

CAUSE NUMBER _____

MICHAEL CARTER § IN THE _____ DISTRICT COURT,
v. §
JEROME GODINICH § HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

MICHAEL CARTER, Plaintiff, complains of JEROME GODINICH, Defendant, and for cause of action would respectfully show the court as follows:

DISCOVERY CONTROL PLAN

1. Pursuant to Tex. R. Civ. P. Rule 190.3, this case will be pursued under Discovery Control Plan Level 2.

PARTIES

2. Plaintiff is Michael Carter, an individual who resides in the city of Houston, Harris County, Texas.
3. Defendant, Jerome Godinich, is an attorney in private practice, doing business in the State of Texas. Service of citation on Defendant may be accomplished by serving him at 917 Franklin St Fl 6 Ste 601B Houston, TX 77002. Service is requested. Tex. R. Civ. P. 103.

CAUSE OF ACTION

4. This Suit is filed for the common-law claim of legal malpractice. *Alexander v. Turtur & Associates, Inc.*, 146 S.W.3d 113, 117 (Tex. 2004).

JURISDICTION AND VENUE

5. This court has original jurisdiction over this civil case in which the amount in controversy exceeds \$500. Tex. Gov't Code § 24.007; Tex. Const. art. V sec. 8.
6. Damages sought are within the jurisdictional limits of this court. Tex. R. Civ. P. 47(b). Plaintiff seeks monetary relief over \$250,000 but not more than \$1,000,000. *Id.* at 47(c).

7. At all times material to the cause of action detailed below, Plaintiff Michael Carter resided in the city of Houston, Harris County, Texas.
8. At all times material to the cause of action detailed below, Defendant Jerome Godinich was doing business in the city of Houston, Harris County, Texas.
9. The actions complained of below arose in whole in the city of Houston, Harris County, Texas.

FACTUAL BACKGROUND

10. Michael Carter was incarcerated during a global pandemic in the Harris County Jail for over three years for a DWI case that was ultimately dismissed. During that time his attorney, Jerome Godinich, never visited Carter, never communicated confidentially with him, never responded to the State's motions in writing, and filed just one stock motion. During that same time, Carter lost his employment, his truck, his credit, and ultimately his wife of over 40 years, whose funeral he was unable to attend due to incarceration.
11. On July 10, 2018, Michael Carter was a happily married 65-year-old man with a house, a truck, and a simple life.
12. Carter supported himself and his wife doing occasional handywork to supplement social security benefits.
13. Carter walks with a cane because of a workplace injury from 2002, and often uses a back brace.
14. On or about July 10, 2018 Michael Carter was arrested and charged with one count of felony Driving While Intoxicated.
15. Carter was not driving under the influence of any alcohol or illegal drugs when he was arrested.
16. Carter was not driving at all when he was arrested. He had been sleeping in his car, and the keys were not in the ignition when he encountered the police.
17. Carter eventually performed a field sobriety test, but was not allowed to use his cane or back brace, which made the test painful and difficult.
18. Carter's blood was not drawn for testing for hours after his arrest.
19. He was ordered held without bail. He would remain in pretrial detention for over three years based on this charge.
20. Carter appeared before a magistrate and requested court-appointed counsel on July 11, 2018.
21. Carter's walking cane was taken away from him in jail. For approximately the first year he was in jail, he had to limp around and was in pain. After the first year, Carter was transported in a wheelchair to most places he went in the jail.

22. On July 14, 2018, Carter turned 66 years old in the Harris County Jail.
23. Carter was found indigent, and Jim Barr was appointed as counsel to represent him on July 19, 2018.
24. On November 07, 2018, Jim Barr withdrew from his representation of Carter due to retirement.
25. Jerome Godinich Jr. was appointed as counsel for Carter on November 20, 2018.
26. On January 3, 2020, over a year after he was appointed, Godinich filed a motion to approve expenses for an investigator and expert witness in this matter.
27. Godinich did receive funding for and hired an investigator to work on the case. Carter does not know whether Godinich ever received funding for or hired an expert witness.
28. This was the only substantive motion Godinich filed throughout the entirety of his representation of Carter.
29. The only other documents Godinich filed in that case were fee claims and exhibits related to those claims.
30. Over the course of more than three years during which he was assigned to Carter's case, Godinich reset the case 11 times.
31. During their three-year attorney-client relationship, Godinich never visited Carter in jail, either in person or via video.
32. Carter was visited in jail a total of four times in the over three years by other people on Godinich's behalf.
33. The first visit was by a legal assistant who claimed to work for Godinich, on July 10, 2019 – more than eight months after Godinich was first appointed to represent Carter.
34. The three remaining jail visits Carter received were in January of 2020 – once by the same legal assistant and twice by an investigator.
35. Carter called Godinich repeatedly from the jail but he was never able to reach him.
36. Carter's understanding is that Godinich's phone was not set up to take calls from the jail, nor did the situation improve when the jail started providing free (not collect) phone calls due to Covid-19.
37. Carter wrote several letters to Godinich from jail marked as legal mail. Godinich never responded.
38. In those letters, Carter asked Godinich to request an independent test of the blood sample that was taken from him when he was arrested. Carter does not know whether Godinich ever did so. If he did, he never produced any information to Carter from any such test or expert.

39. In those letters, Carter also asked Godinich to file motions, but Godinich never did so.
40. In those letters, Carter advised Godinich of the names and addresses of several witnesses who were with him on the day of his arrest and could testify on his behalf. On information and belief neither Godinich nor any investigator attempted to contact those witnesses.
41. Carter's family called Godinich's office repeatedly to try to speak with Godinich on Carter's behalf but they were only able to speak with Godinich on the phone one time, briefly before a court date in 2021, when Godinich told Carter's sister that he had already done everything Carter requested in the case.
42. On two occasions when Carter's sister called Godinich's office on Carter's behalf she was able to speak with someone who worked for Godinich. She stated that Godinich would bring paperwork for an independent blood test to Carter. Yet Godinich neither visited Carter nor delivered the paperwork to Carter.
43. On February 25th, 2020, more than a year after Godinich had been appointed as counsel, Carter wrote to the court that he had been unable to discuss the case with Godinich.
44. Over the course of the case, Carter would file more than 15 pro se motions across 31 months with the Court seeking information about his case and rulings on his requests.
45. Several of those motions were requests to replace his court-appointed lawyer or allow Carter to engage in "hybrid representation" because Carter was unable to communicate with Godinich, and because Godinich had done no work on his case.
46. The State filed substantive motions regarding their intended use of expert witnesses, Defendant testimony, evidence of prior convictions, and even motions regarding Carter's bond. Godinich never filed a written response to any of these motions.
47. On December 16, 2021, the State filed a motion in limine on six issues. On February 6, 2022, the State filed a motion in limine on an additional 15 issues.
48. Godinich did not file a written response to either motion.
49. Carter was normally not brought inside the courtroom on his scheduled court dates. He remained in the holding tank, where other detained persons and correctional officers were present, in the court building until the hearings ended, at which point he was returned to jail.
50. Carter saw and heard Godinich talk to other clients of Godinich's in the holding tank where Carter was also being held. Yet Godinich rarely spoke with Carter on his court dates, whether in court or in the holding tank, and only approximately five times in three years. On those roughly five occasions, their conversations were conducted quickly in the few minutes before or after the case was heard, always with other people within earshot (bailiffs, other detained people, prosecutors, the judge, and/or members of the public).
51. On multiple occasions, Carter approached the glass in the holding cell to speak with Godinich. Each time, Godinich walked away without speaking to Carter.

52. Godinich never had a confidential discussion with Carter about the potential merits or harms of taking a plea offer versus going to trial.
53. Carter was brought physically into court and tried speaking directly to the judge in his matter on three different occasions in the over three years he was incarcerated.
54. The first time he told Judge Amy Martin that he wanted to replace Godinich with a different court-appointed attorney, because Godinich was not working on Carter's case, which the judge denied without inquiry.
55. The second time, Carter asked Judge Martin for a speedy trial and also to replace Godinich, which the judge denied again.
56. Carter was eventually set for an "impact docket" in an attempt to resolve his case, because no progress was being made toward case resolution.
57. On February 15, 2022, Carter told the judge that Godinich had never asked him his side of the story. After Carter explained what happened when he was arrested, that the keys were not in the ignition when he was approached by the police, and the delay between his arrest and the testing of his blood, Carter's case was dismissed.
58. The record in the criminal case reflects that it was dismissed on February 15th, 2022 because the "case cannot be proven beyond a reasonable doubt at this time."
59. Godinich never told Carter that his case was dismissed. Instead, Carter learned that information from the bailiff.
60. Despite being Carter's attorney for over three years, Godinich claimed a total of eight out of court hours worked on his fee voucher for the entire case – one for allegedly reviewing discovery on July 17, 2020 and seven more for performing the same task on August 24, 2020.¹
61. In sum, Carter believes that he has only spoken to Godinich about five times, all of which were during court dates Carter had, and none of which were confidential or involved discussing the facts of his case or any possible legal strategies.
62. Since the case was dismissed, Carter has attempted to get a copy of his case file from Godinich on multiple occasions, but neither Godinich nor anyone at his office will produce it for him.
63. Carter lost everything as a result of this case and his deficient representation from Godinich.
64. In the three years and seven months during which he was in the Harris County Jail awaiting trial for this charge, Carter was unable to keep up payments on his house, car, and credit cards.

¹ In Harris County, court-appointed attorneys are paid per court appearance up to a presumptive maximum threshold, and subsequently can be paid hourly for out-of-court work at the discretion of the judge. Each case has a presumptive maximum pay which is a function of the daily rate – 3x the daily appearance rate for Third Degree felonies, 4x for Second Degree Felonies, and 5x for First Degree Felonies. Attorneys submit fee vouchers which the judge who appointed them, and is presiding over the criminal case, can approve, modify, or deny them. Each fee voucher that includes a request for out-of-court hourly payments includes an explanation of what that time was spent doing, as well as a space to justify the request for fund above the prospective maximum.

65. Before his arrest, Carter was receiving social security payments and was working odd jobs to support himself and his wife.
66. During his incarceration, he was not able to work for pay.
67. Carter's wife died while he was in jail.
68. Carter was not able to attend her funeral.
69. Carter owned a truck before he went to jail, but lost it because in custody he was unable to get it from the impound lot or to continue making payments on it.
70. Carter's credit score plummeted while he was in custody because he was not able to meet his financial obligations.
71. While in jail, Carter missed out on employment opportunities and opportunities to save money, which he has not been able to recover from.
72. Carter is now retired and can no longer work. He lives with his sister because he can no longer afford his own home as a result of his incarceration in this case.
73. While in custody, Carter experienced violence and threats of violence.
74. Carter was in jail for the first two years of the COVID-19 pandemic, which caused him to experience additional fear and isolation, especially because he had high blood pressure and high cholesterol, which he had been told made COVID-19 more dangerous to him.
75. Carter was detained while awaiting case resolution in this case because he was on parole for a different case where he was convicted in 2008.
76. Carter had been performing well on parole for years prior to this arrest.
77. Carter's parole officer visited him regularly in jail while he was awaiting this charge.
78. Carter's understanding, based on conversations with his parole officer, was that he did not have any issues on parole and that his parole would not be revoked unless he was convicted of the new charge.
79. However, any conviction in the DWI case for which Godinich represented Carter would have automatically revoked Carter's parole, sending him to prison for decades.
80. The only options for representing Carter would be either to get the case dismissed or to take it to trial.
81. Following the dismissal of the DWI case, Carter's parole officer reinstated him on parole.
82. Godinich did not exercise a reasonable amount of care in representing Carter.

83. Any reasonable lawyer representing Carter would have, at minimum, regularly met with Carter confidentially, discussed the facts and law with Carter, developed a legal theory to defend Carter's case, sought to have the blood sample independently tested, investigated witnesses, sought speedy resolution of the case, and performed numerous other legal tasks to advance Carter's interests.
84. On information and belief, Godinich did none of these things.
85. Godinich maintains a court-appointed caseload that would prevent even the most skilled and dedicated attorney from competently representing all of his clients.
86. In 2018, when he was first appointed to represent Carter, Godinich was appointed by the Harris County Criminal Courts to more than *six hundred* felony cases. That is more than four times the recommended felony caseload for an attorney in a year.
87. For this work, Godinich earned \$409,615 exclusively from appointed cases in Harris County.
88. In 2019, Godinich was paid for 14 capital cases, 429 non-capital felony cases, and 4 felony appeals. This is in addition to all of the cases, like Carter's, that he had open but had not yet resolved.
89. For that work, Godinich was paid \$440,265 by Harris County in 2019.
90. Godinich has consistently increased his revenue from court-appointed cases each year since 2018.
91. In 2020 his compensation ballooned to a total of \$539,350 for court-appointed cases; that number further increased to \$548,740 in 2021 and \$585,950 in 2022.
92. Publicly available sources show that Godinich often provides abysmal representation.
93. In three cases, Godinich missed statutes of limitations to file papers in death-penalty cases. He used the same implausible excuse twice: "In at least one prior case," the U.S. District Court for the Southern District of Texas noted in a federal habeas-corpus case that Godinich defaulted, "Mr. Godinich offered the same excuse—that his attempt to file the petition after hours on the due date was frustrated by a broken time stamp machine."
94. In 2014, one of Godinich's clients, Juan Balderas, was sentenced to death after his case had been pending for eight years during which, according to Balderas's wife, "Godinich and his second chair attorney didn't even meet with [their client] until just before the trial and conducted almost no investigation."

CAUSE OF ACTION

A. Legal Malpractice

95. Like other claims rooted in negligence, a lawyer commits malpractice if: "(1) the attorney owed the plaintiff a duty; (2) the attorney breached that duty; (3) the breach proximately caused the

plaintiff's injuries; and (4) damages occurred.” *Alexander v. Turtur & Associates, Inc.*, 146 S.W.3d 113, 117 (Tex. 2004).

96. Having accepted appointment to represent Carter, Godinich failed to act as any reasonable criminal defense lawyer would act in defending any client, let alone one in Carter’s situation.
97. This inadequate representation caused Carter harm, including extended pretrial detention and mental distress from not knowing anything about his case or whether anything was being done to resolve it other than keeping him in jail, seemingly indefinitely.
98. Therefore, Godinich committed legal malpractice against Carter.

I. Godinich owed a duty of care to represent Carter as a reasonable lawyer would.

99. Godinich owed Carter a duty of care to act as a reasonable lawyer would when representing a client. *Cosgrove v. Grimes*, 774 S.W.2d 662, 664 (Tex. 1989).
100. A lawyer who accepts a court appointment is required by law and by professional ethics to represent court-appointed clients with the same zeal and effort as privately retained clients. *McCoy v. Court of Appeals of Wisconsin, Dist. 1*, 486 U.S. 429, 435 (1988) (“It is therefore settled law that an indigent defendant has the same right to effective representation by an active advocate as a defendant who can afford to retain counsel of his or her choice.”).²
101. This means that Godinich owed Carter the same duty as any lawyer owes any client.
102. This duty includes the duty to competently and diligently represent a client.
103. Competence involves having the skill and knowledge necessary to adequately represent a client.
104. Diligence includes communicating with the client, investigating the case, filing reasonably necessary motions, communicating with opposing counsel about potential resolutions of the case, and developing a litigation strategy regarding the case. It also means not neglecting a case or a client.
105. The Sixth Amendment requires that any criminal defense lawyer, appointed or otherwise, must provide reasonably effective assistance of counsel under prevailing professional norms. *Strickland*

² See also *Polk Cnty v. Dodson*, 454 U.S. 312, 321 (1981) (noting that court-appointed lawyers are “[h]eld to the same standards of competence and integrity as a private lawyer” because they “work[] under canons of professional responsibility that mandate [their] exercise of independent judgment on behalf of the client.”); Texas Disciplinary Rules of Professional Conduct, Rule 6.01, Comment 2 (“An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality...”); Robert P. Schuwerk and Lillian B. Hardwick, *Rule 6.01 Accepting appointments by a tribunal*, 48A Tex. Prac., Tex. Lawyer & Jud. Ethics § 11:1 (2021 ed.) (“While judicial appointments can thrust a lawyer into unfamiliar areas, the professional obligations of court-appointed counsel to their clients and to the court are no less stringent than those of privately retained counsel. Ordinary standards of competence and diligence remain as expectations and requirements and a lawyer is subject to both disciplinary sanctions and malpractice liability for failing to achieve them.”).

v. Washington, 466 U.S. 668 (1984).

106. State law requires a court-appointed criminal defense attorney to contact his client within one working day of receiving the appointment and to interview his client “as soon as is practicable[.]” Tex. Code Crim. P. art. 26.04(j)(1).
107. Prevailing professional standards in Texas provide that a criminal defense lawyer must arrange for a timely interview with their client, perform investigations, maintain regular contact with the client, pursue discovery, advise their client of their rights, and study the facts and case before advising whether to accept a plea offer. STATE BAR OF TEXAS, *Performance Guidelines for Non-Capital Criminal Defense Representation*, 74 Tex. Bar Journal 616 (July 2011).
108. They also provide that, among other tasks, a criminal defense lawyer should promptly comply with a client’s correspondence and reasonable requests for information and consider developing bond reduction motions, pretrial motions, and a defense theory for use at trial. *Id.*
109. The attorney’s duty to communicate with the client includes the duty to *confidentially* communicate with their client. AMERICAN BAR ASSOCIATION, *Criminal Justice Standards for the Defense Function*, 4-3.1(e) (2017).
110. Relying solely on non-confidential avenues, such as conversations in open court or while the client is in a room where other incarcerated people are within earshot, is insufficient communication under the Sixth Amendment right to assistance of counsel as a matter of law. *Coplon v. United States*, 191 F.2d 749, 757 (D.C. Cir. 1951) (“It is well established that an accused does not enjoy the effective aid of counsel if he is denied the right of private consultation with him.”). It is also malpractice.

II. *Godinich breached his duty to Carter by failing to do any meaningful work on his case and by entirely failing to communicate with Carter.*

111. Godinich breached his duty to provide reasonable representation to Carter by completely failing to communicate with him about his case, failing to file any substantive motions in his matter, by perpetually resetting court dates without discussing the matter with Carter, and by not attempting to move the case toward resolution in any meaningful way.
112. Carter was in jail for over three years with Godinich assigned to represent him.
113. During that period, Godinich did not visit Carter in jail a single time.
114. Nor did Godinich ever answer a phone call from Carter, or respond to any of his letters.
115. Carter’s only communications with his court-appointed lawyer were a few words in court after the hearings had been reset, which were never in a confidential space.
116. The only work Godinich appears to have done on Carter’s case was to request funding for an investigator on January 3, 2020.
117. Godinich did not contact Carter within one working day of appointment, and never interviewed Carter despite being appointed to represent him while he was in custody and held without bond for

over three years.

118. Godinich did not perform a complete investigation, maintain regular contact with Carter, pursue discovery, advise Carter of his rights, or study the facts and case before advising whether to accept a plea offer.
119. Godinich did not promptly comply with Carter's correspondence and reasonable requests for information.
120. Godinich did not meaningfully consider developing bond reduction motions, pretrial motions, or a defense theory for use at trial.
121. Godinich did functionally no work on Carter's case, and had functionally no communications with Carter, in over three years of being appointed to represent him.
122. Godinich was not diligent in representing Carter.
123. Godinich did not provide reasonably effective assistance of counsel to Carter.
124. No reasonable and competent lawyer would have performed as little work in a criminal case as Godinich performed in Carter's case.
125. No reasonable and competent lawyer would have communicated as little with an incarcerated client in a criminal case as Godinich did with Carter throughout his case.

III. Godinich's breach of duty was the proximate cause of Carter's harm.

126. Carter sat in jail for over three years without any meaningful communication with his court-appointed lawyer, Jerome Godinich.
127. Godinich did virtually no work on Carter's case during that entire time.
128. It is nobody's fault but Godinich's that he refused to do any work on Carter's case or communicate with him in any meaningful way.
129. Carter does not claim Godinich's malpractice is responsible for his initial arrest. However, Godinich's failure to provide even a modicum of representation to Carter following his appointment to represent Carter resulted in case delays, prolonged pretrial incarceration, and significant mental distress from his sheer inability to communicate with his appointed legal representative about the charges he was facing.
130. Godinich's representation of Carter fell far below what a reasonable criminal defense attorney would provide.

IV. Carter suffered serious injury as a result of Godinich's malpractice.

131. As a result of Godinich's deficient performance, Carter remained in the Harris County Jail during a pandemic without any information about what was happening with his case and without any work being done to resolve the case against him.

132. Carter made numerous attempts to communicate with Godinich from jail, to no avail.
133. Carter got so desperate to have something happen with his case that he started writing and submitting his own motions to the court, attempting to get anything to happen in his case.
134. Carter sat in jail not knowing if anything was happening with his case at all. He did not know at the time whether he would be in custody for months, years, or decades waiting for anybody to do anything with his charges. He felt forgotten and disposable.
135. Carter was in jail while awaiting a resolution of his case for a total of 1,323 days.
136. While in custody, Carter experienced financial devastation, physical assault, and significant emotional distress.
137. If Godinich had acted as a reasonable attorney in the situation, Carter would have experienced less pretrial detention and had his case resolved more quickly.
138. If Godinich had acted as a reasonable attorney in the situation, Carter would have suffered less distress throughout the duration of his case – even if it had lasted for the same amount of time - because he would have been apprised of his case’s status and would know that he had an advocate working to support him, instead of wondering whether his lawyer would ever do anything and whether he would just sit in jail indefinitely as long as he refused to plead guilty.

CLAIMS FOR RELIEF

139. Plaintiff incorporates all prior paragraphs.
140. Godinich committed legal malpractice against Carter.
141. All conditions precedent have been performed or have occurred.
142. Carter requests a jury trial in this matter.

PRAYER

143. Plaintiff prays that Defendant be cited to appear and answer the allegations contained in this Petition and that Plaintiff recover from Defendant:
 - a. damages for economic losses;
 - b. damages for mental anguish in the amount the judge or jury may award;
 - c. exemplary damages in the amount the judge or jury may award;

- d. prejudgment and postjudgment interest at the maximum rate allowed by law; and
- e. any and all other just relief, at law or in equity, to which Plaintiff is entitled, including costs of court expended on Plaintiff's behalf.

Respectfully submitted this 3rd of August, 2023.

By: */s/Nathan Fennell*

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