

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99- 9074

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

The Supreme Court of Texas hereby appoints the Honorable Bascom W. Bentley, III, Judge of the 369th District Court of Anderson County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Damon C. Thomas

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of San Jacinto 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,

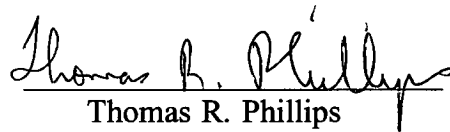
with the Seal thereof affixed at the City
of Austin, this 9th day of April, 1999.

A handwritten signature in black ink, appearing to read 'J. Adams', is written over the printed name of the clerk.

JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9074, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 12 day of April, 1999.


Thomas R. Phillips
Chief Justice

NO. _____

COMMISSION FOR LAWYER DISCIPLINES
V.S.
DAMON C. THOMAS

§
§
§
§

IN THE DISTRICT COURT OF
SAN JACINTO COUNTY, TEXAS
_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas, complaining of Respondent, Damon C. Thomas, showing the Court:

I.

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

II.

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex.Gov't Code Ann. §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 the Disciplinary Petition was filed with the State Bar of Texas on or after May 1, 1992.

III.

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent is a resident of and has his principal place of practice in San Jacinto County, Texas. An officer may serve citation on Respondent at his place of

business located at 149 Waterwood, Huntsville, Texas 77340.

IV.

In June, 1994, the Respondent completed representation of a number of clients in a class action lawsuit filed against Southern Pacific Railroad, styled Brenda Adams, et al v. Southern Pacific Railroad, et al; Cause No. 90-049457, in the 215th Judicial District Court of Harris County, Texas. The case went to trial and a directed verdict was entered against Respondent's clients, at the request of the attorneys for the Defendant, Southern Pacific Railroad. During the course of the trial, on several days it had to be postponed in the early afternoon because the Respondent did not have witnesses to testify. After completing the representation, Respondent failed to return all of the client file documents to his client, Lucifus Sturns. Lucifus Sturns had requested a copy of his file.

Respondent asked another attorney, Blaise Heaney, to help him with the lawsuit against Southern Pacific Railroad. Respondent agreed to split any earned legal fees with Blaise Heaney without the consent of his clients.

After the Judgment was entered against the Plaintiff's, Respondent's clients, the Respondent and co-counsel, Blaise Heaney, failed to notify their clients of the right to appeal, and of the time frame during which they could file an appeal.

V.

By failing to have witnesses at the trial on the merits, Respondent engaged in conduct in violation of Rules **1.01(a)**[a lawyer shall not accept or continue employment in a legal matter that is beyond the lawyer's competence] and **1.01(b)**[in representing a client, a lawyer shall not neglect a legal matter entrusted to him] of the Texas Disciplinary Rules of Professional Conduct, and of Rule **1.06(Q)** of the Texas Rules of Disciplinary Procedure.

By entering into an agreement with another attorney that practices in a different law firm to represent his clients and to divide fees with this attorney, Respondent engaged in conduct in violation of Rule **1.04(f)** [no division or agreement for division of fee between lawyers in different firms unless by written agreement with the client, with the lawyer assuming joint responsibility for the representation] of the Texas Disciplinary Rules of Professional Conduct, and of Rule **1.06(Q)** of the Texas Rules of Disciplinary Procedure.

By failing to return his client's file, and failing to notify his clients of their right to appeal, Respondent engaged in conduct in violation of Rule **1.15(d)**[upon termination of representation, a lawyer shall take steps reasonably practicable to protect his clients' interests, such as giving reasonable notice, surrendering papers or property to the client, and allowing time to employ other counsel] of the Texas Disciplinary Rules of Professional Conduct, and of Rule **1.06(Q)** of the Texas Rules of Disciplinary Procedure.

VI.

The complaint which forms the basis of this lawsuit as hereinabove set forth was brought to the attention of the Office of the General Counsel of the State Bar of Texas by the filing of a complaint by the State Bar of Texas on or about October 15, 1996.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined by reprimand, suspension, or disbarment, as the facts shall warrant; and that Petitioner have such other and further relief to which 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

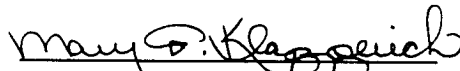
State Bar of Texas

1111 Fannin, Suite 1370

Houston, Texas 77002

(713) 759-6932

(713) 752-2158 FAX



MARY F. KLAPPERICH

State Bar No. 11550700

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the General Counsel

March 1, 1999

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

Re: Commission for Lawyer Discipline v. Damon C. Thomas

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 Damon C. Thomas. Mr. Thomas has designated San Jacinto County, Texas, 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:

Damon D. Thomas
149 Waterwood
Huntsville, Texas 77340

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 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.

Mr. John Adams
March 1, 1999
Page 2

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 San Jacinto 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.

I have enclosed a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of San Jacinto County, Texas, and a return envelope to be sent to the District Clerk of San Jacinto 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,



Mary F. Klapperich
Assistant General Counsel

MFK/rr
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

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

APR 15 1999

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

Mr. Damon C. Thomas
149 Waterworld
Huntsville, Texas 77340

Dear Ms. Klapperich and Mr. Thomas:

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 Bascom W. Bentley, III, Judge of the 369th District Court of Palestine, Texas to preside in

Commission for Lawyer Discipline v. Damon C. Thomas

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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APR 15 1999

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HARRIET O'NEILL
ALBERTO R. GONZALES

The Honorable Marilyn Nettles
District Clerk of San Jacinto County
P.O. Box 369
Coldspring, Texas 77331

Dear Ms. Nettles:

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. Damon C. Thomas*, and a copy of the Supreme Court's order appointing the Honorable Bascom W. Bentley, III, Judge of the 369th District Court, Palestine, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Bascom W. Bentley, III
Ms. Mary F. Klapperich
Mr. Damon C. Thomas



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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JUSTICES
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WILLIAM L. WILLIS

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JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

APR 15 1999

Honorable Bascom W. Bentley, III
Judge, 369th District Court
P.O. Box 221
Palestine, Texas 75802-0221

Dear Judge Bentley:

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. Thomas and Ms. Klapperich, and a copy of the letter to the District Clerk of San Jacinto 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 San Jacinto 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 (409-538-8176) to obtain claims forms for your expenses and other information incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk