

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97- 9041

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

The Supreme Court of Texas hereby appoints the Honorable George D. Gilles, Judge of the 142nd District Court of Midland County, Texas, to preside in the Disciplinary Action styled:


The Commission for Lawyer Discipline v. James Bryce Kennedy, Jr.

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

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

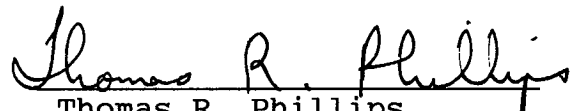
with the Seal thereof affixed at the City
of Austin, this 18th day of February, 1997.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 97-9041, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 24 day of February, 1997.


Thomas R. Phillips
Chief Justice

No. _____

COPY

COMMISSION FOR LAWYER
DISCIPLINE

V.

JAMES BRYCE KENNEDY, JR.

§
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§

IN THE DISTRICT COURT OF

EL PASO 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, JAMES BRYCE KENNEDY, JR., 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, JAMES BRYCE KENNEDY, JR., State Bar Number 00791014, 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 El Paso County, Texas and may be served with process at 109 North Oregon Street, Eighth Floor, El Paso, El Paso County, Texas 79901, his usual place of business. No service is requested at this time.

Venue

Respondent resides in and maintains his principal place of practice in El Paso County, Texas. The alleged professional misconduct occurred in El Paso County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in El Paso 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 complaint which forms the basis of this action was filed on or about January 3, 1996. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

II.

On or about December 4, 1995, a case entitled Howard v. Robert Ruiz was called for trial in County Court at Law No. 5 of El Paso County, Texas. Respondent represented the plaintiff in this personal injury action. Prior to the trial, Respondent provided to defense counsel photocopies of medical records. At trial, Respondent submitted to defense counsel a second set of the same medical records that had been produced in pre-trial discovery. The medical records presented at trial had been altered to increase the amount potentially recoverable at trial, had been altered to conceal a report fee generally not recoverable and altered to conceal the address block salutation to Respondent's law firm.

III.

Respondent altered the medical records for use at trial or had a member of his staff under his direct supervision alter the medical records.

IV.

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

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

Rule 3.03(a)(5) -- A lawyer shall not knowingly offer or use evidence that the lawyer knows to be false;

Rule 3.04(a) -- A lawyer shall not unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy or conceal a document or other material that a competent lawyer would believe has potential or actual evidentiary value; or counsel or assist another to any such act;

Rule 5.03(2) -- 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; and/or

Rule 5.03(b)(1) -- A lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if the lawyer orders, encourages, or permits the conduct involved.

PRAYER

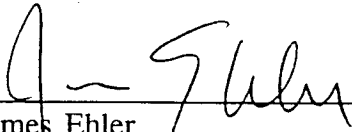
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including costs of court and attorney's fees.

Respectfully submitted,

Steve Young
General Counsel

James Ehler
Assistant General Counsel

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



James Ehler
State Bar No. 06484650
ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 583 840 617

January 7, 1997

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

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

RE: Commission for Lawyer Discipline v. James Bryce Kennedy, Jr.

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 James Bryce Kennedy, Jr. Mr. Kennedy has designated El Paso 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 practices 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:

James Bryce Kennedy, Jr.
109 North Oregon Street, Eighth Floor
El Paso, Texas 79901

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 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. 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 and the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of El Paso 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 El Paso County, Texas and a return envelope to be sent to the District Clerk of El Paso 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,

A handwritten signature in cursive script, appearing to read "J. Ehler".

James Ehler
Assistant General Counsel

Enclosures



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 ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

FEB 25 1997

The Honorable Edie Rubalcaba
District Clerk of El Paso County
500 East San Antonio Avenue, Room 103
El Paso, Texas 79901-2496

Dear Mr. Rubalcaba:

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. James Bryce Kennedy, Jr., and a copy of the Supreme Court's order appointing the Honorable George D. Gilles, Judge of the 142nd District Court, Midland, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. George D. Gilles
Mr. James Bryce Kennedy, Jr.
Mr. James Ehler



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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JOHN T. ADAMS

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
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JAMES A. BAKER
GREG ABBOTT

FEB 25 1997

Mr. James Ehler
Assistant General Counsel, State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205

Mr. James Bryce Kennedy, Jr.
109 N. Oregon Street, 8th Floor
El Paso, Texas 79901

Dear Mr. Ehler and Mr. Kennedy:

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 George D. Gilles, Judge of the 142nd District Court, Midland, Texas to preside in

Commission for Lawyer Discipline v. James Bryce Kennedy, Jr.

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

CLERK
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FAX: (512) 463-1365

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

FEB 25 1997

Honorable George D. Gilles
Judge, 142nd District Court
300 Courthouse
200 W. Wall Street
Midland, Texas 79701

Dear Judge Gilles:

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. Ehler and Mr. Kennedy, and a copy of the letter to the District Clerk of El Paso County.

It is recommended that, a month or six weeks after receipt of this letter, you or your coordinator contact the District Court Administrative Office (915-546-2143) to find out the district court to which this disciplinary case has been assigned, names and addresses of counsel, etc. We then recommend that, either before or immediately after you set the case for trial, you contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (915-546-8135) to reserve a courtroom, obtain a court reporter, obtain claims forms for your expenses incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk