

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97- 9148

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

The Supreme Court of Texas hereby appoints the Honorable Bob McGrath, Judge of the 342nd District Court of Tarrant County, Texas, to preside in the Disciplinary Action styled:

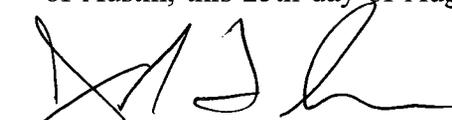
The Commission for Lawyer Discipline v. John M. McDermott

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 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,

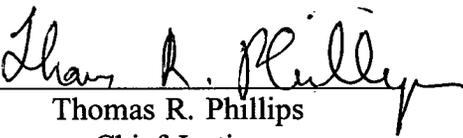
with the Seal thereof affixed at the City
of Austin, this 25th day of August, 1997.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 97-9148, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 26 day of August, 1997.


Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER
DISCIPLINE

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IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, T E X A S

JOHN M. MCDERMOTT

_____ 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, complaining of Respondent, John M. McDermott, 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 with the State Bar of Texas on or after May 1, 1992.

II.

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent is a resident of and has his principal place of practice in Harris County, Texas. An officer may serve citation on Respondent at his business address located at 6776 Southwest Freeway, Suite 150, Houston, Harris County, Texas 77074.

III.

Respondent represented a LaJuan Sadler in her divorce. Respondent filed a Final Decree of Divorce for his client that was signed on or about December 28, 1993. The divorce decree provided, in part, that:

1. The mother and father would be joint managing conservators of the child; and
2. The child would reside with the father; and
3. The mother would pay four hundred eleven dollars and sixty-six cents (\$411.66) per month in child support to the father, which would be withheld from the mother's earnings.

The amount of child support provided for in the divorce decree was calculated based upon Mrs. Sadler's statement that she wished here child support payments to reflect the day-care expenses that she had agreed to provide in her agreement with her husband. Respondent allegedly calculated the amount of monthly child support by using the following formula:

- a. Mrs. Sadler stated she was paying ninety-five dollars (\$95.00) per week for child support;
- b. Respondent multiplied ninety-five dollars times fifty-two weeks, which equalled four thousand nine hundred forty dollars. ($\$95.00 \times 52 = \$4,940.00$)
- c. Respondent divided four thousand nine hundred forty dollars by twelve months, which equalled four hundred eleven dollars and sixty-six cents per month child support. ($\$4,940.00$ divided by 12 = \$411.66).

Mrs. Sadler, Respondent's client, stated the divorce decree does not contain the exact wording of her agreement with her husband. She stated the decree is deficient in two ways. First, the decree orders her child support payments to be withheld from her

pay. Ms. Sadler states that is not the agreement she had with her husband. Second, the decree does not provide for direct payment of the child support to the child-care facility, which is the agreement she had with her husband.

Although the Family Code statutorily mandates the withholding of child support, Respondent did not explain that to his client, LaJuan Sadler. Neither did he explain to his client, LaJuan Sadler, that the child support could not be directed to the child-care facility, rather than to her husband.

IV.

By failing to explain the mandatory requirements of the Texas Family Code regarding payment of child support, and by failing to explain to his client that the agreement she entered into with her ex-husband regarding support of their child could not be accomplished under the Texas Family Code, Respondent engaged in conduct in violation of Rule 1.03(b)[failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation]; of the Texas Disciplinary Rules of Professional Conduct, and of Rule 1.06(Q) of the Texas Rules of Disciplinary Procedure.

V.

The complaint which forms the basis of this lawsuit as hereinabove set forth was brought to the attention of the Office of the General Counsel of the State Bar of Texas by the filing of a complaint by LaJuan Sadler on or about May 16, 1995.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that

Respondent be disciplined by reprimand, suspension, or disbarment, as the facts shall warrant; and that Petitioner have such other and further relief to which entitled, including costs of Court and attorney's fees.

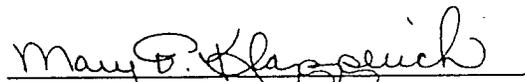
Respectfully submitted,

Steven W. Young
General Counsel

Mary F. Klapperich
Assistant General Counsel

Office of the General Counsel
State Bar of Texas

1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6932
(713) 752-2158 FAX


MARY F. KLAPPERICH
State Bar No. 11550700

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the General Counsel

July 16, 1997

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

Re: Commission for Lawyer Discipline v. John M. McDermott

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 John M. McDermott. Mr. McDermott is a resident of Harris 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 hereby made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Mr. John M. McDermott
6776 Southwest Frwy, Suite 150
Houston, Texas 77074

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 Harris County, Texas, with the request that the suit be filed, citation be issued, and the citation, alone with a file-stamped copy of the petition, be returned to the undersigned.

Mr. John T. Adams, Clerk
Supreme Court of Texas
July 16, 1997
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I have enclosed a pre-addressed envelope for your use in transmitting the above reference documents, 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-stamped copy of the petition to the undersigned.

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

Very truly yours,



Mary F. Klapperich
Assistant General Counsel

MFK/lp

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

JUSTICES
RAUL A. GONZALEZ
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

SEP 03 1997

The Honorable Charles Bacarisse
District Clerk of Harris County
P.O. Box 4651
Houston, Texas 77210

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. John M. McDermott, and a copy of the Supreme Court's order appointing the Honorable Bob McGrath, Judge of the 342nd District Court of Fort Worth, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Bob McGrath
Mr. John M. McDermott
Ms. Mary F. Klapperich



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

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ROSE SPECTOR
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JAMES A. BAKER
GREG ABBOTT

SEP 03 1997

Honorable Bob McGrath
Judge, 342nd District Court
401 W. Belknap Street
Fort Worth, Texas 76196-0225

Dear Judge McGrath:

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. McDermott and Ms. Klapperich, 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

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

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JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

SEP 03 1997

Ms. Mary F. Klapperich
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. John M. McDermott
6776 Southwest Freeway, Suite 150
Houston, Texas 77074

Dear Ms. Klapperich and Mr. McDermott:

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 Bob McGrath, Judge of the 342nd District Court of Fort Worth, Texas to preside in

Commission for Lawyer Discipline v. John M. McDermott

Sincerely,

SIGNED

John T. Adams
Clerk