

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 02 - 9070

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

The Supreme Court of Texas hereby appoints the Honorable William Harmon, Judge of the 178th District Court of Harris County, Texas, to preside in the Disciplinary Action styled

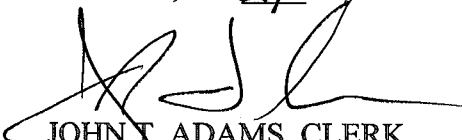
The Commission for Lawyer Discipline v. Daniel Ralph Rutherford

filed in the District Court of Bexar County, Texas.

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

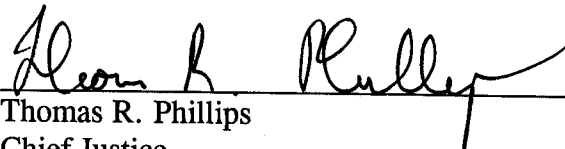
As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City
Of Austin, this 27th day of March, 2002.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 02-9070 is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 27 day of March, 2002.


Thomas R. Phillips
Chief Justice



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

JUSTICES

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

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

APR 19 2002

Mr. Paul H. Homburg, III
Assistant Disciplinary Counsel, State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205

Mr. Daniel Ralph Rutherford
825 South Saint Mary's Street
San Antonio, Texas 78205

Dear Mr. Homburg and Mr. Rutherford:

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 William Harmon, Judge of the 178th District Court, Houston, Texas to preside in

Commission for Lawyer Discipline v. Daniel Ralph Rutherford

Sincerely,

SIGNED

John T. Adams
Clerk



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
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APR 19 2002

CLERK
JOHN T. ADAMS

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

The Honorable Reagan Greer
District Clerk of Bexar County
100 Dolorosa Street
San Antonio, Texas 78205-1205

Dear Mr. Greer:

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. Daniel Ralph Rutherford*, and a copy of the Supreme Court's order appointing the Honorable William Harmon, Judge of the 178th District Court, Houston, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable William Harmon
Mr. Paul H. Homburg, III
Mr. Daniel Ralph Rutherford



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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JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

APR 19 2002

Honorable William Harmon
Judge, 178th District Court
19032 Criminal Justice Center
1201 Franklin Street
Houston, Texas 77002

Dear Judge Harmon:

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. Rutherford and Mr. Homburg, and a copy of the letter to the District Clerk of Bexar County.

It is recommended that, six to eight weeks after receipt of this letter, you or your coordinator contact the Bexar County Administrative Office (956-335-2300) 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 (210-769-3519) 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

CAUSE NO. _____

**COMMISSION FOR
LAWYER DISCIPLINE,
Petitioner**

vs

**DANIEL R. RUTHERFORD
Respondent**

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

_____ **JUDICIAL DISTRICT**

BEXAR COUNTY, TEXAS

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Commission for Lawyer Discipline, Petitioner, and would respectfully show the following:

I.

DISCOVERY CONTROL PLAN

Discovery proceedings in this cause should be conducted on Level 2 pursuant to Tex.R.Civ.P. Rule 190.3.

II.

PARTIES

Petitioner is the Commission for Lawyer Discipline, a committee of the State Bar of Texas. Respondent, Daniel R. Rutherford, State Bar No. 17450000, is an attorney

licensed to practice law in the State of Texas and is a member of the State Bar of Texas.

Respondent may be served with process at his principal place of business at 825 South Saint Mary's Street, San Antonio, Bexar County, Texas, 78205.

III.

JURISDICTION, VENUE AND CONDITIONS PRECEDENT

The cause of action and the relief sought in this case are within the jurisdictional requirements of this Honorable Court. Venue of this case is proper in Bexar County, Texas pursuant to Texas Rules of Disciplinary Procedure Rule 3.03, because Bexar County is the county of the Respondent's residence and principal place of practice. All conditions precedent to proceeding with this cause have been performed or fulfilled.

IV.

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex.Gov't.Code §81.001 *et seq.*, the Disciplinary Rules of Professional Conduct ("DRPC") and the Texas Rules of Disciplinary Procedure ("TRDP"). The complaint which forms the basis of this action was filed by Sterling W. Bennett. The acts and omissions of Respondent, as hereinafter alleged, constitute professional misconduct.

V.

FACTUAL BACKRGOUND

Respondent Rutherford was retained in October 1998 to represent the Complainant Bennett, who was a defendant in a suit filed in Bexar County, Texas.

The suit involved allegations regarding the financial condition of Medina Adult Day Care Center, Inc. Respondent's representation of Bennett in that case, Cause No. 98 - CI - 08660 (the "98 case"), involved subject matter substantially related to a Guadalupe County case, Cause No. 99 - 0607 - CV (the "99 case"), in which Bennett's interests were directly and materially adverse to the interests of other clients who were represented by Respondent Rutherford.

VI.

Respondent's representation of Bennett in the 98 case either reasonably appeared to be or became adversely limited by Respondent's responsibilities to other clients in the 99 case or by Respondent's own interests or the interests of his firm. Without prior consent, Respondent represented Bennett in the 98 case and thereafter continued to represent other clients as plaintiffs in the 99 case, which was adverse to Bennett as defendant. Moreover, the representation in reasonable probability involved a violation of Rule 1.05, regarding the use of and protection of confidential information, as to Bennett.

VII.

On October 11, 2001, Respondent Rutherford made a false sworn statement of material fact to the State Bar of Texas District 10B Grievance Committee panel when he testified that he was merely mentoring another attorney, Barbara M. Riddle, in the representation and prosecution of the 99 case against Bennett in a May 6, 1999

hearing in the District Court of Guadalupe County. The official transcript of those proceedings demonstrates that Respondent Rutherford appeared as counsel for the plaintiffs in the matter, that he was the only attorney that appeared as counsel for the plaintiffs that day and that he conducted direct and redirect examination of one of the plaintiffs in the hearing.

VIII.

Prior to the May 6, 1999 hearing, Respondent Rutherford had been warned by the Honorable Judge Gus J. Strauss in open court on April 26, 1999, that Respondent had a conflict of interest in his representation of the plaintiffs in the 99 case and the defendant in the 98 case. The hearing scheduled for that day was continued by the judge to enable the parties to resolve the conflict of interest issue. Respondent knowingly, and without an open refusal for cause, deliberately disobeyed the obligation to resolve the conflict before the next hearing, on May 6, 1999, and, instead, requested Bennett not to raise the issue again at the hearing. Respondent engaged in conduct involving dishonesty, deceit or misrepresentation by his continued representation of both parties, his failure to resolve the conflict prior to the May 6, 1999 hearing and his false sworn testimony to the grievance committee.

IX.

PROFESSIONAL MISCONDUCT

The conduct exemplified by the allegations above constitutes violation of the

following Disciplinary Rules of Professional Conduct:

Rule 1.06(b)(1) -- ... a lawyer shall not represent a person if the representation of that person involves a substantially related matter in which that persons interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm.

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 firms own interests.

Rule 1.09(a)(2) -- Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client if the representation in reasonable probability will involve a violation of Rule 1.05.

Rule 1.09(a)(3) -- Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client if it is the same or a substantially related matter.

Rule 3.03(a)(1) -- A lawyer shall not knowingly make a false statement of material fact or law to a tribunal.

Rule 3.04(d) -- A lawyer shall not knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience.

Rule 8.01(a) -- An applicant for admission to the bar, a petitioner for reinstatement to the bar, or a lawyer in connection with a bar admission application, a petition for reinstatement, or a disciplinary matter, shall not knowingly make a false statement of material fact.

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

X.

RELIEF SOUGHT

Petitioner would show that this Honorable Court should enter a judgment of professional misconduct and impose a sanction against Respondent which is in the Court's discretion appropriate under the facts established. Additionally, Respondent should be ordered to pay restitution, attorney fees and all costs associated with this litigation.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Honorable Court impose an appropriate sanction against Respondent as the facts proved shall warrant. Petitioner further prays to recover costs of court and all expenses associated with these proceedings, including attorney fees as provided in TRDP Rule

1.06(T)(8)(b). Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

Respectfully submitted,

DAWN MILLER,
Chief Disciplinary Counsel

PAUL H. HOMBURG III,
Disciplinary Counsel

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

By: 

PAUL H. HOMBURG III
State Bar No. 09934050
ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7099 3220 0000 0580 5545

Regional Office
Soledad Plaza West
425 Soledad, Suite 300
San Antonio, Texas 78205
(210) 271-7881
FAX: (210) 271-9642

February 12, 2002

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

RE: Commission for Lawyer Discipline v. Daniel Ralph Rutherford

Dear Mr. Adams:

Enclosed please find an original and three (3) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Daniel Ralph Rutherford. Mr. Rutherford has designated Bexar 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 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:

Daniel Ralph Rutherford
825 South Saint Mary's Street
San Antonio, Texas 78205

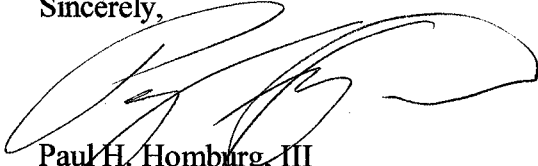
As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial as set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure. If not, I would respectfully request that an alternate appointment be made.

Once a trial judge has been appointed, please forward the original and three (3) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Bexar County, Texas, with the request that the suit be filed, service be obtained, and a filemarked copy of the petition be returned to the undersigned.

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Bexar County, Texas and a return envelope to be sent to the District Clerk of Bexar 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 black ink, appearing to read "Paul H. Homburg, III". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Paul H. Homburg, III
Assistant Disciplinary Counsel

Enclosures

PHH/apr