

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97- 9070

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

The Supreme Court of Texas hereby appoints the Honorable Paul R. Davis, Jr., Judge of the 200th District Court of Travis County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Marshall B. Brown

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,

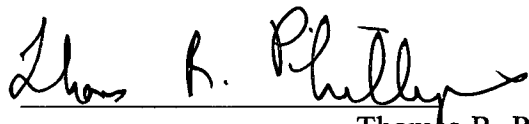
with the Seal thereof affixed at the City
of Austin, this 22nd day of April, 1997.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 9-9070, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 22 day of April, 1997.

A handwritten signature in cursive script that reads "Thomas R. Phillips". The signature is written in black ink and is positioned above a horizontal line.

Thomas R. Phillips
Chief Justice

COPY

NO. _____

COMMISSION FOR LAWYER DISCIPLINES

vs

MARSHALL B. BROWN

§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas, complains of Respondent, MARSHALL B. BROWN as follows:

I.

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex. Gov't. Code Ann. §81.001 et seq. (Vernon 1988), and the State Bar Rules. The complaint that forms the basis of the Disciplinary Petition was filed 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. An officer may serve citation on Respondent at his address located at 2600 S. Gessner, Suite 300, Houston, Harris County, Texas 77063.

III.

Respondent was retained to handle several legal matters for Todd R. Smith, who is a chiropractor. At the same time that Respondent was representing Todd Smit, Smith was treating some of Respondent's clients in connection with personal injury claims.

Upon completion of two (2) of Todd Smith's cases, Smith requested that Respondent turn over his case files. Smith intended to hire another attorney to assist in the execution on the Judgments obtained for him by the Respondent. Respondent failed and refused to turn over Smith's files to him, offering only to provide the client with a copy of the files at Smith's expense.

During the course of Smith's treatment of Respondent's clients in their personal injury claims, Respondent settled several of the claims and withheld funds due to be paid to Smith for his medical services. Respondent failed and refused to promptly deliver the funds to Smith as requested. Respondent asserted a claim for offsets which he wished to assert against the funds for fees and expenses owed to him by Smith. Respondent failed to promptly deliver those funds which Smith was entitled to receive for his medical services.

IV.

By his conduct of refusing to pay to Smith the medical fees incurred with respect to Respondent's clients, Respondent committed professional misconduct in violation of Rule 1.14(b) [failing, upon receiving funds or other property in which a client or third person has an interest, to promptly notify the client or third person and render a full accounting upon request; and failing to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive] of the Texas Disciplinary Rules of Professional Conduct and of Part 1.06(Q) of the Texas Rules of Disciplinary Procedure.

By his conduct of refusing to return Smith's case files to him, Respondent committed professional misconduct in violation of Rule 1.15(d) [failing, upon termination of representation, to reasonably protect a client's interest, give notice to the client to seek other counsel, or surrender papers and property which belongs to the client] of the Texas Disciplinary Rules of Professional Conduct and of Part 1.06(Q) of the Texas Rules of Disciplinary Procedure.

By his conduct in representing Todd R. Smith in certain matters, and in failing to promptly deliver funds to Todd R. Smith, in which Todd R. Smith has an interest, Respondent committed professional misconduct in violation of Rule 1.06(b)(2) [a lawyer shall not represent a person if the representation of that person reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.

V.

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 Todd R. Smith filing a complaint on or about April 10, 1996.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent MARSHALL B. BROWN by disbarment, suspension or reprimand as the facts shall warrant, and that the Petitioner have

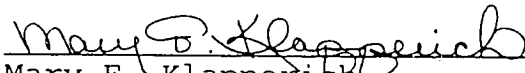
all other relief to which it may show itself to be justly entitled,
including costs of court and attorney's fees.

Respectfully submitted,

Steven W. Young
General Counsel

Mary F. Klapperich
Assistant General Counsel

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



Mary F. Klapperich
State Bar Card No. 11550700

STATE BAR OF TEXAS



Office of the General Counsel

March 31, 1997

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

Re: Commission for Lawyer Discipline v. Marshall B. Brown

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 Marshall B. Brown. Mr. Brown is a resident of Harris 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 hereby made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Mr. Marshall B. Brown
2600 S. Gessner, Suite 300
Houston, Texas 77063

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 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.

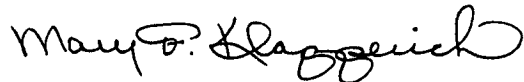
Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Harris County, Texas, with the request that the suit be filed, citation be issued,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

Mr. John T. Adams, Clerk
Supreme Court of Texas
March 31, 19976
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I have enclosed a pre-addressed envelope for your use in transmitting the above reference documents, to the District Clerk of Harris County, Texas, and a return envelope to be sent to the District Clerk of Harris County, Texas, for the Clerk's use in returning a file-stamped copy of the petition to the undersigned.

If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,



Mary F. Klapperich
Assistant General Counsel

MFK/gcp
enclosures



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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

TEL: (512) 463-1312

FAX: (512) 463-1365

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

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. Marshall B. Brown, and a copy of the Supreme Court's order appointing the Honorable Paul R. Davis, Jr., Judge of the 200th District Court of Austin, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Paul R. Davis
Mr. Marshall B. Brown
Ms. Mary F. Klapperich



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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EXECUTIVE ASS'T
WILLIAM L. WILLIS
ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

Honorable Paul R. Davis, Jr.
Judge, 200th District Court
P.O. Box 1748
Austin, Texas 78767-1748

Dear Judge Davis:

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. Brown and Ms. Klapperich, 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

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

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CLERK
JOHN T. ADAMS

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NATHAN L. HECHT
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Ms. Mary F. Klapperich
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Marshall B. Brown
2600 S. Gessner, Suite 300
Houston, Texas 77063

Dear Ms. Klapperich and Mr. Brown:

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 Paul R. Davis, Judge of the 200th District Court of Austin, Texas to preside in

Commission for Lawyer Discipline v. Marshall B. Brown

Sincerely,

SIGNED

John T. Adams
Clerk