

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 96- 9109**

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

The Supreme Court of Texas hereby appoints the Honorable Brock Jones, Jr., Judge of the 112th District Court of Crockett County, Texas, to preside in the Disciplinary Action styled:

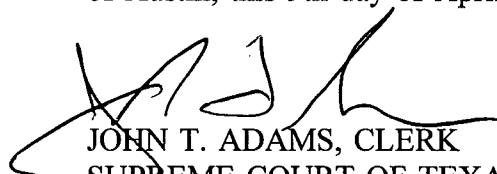
**The Commission for Lawyer Discipline v. Derek A. Howard**

filed as No. 96-01268 in the 353rd District Court of Travis County, Texas.

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

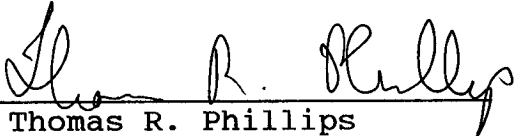
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City  
of Austin, this 9th day of April, 1996.

  
JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9109, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 10 day of April, 1996.

  
Thomas R. Phillips  
Chief Justice

COPY

NO. \_\_\_\_\_

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
DEREK A. HOWARD	§	_____ 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, Derek A. Howard, (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 a member of the State Bar of Texas. Respondent is a resident of and has his principal place of practice in Travis County, Texas. An officer may serve citation on Respondent at his business address located at 100 Congress, Suite 1720, Austin, Travis County, Texas 78701.

### III.

On or about September 30, 1993, John Mertens retained Derek A. Howard, Respondent, to represent Mr. Mertens in a claim for damages against Kino Express and/or Airborne Express, arising out of an alleged wrongful termination of employment by Kino Express and/or Airborne Express. The employment contract or retainer agreement prepared by Respondent provided for a 33 1/3% contingent fee for any recovery "prior to trial" and 40% of any recovery "after trial begins," and made references to "judgment," "authority ... to sign all ... pleadings ... and papers that shall be reasonably necessary to pursue litigation" and to "assign this case ... for preparation and litigation." Such language caused Mr. Mertens to believe that Respondent would file a lawsuit against Mr. Mertens' employer. Mr. Mertens had been terminated from employment by Kino Express for alleged activities by him on behalf of Teamsters Union Local 657. An unfair labor practices charge was previously filed by the Teamsters Union on behalf of Mr. Mertens with the National Labor Relations Board and had been withdrawn but was refiled on October 1, 1993. An attorney in Respondent's firm working with Respondent on behalf of Mr. Mertens was told on October 1, 1993 by the attorney for the Teamsters Union that the unfair labor practice had been withdrawn but was to be refiled. Filing suit was not in actuality a legal option based upon federal law giving the National Labor Relations Board exclusive jurisdiction of this type of matter. Respondent thereafter did not initiate litigation against Kino Express and/or Airborne Express or otherwise pursue such

claim, independently of the unfair labor practices charge. Respondent further failed to adequately explain or provide to Mr. Mertens sufficient information at the time he undertook the representation or thereafter as to why Respondent would not or could not initiate litigation or otherwise pursue the claim directly against the Kino Express and/or Airborne Express.

IV.

The above-described acts or omissions of Respondent constitute violations of Rule 1.03(a) and 1.03(b), Texas Disciplinary Rules of Professional Conduct.

V.

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 John Mertens filing a complaint on or about July 30, 1994.

VI.

Pursuant to Rule 3.10, Texas Rules of Disciplinary Procedure, Petitioner would further show that Respondent has previously been disciplined for professional misconduct by Judgment Of Public Reprimand, dated October 7, 1993, in Case No. F1059300581, styled Complaint Against Derek Alden Howard, Austin, Texas, Before The Grievance Committee For State Bar District No. 9A, State Bar Of Texas.

**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,

James M. McCormack  
General Counsel

Russell A. Friemel  
Senior Assistant General Counsel

Office of the General Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711-2487  
512/463-1463  
512/477-4607 (FAX)



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Russell A. Friemel  
State Bar of Texas No. 07473500

ATTORNEYS FOR PETITIONER



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

April 15, 1996

The Honorable Amalia Rodriguez-Mendoza  
District Clerk of Travis County  
P. O. Box 1748  
Austin, Texas 78767-1748

Dear Ms. Rodriguez-Mendoza:

Pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure, I am sending for filing in State Bar of Texas Disciplinary Action styled: The Commission for Lawyer Discipline v. Derek A. Howard., Cause No. 96-01268 in the 353rd District Court of Travis County, a copy of the Supreme Court's order appointing the Honorable Brock Jones, Jr., Judge of the 112th District Court, Ozona, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Hon. Brock Jones, Jr.  
Mr. Derek A. Howard  
Mr. James M. McCormack



# THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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JAMES A. BAKER  
GREG ABBOTT

April 15, 1996

Honorable Brock Jones, Jr.  
Judge, 112th District Court  
P. O. Drawer C  
Ozona, Texas 76943

Dear Judge Jones:

We enclose for your information a copy of the order of assignment, a copy of the notification letter to Mr. Howard and Mr. McCormack, and a copy of the letter to the District Clerk of Travis County.

It is suggested that, after receipt of this letter, you or your coordinator contact the Travis County court administrator [512 753-9300] (certainly just before or immediately after you set the case for trial) 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 [210 379-8556] 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

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GREG ABBOTT

EXECUTIVE ASST  
WILLIAM L. WILLIS

ADMINISTRATIVE ASST  
NADINE SCHNEIDER

April 15, 1996

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

Mr. Derek A. Howard  
c/o Mr. Steven Zaleski  
100 Congress Avenue, Suite 1720  
Austin, Texas 78701

Dear Mr. McCormack and Mr. Howard:

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 Brock Jones Jr., Judge of the 112th District Court, Ozona, Texas to preside in

Commission for Lawyer Discipline v. Derek A. Howard.

Sincerely,

SIGNED

John T. Adams  
Clerk