

ORDER OF THE SUPREME COURT OF TEXAS

9204

Misc. Docket No. 01-----

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

The Supreme Court of Texas hereby appoints the Honorable Cheryl Lee-Shannon, Judge of the 305th District Court of Dallas County, Texas, to preside in the Disciplinary Action styled


The Commission for Lawyer Discipline v. Harold D. Rogers

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Wichita County, Texas, a copy of the Disciplinary petition and this Order for filing and service pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

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

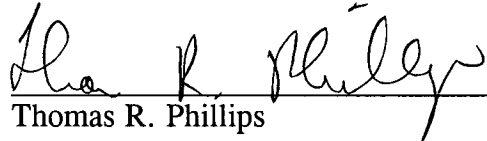
With the Seal thereof affixed at the City
Of Austin, this 12th day of December, 2001.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9204 is also an assignment by Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 11 day of December, 2001.



Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE §
VS. §
HAROLD D. ROGERS §

IN THE DISTRICT COURT OF
WICHITA 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 (hereinafter referred to as the "CFLD"), complains of HAROLD D. ROGERS ("hereinafter referred to as "Respondent") as follows:

**I.
DISCOVERY CONTROL PLAN**

Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, CFLD intends discovery in this case to be conducted under Discovery Control Plan - Level 2 as provided in Rule 190.3 of the Texas Rules of Civil Procedure.

**II.
PROCEDURAL BASIS FOR SUIT**

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.

**III.
VENUE AND SERVICE**

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent's principal place of practice is Wichita County, Texas, and therefore venue is appropriate in Wichita County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure. An officer may service citation upon Respondent 900 Eighth Street, Suite 725, Wichita Falls, Texas 76301.

**IV.
FIRST CAUSE OF ACTION**

On or about March 8, 1997, by Notice dated February 24, 1997, the Cadle Company noticed John L. "Jay" Tucker (hereinafter referred to as "Tucker") for a collection deposition with a duces tecum attached to the notice requiring both attendance and testimony by Tucker as well as production of a number of documents. The scope of the duces tecum included both the Tucker Family Trusts agreements and the bank account records for the bank account held by the Tucker Family Trusts. The deposition was originally scheduled for March 25, 1997. With the agreement of opposing counsel, the deposition was continued until April 14, 1997.

On or about April 7, 1997 a week prior to the continued deposition, Respondent signed his own name to two checks transferring \$18,550.00 to Jayne Tucker Lynds and \$18,550.00 to Scott Tucker, the adult children of John L. Tucker. The transfer was made from an account in the name of Tucker Family Trusts. Following the transfer, the sum of approximately \$290.00 remained in the bank account of Tucker Family Trusts. Neither Respondent, the independent trustee of the trust, nor the creator of the trust, Willa Mae Hall, the mother-in-law of Tucker, filed any written instrument to rescind the trust. Prior to the deposition, Respondent advised Tucker that the trust was closed

and need not be mentioned in answer to questions knowing that money remained in the account owned by the trust and knowing that no written instrument closing the trust had been executed by the parties required by law.

Respondent represented Tucker at the April 14, 1997 deposition. Early in the deposition, Respondent attempted to deflect an opposing counsel away from Tucker Family Trust questions in the following colloquy:

“Mr. Campbell: We also - - there are two insurance trusts; one of which you have a copy of and in which John is the grantor. There is another life insurance trust that we did not give you a copy of, but I’ve got one here in which his wife Joann is the grantor of in which the trust is the owner and beneficiary; and let me give you a copy of that, Randy.

Mr Rogers: The truth is, he’s not the beneficiary of any.”

Later, on page 26, the following colloquy occurred:

“Q. Are there any other trust agreements that you’ve signed in the last ten years?

Mr. Rogers: What does it say?

Mr. Lindley: Well, it doesn’t say ten years; I’m just putting a restriction on it.

Mr. Rogers: Whether he created the trust, you mean?

Mr. Lindley: I’m sorry.

Mr. Rogers: It says “creating a trust.”

Mr. Lindley: Okay.

A. No, sir.

However, Dan Campbell, Tucker’s co-counsel at the deposition had stated: at page 23 and line 21 of the deposition: “No, he’s not the beneficiary. But I just don’t want to--I don’t want you to think we’re hiding something from you.” Respondent made no attempt to correct or clarify Campbell’s statement.

Later during the deposition the opposing counsel to Tucker came back with the following questions to which a truthful answer required that Tucker divulge the existence of the Tucker Family Trusts:

P. 97

“Q: But this First American Trust shows interest income of \$334; you’re saying that’s a mistake?”

A: I’m saying that is a mistake.

Q: Is that a mistake in the name, did you have interest income off of some other trust?

A: No.

Q: Other than the two trusts, the John L. Tucker Trust and the Joann Tucker Trust, other than those two trusts, do you have any other trust?

A: That’s not an additional trust, no

Q: Do you have any other trusts?

A: No, no, sir.:

Of course during this deposition, Respondent knew that the trust was still in existence because it had an open bank account, and, more importantly, because no proper written instrument had been signed dissolving the trust. Respondent knew that the First American Bank account as to which opposing counsel was questioning his client was the bank account for the very Tucker Family Trust the existence of which his client was denying.

Apparently, immediately following the deposition, Respondent referred Tucker to John Leonard (hereinafter referred to as “Complainant”) for a bankruptcy filing and, toward that end, met with Complainant on April 15, 1997. During that April 15, 1997 meeting, Respondent did not disclose to Complainant the fact that the \$37,100 transfer had been made from the Tucker Family Trusts 8 days previously.

Tucker and his wife, Joann Tucker finally disclosed the transfer to Complainant in or around July, 1997, on the eve of a subsequent deposition of Tucker regarding the bankruptcy case. Complainant immediately amended Tucker's schedules to disclose the transfer. However, following a hotly litigated Adversary Proceeding in the Bankruptcy case by which the Cadle Company, sought to deny Tucker a discharge, Tucker's discharge was denied with the court finding that the transfers of the \$37,100.00 were made "...with actual intent to hinder Cadle, debtor's creditor. . ." Page 5, Memorandum opinion of Judge McGuire.

During his deposition taken on January 7, 1998, Respondent testified, on page 33 at line 4,

"Well, all I know is we had \$37,000.00 left.",

Q: In? "In the Tucker Family Trusts. And so I recommended that we distribute it to the two children."

Q: Why did you recommend that?

A: Well, they were the beneficiaries. It was my discretion as trustee to make that distribution. I could have distributed it to Joann or Jay."

Further, Respondent testified on page 34 of his deposition at line 2:

"Q: You say you recommended that. To whom did you recommend it?

A. "To Joann and Jay, co-trustees."

Further, Respondent testified on page 39, Line 3 of his deposition:

"Q: Well, it still holds a few hundred dollars in a bank account, doesn't it?

A: "But for all practical purposes it is wound up."

Respondent states in the Defendant's Motion for Stay under Bankruptcy Rule 8005 (filed over the signature of Robert Lybrand) that, "Further, Rogers, as debtor's attorney, made the decision, relied upon by the debtor, to transfer the said \$37,100.00 on April 7, 1997 to Scott Tucker and Jayne

Lynds. Respondent had full knowledge of all the facts related to the transfer.” Despite the fact that Attorney Robert Lybrand signed the appeal pleadings following John Leonard’s withdrawal, on or about November 9, 1999 Respondent, himself made the oral argument to U. S. District Judge Buchmeyer on the Appeal of Judge McGuire’s decision, and, at page 7, line 24 through page 8, line 1 stated:“And in this instance, I made the decision, Rogers made the decision to distribute the money out to the children.”

The acts and/or omissions of the Respondent described in Paragraph III(A) above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

1.05(f) a lawyer shall reveal confidential information when required to do so by Rule 3.03(a)(2), 3.03(b), 3.03(b), or by Rule 4.01(b).

3.03(a)(5) for knowingly offering or using evidence that the lawyer knows to be false;

3.04(b) for falsifying evidence, counseling or assisting a witness to testify falsely, or paying, offering to pay, or acquiescing in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case;

4.01(b) for failing to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client;

8.04(a)(1) for violating these Rules, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

8.04(a)(3) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;

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 John Leonard filing a complaint on or about January 13, 1999.

Prayer

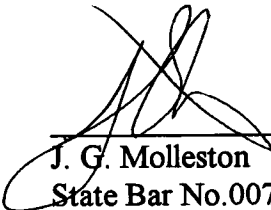
WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent by reprimand, suspension or disbarment, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself to be justly entitled,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

Respectfully submitted,

Dawn Miller
Chief Disciplinary Counsel

J. G. Molleston
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
STATE BAR OF TEXAS
1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6931
Fax No. (713) 752-2158



J. G. Molleston
State Bar No. 00795924

ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

October 30, 2001

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

Re: Commission for Lawyer Discipline v. Harold D. Rogers

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 Harold D. Rogers. Mr. Rogers' principal place of practice is Wichita County, Texas. 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:

Harold D. Rogers
900 Eighth Street, Suite 725
Wichita Falls, Texas 76301

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 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.

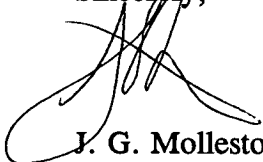
Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Wichita County, Texas, with the request that the suit be filed, service be obtained, and a file-marked copy of the petition be returned to the undersigned.

Mr. John Adams
October 30, 2001
Page Two

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Wichita County, Texas, and a return envelope to be sent to the District Clerk of Wichita 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 black ink, appearing to read 'J. G. Molleston', with a large, sweeping flourish at the end.

J. G. Molleston
Assistant Disciplinary Counsel

JGM/vr

Enclosures



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

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON
XAVIER RODRIGUEZ

CLERK
JOHN T. ADAMS

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

DEC 17 2001

Mr. J.G. Molleston
Assistant Disciplinary Counsel
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Harold D. Rogers
900 Eighth Street, Suite 725
Wichita Falls, Texas 76301

Dear Mr. Molleston and Mr. Rogers:

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 Cheryl Lee Shannon, Judge of the 305th District Court of Dallas,

Commission for Lawyer Discipline v. Harold D. Rogers

Sincerely,

SIGNED

John T. Adams
Clerk



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

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NADINE SCHNEIDER

DEC 17 2001

Honorable Cheryl Lee Shannon
Judge, 305th District Court
2600 Lone Star Drive, LB 4
Dallas, Texas 75212

Dear Judge Shannon:

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. Rogers and Mr. Molleston, and a copy of the letter to the District Clerk of Wichita 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 Wichita 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 case 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 (817-884-3328) to obtain claims forms for your expenses and other information 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

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DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

DEC 17 2001

The Honorable Dorsey Ray Trapp
District Clerk of Wichita County
P.O. Box 718
Wichita Falls, Texas 76307-0718

Dear Mr. Trapp:

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. Harold D. Rogers*, and a copy of the Supreme Court's order appointing the Honorable Cheryl Lee Shannon, Judge of the 305th District Court of Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Cheryl Lee Shannon
Mr. J.G. Molleston
Mr. Harold D. Rogers