

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 96- 9175

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

The Supreme Court of Texas hereby appoints the Honorable Robert Garza, Judge of the 138th District Court of Cameron County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Keith S. Donati

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,

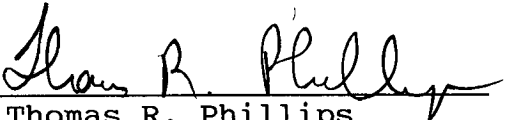
with the Seal thereof affixed at the City
of Austin, this 5th day of July, 1996.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9175, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 8 day of July, 1996.


Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE §
v. §
KEITH S. DONATI §

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas complaining of Respondent, Keith S. Donati, showing the Court:

I.

Petitioner 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.

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 Fort Bend County, Texas. Respondent has his principal place of practice in Harris County, Texas, and therefore venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure. Respondent may be served at his business address located at 1155 Dairy Ashford, Suite 300, Houston, Harris County, Texas, 77079.

III.

Respondent's law firm , Griffin & Matthews, represented Veda Montalbano Flessner Donati in her divorce from the Complainant, David Allen Flessner in Cause No. 92-24654, styled *In the Matter of the Marriage of Veda Montalbano Flessner and David Allen Flessner and in the Interest of David Allen Flessner, II and Rachel Lynne Flessner, Minor Children*, in the 308th Judicial District Court of Harris County, Texas. After the divorce became final, Respondent married Mrs. Donati.

IV.

On or about February 2, 1995, Respondent sent a letter to Flessner's lawyer, Charles Michael, in which he discussed child support and proposed a settlement of the controversy over child support between David Allen Flessner and Veda Montalbano Flessner Donati. In several places within the February 2, 1995 letter he sent to Charles Michael, Respondent refers to Veda Montalbano Flessner Donati as "my client," and he signed the letter "for the firm."

V.

Further, Respondent intentionally sent letters to Flessner by facsimile transmission on or about June 28, 1995, July 3, 1995, July 11, 1995, and July 17, 1995, concerning visitation and other matters regarding the minor children. Respondent claims that he was not acting as his wife's attorney when he wrote the letters to Flessner, but as her husband. However, the letters were on Respondent's firm's letterhead and were an attempt by Respondent to intimidate Flessner.

VI.

The acts and/or omissions of the Respondent described in Paragraphs III-V above, which occurred on or after January 1, 1990, constitute conduct in violation of Rules 3.04(a)[a lawyer shall not knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal]; 4.02(a)[in representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer to do so]; 4.04(a)[in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person]; and 8.04(a)(1)[a lawyer shall not violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship] of the Texas Disciplinary Rules of Professional Conduct, and of Part 1.06 (Q) of the Texas Rules of Disciplinary Procedure.

VII.

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 David Allen Flessner's filing of a complaint on or about August 14, 1995.

Prayer


WHEREFORE, PREMISES CONSIDERED, Petitioner the Commission for Lawyer Discipline respectfully prays that this Court discipline Respondent Keith S. Donati, 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 attorney's fees.

Respectfully submitted,

James M. McCormack
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) 759-6931
Fax No. (713) 759-1932



MARY F. KLAPPERICH
State Bar No. 11550700

ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

June 26, 1996

Via Airborne Express

Mr. William L. Willis
Executive Assistant
Supreme Court of Texas
201 West 14th Street, Room 104
Austin, Texas 78701

Re: Commission for Lawyer Discipline v. Keith S. Donati

Dear Mr. Willis:

Pursuant to our telephone conversation yesterday, please find enclosed the original and two copies of a revised Disciplinary Petition for the referenced case. Please replace the previous original petition and its copies with the revised petition and its copies, for forwarding to the Harris County District Clerk's office.

Thank you again for your help in this matter. If you have any questions, please call me or Mary Klapperich.

Very truly yours,

A handwritten signature in cursive script that reads "Shawn M. Leslie".

Shawn M. Leslie
Legal Assistant

SML/
enclosures

STATE BAR OF TEXAS



Office of the General Counsel

May 22, 1996

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

Re: Commission for Lawyer Discipline v. Keith S. Donati

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 Keith S. Donati. Mr. Donati is a resident of Fort Bend County, Texas. Mr. Donati has designated Harris 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 or 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:

Keith S. Donati
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

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 Civil Case Information Sheet, and 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, service be obtained, and a filemarked 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 Harris County, Texas, and a return envelope to be sent to

Mr. John T. Adams, Clerk
Supreme Court of Texas
May 22, 1996
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the District Clerk of Harris 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,



Mary F. Klapperich
Assistant General Counsel

MFK/sml
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

July 8, 1996

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

Mr. Keith S. Donati
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

Dear Mr. McCormack and Mr. Donati:

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 Robert Garza, Judge of the 138th District Court, Brownsville, Texas to preside in

Commission for Lawyer Discipline v. Keith S. Donati

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

July 8, 1996

Honorable Robert Garza
Judge, 138th District Court
974 E. Harrison Street
Brownsville, Texas 78520

Dear Judge Garza:

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. Donati and Mr. McCormack, 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

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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 ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

July 8, 1996

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. Keith S. Donati and a copy of the Supreme Court's order appointing the Honorable Robert Garza, Judge of the 138th District Court, Brownsville, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Robert Garza
Mr. Keith S. Donati
Mr. James M. McCormack