

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97-9213

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

The Supreme Court of Texas hereby appoints the Honorable Robert K. Gill, Judge of the 213th District Court of Tarrant County, Texas, to preside in the Disciplinary Action styled:


The Commission for Lawyer Discipline v. Jerry S. Payne

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 Disciplinary Petition 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 2nd day of December, 1997.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 97-9213, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 3 day of December, 1997.

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

Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE §
v. §
JERRY S. PAYNE §
§

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

The COMMISSION FOR LAWYER DISCIPLINE ("Petitioner") a permanent committee of the State Bar of Texas, pursuant to the authority of an investigatory panel for State Bar District Number 4E files this Disciplinary Petition complaining of **JERRY S. PAYNE** ("Respondent"), an attorney licensed to practice law in the State of Texas, showing the Court as follows:

1. NATURE OF PROCEEDING

Petitioner brings this disciplinary action pursuant to the State Bar Act, the 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. The complaints that form the basis of this Disciplinary Petition were filed on or after May 1, 1992.

2. VENUE

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. Respondent's 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.

3. ISSUANCE OF CITATION REQUESTED

3.01 Petitioner requests that citation be issued and forwarded to: Jeannette Duer, 1111 Fannin, Suite 1370, Houston, Texas 77002, for service by an individual processor.

3.02 Respondent may be served at his business address located at 5847 San Felipe #3400, Houston, Harris County, Texas, 77057.

4. PURSUANT TO PART III OF THE TEXAS RULES OF DISCIPLINARY PROCEDURE, PETITIONER REQUESTS THIS COURT TO DISCIPLINE PAYNE FOR ACTS OF PROFESSIONAL MISCONDUCT.

4.01 PAYNE ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULE OF PROFESSIONAL CONDUCT 1.03(a) [a lawyer shall keep a client reasonably informed about the status of matter and promptly comply with reasonable requests for information].

(A) On or about December 5, 1993, Complainant, Lisa J. Waggoner, retained Respondent to represent her in a personal injury case resulting from an automobile accident that occurred on December 3, 1993.

(B) Respondent failed to communicate adequately with the Complainant about the case.

(C) Respondent failed to return Complainant's telephone calls or to respond to faxes sent to him.

4.02 PAYNE ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULE OF PROFESSIONAL CONDUCT 1.03(b) [a lawyer shall explain

a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation].

- (A)** Complainant endorsed an insurance settlement check for Five Thousand Dollars (\$5,000.00) on or about September 9, 1996.
- (B)** Complainant was unable to make an informed decision regarding the settlement of her cause of action as there was no disbursement sheet, accounting or explanation made by Respondent to Complainant regarding the receipt of the settlement check.
- (C)** On or about October 11, 1996, Complainant received a settlement check for \$932.77 from Respondent.
- (D)** Complainant disputed the amount received from Respondent. Complainant returned the settlement check to Respondent.
- (E)** Complainant did not receive an accounting of fees or statement of expenses from Respondent until after she had filed a grievance with the State Bar of Texas on or about September 20, 1996.

5. PRAYER

Petitioner respectfully prays that this Court discipline Respondent by disbarment, suspension or reprimand, as the facts shall warrant; and that the Petitioner have all relief to which it may show itself to be justly entitled, including costs of court and attorneys' fees.

Respectfully submitted,

Steven W. Young
General Counsel

STATE BAR OF TEXAS
1111 Fannin, Suite 1370
Houston, Texas 77002
Phone: (713) 759-6931
Fax No.: (713) 752-2158

A handwritten signature in cursive script, reading "Jeannette Duer", written in black ink. The signature is positioned above a horizontal line.

JEANNETTE M. DUER
State Bar No. 00793645
ATTORNEYS FOR PETITIONER/ THE
COMMISSION FOR LAWYER
DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

October 14, 1997

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

Re: Commission for Lawyer Discipline v. Jerry S. Payne

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 Jerry S. Payne. Mr. Payne 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 practices 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:

Jerry S. Payne
5847 San Felipe, Suite 3400
Houston, Texas 77057

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 Civil Case Information Sheet, and 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 citation, along with a file-stamped copy of the petition be returned to the undersigned.

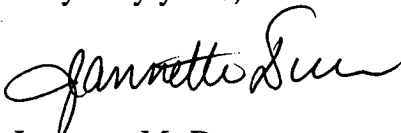
Also enclosed is a pre-addressed envelope for your use in transmitting the above referenced documents to the District Clerk of Harris County, Texas, and a return envelope to be sent to

Mr. John T. Adams, Clerk
Supreme Court of Texas
October 14, 1997
Page 2

the District Clerk of Harris County, Texas, for the Clerk's use in returning a filemarked copy of the petition to the undersigned.

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

Very truly yours,



Jeannette M. Duer
Assistant General Counsel

JMD/lp
enclosures