

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 96- 9196**

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

The Supreme Court of Texas hereby appoints the Honorable Mark Davidson, Judge of the 11th District Court of Harris County, Texas, to preside in the Disciplinary Action styled:

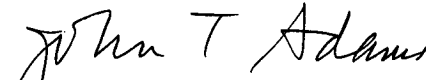
**The Commission for Lawyer Discipline v. Randy Lee Cleveland**

to be filed in a District Court of Hidalgo County, Texas.

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Hidalgo County, Texas, a copy of this Order and of the Disciplinary Petition for filing and service 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 20th day of August, 1996.



JOHN T. ADAMS, CLERK <sup>EST</sup>  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9196, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 22 day of August, 1996.

  
Thomas R. Phillips  
Chief Justice

COPY

No. \_\_\_\_\_

COMMISSION FOR LAWYER  
DISCIPLINE

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§

IN THE DISTRICT COURT OF

V.

HIDALGO COUNTY, T E X A S

RANDY LEE CLEVELAND

\_\_\_TH JUDICIAL DISTRICT

**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, RANDY LEE CLEVELAND, 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, RANDY LEE CLEVELAND, State Bar No. 04379400, is an attorney licensed to practice law in the State of Texas and is a member of the State Bar of Texas. Respondent is a resident of Hidalgo County, Texas and may be served with process at 920 North Main Street, McAllen, Hidalgo County, Texas 78501, his usual place of business. No service is requested at this time.

**Venue**

Respondent maintains his principal place of practice in Hidalgo County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Hidalgo County, Texas.

## Professional Misconduct

### I.

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 by Abel R. Natividad on or about December 16, 1994 and by Maria Flores on or about October 13, 1995. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

### Count One -- Abel R. Natividad

### II.

On or about November 16, 1991, Abel R. Natividad was injured in a motor vehicle accident which occurred in Reaves County, Texas. On or about December 30, 1991, Respondent was hired by Mr. Natividad to represent him in a claim for personal injury damages. Without notice to Mr. Natividad, Respondent left the state of Texas and abandoned his law practice in August of 1994.

### III.

A products liability suit was filed on Mr. Natividad's behalf and the Court entered a scheduling order requiring the plaintiffs to designate expert witnesses by August 31, 1994. Trial was set for November 14, 1994. Respondent failed to designate experts. On October 27, 1994, the Court entered an order precluding plaintiff from offering expert testimony. On October 24, 1994, the defendant filed a motion for summary judgment which was granted by the Court in favor of the defendant on November 4, 1994. No response to the motion for summary judgment

was filed on behalf of Mr. Natividad.

IV.

As a result of Respondent's abandonment of Mr. Natividad's case, Mr. Natividad's cause of action was lost. Prior to leaving the state of Texas, Respondent failed to withdraw from Mr. Natividad's case, failed to obtain counsel to take over Mr. Natividad's case, failed to comply with the Court's scheduling order and failed to notify Mr. Natividad that he was dropping the representation.

V.

The conduct of Respondent described above, as related to the representation of Mr. Natividad, constitutes violations of the following Disciplinary Rules:

Rule 1.03(a) -- A lawyer shall keep a client reasonably informed about the status of a matter \* \* \* \*;

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 1.15(b)(1) -- A lawyer shall not withdraw from representing a client unless withdrawal can be accomplished without material adverse effect on the interests of the client; and/or

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 (client's file) to which the client is entitled \* \* \* \*

**Count Two -- Maria Flores**

VI.

On or about April 23, 1993, Respondent was retained by Maria Flores to represent her in a claim for personal injury damages incurred as a result of work related accident. On April 23, 1993, Ms. Flores signed a contract of employment which stated that "\* \* \* Attorney shall

receive 40% of any and all sums of money or property recovered herein \* \* \* \*". On or about May 24, 1993, Ms. Flores' case was settled for \$67,500.00 plus the payment of certain future medical expenses which Ms. Flores may have incurred for a period of eighteen (18) months after the settlement.

VII.

Contrary to the contract of employment, upon settlement, Respondent charged Ms. Flores a fee of \$40,000.00. A fee of \$40,000.00, under the circumstances of Ms. Flores' case, represents an unconscionable fee. A competent lawyer could not form a reasonable belief that a \$40,000.00 fee was reasonable.

VIII.

Upon disbursement of the settlement proceeds, Respondent failed to provide to Ms. Flores a written summary of the settlement disbursement showing the method for the determination of the contingent fee charged by Respondent and the amount to be disbursed to Ms. Flores.

IX.

The conduct of Respondent described above, as related to the representation of Ms. Flores, constitutes violations of the following Disciplinary Rules:

Rule 1.04(a) -- A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee; and/or

Rule 1.04(d) -- Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

**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 and attorney's fees.

Respectfully submitted,

James M. McCormack  
General Counsel

James Ehler  
Assistant General Counsel

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

A handwritten signature in black ink, appearing to read "James Ehler", is written over a horizontal line.

James Ehler  
State Bar No. 06484650  
ATTORNEYS FOR PETITIONER

# STATE BAR OF TEXAS



CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
P 426 178 012

Office of the General Counsel  
Regional Office  
Soledad Plaza West  
425 Soledad, Suite 300  
San Antonio, Texas 78205  
(210) 271-7881  
FAX: (210) 271-9642

July 8, 1996

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

RE: Commission for Lawyer Discipline v. Randy Lee Cleveland; In the District Courts  
of Hidalgo County, Texas

Dear Mr. Adams:

Enclosed please find an original and two (2) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Randy Lee Cleveland. Mr. Cleveland has designated Hidalgo 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 practices 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:

Randy Lee Cleveland  
By and through his attorney of record  
Jerry L. Zunker  
ZUNKER, BUTLER, ESTES & CRANE, L.L.P.  
812 San Antonio, Suite 201  
Austin, Texas 78701

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 two (2) copies of the Disciplinary Petition and the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Hidalgo County, Texas, with the request that the suit be filed, service be obtained, and a filemarked copy of the petition returned to the undersigned.



Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Hidalgo County, Texas and a return envelope to be sent to the District Clerk of Hidalgo 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 black ink, appearing to read "J. Ehler". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James Ehler  
Assistant General Counsel

Enclosures

JE/mc



# THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK  
JOHN T. ADAMS

EXECUTIVE ASST  
WILLIAM L. WILLIS

ADMINISTRATIVE ASST  
NADINE SCHNEIDER

JUSTICES  
RAUL A. GONZALEZ  
NATHAN L. HECHT  
JOHN CORNYN  
CRAIG ENOCH  
ROSE SPECTOR  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT

September 13, 1996

Mr. Steve Young  
General Counsel, State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711

Mr. Randy Lee Cleveland  
c/o Jerry L. Zunker  
Zunker, Butler, Estes & Crane, L.L.P.  
812 San Antonio, Suite 201  
Austin, Texas 78701

Dear Mr. Young and Mr. Cleveland:

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 Mark Davidson, Judge of the 11th District Court, Houston, Texas to preside in

Commission for Lawyer Discipline v. Randy Lee Cleveland

Sincerely,

**SIGNED**

John T. Adams  
Clerk



## THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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WILLIAM L. WILLIS

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ROSE SPECTOR  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT

September 13, 1996

Honorable Mark Davidson  
Judge, 11th District Court  
304 Civil Courts Building  
301 Fannin Street  
Houston, Texas 77002

Dear Judge Davidson:

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. Cleveland and Mr. Young, and a copy of the letter to the District Clerk of Hidalgo County.

It is recommended that, a month or six weeks after receipt of this letter, you or your coordinator contact the District Court Administrative Office (210-318-2200) 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 (210-546-0724) 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

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CRAIG ENOCH  
ROSE SPECTOR  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT

September 13, 1996

The Honorable Pauline Gonzales  
District Clerk of Hidalgo County  
P.O. Box 87  
Edinburg, Texas 78540

Dear Ms. Gonzales:

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. Randy Lee Cleveland and a copy of the Supreme Court's order appointing the Honorable Mark Davidson, Judge of the 11th District Court, Houston, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Hon. Mark Davidson  
Mr. Randy Lee Cleveland  
Mr. Steve Young