

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 98- 9102

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

The Supreme Court of Texas hereby appoints the Honorable Caroline E. Baker, Judge of the 151st District Court of Harris County, Texas, to preside in the Disciplinary Action styled:

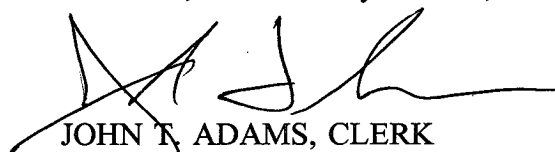
The Commission for Lawyer Discipline v. Joe B. Abbey

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

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

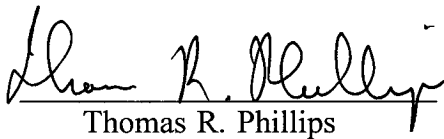
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 17th day of June, 1998.


JOHN F. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 98-9102, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 19 day of June, 1998.

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

Thomas R. Phillips
Chief Justice

NO. _____

COMMISSION FOR LAWYER DISCIPLINE § IN THE DISTRICT COURT OF
V. §
§ DALLAS COUNTY, TEXAS
§
JOE BEVERLY ABBEY § _____ 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, Joe Beverly Abbey, (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 on or 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 Dallas County, Texas. An officer may serve citation on Respondent at 1717 Main Street, Suite 2220, Dallas, Texas 75201.

III.

In August 1992, James A. Warnhoff ("Warnhoff"), President of Performance Products, Inc. ("PPI"), hired Respondent to file suit against Soderstrom Energy Corporation ("SEC") and its

president, Glen S. Soderstrom, personally, ("Soderstrom"), to recover monies PPI lost from investments in Soderstrom partnership oil and gas exploration ventures. Warnhoff entered into an oral contingent fee agreement with Respondent and agreed to pay Respondent one third (1/3) of the amount of recovery, plus out of pocket expenses. Additionally, Warnhoff paid Respondent \$100.00 to "get the ball rolling." Respondent and Warnhoff did not enter into a written contingent fee agreement, as required by the Texas Disciplinary Rules of Professional Conduct.

IV.

In September 1992, Respondent filed suit in Federal District Court on behalf of PPI, and on April 29, 1993, Final Judgment (the "Judgment") was entered whereby PPI was awarded recovery of \$23,586.00 against SEC and Soderstrom, personally. Thereafter, on or about July 13, 1994, Respondent informed Warnhoff that Soderstrom paid \$5,000.00 on the Judgment, and on or about September 8, 1994, Respondent informed Warnhoff that Soderstrom paid an additional \$1,000.00 on the Judgment. Respondent, however, retained all of the \$6,000.00, claiming the funds were owed to him in payment of his legal fees.

V.

At the same time he hired Respondent to represent him in the Soderstrom matter, Warnhoff also hired Respondent to represent him in another collection matter against Dennis Harris ("Harris"). Respondent entered into settlement negotiations with Harris, on behalf of Warnhoff, which resulted in Harris making a note dated January 1, 1993, for \$115,000.00 (the "Note") payable jointly to Warnhoff and Respondent. Harris' note was due and payable in one (1) year.

VI.

After the Harris Note was negotiated in or around January 1993, and after Judgment was entered in the Soderstrom case in April 1993, Respondent neglected these legal matters that Warnhoff had entrusted to him. Respondent failed to fully inform Warnhoff about payments made under the Soderstrom Judgment and failed to forward to Warnhoff the funds collected. Additionally, Respondent failed to pursue collection on the Note, which fell into default. Respondent neither filed suit against Harris, as he informed Warnhoff he would, nor did Respondent collect on the Settlement Agreement and Release he entered into with Harris. During the time intervening between the Fall of 1993 and December 1995, Warnhoff, who lives out of state, repeatedly attempted to contact Respondent by telephone, fax and certified mail, return receipt requested. Respondent failed in his duty to respond to Warnhoff's repeated inquiries and attempts to communicate with Respondent. Respondent failed to respond to Warnhoff's reasonable requests for information and status reports on the Soderstrom and Harris cases. Because Respondent was negligent and non-responsive, by letter dated December 8, 1995, Warnhoff discharged Respondent.

VII.

In April 1996, Warnhoff's accountants were auditing his records, including the records for the Soderstrom and Harris cases. Warnhoff's accountants raised questions concerning Respondent's retention of the entire \$6,000.00, which Soderstrom had paid under the Judgment, instead of only one third ($\frac{1}{3}$) of the sum collected. Therefore, by letter dated April 10, 1996, Warnhoff wrote Respondent a letter requesting an accounting. Respondent did not respond to Warnhoff's letter, and he did not render an accounting of the monies Soderstrom had paid on the Judgment. In addition,

Respondent did not send Warnhoff any portion of the monies to which Warnhoff was entitled.

VIII.

On June 4, 1996, Respondent called and left a voice mail message for Warnhoff, informing Warnhoff that Soderstrom contacted him concerning the outstanding balance owed under the Judgment. After receiving Respondent's voice mail message on June 4, 1996, Warnhoff wrote Soderstrom a letter advising that Respondent no longer represented him in collecting the monies awarded under the Judgment. The next year, by letter dated June 16, 1997, Soderstrom provided Warnhoff with a full accounting of the payments he had delivered to Respondent in partial satisfaction of the award ordered under the Judgment. Instead of payments totaling \$6,000.00, as Respondent reported, Soderstrom had actually made payments totaling \$15,000.00. Respondent not only failed to report receipt of the additional \$9,000.00 that Soderstrom had paid, but he also retained the unreported \$9,000.00 and failed to promptly deliver the monies to his then client, Warnhoff. Upon receipt of each of Soderstrom's payments, including the previously reported \$6,000.00, Respondent immediately cashed the checks and had the funds converted into cashier's checks made payable to himself; Respondent never deposited the check into his trust account.

IX.

As a result of the conduct described in Paragraphs III, IV, V, VI, VII and VIII, Warnhoff filed a complaint against Respondent with the State Bar of Texas on July 10, 1997. On August 14, 1997, the State Bar of Texas personally served Respondent by civil process with a letter notifying him that a complaint alleging professional misconduct on his part had been filed against him by Warnhoff. In said letter, Respondent was advised that, pursuant to Rule 2.09 of the Texas Rules of

Disciplinary Procedure, he was required to file a written response with the State Bar of Texas within thirty (30) days of his receipt of the letter. Respondent received the letter on August 14, 1997, and failed to furnish the State Bar of Texas a written response to the complaint within the required thirty (30) days of his receipt of the notification letter, and he failed to timely assert a privilege or other legal ground for his failure to furnish his response.

X.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs III, IV, V, VI, VII and VIII, hereinabove, which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.01(b), 1.03(a), 1.04(a), 1.14(b), 1.14(d), 1.15(d) and/or 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct.

XI.

The complaint which forms the basis of the Cause of Action hereinabove set forth was brought to the attention of the Office of General Counsel of the State Bar of Texas by James A. Warnhoff filing a complaint on or about July 1, 1997.

PRAYER

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

Respectfully submitted,

Steve W. Young
General Counsel

Angela Methvin
Assistant General Counsel

State Bar of Texas
Litigation - Dallas
3710 Rawlins
Suite 800
Dallas, Texas 75219
(214) 559-4997
FAX (214) 559-4335

Angela Methvin, by
Christine A. Cuneo, BCN

Angela Methvin
State Bar Card No. 00792698

00798125,
with

ATTORNEYS FOR PETITIONER *permission*

STATE BAR OF TEXAS



Office of the General Counsel

May 26, 1998

CMRRR NO. Z 085 333 220

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

RE:: *Commission for Lawyer Discipline v. Joe Beverly Abbey*

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 Joe Beverly Abbey. Mr. Abbey has designated Dallas 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 resides to preside in this case. Upon appointment, request is made that you notify the Respondent's attorney at the address shown below and the undersigned of the identity and address of the judge assigned:

**Joe B. Abbey
1717 Main Street
Attorney at Law
Suite 2220
Dallas, Texas 75201**

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to: (1) 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; and (2) whether he or she can accommodate compliance with *Mellon Service Co., et al v. Touche Ross Co.*, 946 S.W.2d 862 (Tex. App. - Houston [14th Dist.] 1997), which requires that all proceedings incident to a case occur in the county of proper venue. If not, I would respectfully request that an alternate appointment be made.

Regency Plaza, 3710 Rawlins, Suite 800, Dallas, Texas 75219
Telephone: (214) 559-4353 Fax: (214) 559-4335

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 Dallas County, Texas, with the request that the suit be filed, service be obtained, and a file-marked 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 Dallas County, Texas, and a return envelope to be sent to the District Clerk of Dallas County, Texas, for the Clerk's use in returning a file-marked copy of the Petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in black ink that reads "Angela Methvin". The signature is written in a cursive, flowing style.

Angela Methvin
Assistant General Counsel

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

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
CRAIG T. ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON

CLERK
JOHN T. ADAMS

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

JUN 30 1998

Ms. Angela Methvin
Assistant General Counsel, State Bar of Texas
3710 Rawlins, Suite 800
Dallas, Texas 75219

Mr. Joe B. Abbey
1717 Main Street, Suite 220
Dallas, Texas 75201

Dear Ms. Methvin and Mr. Abbey:

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 Caroline E. Baker, Judge of the 151st District Court, Houston, Texas to preside in

Commission for Lawyer Discipline v. Joe B. Abbey

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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GREG ABBOTT
DEBORAH G. HANKINSON

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUN 3 0 1998

Honorable Caroline E. Baker
Judge, 151st District Court
519 Civil Courts Building
301 Fannin Street
Houston, Texas 77002

Dear Judge Baker:

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 Ms. Methvin and Mr. Abbey, and a copy of the letter to the District Clerk of Dallas County.

We then recommend that, either before or immediately after you set the case for trial, the Dallas County District Court Administrative Office (214-653-6510) 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 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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GREG ABBOTT
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EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUN 30 1998

The Honorable Bill Long
District Clerk of Dallas County
George L. Allen Courts Building
600 Commerce Street
Dallas, Texas 75202

Dear Mr. Long:

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. Joe B. Abbey*, and a copy of the Supreme Court's order appointing the Honorable Caroline E. Baker, Judge of the 151st District Court, Houston, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Caroline E. Baker
Mr. Joe B. Abbey
Ms. Angela Methvin