

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97- 9007

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

The Supreme Court of Texas hereby appoints the Honorable Brian A. Carper, Judge of the 324th District Court of Tarrant County, Texas, to preside in the Disciplinary Action styled:

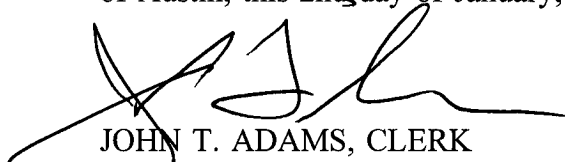
The Commission for Lawyer Discipline v. Amanda A. Martin

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Harris 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,

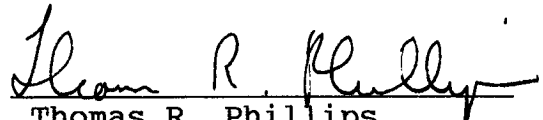
with the Seal thereof affixed at the City
of Austin, this 2nd day of January, 1997.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 9²-9007, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 6 day of January, 1997.


Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
AMANDA A. MARTIN	§	_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas (hereinafter called "Petitioner"), complaining of Respondent AMANDA A. MARTIN (hereinafter called "Respondent"), showing the Court:

I.

Petitioner brings this disciplinary action pursuant to the State Bar Act, the 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 complaints that form the basis of this Disciplinary Petition was filed on or after May 1, 1992.

II.

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent is a resident of Harris County, Texas. Respondent's principal place of practice is Harris County, Texas, and therefore venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure. An officer may serve citation on Respondent at her business address located at 8700 Commerce Park Drive, Suite 244, Houston, Harris County, Texas 77036.

TO CLERK: "FILE MARK THIS
COPY AND RETURN"

III.

On or about October 6, 1994, Vivian Lopez, along with her three children; Sergio, Miguel, and Juan Lopez, sustained injuries as a result of an automobile accident in Beaumont, Jefferson County, Texas. Following the accident, Vivian Lopez (hereinafter called "Ms. Lopez") went to Dr. Everett Beyer at American Neck and Back Chiropractic Clinic (hereinafter called "the Clinic") for treatment.

IV.

While Ms. Lopez was undergoing therapy at the Clinic, Dr. Beyer and/or his employee approached her about hiring an attorney and filing a personal injury claim. At the time, Ms. Lopez spoke and understood very little English, yet she communicated to Dr. Beyer and/or his employee that she did not want a lawyer, nor did she think she needed a lawyer.

Notwithstanding, Dr. Beyer and/or his employee contacted Respondent by phone regarding Ms. Lopez's personal injury claim. Ms. Lopez was later informed that Respondent was handling her personal injury claim. Ms. Lopez was instructed to sign some forms kept at the Clinic for Respondent's services. She again told Dr. Beyer and/or his employee that she did not want to hire a lawyer as a result of this particular incident.

Over the course of her therapy at the Clinic, Ms. Lopez was continuously pressured and ultimately coerced into signing various legal documents, including a Power of Attorney and a Contract for Employment and a Patient's Medical Authorization. These documents were given to Ms. Lopez to sign against her wishes to do so.

V.

Such acts and/or omissions on the part of Respondent as are described in Paragraph IV, hereinabove, constitute conduct which violates Rules 7.03(a)(1) and 7.03(b) of the Texas Disciplinary Rules of Professional Conduct.

VI.

Because Ms. Lopez understood very little English, she did not understand the content of the documents described in Paragraph IV that were printed in English and given to her to sign. Respondent failed to explain the content of the documents to the extent reasonably necessary to permit Ms. Lopez to make an informed decision regarding the representation.

VII.

Such acts and/or omissions on the part of Respondent as are described in Paragraph VI, hereinabove, constitute conduct which violates Rule 1.03(b) of the Texas Disciplinary Rules of Professional Conduct.

VIII.

Respondent pursued the personal injury claim of Ms. Lopez and the personal injury claims of the three Lopez children against Farmers Insurance Company. Respondent did not inform Ms. Lopez that the representation of her interests may be or may later become materially adverse to the interests of the Lopez children. Respondent failed to obtain Ms. Lopez's fully informed consent to the continued representation of all parties in this manner.

IX.

Such acts and/or omissions on the part of Respondent as are described in Paragraph VIII, hereinabove, constitute conduct which violates Rules 1.06(b)(1) and/or 1.06(b)(2) of the Texas Disciplinary Rules of Professional Conduct.

X.

On or about March 27, 1995, Respondent reached a settlement with Farmers Insurance Company for the Lopez family. Respondent failed to inform Ms. Lopez regarding the settlement offer or receive her permission to accept the offer. Instead, Respondent proceeded to finalize the settlement of Ms. Lopez's claim for \$8,000.00 and the Lopez children's claims for \$500 to each child.

Although Ms. Lopez did sign a document styled "Power of Attorney," this document has no legal effect because it was not properly executed by the Respondent. The document was not notarized, was not dated, and was not signed by the Respondent. Therefore the document was invalid and could not give Respondent any authority to reach a final settlement in Ms. Lopez's cause of action. Respondent violated her duty under the Texas Disciplinary Rules of Professional Conduct by failing to reasonably inform Ms. Lopez of the settlement offer and seek her permission to finalize the agreement.

XI.

Such acts and/or omissions on the part of Respondent as are described in Paragraph X, hereinabove, constitute conduct which violates Rules 1.02(a)(2) and 1.03(a) of the Texas Disciplinary Rules of Professional Conduct.

XII.

Pursuant to the settlement statement sent to Ms. Lopez, she received \$1,966.67. Respondent received \$3,366.67 for attorney fees and expenses, and the Clinic received \$1,756.46 for treating Ms. Lopez' injuries. Respondent settled the Lopez children's claims for \$500.00 each, of which Respondent received an additional \$500.00 for attorney fees. Respondent did not communicate Respondent's fee to Ms. Lopez, in manner that she would understand, before or within a reasonable time after commencing the representation. The only form stating Respondent's fee, the Contract for Employment and Medical Authorization, was printed in English and was not translated for Ms. Lopez. Furthermore, the contract was not properly executed by the Respondent. The contract was not dated, was not signed by the Respondent, and was not fully explained to Ms. Lopez.

XIII.

Such acts and/or omissions on the part of the Respondent as are described in Paragraph XII, hereinabove, constitute conduct which violates Rules 1.04(a) and/or 1.04(c) of the Texas Disciplinary Rules of Professional Conduct.

XIV.

Ms. Lopez's client files include four (4) executed Releases in Full of All Claims and Rights, witnessed by Mary Vargas and dated March 27, 1995. Although these documents were never personally signed nor seen by Ms. Lopez, each signature line of each release reads, "Vivian Lopez w/permission of Attorney A.A. Martin." Ms. Lopez never gave her consent for the signing of any of these documents, nor her consent for the release of any claims in her cause of action.

In addition, the Settlement Statement styled *Vivian Lopez vs. Farmers Insurance*, acknowledges receipt of payment of funds but was not approved nor consented to by Ms. Lopez. The signature line of this documents states, "Vivian Lopez, with permission of attorney," dated March 27, 1995. Ms. Lopez did not personally sign the documents nor give her consent for the signing or acceptance of her settlement, she had no knowledge of any transactions which allegedly took place, and was not informed of any actions prior to the distribution. Respondent fraudulently signed the settlement documents in Ms. Lopez's name and/or misrepresented that Respondent had Ms. Lopez's permission to do so.

The Settlement Statements for Sergio, Juan, and Miguel Lopez were signed "Daniel [sic] Lopez, with permission of Vivian Lopez"; "Sergio Lopez, with permission of Vivian Lopez"; and "John [sic] Lopez, with permission of Vivian Lopez." Ms. Lopez did not sign these documents, nor did she give her consent for the signing of these documents. Furthermore, she did not give her consent to the settlement distributions for any of her children's claims. Respondent fraudulently signed the settlement documents in Ms. Lopez's name and/or misrepresented that Respondent had Ms. Lopez's permission to do so.

XV.

Such acts and/or omissions on the part of Respondent as are described in Paragraph XIV, hereinabove, constitute conduct which violates Rules 1.02(a)(2), 1.03(a), and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

XVI.

As a result of Respondent's actions, Ms. Lopez hired Woodson E. Dryden to further review the matter on her behalf. Mr. Dryden sent three certified letters; dated April 17, 1995, May 11, 1995 and June 28, 1995, to Respondent requesting a copy of the Lopez file, copies of all correspondence between Respondent and Dr. Beyer, a detailed accounting of all of the expenses involved in the Lopez case, and a itemized list of all deductions from the \$8,000.00 settlement. Respondent refused to send the requested information to Mr. Dryden or to Ms. Lopez.

XVII.

Such acts and/or omissions on the part of Respondent as are described in Paragraph XVI, hereinabove, constitute conduct which violates Rules 1.03(a) and/or 1.15(d) of the Texas Disciplinary Rules of Professional Conduct.

XVIII.

The complaint that forms the basis of this cause of action was brought to the attention of the Office of the General Counsel by Woodson E. Dryden's filing of a complaint on behalf of Ms. Vivian B. Lopez on or about July 14, 1995.

Prayer

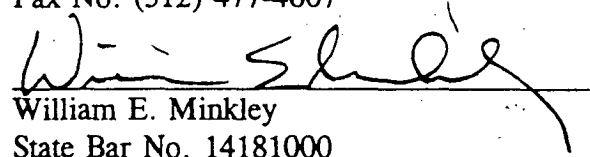
WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent, AMANDA A. MARTIN, by disbarment, suspension or reprimand, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself to be justly entitled, including costs of court and attorney's fees.

Respectfully submitted,

Steven W. Young
Interim General Counsel

William E. Minkley
Chief Trial Counsel

Office of the General Counsel
STATE BAR OF TEXAS
400 West 15th Street, Suite 1500
P.O. Box 12487
Austin, Texas 78711
(512) 463-1463
Fax No. (512) 477-4607



William E. Minkley
State Bar No. 14181000

ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE



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

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

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

January 8, 1997

Mr. William E. Minkley
Assistant General Counsel, State Bar of Texas
400 W. 15th Street, Suite 1500
P.O. Box 12487
Austin, Texas 78711

Ms. Amanda A. Martin
8700 Commerce Park Drive, Suite 244
Houston, Texas 77036

Dear Mr. Minkley and Ms. Martin:

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 Brian A. Carper, Judge of the 324th District Court of Fort Worth, Texas to preside in

Commission for Lawyer Discipline v. Amanda A. Martin

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

January 8, 1997

Honorable Brian A. Carper
Judge, 324th District Court
500 Civil Courts Building
100 N. Houston Street
Fort Worth, Texas 76196

Dear Judge Carper:

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. Minkley and Ms. Martin and a copy of the letter to the District Clerk of Harris County.

It is recommended that, six to eight weeks after receipt of this letter, you contact the Harris County District Court Administrative Office (713-755-7593) 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 case for trial, you again contact the Harris County District Court Administrative Office (713-755-6593) 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 (713-471-3911) 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

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PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

January 8, 1997

The Honorable Charles Bacarisse
District Clerk of Harris County
P.O. Box 4651
Houston, Texas 77210

Dear Mr. Bacarisse:

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. Amanda A. Martin, and a copy of the Supreme Court's order appointing the Honorable Brian A. Carper, Judge of the 324th District Court of Fort Worth, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Brian A. Carper
Ms. Amanda A. Martin
William E. Minkley