

ORDER OF THE SUPREME COURT OF TEXAS

9168

Misc. Docket No. 01-----

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

The Supreme Court of Texas hereby appoints the Honorable Joe Carroll, Judge of the
27th District Court of Bell County, Texas, to preside in the Disciplinary Action styled

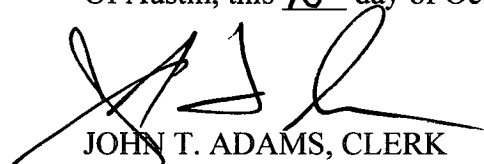
The Commission for Lawyer Discipline v. Kerry Eugene Moseley

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Tarrant
County, Texas, a copy of the Disciplinary petition and this Order for filing and service pursuant
to Rule 3.03, Texas Rules of Disciplinary Procedure.

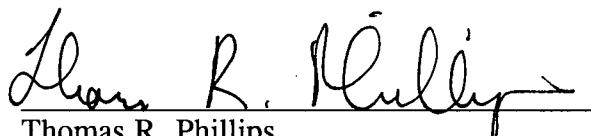
As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City
Of Austin, this 10th day of October, 2001.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9168, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 9 day of October, 2001.


Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE § IN THE DISTRICT COURT OF
 §
VS. § TARRANT COUNTY, TEXAS
 §
KERRY EUGENE MOSELEY § _____ JUDICIAL DISTRICT

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

Petitioner the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas (hereinafter referred to as the "CFLD"), complains of KERRY EUGENE MOSELEY ("hereinafter referred to as "Respondent") as follows:

**I.
DISCOVERY CONTROL PLAN**

Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, CFLD intends discovery in this case to be conducted under Discovery Control Plan - Level 2 as provided in Rule 190.3 of the Texas Rules of Civil Procedure.

**II.
PROCEDURAL BASIS FOR SUIT**

The CFLD brings this disciplinary action pursuant to the State Bar Act, 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.

**III.
VENUE AND SERVICE**

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent's principal place of practice is Tarrant County, Texas, and therefore venue is appropriate in Tarrant County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure. An officer may service citation upon Respondent by and through Respondent's attorney of record, Kleber C. Miller, located at 777 Main St., Ste. 3800, Fort Worth, Texas 76102.

**IV.
FIRST CAUSE OF ACTION**

In or around March 1993, Dolores Hernandez (hereinafter referred to as "Hernandez"), retained Respondent for representation in a probate matter. Thereafter in or around April 1993, Hernandez was appointed to serve as Administratrix of Cause No. 93-594-2; In the Matter of Miguel Alejandro Hernandez, Deceased, In Probate Court Number 2 of Tarrant County, Texas.

V.

In or around 1997, Hernandez contacted Respondent's office to inform him of the need of a partial distribution of the estate funds. Hernandez spoke with Julie Steen (hereinafter referred to as "Steen"), an employee of Respondent's office, who instructed Hernandez to bring a check from the estate account to the office and Respondent would submit a request to the court for a distribution. Hernandez brought check number 0344 to Steen who then instructed Hernandez to date and sign the check but to not complete the payee portion of the check. It was later discovered that check number 0344, dated July 1, 1997, for the amount of \$10,000.00 and payable to the Strother Estate has been presented and posted for payment on Hernandez's Central Bank & Trust

account. Upon this discovery, Hernandez contacted Respondent's office and entered a discussion with Steen. Steen advised Hernandez to bring another check, to which she did and check number 0350 was made payable to Hernandez for \$10,000.00. Steen later gave Hernandez a deposit slip for \$10,125.00. Thereafter, Hernandez made numerous attempts to speak with Respondent regarding check number 0344.

In 1999, Hernandez contacted attorney, Jeff Chambers (hereinafter referred to as "Chambers"), and explained the situation regarding the financial irregularities connected with Respondent's handling of the Hernandez Estate. Chambers and his firm partner visited Respondent's office to discuss the Hernandez check, but was unable to meet with Respondent. Chambers and his firm partner waited for Respondent outside and when Respondent returned, Chambers presented the check as well as a copy of Hernandez's signature to Respondent. Respondent explained that there had been some problems in his office regarding situations such as these. However, Steen remained employed by Respondent's office. Because of communications between Steen and Respondent, and because of Respondent's knowledge that Steen had stolen money as early as 1993 Respondent knew or should have known that Steen should not have been allowed to have access to client financial information or checks including the Respondent's own checks.

On or about July 20, 1999, check number 0251 from the Hernandez estate account for the amount of \$35,000.00 payable to Julie Steen had been issued. The check was subsequently endorsed by Steen and cashed.

On or about August 19, 1999, Hernandez made a written request to Respondent terminating his services and demanding direct and immediate release of the Hernandez probate file to her.

Thereafter and on or about August 20, 1999, Thomas J. Henry (hereinafter referred to as "Complainant") was appointed as Attorney Ad Litem by the Honorable Judge Pat Ferchill (hereinafter referred to as "Judge Ferchill") in the herein stated cause of action. Upon Complainant's review of a Fifth Annual Accounting filed by Respondent on or about August 13, 1998, Respondent failed list check number 0344 to the Strother Estate as well as the \$10,125.00 deposit. Instead, Respondent reported that check number 0344 was paid to Carpet One Super S for the amount of \$2,688.23. The Accounting did show that \$125.00 was listed as a "refund" into the estate. However, Respondent failed to review the Accounting with Hernandez and after Hernandez signed the Accounting, Respondent signed and had Steen notarized it.

In 1999, Hernandez contacted attorney, Jeff Chambers (hereinafter referred to as "Chambers"), and explained the situation regarding the financial irregularities connected with Respondent's handling of the Hernandez Estate. Chambers and his firm partner visited Respondent's office to discuss the Hernandez check, but was unable to meet with Respondent. Chambers and his firm partner waited for Respondent outside and when Respondent returned, Chambers presented the check as well as a copy of Hernandez's signature to Respondent. Respondent explained that there had been some problems in his office regarding situations such as these. However, Steen remained employed by Respondent's office. Because of communications between Steen and Respondent, and because of Respondent's knowledge that Steen had stolen money as early as 1993 Respondent knew or should have known that Steen should not have been allowed to have access to client financial information or checks including the Respondent's own checks.

VI.

On or about August 23, 1999, Complainant filed an Emergency Motion to Require Release of Information and Documentation and the same day, an Order on this Motion was approved by Judge Ferchill. That Order required Steen and Respondent to disclose and/or deliver to Complainant specific records regarding Hernandez Probate matter. Complainant served the Order upon Respondent on the same day and by the end of that day, Respondent produced to Complainant a small file containing copies of bank statement for the Hernandez Estate for various months from 1993 through April 1997.

VII.

On or about September 2, 1999, Complainant obtained information from Norwest Bank confirming that \$25,000.00 of the \$35,000.00 misappropriated from the Hernandez account had been deposited into Steen's Norwest account and that the same amount was withdrawn by Steen in the form of a cashier's check and then deposited directly into Respondent's Norwest Bank Office account. Complainant filed a Motion of Attorney Ad Litem for Contempt and for Sanctions against Respondent and Steen for failing to produce full and complete documents as contained in the August 23, 1999 Order on Emergency Motion to Require Release of Information and Documentation. An Order to Show Cause was issued and a hearing scheduled for September 16, 1999.

VIII.

On or about September 10, 1999 in a telephone conference between Respondent and Complainant, Complainant pointed out that \$25,000.00 of the \$35,000.00 Hernandez probate monies were deposited into Respondent's office account. Respondent admitted that he was aware

of the deposit, but claimed that it was made by Steen to repay Respondent for funds stolen by Steen from Respondent. Respondent made no offer to repay the \$25,000.00, but later conceded that the bank records showed that money to have come from the Hernandez estate.

XI.

During the Show Cause hearing held on September 16, 1999, Respondent tendered the amount of \$25,000.00 into the Court's registry. During that same hearing, Respondent stated that he was aware of the monies stolen regarding the Hernandez estate matter.

X.

On or about November 3, 1999, Complainant made a written request to Respondent to repay the additional \$10,000.00 with interest as well as Complainant's attorneys' fees. Respondent did not respond.

During the pendency of the Hernandez estate matter, Respondent also handled an estate matter for Jeanette Cowden (hereinafter referred to as "Cowden"). A family member of Cowden contacted Respondent and informed him that they had not received disbursement. Respondent then contacted Cowden directly and she explained to Respondent that she was instructed by Steen to send the check to Steen and that Steen would handle sending out the disbursement. Instead, Steen deposited the Cowden check into Steen's account.

XI.

The acts and/or omissions of the Respondent described in Paragraph III(A) above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

1.03(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;

1.14(a) for failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property;

1.14(b) for failing to promptly notify clients or third persons who had interest in money received by a lawyer that such money had been received and failing to promptly deliver such money to the client or third person entitled to receive same.

1.14(c) for failing to keep funds or other property in which both the lawyer and another person claim interests separate until there is an accounting and severance of their interests;

3.03(a)(2) for knowingly failing to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;

5.03(a) for failing to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

5.03(b)(1) a lawyer shall be in violation if the lawyer orders, encourages, or permits the conduct involved of a non-lawyer to be in violation of the rules of the Texas Disciplinary rules of Professional Conduct;

5.03(b)(2)(ii) a lawyer shall be subject to discipline for the conduct of a non-lawyer employed or retained by the lawyer that would be a violation of these rules if engaged in by a lawyer if the lawyer with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that person's misconduct;

8.04(a)(1) for violating these Rules, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship; and

8.04(a)(3) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

The complaint that forms the basis of this cause of action was brought to the attention of the Office of the General Counsel of the State Bar of Texas by Thomas Henry filing a complaint on or about November 23, 1999.

Prayer

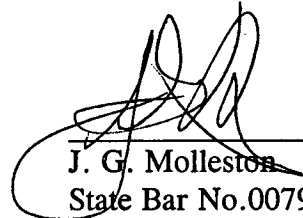
WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent by reprimand, suspension or disbarment, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself to be justly entitled,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

Respectfully submitted,

Dawn Miller
Chief Disciplinary Counsel

J. G. Molleston
Assistant Disciplinary Counsel

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



J. G. Molleston
State Bar No.00795924

ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE

J:\MOSELEY.K\CFLD1.JGMDP.

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

August 3, 2001

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

Re: Commission for Lawyer Discipline v. Kerry Eugene Moseley

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 Kerry Eugene Moseley. Mr. Moseley has designated Tarrant 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 at the address shown below and the undersigned of the identity and address of the judge assigned:

Kerry Eugene Moseley
C/O Kleber C. Miller
777 Main St., Ste. 3800
Fort Worth, Texas 76102

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 trial as 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 Tarrant 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.

Mr. John Adams
August 3, 2001
Page 2

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Tarrant County, Texas, and a return envelope to be sent to the District Clerk of Tarrant 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,



J. G. Molleston
Assistant Disciplinary Counsel

JGM/vr

Enclosures

cc: Kerry E. Moseley
C/O Kleber C. Miller
777 Main St., Ste. 3800
Fort Worth, Texas 76102

J:\MOSELEY.K\CFLD1.JGM\CLERK1.SCT



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

CLERK
JOHN T. ADAMS

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON
XAVIER RODRIGUEZ

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

OCT 12 2001

The Honorable Thomas A. Wilder
District Clerk of Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0402

Dear Mr. Wilder:

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. Kerry Eugene Moseley*, and a copy of the Supreme Court's order appointing the Honorable Joe Carroll, Judge of the 27th District Court, Belton, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Joe Carroll
Mr. J. G. Molleston
Mr. Kerry Eugene Moseley



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

CLERK
JOHN T. ADAMS

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DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

OCT 12 2001

Honorable Joe Carroll
Judge, 27th District Court
P.O. Box 747
Belton, Texas 76513-0747

Dear Judge Carroll:

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. Moseley and Mr. Molleston, and a copy of the letter to the District Clerk of Tarrant County.

It is recommended that, six to eight weeks after receipt of this letter, your coordinator contact the District Clerk of Tarrant County (817-884-1574) to learn the names, addresses, and telephone numbers of counsel for purposes of scheduling a conference. Also, either before or immediately after you set the case for trial, you should contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (817-884-1558) to reserve a courtroom, provide for a court reporter, etc., and to 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

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

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EXECUTIVE ASSISTANT
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JUSTICES
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JAMES A. BAKER
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HARRIET O'NEILL
WALLACE B. JEFFERSON
XAVIER RODRIGUEZ

OCT 12 2001

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

Mr. Kerry Eugene Moseley
c/o Kleber C. Miller
777 Main Street, Suite 3800
Fort Worth, Texas 76102

Dear Mr. Molleston and Mr. Moseley:

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 Joe Carroll, Judge of the District Court, Belton, Texas to preside in

Commission for Lawyer Discipline v. Kerry Eugene Moseley

Sincerely,

SIGNED

John T. Adams
Clerk