

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 02 - 1068

**Appointment of a District Judge to Preside
in a State Bar Disciplinary Action**

The Supreme Court of Texas hereby appoints the Honorable Thomas J. Gossett, Judge of the 391st District Court of Tom Green County, Texas, to preside in the Disciplinary Action styled

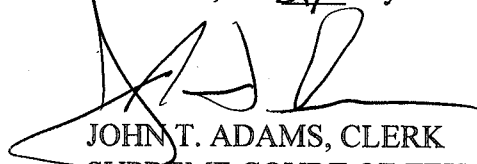
The Commission for Lawyer Discipline v. Edward N. Daneri

filed in the District Court of Bexar County, Texas.

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Bexar County, Texas, a copy of the Disciplinary Petition and this Order for filing pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

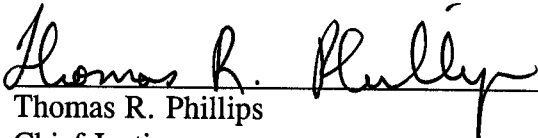
As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City
Of Austin, this 27th day of March, 2002.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 02-9068 is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 27 day of March, 2002.


Thomas R. Phillips
Chief Justice



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON
XAVIER RODRIGUEZ

CLERK
JOHN T. ADAMS

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

APR 19 2002

Mr. Robert E. Kaszczuk
Assistant Disciplinary Counsel, State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205

Mr. Edward N. Daneri
6838 San Pedro Avenue
San Antonio, Texas 78216

Dear Mr. Kaszczuk and Mr. Daneri:

Pursuant to Rule 3.02 of the Texas Rules of Disciplinary Procedure, I hereby notify you that the Supreme Court of Texas has appointed the Honorable Thomas J. Gossett, Judge of the 391st District Court, San Angelo, Texas to preside in

Commission for Lawyer Discipline v. Edward N. Daneri

Sincerely,

SIGNED

John T. Adams
Clerk



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

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ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

APR 9 2002

Honorable Thomas J. Gossett
Judge, 391st District Court
112 W. Beauregard Avenue
San Angelo, Texas 76903-5850

Dear Judge Gossett:

We enclose for your information a copy of the order of assignment, a copy of the Disciplinary Action, a copy of the notification letter to Mr. Daneri and Mr. Kaszczuk and Mr. Daneri, and a copy of the letter to the District Clerk of Bexar County.

It is recommended that, six to eight weeks after receipt of this letter, you or your coordinator contact the Bexar County Administrative Office (956-335-2300) to find out the district court to which this disciplinary case has been assigned, names and addresses of counsel, etc. We then recommend that, either before or immediately after you set the case for trial, you contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (210-769-3519) to reserve a courtroom, obtain a court reporter, obtain claims forms for your expenses incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

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ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

APR 19 2002

The Honorable Reagan Greer
District Clerk of Bexar County
100 Dolorosa Street
San Antonio, Texas 78205-1205

Dear Mr. Greer:

Pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure, I am sending for filing State Bar of Texas Disciplinary Action styled: *The Commission for Lawyer Discipline v. Edward N. Daneri*, and a copy of the Supreme Court's order appointing the Honorable Thomas J. Gossett, Judge of the 301st District Court, San Angelo, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Rae Leifeste
Mr. Robert E. Kaszczuk
Mr. Edward N. Daneri

No. _____

COMMISSION FOR LAWYER
DISCIPLINE

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IN THE DISTRICT COURT OF

V.

BEXAR COUNTY, TEXAS

EDWARD N. DANERI

_____ JUDICIAL DISTRICT

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Petitioner, COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas, complaining of Respondent, EDWARD N. DANERI, and in support thereof would respectfully show the Court the following:

Parties

Petitioner is the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas. Respondent, EDWARD N. DANERI, State Bar Number 05352900, was, at the time the following alleged acts of professional misconduct occurred, an attorney licensed to practice law in the State of Texas and a member of the State Bar of Texas. Respondent may be served with process at, 6838 San Pedro Avenue, San Antonio, Bexar County, Texas 78216, his usual place of business.

Venue

At the time the alleged professional misconduct occurred, Respondent maintained a law office in San Antonio, Bexar County, Texas. The alleged acts of professional misconduct occurred in whole or in part in Bexar County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Bexar County, Texas.



Discovery Level Designation

1.

Pursuant to Tex.R.Civ.P. 190.1, Petitioner designates that discovery in this action should proceed pursuant to Level 2 (Tex.R.Civ.P. 190.3).

Professional Misconduct

2.

Petitioner brings this disciplinary action pursuant to State Bar Act, Tex. Gov't. Code Ann., Sec. 81.001, et seq. (Vernon 1988), the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. The complaints which form the basis of this action were filed with the State Bar of Texas as follows:

LeNelle M. Marsh	March 10, 2001
Blanca I. Gonzalez-Flynn	June 6, 2001
Carlos A. Saenz	July 11, 2001
William Vega-Acevedo	August 5, 2001
Antonio G. Villasana	April 10, 2001

The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

Count I – LeNell M. Marsh

3.

LeNell M. Marsh and her son, Robert Marsh, hired Respondent on March 22, 1998 to represent Robert in criminal and civil cases. Complainant deposited \$2,500.00 with Respondent for legal fees. Respondent later requested and was given an additional \$2,000.00 for a bond so that Robert's tools would be released from police impoundment. Respondent assured the \$2,000.00 was refundable once the case was resolved. Respondent advised LeNell Marsh that if she gave him an additional \$8,700.00 for bond money, he would have Robert out of jail before Thanksgiving 1999. LeNell

Marsh paid Respondent the additional \$8,700.00 on November 10, 1999. Respondent has not returned any of the money identified as refundable money for the bonds. Respondent has not obtained the release of the tools or the person of Robert Marsh. Respondent requested and received another \$750.00 from LeNell Marsh on February 29, 2000 for transportation costs to bring Robert back from Beeville to Bexar County for his civil trial. Respondent did not arrange for Robert to attend the civil trial heard on August 8, 2000.

4.

Respondent made misrepresentations to both LeNell Marsh and to Robert Marsh about his representation and about the various fees he collected for the representation. Respondent assured Robert Marsh that he would get his tools out of impoundment with the \$2,000.00 bond money. Respondent has failed to obtain the tools or refund the money specifically given to him for the bond. Respondent has failed to return the money for the refundable bond as promised. Respondent, after accepting the requested \$8,700.00 refundable bond money, failed to obtain the release of Robert at any time. On approximately eighteen occasions between November 1999 and July 2001, Respondent assured his clients he would secure Robert's release and on each occasion Respondent has failed to secure the release. Respondent has failed to return the \$8,700.00 received for the bond to secure the release.

5.

Respondent failed to secure the return of Robert for his civil hearing held on August 8, 2000 after accepting the \$750.00, he requested, from LeNell Marsh for that purpose. Respondent received the requested transportation fee on February 29, 2000. Respondent failed to advise LeNell Marsh that the State would pay the cost of transportation for Robert in his civil suit against the State for the

wrongful seizure of his property. Respondent failed to insure the presence of Robert for the trial and failed to produce witnesses and receipts for the contested asset seizures thus insuring the forfeiture of his client's assets. Respondent, in his representation of Robert Marsh, failed to carry out his obligations owed to his client.

6.

Respondent failed to return the fees he collected for refundable bond fees after he failed to secure the release of Robert's tools or his person. Respondent failed to return the unused transportation fee upon his failure to secure Robert's presence for his civil suit for the return of his property.

7.

Respondent has failed to return numerous telephone calls from LeNell Marsh requesting information on the status of her son's cases and the refund of the money for the refundable bonds and the money for the transportation of Robert back to Bexar County for his civil trial.

8.

LeNell Marsh is due restitution in the amount of \$10,950.00.

9.

In relation to the representation of Mr. Robert Marsh and the Complaint of LeNell Marsh, the conduct of Respondent described above constitutes a violation of the following Disciplinary Rules:

Rule 1.01(b)(2) -- In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client.

Rule 1.03(a) -- A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.04(a) -- A lawyer shall not enter into an arrangement or collect an illegal or

unconscionable fee.

Rule 1.14 (b) – Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.

Rule 8.04(a)(3) -- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Count II - Blanca I. Gonzalez-Flynn

10.

Blanca Gonzalez-Flynn hired Respondent to represent her in a divorce case on November 6, 1999. Respondent requested and received a \$1,000.00 fee for his representation. Between November 6, 1999 and May 3, 2000, Ms. Gonzalez-Flynn attempted several times to contact Respondent by phone and left messages. Respondent failed to return her calls. On May 3, 2000, Complainant contacted Respondent and set up a meeting to review her case on May 8, 2000. Respondent failed to show up for the appointment and did not return Ms. Gonzalez-Flynn's telephone call about the missed meeting. On May 10, 2000, Blanca Gonzalez-Flynn met with Respondent and was informed that a hearing in her divorce was scheduled for June 15, 2000. Respondent appeared at the divorce hearing unprepared and having failed to properly prepare his client for her testimony. Complainant requested to see and approve the final decree of divorce before it was entered. Ms. Gonzalez-Flynn called Respondent several times and went to his office in an attempt to get information about the decree. Complainant learned the decree was entered on September 21, 2000 several months after she specifically informed Respondent that she wanted to review and sign the decree before submission to the court. Upon review of the decree, Complainant noted several errors and believed the decree did not represent the ruling of the court.

11.

In relation to the complaint by Blanca I. Gonzalez-Flynn, the conduct of Respondent described above constitutes a violation of the following Disciplinary Rules:

Rule 1.03(a) -- A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Count III - Carlos A. Saenz

12.

Carlos A. Saenz hired Respondent in 1994 to file a lawsuit on his behalf for violations of his civil rights and to file various pleadings pertaining to his criminal conviction. Respondent filed a petition in the United States District Court for the Western District of Texas on May 23, 1997. On November 14, 1997, the U.S. Magistrate reviewed the case file and noticed the defendant had not been served. On November 14, 1997, the Magistrate issued an order to Respondent to show cause on or before November 25, 1997 as to why this case should not be dismissed for want of prosecution. On December 8, 1997, the court again reviewed the file and discovered the defendant still had not been served. The court contacted Respondent and was advised that Respondent was filing a motion to dismiss without prejudice. On January 20, 1998, the court on its own motion dismissed the case for want of prosecution. Respondent never filed a motion to dismiss.

13.

After learning that his case was dismissed for want of prosecution, Mr. Saenz terminated Respondent and requested his entire file be returned to him. Respondent has failed to return the client's file to him. Respondent failed to keep his client reasonably informed about the status of his case.



14.

Respondent misrepresented his actions by telling his client that he filed a request for a full pardon from the Executive Clemency Section of the Texas Board of Pardons and Paroles and that he had filed an Extraordinary Writ of Certiorari with the Supreme Court of the United States. Respondent had not filed a writ with the Supreme Court. Respondent failed on two occasions to file the full pardon application forms and questionnaires with the Texas Board of Pardons and Paroles before the due dates. Respondent's failure to return the required documentation to the Texas Board of Pardons and Paroles, resulted in the closing of Complainant's application process without action by the Board.

15.

In relation to the representation of Mr. Saenz, the conduct of Respondent described above constitutes a violation of the following Disciplinary Rules:

Rule 1.01(b)(1) -- In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.01(b)(2) -- In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

Rule 1.03(a) -- A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.03(b) -- A lawyer shall explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation.

Rule 1.15(d) -- Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payments of fee that has not been earned.

Count IV - William Vega-Acevedo

16.

Mr. William Vega-Acevedo hired Respondent on December 19, 2000 to clear his immigration status and prevent his deportation. Mr. Vega-Acevedo paid the Respondent a retainer fee of \$2,300.00. Respondent failed to perform any legal duties on behalf of William Vega-Acevedo. Respondent failed to appear at several hearings scheduled to determine Vega-Acevedo's immigration status. Respondent failed to return telephone calls from his client and failed to refund the unearned fee as requested by his client. Respondent's failure to act in his client's best interest, caused Mr. Vega-Acevedo to hire new counsel, who cleared up the immigration status quickly.

17.

In relation to the complaint filed by William Vega-Acevedo, the conduct of Respondent described above constitutes a violation of the following Disciplinary Rules:

Rule 1.03(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 8.04(a)(3) -- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Count V – Antonio G. Villasana

18.

On or about September 22, 2000, Antonio G. Villasana (Complainant) hired Respondent to file a divorce from his wife living in Mexico. Respondent advised Complainant that he would be filing the divorce petition in Texas and would insure it met with Mexico's requirements to be a valid, binding divorce recognized by Mexico. On several occasions between September 2000 and March 2001, Respondent assured Complainant that everything was progressing fine and it would take a few more weeks to conclude. On March 16, 2001, Respondent failed to appear at

a scheduled meeting with Complainant at the Caldwell County Courthouse in Lockhart. While at the Courthouse, Complainant discovered that there was no divorce petition filed.

19.

Respondent neglected the Complainant's divorce matter by failing to file and pursue a divorce petition in the state of Texas. Respondent further failed to ensure that a divorce action was promptly pursued in Mexico.

20.

Respondent failed to communicate the status of the divorce matter to his client and failed to respond to reasonable requests for information from his client. On several occasions during the period of representation, Respondent failed to return telephone calls from Complainant requesting information about the status of the case. On three occasions, Respondent agreed to meet the Complainant at the Caldwell County Courthouse to discuss the case and on each occasion Respondent failed to appear or offer an explanation for his failure to appear. Respondent has failed to provide the Complainant with copies of his file after Complainant made requests for copies of his file and any petitions filed in his case. Respondent failed to advise his client of his decision not to file the divorce case in Texas and his decision to file a divorce in Mexico. Respondent has not filed a divorce action in Mexico to date.

21.

Respondent misrepresented to the Investigatory Panel (Panel 8C-3) and to Complainant that he would file and conclude the divorce matter within 60 days of the just cause hearing held on September 20, 2001. Respondent advised the panel that he would contact Complainant and

obtain a statement from Complainant that he was satisfied with Respondent's association of a Mexican attorney to complete the divorce in Mexico. Respondent contacted the Respondent on September 22, 2001 and advised him the case would be concluded within 60 days. Respondent has not, to date, filed a petition, or insured that an associated firm in Mexico filed a petition. Respondent has failed to conclude the divorce matter as promised on September 20, 2001.

22.

Respondent engaged in dishonest conduct by misrepresenting to the status of the legal matter to both the Complainant and the grievance committee. Respondent was requested to provide a copy of the client file to the grievance committee and Respondent has failed to comply with the lawful request for information from the grievance committee.

23.

In relation to the representation of Mr. Villasana, the conduct of Respondent described above constitutes a violation of the following Disciplinary Rules:

Rule 1.01(b)(1) -- In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.01(b)(2) -- In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

Rule 1.03(a) -- A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.03(b) -- A lawyer shall explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation.

Rule 8.01(a) -- A lawyer in connection with a disciplinary matter, shall not knowingly make a false statement of material fact.

Rule 8.04(a)(8)—A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the

Texas Rules of Disciplinary Procedure.

Rule 8.04(a)(3) -- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

PRAYER


WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including costs of court, litigation expenses and attorney fees.

Respectfully submitted,

Dawn Miller
Chief Disciplinary Counsel

Robert E. Kaszczuk
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205
Telephone: (210) 271-7881
Telecopier: (210) 271-9642


Robert E. Kaszczuk
State Bar No. 11106300

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7099 3220 0000 0580 7273

January 7, 2002

John T. Adams, Clerk
Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

RE: Commission for Lawyer Discipline v. Edward N Daneri

Dear Mr. Adams:

Enclosed please find an original and three (3) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Edward N. Daneri. Mr. Daneri has designated Bexar County as his principal place of practice. Request is hereby made that the Court appoint an active District Judge who does not reside in the Administrative Judicial Region in which Respondent resides to preside in this case. Upon appointment, request is made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Edward N. Daneri
6838 San Pedro Avenue
San Antonio, Texas 78216

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial as set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure. If not, I would respectfully request that an alternate appointment be made.

Once a trial judge has been appointed, please forward the original and three (3) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Bexar County, Texas, with the request that the suit be filed, service be obtained, and a filemarked copy of the petition be returned to the undersigned.

425 SOLEDAD, SUITE #300, SAN ANTONIO, TEXAS 78205, (210) 271-7881

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Bexar County, Texas and a return envelope to be sent to the District Clerk of Bexar County, Texas, for the Clerk's use in returning a filemarked copy of the petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Kaszczuk".

Robert E. Kaszczuk
Assistant Disciplinary Counsel

Enclosures

REK/apr