

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97- 9015

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

The Supreme Court of Texas hereby appoints the Honorable Olin B. Strauss, Judge of the 81st District Court of Atascosa County, Texas, to preside in the Disciplinary Action styled:

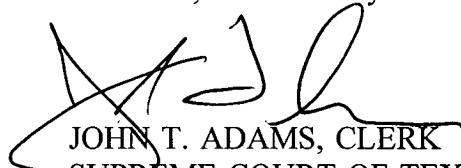
The Commission for Lawyer Discipline v. Frank H. Bass, Jr.

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Montgomery 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.

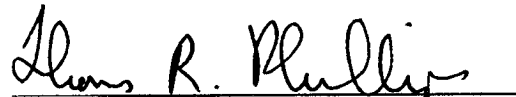
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 20th day of January, 1997.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 97-9015, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 21 day of January, 1997.



Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
V.	§	MONTGOMERY COUNTY, TEXAS
FRANK H. BASS, JR.	§	_____ 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, complains of Frank H. Bass, Jr. ("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 complaint that forms the basis of this disciplinary petition was 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 Montgomery County, Texas. Respondent's principal place of practice is located in Montgomery County, Texas. Therefore venue is appropriate in Montgomery County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure.

3. ISSUANCE OF CITATION AND SERVICE OF PROCESS REQUESTED

Petitioner requests that citation be issued and Respondent be served. An officer may serve citation on Respondent at his business address located at the Montgomery County Attorney's Office, 301 N. Main Street, Third Floor, Conroe, Montgomery County, Texas 77301.

4. FACTS GIVING RISE TO REPRESENTATION

4.01 On or about August 3, 1995, William A. Valentine, Mark D. Hollie and Paul Price (collectively the "Plaintiffs") sued Montgomery County, Texas, (the "County") and David Garner ("Garner"), the Director of the Maintenance Department of Montgomery County, Texas, in the United States District Court for the Southern District of Texas, Houston Division.

4.02 On or about August 7, 1995, Garner was served with Plaintiffs' complaint.

4.03 On or about August 15, 1995, Plaintiffs filed their First Amended Complaint against the County, Garner and Malcolm Purvis ("Purvis"), a County Commissioner for Montgomery County, Texas.

4.04 On or about August 16, 1995, Garner was served with Plaintiffs' First Amended Complaint.

4.05 On or about August 21, 1995, Respondent and his assistant, Steve McKeithen ("McKeithen"), met with the Commissioners' Court of Montgomery County, Texas, in executive session. This meeting concerned the possibility of a conflict of interest between the County and Garner in the above referenced litigation. Based upon Respondent's counsel and guidance the Commissioners'

Court decided there was no conflict of interest between Garner and the County. This resulted in a decision to allow Respondent and McKeithen to represent the County and Garner.

4.06 On or about August 21, 1995, McKeithen drafted a memorandum to Garner informing Garner of the Commissioners' Court meeting held earlier the same day. In this memorandum, McKeithen informed Garner that the Commissioners' Court was aware that a conflict of interest could arise between the County and Garner. In addition, Garner was informed that if a conflict of interest arose between Garner and the County, Garner would be informed and the Commissioners would meet to discuss the appropriate action to take with respect to Respondent's representation of the County and Garner.

4.07 Garner was never consulted by Respondent, or McKeithen, about a possible conflict of interest between he and the County. Garner was never advised about possible causes of action he may have against the County or the Plaintiffs. Neither was Garner consulted about possible causes of action the County may have against him. Respondent, and McKeithen, never spoke to Garner about these issues.

4.08 In addition, Respondent, and McKeithen, advised the County that no conflict of interest existed between the County and Garner without ever talking to Garner about any possible conflicts of interests Garner may have had against the County.

5. ATTORNEY - CLIENT RELATIONSHIP FORMED

5.01 On or about August 23, 1995, Respondent, by and through McKeithen, filed a Motion to Dismiss on behalf of the County, Garner and Purvis.

5.02 Respondent and McKeithen, represented the County, Garner and Purvis (collectively the "Defendants").

6. CHRONOLOGY OF EVENTS GIVING RISE TO PROCEEDING

6.01 On or about August 28, 1995, Garner requested a copy of the answer filed on his behalf by Respondent and McKeithen. Garner never received a response to his request from Respondent or McKeithen. In fact, no answer was ever filed on behalf of the Defendants.

6.02 On or about October 19, 1995, Respondent and McKeithen filed a Federal Rule of Civil Procedure 26(a)(1) Initial Disclosure on behalf of the Defendants.

6.03 On or about October 27, 1995, Respondent, and McKeithen, filed a Joint Report of Meeting and Joint Discovery - Case Management Plan on behalf of the Defendants.

6.04 Garner was never advised of the actions being taken on his behalf. In addition, Garner was never requested to provide any information with respect to the Initial Disclosure and Case Management Plan filed on his behalf.

6.05 On or about January 3, 1996, Garner was informed that a settlement had been reached in the litigation. Garner requested a copy of the settlement reached in this case from McKeithen. (A copy of this settlement is attached as Exhibit A and is incorporated herein as if set forth in full). After receiving a copy of the

settlement from Respondent, and McKeithen, it became clear to Garner that a conflict of interest arose between he and the County. Garner then requested separate counsel from the Commissioners' Court of Montgomery County, Texas.

6.06 On or about January 5, 1996, McKeithen drafted a memo to Alan B. Sadler ("Sadler"), the County Judge of Montgomery County, Texas, advising Sadler to refuse Garner's request for outside legal counsel. In that memo McKeithen states that "Mr. Garner has been dismissed from this lawsuit without having any financial or other liability imposed against him." (This memorandum is attached as Exhibit B and is incorporated herein as if set forth in full). The assertion made by McKeithen was false. The agreed settlement did impose a financial loss, or other liability, against Garner. The Agreed Settlement, attached as Exhibit A, speaks for itself and the impositions against Garner are clear.

6.07 Based upon the advise and counsel of Respondent, and McKeithen, the Commissioners' Court of Montgomery County refused to retain separate counsel for Garner.

6.08 On or about January 8, 1996, the agreed settlement was approved by the Commissioners' Court of Montgomery County, Texas, on behalf of the County.

6.09 On or about January 22, 1996, a Stipulation for filing of Amended Complaint was filed by McKeithen on behalf of the Defendants. This stipulation states: "IT IS HEREBY STIPULATED by and between the parties hereto through their respective attorneys of record that Plaintiffs may file a Second Amended Complaint, a copy of which is attached hereto."

6.10 Garner was never contacted by Respondent, or McKeithen, about this stipulation. In addition, Garner never agreed, or advised his counsel that he agreed, to allow the Plaintiffs to file a Second Amended Complaint.

6.11 On or about January 22, 1996, an Agreed Motion to Dismiss was filed by McKeithen on behalf of the Defendants. The Agreed Motion to Dismiss stated: "Plaintiffs William A. Valentine ("Valentine"), Mark D. Hollie ("Hollie"), Paul Price ("Price"), and James Alpha ("Alpha") (collectively referred to as "Plaintiffs") and Defendants Montgomery County, Texas, Malcolm Purvis, and David Garner ("Montgomery County") file this Agreed Motion to Dismiss, and in support thereof would show the Court the following: 1. The parties have resolved all outstanding disputes between them. 2. The parties request that the Court dismiss this action with prejudice."

6.12 Neither Respondent, nor McKeithen, consulted with Garner prior to filing this Agreed Motion to Dismiss. In fact, Garner did not agree to the filing to this Agreed Motion to Dismiss.

6.13 On or about January 26, 1996, Judge Lynn Hughes signed an Order of Dismissal dismissing the case against the Defendants.

6.14 The Agreed Motion to Dismiss was the result of a settlement between the Plaintiffs and the County. Respondent, and McKeithen, failed to advise Garner that a Conflict of Interest existed between he and the County.

7. SPECIFIC VIOLATIONS OF THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

The acts and/or omissions of the Respondent described in Sections 4, 5, and 6 above, which occurred on or after January 1, 1990, constitute conduct in violation of Rule(s) 1.01(b)(1) [in representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer]; 1.03(a) [a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; 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 person's interests are materially and directly adverse to the interests of another client]; 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]; 1.08(f) [a lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients unless each client has consented after consultation, including disclosure of the existence and nature of all the claims involved and of the nature and extent of the participation of each person in the settlement]; 3.03(a) [a lawyer shall not knowingly make a false statement of material fact or law to a tribunal]; 5.01(a) [a lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if the lawyer is a partner or supervising lawyer and knowingly permits the conduct involved]; 5.01(b) [a lawyer shall be subject to discipline because of

another lawyer's violation of these rules of professional conduct if the lawyer is the general counsel of a governmental agency's legal department in which the other lawyer is employed and with knowledge of the other lawyer's violation of these rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation]; and 8.04(a)(3) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation] of the Texas Disciplinary Rules of Professional Conduct.

8. TIMELINESS OF FILING

The complaint that forms the basis of this cause of action was brought to the attention of the Office of the General Counsel by Daniel C. Rice's filing this complaint on or about January 18, 1996.

9. PRAYER

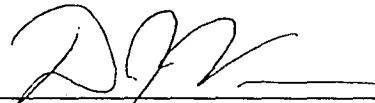
Petitioner prays that this Court discipline Respondent by disbarment, suspension or reprimand, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself to be justly entitled, including costs of court and attorney's fees.

Respectfully submitted,

Steven W. Young
General Counsel

Diego J. Vargas
Assistant General Counsel

Office of the General Counsel
STATE BAR OF TEXAS
1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6931
Fax No. (713) 752-2158



DIEGO J. VARGAS
State Bar No. 00791847

ATTORNEYS FOR PETITIONER/ THE COMMISSION
FOR LAWYER DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

December 4, 1996

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

Re: Commission for Lawyer Discipline v. Frank H. Bass, Jr.

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 Frank H. Bass, Jr. Mr. Bass resides in Montgomery County, Texas, and has designated same 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:

Frank H. Bass, Jr.
301 N. Main Street, Third Floor
Conroe, Texas 77301

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 and the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Montgomery 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 Montgomery County, Texas, and a return envelope to be

Mr. John T. Adams, Clerk
Supreme Court of Texas
December 4, 1996
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sent to the District Clerk of Montgomery 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,

A handwritten signature in cursive script that reads "Diego Vargas" followed by a vertical line and the initials "slk".

Diego J. Vargas
Assistant General Counsel

DJV/slk
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 ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

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

January 23, 1997

The Honorable Peggy Stevens
District Clerk of Montgomery County
P.O. Box 2985
Conroe, Texas 77305-2985

Dear Ms. Stevens:

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. Frank H. Bass, Jr. and a copy of the Supreme Court's order appointing the Honorable Olin B. Strauss, Judge of the 81st District Court, Jourdanton, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Olin B. Strauss
Mr. Frank H. Bass, Jr.
Mr. Diego J. Vargas



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
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ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

January 23, 1997

Honorable Olin B. Strauss
Judge, 81st District Court
P.O. Box 161
Jourdanton, Texas 78026

Dear Judge Strauss:

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. Bass and Mr. Vargas, and a copy of the letter to the District Clerk of Montgomery County.

It is recommended that, a month or six weeks after receipt of this letter, you or your coordinator contact the presiding judge or the District Clerk of Montgomery County 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 (409/835-8402) 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



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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JAMES A. BAKER
GREG ABBOTT

January 23, 1997

Mr. Diego J. Vargas
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Frank H. Bass, Jr.
301 N. Main Street, Third Floor
Conroe, Texas 77301

Dear Mr. Vargas and Mr. Bass:

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 Olin B. Strauss, Judge of the 81st District Court, Jourdan, Texas to preside in

Commission for Lawyer Discipline v. Frank H. Bass, Jr.

Sincerely,

SIGNED

John T. Adams
Clerk