

ORDER OF THE SUPREME COURT OF TEXAS

9185

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 James N. Parsons, III, Judge of the 3rd District Court of Anderson County, Texas, to preside in the Disciplinary Action styled

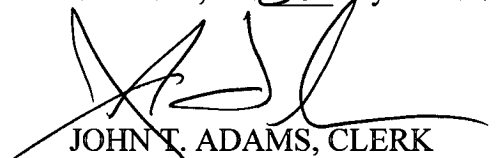
The Commission for Lawyer Discipline v. Jerry Keith Atkins

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 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 30th day of October, 2001.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9185, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 29 day of October, 2001.

A handwritten signature in cursive script, reading "Thomas R. Phillips", written over a horizontal line.

Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE, §

IN THE DISTRICT COURT OF

Petitioner, §

vs. §

HARRIS COUNTY, TEXAS §

JERRY KEITH ATKINS, §

Respondent. §

_____ JUDICIAL DISTRICT §

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, a committee of the STATE BAR OF TEXAS (hereinafter referred to as "Petitioner"), complaining of Respondent, JERRY KEITH ATKINS (hereinafter referred to as "Respondent"), and would respectfully show unto the Court the following:

I. DISCOVERY CONTROL PLAN

Pursuant to Rules 190.1 and 190.2, TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level 1 Discovery Control Plan. Pursuant to Rule 190.2(a)(1), TRCP, Petitioner affirmatively pleads that it seeks only monetary relief aggregating fifty thousand and no/100 dollars (\$50,000.00) or less, excluding costs, pre-judgment interest and attorneys' fees.

II. NATURE OF PROCEEDING

Petitioner 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.

III. VENUE

Respondent is an attorney licensed to practice law in Texas and is a member of the STATE BAR OF TEXAS. Respondent's residence and principal place of practice is Harris County, Texas; therefore, venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the TEXAS RULES OF DISCIPLINARY PROCEDURE. Respondent may be served at his business address, 5005 Riverway Drive, Suite 500, Houston, Harris County, Texas 77056.

IV. CAUSE OF ACTION

In or about June of 1999, **ELEANOR YVONNE DUKES** (hereinafter referred to as "Eleanor Dukes") contacted Respondent regarding representation in connection with her potential inheritance rights in the estate of her mother, Lucille R. Dukes. At that time Eleanor Dukes' sister, Carmen McElreath, was acting as their mother's primary caretaker. Although no action could be undertaken by Respondent as Lucille R. Dukes was alive (though 93 years old, incapacitated, and in failing health), Eleanor Dukes expressed concern that her sister might interfere with the proper distribution of the estate. Nevertheless, they would simply have to wait and see whether Eleanor Dukes was a named beneficiary of her mother's estate.

Pursuant to Respondent's advice and counsel, on or about November 16, 1999, Dukes executed a *Contract of Employment* (hereinafter referred to as the "Contract"). Respondent and Eleanor Dukes spoke several times by telephone regarding the situation and the status of Lucille R. Dukes' declining condition. On February 10, 2000, Lucille R. Dukes passed away.

The Contract is unconscionable in that no competent lawyer could form a reasonable belief that the fee stated in said contract is reasonable. The Contract requires Eleanor Dukes to pay Respondent even if no legal services are performed. In the event that Respondent is required to perform any legal services, the Contract requires Eleanor Dukes to pay a substantial contingency fee, a substantial hourly rate, and costs. Specifically, the Contract provides that Respondent will receive twenty percent (20%) of Eleanor Dukes' inheritance if her mother's Will substantially favors Eleanor Dukes (leaving Eleanor Dukes more than her intestate share). If the Will is contested, in addition to receiving the twenty percent (20%), Respondent shall be paid at the rate of two hundred and fifty dollars (\$250.00) per hour for any time spent defending such contest. If there is a Will that leaves Eleanor Dukes less than her intestate share, the Contract provides that Respondent will receive forty percent (40%) of Eleanor Dukes' inheritance. In all scenarios, Eleanor Dukes is responsible for all costs and expenses.

Pursuant to the Will, Eleanor Dukes received a majority of her mother's estate which, after taxes, was approximately five hundred seventy-two thousand, four hundred twenty-three and no/100 dollars (\$572,423.00). Respondent contacted the executor and attempted to collect twenty percent (20%) of each distribution made to Eleanor Dukes.

Thereafter, Eleanor Dukes retained attorney Paul K. Williams concerning Respondent's claims. On or about March 3, 2000, acting on behalf of Eleanor Dukes, Mr. Williams sent a letter to Respondent terminating his attorney-client relationship with Dukes.

From November 16, 1999 (date Eleanor Dukes signed the Contract), to February 10, 2000 (date Lucille R. Dukes passed away), Respondent did not perform any legal work on behalf of Eleanor Dukes. The time involved was minimal and amounted to nothing more than a few phone

calls. From February 10, 2000, to March 3, 2000 (date of termination), Respondent's only efforts concerning the case were to collect his fee from the executor. Respondent never filed any legal document nor did he participate in any way in representing Eleanor Dukes as a beneficiary.

V. RULE VIOLATIONS

The acts and/or omissions of Respondent constitute conduct in violation of Rules **1.04(a)** [a lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee]; and **8.04(a)(1)** [a lawyer shall not violate the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT], of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

VI.

The complaint that forms the basis of this cause of action was brought to the attention of the Office of the Chief Disciplinary Counsel of the STATE BAR OF TEXAS by **ELEANOR YVONNE DUKES'** filing of a complaint on or about September 18, 2000.

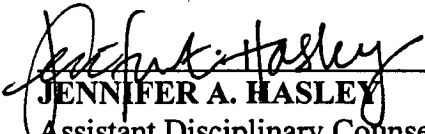
PRAYER FOR RELIEF

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

Respectfully submitted,

DAWN MILLER,
Chief Disciplinary Counsel

STATE BAR OF TEXAS
Office of the Chief Disciplinary Counsel
1111 Fannin, Suite 1370
Houston, Texas 77002
Phone: (713) 759-6931
Fax: (713) 752-2158



JENNIFER A. HASLEY
Assistant Disciplinary Counsel
State Bar No. 00792818

ATTORNEYS FOR PETITIONER,
COMMISSION FOR LAWYER DISCIPLINE

STATE BAR OF TEXAS



OFFICE OF THE CHIEF DISCIPLINARY COUNSEL

September 27, 2001

John T. Adams, Clerk
SUPREME COURT OF TEXAS
P.O. Box 12248
Austin, Texas 78711

RE: *Commission for Lawyer Discipline v. Jerry Keith Atkins*

Dear Mr. Adams:

Enclosed please find an original and two (2) copies of the *Original Disciplinary Petition* being filed by the COMMISSION FOR LAWYER DISCIPLINE against **Jerry Keith Atkins**. Jerry Keith Atkins has designated **Harris 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:

Jerry Keith Atkins
5005 Riverway Drive, Suite 500
Houston, Texas 77056

As a practical matter, we respectfully suggest that an inquiry be made as to whether the judge will be able to comply with the one hundred and eighty (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, we 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 *Original Disciplinary Petition*, the *Civil Case Information Sheet*, the filing fee check (all enclosed herewith), and the *Court's Appointing Order* to the District Clerk of Harris 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.

J:\ATKINS.JK\CFLD1.JAH\CORRESP\C_ADAMS.01

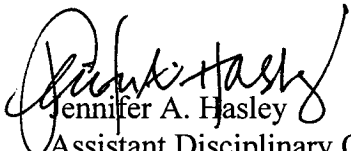
1111 FANNIN, SUITE 1370 HOUSTON, TEXAS 77002
PHONE: (713) 759-6931 FAX: (713) 752-2158

John T. Adams, Clerk
SUPREME COURT OF TEXAS
September 27, 2001
RE: *CFLD v. Jerry Keith Atkins*
Page 2

Additionally, enclosed please find a pre-addressed envelope for your use in transmitting the necessary documentation 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-marked copy of the *Original Disciplinary Petition* to the undersigned.

Thank you for your courtesies in this regard.

Sincerely,


Jennifer A. Hasley
Assistant Disciplinary Counsel

JAH/sml

- Enclosures
1. Original Disciplinary Petition (original and two (2) copies)
 2. Civil Case Information Sheet
 3. Filing Fee Check
 4. Pre-Addressed Envelope to District Clerk
 5. Pre-Addressed Envelope to the STATE BAR OF TEXAS



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

NOV 01 2001

CLERK
JOHN T. ADAMS

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

Ms. Jennifer A. Hasley
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Jerry Keith Atkins
5005 Riverway Drive, Suite 500
Houston, Texas 77056

Dear Ms. Hasley and Mr. Atkins:

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 James N. Parsons, III, Judge of the 3rd District Court, Palestine, Texas to preside in

Commission for Lawyer Discipline v. Jerry Keith Atkins

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

CLERK
JOHN T. ADAMS

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EXECUTIVE ASSISTANT
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JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

NOV 01 2001

Honorable James N. Parsons, III
Judge, 3rd District Court
500 N. Church Street
Palestine, Texas 75801

Dear Judge Parsons:

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. Atkins and Ms. Hasley, 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

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

JUSTICES
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CLERK
JOHN T. ADAMS

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

NOV 01 2001

The Honorable Charles Bacarisse
District Clerk of Harris County
P.O. Box 4651
Houston, Texas 77002

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. Jerry Keith Atkins*, and a copy of the Supreme Court's order appointing the Honorable James N. Parsons, III, Judge of the 3rd District Court, Palestine, Texas.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable James N. Parsons, III
Ms. Jennifer A. Hasley
Mr. Jerry Keith Atkins
Ms. Melissa Dartez