

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 96- 9232

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

The Supreme Court of Texas hereby appoints the Honorable Mark Davidson, Judge of the 11th District Court of Harris County, Texas, to preside in the Disciplinary Action styled:


The Commission for Lawyer Discipline v. Tommy Wayne Fleming

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

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

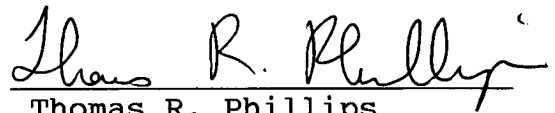
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 22nd day of October, 1996.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9232, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 23 day of October, 1996.


Thomas R. Phillips
Chief Justice

COPY

NO. _____

COMMISSION FOR
LAWYER DISCIPLINE

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§

IN THE DISTRICT COURT OF

V.

CAMERON COUNTY, TEXAS

TOMMY WAYNE FLEMING

_____ 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, Tommy Wayne Fleming, showing the Court as follows:

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 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 has his principal place of practice in Cameron County, Texas. An officer may serve citation on Respondent through his attorney of record, Jerry L. Zunker, 812 San Antonio, Suite 201, Austin, Texas 78701.

III.

In or around June 1993, Gulf Sea Shrimp, a Texas corporation, requested that Respondent's law firm represent the corporation in connection with the renewal of a loan that had been procured through Texas Commerce Bank. Respondent's law firm subsequently agreed to the representation, and Respondent was assigned to represent Gulf Sea Shrimp as supervising partner for the law firm. Respondent's law firm also had represented Texas Commerce Bank with regard to matters unrelated to Gulf Sea Shrimp's loan.

During the time that Respondent represented Gulf Sea Shrimp in connection with the renewal of the corporation's loan, three persons owned all of the corporation's outstanding shares. Patricio Ahumada (hereinafter "Complainant") owned fifty percent of the corporation's shares; Walter Zimmerman (hereinafter "Zimmerman") owned twenty-five percent of the shares; and Harley Londrie (hereinafter "Londrie") owned twenty-five percent of the shares. During the course of his representation of Gulf Sea Shrimp, Respondent acted as the corporation's legal counsel with regard to matters other than the renewal of the corporation's Texas Commerce Bank loan.

On or about May 12, 1994, Respondent filed an action on behalf of Zimco Marine against two (2) ships and the corporations that owned the ships. The action was based on liens against the ships that were held by Zimco Marine. Complainant was the principal owner of both of the corporations that were named as defendants in the action. Complainant also had pledged the ships as collateral for Gulf Sea Shrimp's loan from Texas Commerce Bank.

Around April 22, 1994, Respondent represented Texas Gulf Trawling in the purchase from Texas Commerce Bank of the promissory note that had been executed by Gulf Sea Shrimp in connection with the renewal of Gulf Sea Shrimp's loan from Texas Commerce Bank. In September of 1994, Respondent filed an action on behalf of Texas Gulf Trawling against Complainant and RCA Trawlers. The action was based on the note purchased by Texas Gulf Trawling from Texas Commerce Bank. Both Complainant and RCA Trawlers had executed guarantees to secure Gulf Sea Shrimp's loan from Texas Commerce Bank. Complainant was president of and a stockholder in RCA trawlers.

IV.

By his conduct in representing an interest materially and directly adverse to a client's interest in a substantially related matter, Respondent committed professional misconduct in violation of Rule 1.06(b)(1) [a lawyer shall not represent a person if the representation of that person involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm] of the Texas Disciplinary Rules of Professional Conduct and Part 1.06(Q) of the Texas Rules of Disciplinary Procedure.

By his conduct in representing a person in a matter adverse to a former client, Respondent committed professional misconduct in violation of Rule 1.09(a)(2) [without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client if the representation in reasonable probability will involve a violation of

Rule 1.05] and Rule 1.09(a)(3) [without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client if it is the same or a substantially related matter] of the Texas Disciplinary Rules of Professional Conduct and Part 1.06(Q) of the Texas Rules of Disciplinary Procedure.

By his conduct in knowingly using confidential information of a client and/or former client against the client and/or former client without consent, Respondent committed professional misconduct in violation of Rule 1.05(b)(2) [a lawyer shall not knowingly use confidential information of a client to the disadvantage of the client unless the client consents after consultation] and/or Rule 1.05(b)(3) [a lawyer shall not knowingly use confidential information of a former client to the disadvantage of the former client unless the former client consents after consultation or the information has become generally known] of the Texas Disciplinary Rules of Professional Conduct and Rule 1.06(Q) of the Texas Rules of Disciplinary Procedure.

V.

The complaint which forms the basis of the cause of action set forth above was brought to the attention of the Office of the General Counsel of the State Bar of Texas by Patricio Ahumada's filing a grievance on or about July 21, 1995.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner COMMISSION FOR LAWYER DISCIPLINE prays that this Court discipline Respondent TOMMY WAYNE FLEMING by disbarment, suspension, or reprimand 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

Brian Plotts
Assistant General Counsel

Office of the General Counsel
State Bar of Texas
P.O. Box 12487, Capitol Station
Austin, Texas 78711-2487
1-800-204-2222, Ext. 2302
512/463-1463, Ext. 2302
FAX: (512) 477-4607

A handwritten signature in black ink, appearing to read 'B. Plotts', is written over a horizontal line.

Brian Plotts
State Bar Card No. 16074050

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



September 3, 1996

Office of the General Counsel

Mr. John T. Adams, Clerk
Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711-2487

Re: Commission For Lawyer Discipline v. Tommy Wayne Fleming

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 Tommy Wayne Fleming. Tommy Wayne Fleming has designated Cameron County, Texas as his principal place of practice. Request is hereby made that the Supreme 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 please notify the Respondent's counsel at the address shown below and the undersigned of the identity and address of the judge assigned:

Mr. Jerry L. Zunker
Attorney at Law
812 San Antonio, Suite 201
Austin, Texas 78701

I would respectfully request that inquiry be made 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.

Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, which is enclosed, and the Court's appointing order to the District Clerk of Cameron 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.

Mr. John T. Adams, Clerk
Supreme Court of Texas
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Also enclosed are a pre-addressed envelope for your use in transmitting the petition and any other documents, to the District Clerk of Cameron County, Texas, and a return envelope to be sent to the District Clerk of Cameron County, Texas, for the Clerk's use in returning a filemarked copy of the petition to the undersigned.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian Plotts', with a long, sweeping horizontal stroke extending to the right.

Brian Plotts
Assistant General Counsel

BP/tjm/enclosures

c: William E. Minkley, Chief Trial Counsel, State Bar of Texas, with enclosure



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

October 24, 1996

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

Mr. Bryan Plotts
Assistant General Counsel, State Bar of Texas
P.O. Box 12487
Austin, Texas 78711

Mr. Tommy Wayne Fleming
c/o Mr. Jerry L. Zunker
812 San Antonio, Suite 201
Austin, Texas 78701

Dear Mr. Plotts and Mr. Fleming:

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 Mark Davidson, Judge of the 11th District Court, Houston, Texas to preside in

Commission for Lawyer Discipline v. Tommy Wayne Fleming.

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

October 24, 1996

Honorable Mark Davidson
Judge, 11th District Court
304 Civil Courts Building
301 Fannin
Houston, Texas 77002

Dear Judge Davidson:

We enclose for your information a copy of the order of assignment, a copy of the notification letter to Mr. Fleming and his attorney, Mr. Zunker, and Mr. Plotts, and a copy of the letter to the District Clerk of Cameron County.

It is recommended that, six or eight weeks after receipt of this letter, your coordinator contact the district clerk to learn the names, addresses, and telephone numbers of counsel for purposes of a scheduling 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 [210 544-0847] about 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

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

October 24, 1996

CLERK
JOHN T. ADAMS

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

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NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

The Honorable Aurora de la Garza
District Clerk of Cameron County
974 East harrison
Brownsville, Texas 78520

Dear Ms. de la Garza:

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. Tommy Wayne Fleming. and a copy of the Supreme Court's order appointing the Honorable Mark Davidson, Judge of the 11th District Court, Houston, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Mark Davidson
Mr. Tommy Wayne Fleming
Mr. Jerry L. Zunker
Mr. Bryan Plotts