

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 00- 9009

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

The Supreme Court of Texas hereby appoints the Honorable Jon Wisser, Judge of the 299th District Court of Travis County, Texas, to preside in the Disciplinary Action styled:


The Commission for Lawyer Discipline v. Gilbert Torres

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Galveston 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.

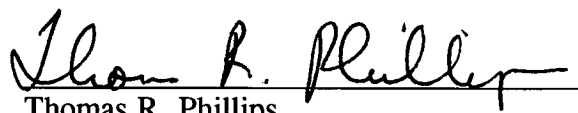
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 4th day of January, 2000.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 00-9009, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code, §74.057.

Signed this 7 day of January, 2000.


Thomas R. Phillips
Chief Justice

Cause No. _____

COMMISSION FOR LAWYER DISCIPLINE §
Petitioner §

v. §

GILBERT TORRES §
Respondent §

IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas (the "CFLD"), complains of Respondent GILBERT TORRES ("Respondent") as follows:

1. DISCOVERY CONTROL PLAN

1.1 Pursuant to Rules 190.1 and 190.3, TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level 2 Discovery Control Plan. Pursuant to Rule 190.3(b), TRCP, Petitioner affirmatively pleads that it seeks monetary relief aggregating fifty thousand and no/100 dollars (\$50,000.00) or more, not excluding costs, pre-judgment interest and attorneys' fees

2. NATURE OF PROCEEDING

2.1 The CFLD brings this disciplinary action pursuant to the State Bar Act, Texas Government Code Annotated §81.001, *et seq.* (Vernon 1988 and supp. 1994), the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT, and the TEXAS RULES OF

DISCIPLINARY PROCEDURE. The complaint that forms the basis of this Disciplinary Petition was filed on or after May 1, 1992.

3. VENUE

3.1 Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent's address and principal place of practice is Galveston County, Texas; therefore, venue is appropriate in Galveston County, Texas, pursuant to Rule 3.03 of the TEXAS RULES OF DISCIPLINARY PROCEDURE, (TRDP). Respondent, **GILBERT TORRES** may be served with citation by and through his attorney of record, Kenneth C. Kaye, 1101 West Main, Suite P, League City, Texas, 77573.

4. AMADOR COMPLAINT

PURSUANT TO PART III OF THE TEXAS RULES OF DISCIPLINARY PROCEDURE, PETITIONER REQUESTS THIS COURT DISCIPLINE TORRES FOR HIS ACTS OF PROFESSIONAL MISCONDUCT.

4.1 A. TORRES ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.01(a) for accepting or continuing employment in a legal matter which the lawyer knew or should have known was beyond lawyer's competence;

1.01 (b)(1) for neglecting a legal matter entrusted to the lawyer;

1.01(b)(2) for failing to carry out completely the obligations owed to a client; and

1.01(c) as used in this Rule "neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients;

1. Respondent was employed by Leeroy Amador (Complainant"), for representation regarding a modification of child support.

2. Respondent neglected Amador's case when Respondent failed to appear for court scheduled hearings with proper notification from the court.
3. Respondent failed to take appropriate action necessary regarding discovery when Respondent was in possession of the client's information to answer the discovery requests.
4. As a result of Respondent's negligence, the opposing party was granted judgment as Complainant was not notified of the hearing. Complainant was sanctioned by the Court and ordered to pay opposing counsel's attorney's fees.
5. As a result of Respondent's negligence, Complainant was forced to hire additional counsel to attempt to have the adverse judgment set aside.
6. As a result of Respondent's negligence, when the Complainant was sanctioned by the Court for his non-appearance, he had to explain to his supervisors with the Department of Public Safety the cause for the sanction.

B. TORRES ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.03(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information;

3.02 In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

1. The Respondent failed to communicate with the Complainant when office visits and telephone calls were ignored.
2. The Respondent failed to notice the Complainant of court dates resulting in the Complainant's non-appearance thereby the Complainant was sanctioned by the Court which resulted in a garnishment of his wages.

C. TORRES ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.15(d) for failing, upon termination of representation, to reasonably protect a client's interests, give notice to the client to seek other counsel, or surrender papers and property which belongs to the client.

1. Respondent contacted another attorney while still in the courtroom to represent his client, Mr. Amador. Respondent did not forward the client's file to Mr. Bennett, the new attorney, until two weeks later. At that time, the file was incomplete of all correspondence received by Respondent during his representation of Complainant.

D. TORRES ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

8.04(a)(8) for failing to timely furnish a district grievance committee a response or other information as required unless he/she timely asserts a privilege or other legal ground for failure to do so;

1. On or about December 4, 1997, the Respondent received notice of the Leeroy Amador complaint. That notice directed the Respondent to provide a written response thereto by January 4, 1998.
2. Respondent requested an extension to respond eight days after the due date of January 4, 1998. Then the response was not filed in a timely fashion.

5. BASIS OF CAUSE OF ACTION

- 5.1 The complaint that forms the basis of this cause of action was brought to the attention of the Office of the General Counsel of the State Bar of Texas by Leeroy Amador filing a complaint on or about November 25, 1997.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent as the facts shall warrant by finding professional misconduct with regard to the above-stated rule violations and imposing a sanction of reprimand, suspension and/or disbarment; and that the CFLD have all other relief to

which it may show itself to be justly entitled, including costs of court, restitution to Leeroy Amador, and attorneys' fees.

Respectfully submitted,

Dawn M. Miller
Acting General Counsel

Jeannette M. Duer
Assistant General Counsel

Office of the General Counsel
State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002
Phone: (713) 759-6931
Fax: (713) 752-2158



JEANNETTE M. DUER
State Bar No. 00793645

ATTORNEYS FOR PETITIONER THE
COMMISSION FOR LAWYER

JATORRES\DP.WPD

Original Disciplinary Petition
Gilbert Torres

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STATE BAR OF TEXAS



Office of the General Counsel

November 17, 1999

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

Re: Commission for Lawyer Discipline v. Gilbert Torres

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 Gilbert Torres. Mr. Torres has designated Galveston County, Texas, as his/her 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 through his attorney of record at the address shown below and the undersigned of the identity and address of the judge assigned:

Gilbert Torres
c/o Kenneth C. Kaye
1101 West Main
Suite P
League City, Texas 77573

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to: (1) whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial 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, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Galveston County, Texas, with the request that the suit be filed, service be obtained, and a file-marked copy of the petition be returned to the undersigned.

Mr. John Adams
November 17, 1999
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Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Galveston County, Texas, and a return envelope to be sent to the District Clerk of Galveston County, Texas, for the Clerk's use in returning a file-marked copy of the Petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Jeannette M. Duer". The signature is written in black ink and is positioned above the typed name and title.

Jeannette M. Duer
Assistant General Counsel

Enclosures

J:\TORRES\CLERK1.SCT



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

CLERK
JOHN T. ADAMS

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JAN 14 2000

The Honorable Evelyn Wells Robison
District Clerk of Galveston County
722 Moody Avenue
Galveston, Texas 77550

Dear Ms. Robison:

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. Gilbert Torres* and a copy of the Supreme Court's order appointing the Honorable Jon Wisser, Judge of the 299th District Court, Austin, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Jon Wisser
Ms. Jeannette M. Duer
Mr. Gilbert Torres



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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JOHN T. ADAMS

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EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JAN 14 2000

Honorable Jon Wisser
Judge, 299th District Court
P.O. Box 1748
Austin, Texas 78767-1748

Dear Judge Wisser

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 Ms. Duer and Mr. Torres, and a copy of the letter to the District Clerk of Galveston County.

We then recommend that, four or five weeks after receipt of this letter, you or your coordinator contact the presiding judge or the District Clerk of Galveston County to find out the district court to which this disciplinary case has been assigned. We then recommend that, either before or immediately after you set the date for trial, the judge or coordinator of that court be contacted to reserve a courtroom, provide for a court reporter, etc. Finally, you should contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (713-655-2700) to obtain information on lodging, allowable expenses, and 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

CLERK
JOHN T. ADAMS

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JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JAN 14 2000

Ms. Jeannette M. Duer
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Gilbert Torres
c/o Kenneth C. Kaye
1101 West Main, Suite P
League City, Texas 77573

Dear Ms. Duer and Mr. Torres:

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 Jon Wisser, Judge of the 299th District Court, Austin, Texas to preside in

Commission for Lawyer Discipline v. Gilbert Torres

Sincerely,

SIGNED

John T. Adams
Clerk