

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 96- 9141

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

The Supreme Court of Texas hereby appoints the Honorable John C. Martin, Judge of the 2nd 9th District Court of Montgomery County, Texas, to preside in the Disciplinary Action styled:

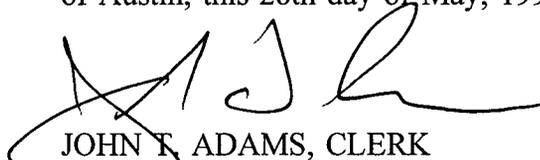
The Commission for Lawyer Discipline v. Harry R. Heard

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

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

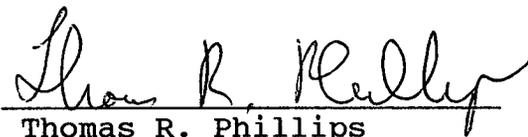
with the Seal thereof affixed at the City
of Austin, this 28th day of May, 1996.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9141, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 30 day of May, 1996.

A handwritten signature in cursive script, reading "Thomas R. Phillips". The signature is written in dark ink and is positioned above a horizontal line.

Thomas R. Phillips
Chief Justice

NO. _____

| | | |
|----------------------------------|---|--------------------------|
| COMMISSION FOR LAWYER DISCIPLINE | § | IN THE DISTRICT COURT OF |
| | § | |
| VS. | § | GREGG COUNTY, TEXAS |
| | § | |
| HARRY R. HEARD | § | _____ 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 (hereinafter called "Petitioner"), complaining of Respondent, Harry R. Heard (hereinafter called "Respondent"), showing the Court:

I.

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 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 and has his principal place of practice in Gregg County, Texas. An officer may serve citation on Respondent by and through his attorney of record, Wayne H. Paris, 3100 South Gessner, Suite 600, Houston, Texas 77063.

III.

On or about April 23, 1991, Frank Cooper (hereinafter referred to as "Cooper") hired Respondent to clarify and collect a judgment of \$40,000.00 awarded to Cooper in a Divorce

Decree entered on February 14, 1990. Cooper paid Respondent an agreed fee of \$1,500.00 for his services. Thereafter, Respondent neglected Cooper's case and failed to communicate with Cooper as to the status of the matter.

IV.

On or about August 21, 1991, Respondent filed a Motion for Enforcement and Clarification of the Divorce Decree on behalf of Cooper. Opposing counsel filed a response to the motion and, in addition, asked for damages and attorney's fees. Respondent failed to inform Cooper that he, Cooper, was being countersued and failed to provide Cooper with a copy of this response or any other pleadings filed in the enforcement matter.

V.

On February 18, 1994, opposing counsel sent Respondent a cashier's check for \$36,000.00 as settlement of the \$40,000.00 judgment. By letter, opposing counsel explained that \$4,000.00 should be deducted from the \$40,000.00 award pursuant to the terms of the original judgment which provided for monthly rental payments from Cooper to his ex-wife for his use of a building. When Respondent informed Cooper of the \$36,000.00 check sent from opposing counsel, he failed to explain to Cooper the reasons why opposing counsel thought \$4,000.00 should be deducted. Despite the fact that the original judgment clearly indicated that Cooper should be entitled to only \$36,000.00, Respondent told Cooper that he did not know why \$4,000.00 was deducted. Respondent failed to show Cooper opposing counsel's letter and explanation. With no explanations, Cooper rejected the \$36,000.00 offer made by opposing counsel. As a result of Respondent's failure to properly inform Cooper, Cooper lacked the information necessary to allow him to make an informed decision.

VI.

A hearing on the matter was set for September 2, 1994. Respondent failed to notify Cooper of this setting and failed to appear at the hearing. As a result of Respondent's failure to appear at the hearing, Cooper's interests were not represented resulting in his ex-wife being awarded an offset of \$18,238.58 to the \$40,000.00 judgment thus reducing Cooper's original award by approximately 50%. Respondent failed to inform Cooper of this hearing or of its outcome.

VII.

On or about September 20, 1994, Respondent filed a Motion for New Trial. Despite the fact that Respondent's file contained a notice of the September 2, 1994, hearing, Respondent cited as his basis for requesting a new trial the fact that he had not been provided notice of the September 2, 1994, setting.

VIII.

A hearing on the Motion for New Trial was set for October 10, 1994. Respondent failed to inform Cooper of this setting. On or about October 5, 1994, Respondent filed a Motion for Continuance. Thereafter, Respondent failed to appear in court to urge his Motion for Continuance and he failed to appear for the scheduled hearing on the Motion for New Trial. Respondent's failure to appear along with his failure to secure another licensed attorney to attend on his behalf resulted in his Motion for Continuance and the Motion for New Trial being denied.

IX.

In or around November 1994, after numerous failed attempts, Cooper finally reached Respondent by telephone and inquired about the status of his case. Respondent again failed to inform Cooper about the September 2, 1994, hearing wherein Cooper's original judgment was

reduced and he failed to inform Cooper of the denial of the Motion for New Trial and his failure to appear at the hearing on that motion.

X.

On or about March 9, 1995, Respondent met with Cooper and refunded his \$1,500.00 fee and returned Cooper's file to him. Once again, Respondent failed to notify Cooper of the court's rulings against him. It was not until Cooper reviewed the file that he discovered the September 2, 1994, hearing had taken place and that his judgment had been reduced by almost 50%.

XI.

As a result of Respondent's actions, Cooper filed a grievance complaint against Respondent. On or about August 18, 1995, Respondent received a letter from the State Bar of Texas notifying him that the complaint had been filed and instructing him to respond to the allegations in writing within thirty (30) days from his receipt of the notice. Respondent failed to timely furnish his response to the Chief Disciplinary Counsel. Respondent had delivered his response to the Grievance Committee on October 12, 1995, the date of the disciplinary hearing.

XII.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs III, IV, V, VI, VII, VIII, IX, X, XI and XII hereinabove constitute conduct violative of Rules 1.01(b)(1), 1.01(b)(2), 1.03(a), 1.03(b) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

XIII.

The complaint which forms the basis of the Cause of Action hereinabove set forth was brought to the attention of the Office of the General Counsel of the State Bar of Texas by Frank

Cooper filing a complaint on or about July 12, 1995.

PRAYER

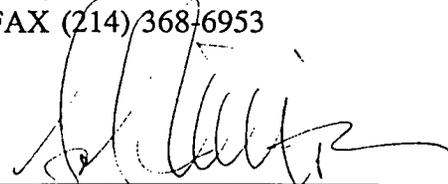
WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined as the facts shall warrant, and that Petitioner be awarded such other relief to which entitled, including costs of Court and attorney's fees.

Respectfully submitted,

James M. McCormack
General Counsel

Sol Villasana
Assistant General Counsel

State Bar of Texas
Litigation - Dallas
5910 N. Central Expressway
Suite 920
Dallas, Texas 75206
(214) 368-0083
FAX (214) 368-6953



Sol Villasana
State Bar Card No. 20585200

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the General Counsel
Litigation - Dallas

March 25, 1996

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

RE: Commission for Lawyer Discipline v. Harry R. Heard

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 Harry R. Heard. Mr. Heard is a resident of Gregg 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 made that you notify the Respondent, through his attorney at the address shown below, and the undersigned of the identity and address of the judge assigned:

**Wayne Paris
3100 South Gessner, Suite 600
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.

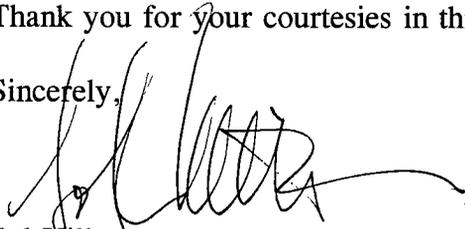
Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Gregg County, Texas, with the request that the suit be filed, service be obtained, and a file stamped 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 Gregg County, Texas, and a return envelope to be sent to the District Clerk of Gregg County, Texas, for the Clerk's use in returning a file stamped copy of the petition to the undersigned.

Premier Place, 5910 N. Central Expressway, Suite 920, Dallas, Texas 75206 (214)368-0083

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sol Willasana', with a long horizontal flourish extending to the right.

Sol Willasana
Assistant General Counsel

SV/abm

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

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

May 31, 1996

The Honorable Ruby Cooper
District Clerk of Gregg County
P.O. Box 711
Longview, Texas 75606

Dear Ms. Cooper:

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. Harry R. Heard and a copy of the Supreme Court's order appointing the Honorable John C. Martin, Judge of the 2nd 9th District Court, Conroe, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. John C. Martin
Mr. Harry R. Heard
Mr. James M. McCormack



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

JUSTICES
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NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

May 31, 1996

Honorable John C. Martin
Judge, 2nd 9th District Court
P.O. Box 8338
The Woodlands, Texas 77387-8338

Dear Judge Martin:

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. Heard and Mr. McCormack, and a copy of the letter to the District Clerk of Gregg 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 Gregg 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 (214-653-2943) to obtain claims forms for your expenses and other information 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

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

JUSTICES
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GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

May 31, 1996

Mr. James M. McCormack
General Counsel, State Bar of Texas
P.O. Box 12487
Austin, Texas 78711

Mr. Harry R. Heard
c/o Wayne Paris
3100 South Gessner, Suite 600
Houston, Texas 77063

Dear Mr. McCormack and Mr. Heard:

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 John C. Martin, Judge of the 2nd 9th District Court, Conroe, Texas to preside in

Commission for Lawyer Discipline v. Harry R. Heard

Sincerely,

A handwritten signature in black ink, appearing to be "J. Adams", written over a circular stamp.

John T. Adams
Clerk