

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 98- 9188

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

The Supreme Court of Texas hereby appoints the Honorable Andy Mireles, Judge of the 73rd District Court of Bexar County, Texas, to preside in the Disciplinary Action styled:

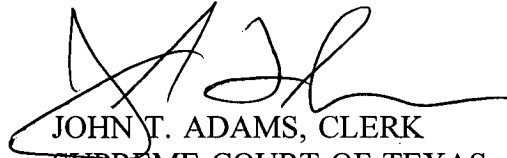
The Commission for Lawyer Discipline v. Eugene X. Mercier

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

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

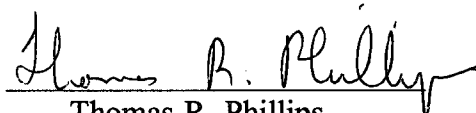
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 27th day of October, 1998.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 98-9188, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 28 day of October, 1998.


Thomas R. Phillips
Chief Justice

No. _____

COMMISSION FOR LAWYER
DISCIPLINE

V.

EUGENE X. MERCIER

§
§
§
§
§
§

IN THE DISTRICT COURT OF

NUECES COUNTY, T E X A S

___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, EUGENE X. MERCIER, 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, EUGENE X. MERCIER, State Bar Number 13946700, 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 Nueces County, Texas, and may be served with citation and a copy of this petition at his place of business located at 4455 South Padre Island Drive, Suite 1, Corpus Christi, Nueces County, Texas 78411.

Venue

Respondent resides in and maintains his principal place of practice in Nueces County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Nueces 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 Victoria Sanchez, on or about December 17, 1997, and Richard and Frederick Garcia, on or about February 24, 1998. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

II.

Victoria Sanchez (S0129706085)

On December 12, 1997, Victoria Sanchez was involved in a motor vehicle accident in San Antonio, Texas. On December 15, 1997, Ms. Sanchez was contacted by Total Collision Services ("TCS"), a collision repair company, regarding a free estimate of the damage to her vehicle. At the time of the premises visit, Anna Rodriguez and Cipriano "Cip" Gongora, acting as agents or employees of TCS, initiated a discussion about possible legal representation by handing Ms. Sanchez a business card belonging to Respondent, Eugene X. Mercier, and by encouraging Ms. Sanchez to contact Respondent about pursuing a personal injury claim on her behalf. Before leaving Ms. Sanchez's residence, Anna wrote the name and telephone number of her brother, Elpidio "Pete" Gongora, on Respondent's business card and directed Ms. Sanchez to contact Pete directly about hiring Respondent to take her case. Although Anna represented to Ms. Sanchez that a written estimate of the damage to her vehicle would be delivered to her that evening, Ms. Sanchez never

received any such estimate. Anna Rodriguez, Pete Gongora, and Cip Gongora are hereinafter referred to collectively as the "TCS Actors."

III.

Richard and Frederick Garcia
(S0029806278)

On December 17, 1997, Frederick Garcia and/or his brother, Richard Garcia (hereinafter referred to collectively as the "Garcias"), were involved in a motor vehicle accident in San Antonio, Texas. On December 19, 1997, the Garcias were contacted by Anna Rodriguez of TCS regarding a free estimate of the damage to their vehicle. At the time of the premises visit, Anna and Cip Gongora, acting as agents or employees of TCS, initiated a discussion about possible legal representation by handing the Garcias a business card belonging to Respondent, Eugene X. Mercier, and by encouraging the Garcias to contact Respondent about pursuing a personal injury claim on their behalf. When asked how she would be compensated for her efforts in this matter, Anna represented that she would be paid by Respondent. That same evening, after Anna placed a telephone call to Respondent's office, her brother, Pete Gongora, acting as Respondent's legal assistant, arrived at the Garcia home and signed the Garcias to an employment contract for Respondent's legal services.

IV.

At the time of the aforementioned contacts, Respondent ordered, encouraged, or permitted his non-lawyer employees and/or agents to contact Ms. Sanchez and the Garcias by telephone and in person for the purposes of obtaining professional employment for Respondent. At all times relevant to this cause of action, Respondent had direct supervisory authority over Pete Gongora and the other

TCS Actors.

V.

Respondent, through the acts of the TCS Actors, sought and/or obtained employment from Ms. Sanchez and the Garcias. The TCS Actors, in their direct contacts with them, told Ms. Sanchez and the Garcias that they could recover money for physical injuries as well as for mental anguish and lost time and wages as a result of their accidents when in fact there were no facts to support such statements. The TCS Actors also told Ms. Sanchez and the Garcias that they were being contacted for the sole purpose of obtaining a free estimate of the damage to their vehicles when in fact the purposes of the contacts were to solicit employment for Respondent. The communications to Ms. Sanchez and the Garcias involved, false, misleading and deceptive statements.

VI.

Respondent paid money to the TCS Actors for soliciting Ms. Sanchez and the Garcias.

VII.

Respondent engaged in dishonest, misleading and deceptive conduct constituting barratry, as defined by §38.12 of the Texas Penal Code, by carrying out direct and uninvited communications with potential clients.

VIII.

The conduct of Respondent described above constitutes a violation of the following Texas Disciplinary Rules of Professional Conduct:

Rule 5.03(a) -- With respect to a non-lawyer employed or retained by or associated with a lawyer, a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

Rule 5.03(b) -- With respect to a non-lawyer employed or retained by or associated with a lawyer, a lawyer shall be subject to discipline for the conduct of such person that would be a violation of these rules if engaged in by a lawyer if: (1) the lawyer orders, encourages, or permits the conduct involved; * * * *

Rule 7.03(b) -- A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, * * * *

Rule 8.04(a)(1) -- A lawyer shall not violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship.

Rule 8.04(a)(2) -- A lawyer shall not commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

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

Rule 8.04(a)(9) -- A lawyer shall not engage in conduct that constitutes barratry as defined by the law of this state.

PRAYER

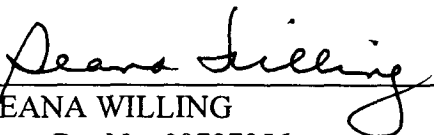
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including costs of court and attorney's fees.

Respectfully submitted,

Steve Young
General Counsel

Seana Willing
Assistant General Counsel

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


SEANA WILLING
State Bar No. 00787056

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 583 840 509**

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

September 29, 1998

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

RE: Commission for Lawyer Discipline v. Eugene X. Mercier

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 Eugene X. Mercier. Mr. Mercier has designated **Nueces 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:

Eugene X. Mercier
4455 South Padre Island Drive, Suite 1
Corpus Christi, Texas 78411

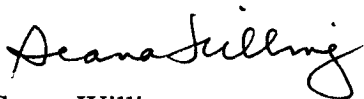
As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to: (1) whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial as set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure; and (2) whether he or she can accommodate compliance with Mellon Service Co., et al v. Touche Ross Co., 946 S.W.2d 862 (Tex.App.- Houston [14th Dist.] 1997), which requires that all proceedings incident to a case occur in the county of proper venue. 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 Nueces 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 Nueces County, Texas and a return envelope to be sent to the District Clerk of Nueces 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,



Seana Willing
Assistant General Counsel

Enclosures

SBW/cah

cc: Richard Russell, State Bar of Texas, 500 N. Water, Suite 604, North Tower, Corpus Christi,
Texas 78471



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
CRAIG T. ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

October 30, 1998

Ms. Seana Willing
Assistant General Counsel, State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205

Mr. Eugene X. Mercier
4455 South Padre Island Drive, Suite 1
Corpus Christi, Texas 78411

Dear Ms. Willing and Mr. Mercier:

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 Andy Mireles, Judge of the 73rd District Court, San Antonio, Texas to preside in

Commission for Lawyer Discipline v. Eugene X. Mercier

Sincerely,

SIGNED

John T. Adams
Clerk



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

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ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

October 30, 1998

The Honorable Oscar Soliz
District Clerk of Nueces County
County Courthouse
901 Leopard
Corpus Christi, Texas 78401

Dear Mr. Soliz:

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. Eugene X. Mercier*, and a copy of the Supreme Court's order appointing the Honorable Andy Mireles, Judge of the 73rd District Court, San Antonio, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Andy Mireles
Ms. Seana Willing
Mr. Eugene X. Mercier



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON

October 30, 1998

Honorable Andy Mireles
Judge, 73rd District Court
100 Dolorosa Street
San Antonio, Texas 78205

Dear Judge Mireles:

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. Mercier and Ms. Willing, and a copy of the letter to the District Clerk of Nueces County.

It is recommended that, six to eight weeks after receipt of this letter, your coordinator contact the District Court Administrator (512-888-0220) to learn the names, addresses, and telephone numbers of counsel for purposes of scheduling a conference. This should also be the number to call to reserve a court room, court reporter, etc. Also, either before or immediately after you set the case for trial, you should contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (210-544-0847) to obtain claims forms for your expenses incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk