

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97- 9125

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

The Supreme Court of Texas hereby appoints the Honorable John R. Roach, Judge of the 199th District Court of Collin County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Bruce A. Coane

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 22nd day of July, 1997.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 97-9125, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 22 day of July, 1997.

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

Thomas R. Phillips
Chief Justice

III.

Respondent represented Plaintiff Arthur Rodriguez in a civil lawsuit filed and pending in Cause Number 348-147270-93; styled Arthur Rodriguez v. Miller Brewing Company, in the 348th Judicial District Court of Tarrant County, Texas. The lawsuit involved claims of racial discrimination, slander, and intentional infliction of emotional distress against Miller Brewing Company and certain specific employees of Miller Brewing Company, including one Tom Facemyer. Plaintiff's claims against Miller Brewing Company were partly based on alleged illegal acts by Tom Facemyer.

In March 1995, Steve Petrou was an attorney working for Respondent's law firm, Coane and Associates. As such, Steve Petrou was subject to supervision by the Respondent, Bruce A. Coane. Steve Petrou worked on the Arthur Rodriguez case against Miller Brewing, et al. On or about March 13, 1995, Tom Facemyer called Respondent. Respondent referred Facemyer to Steve Petrou, who engaged in a telephone conversation with Tom Facemyer, a named Defendant in the Rodriguez lawsuit against Miller Brewing Company. Respondent had directed Steve Petrou to speak with Tom Facemyer, and to record the conversation. The recording device was located in Respondent's office and could be activated only by the Respondent. At the time of the telephone conversation with Tom Facemyer on or about March 13, 1995, both Respondent and Steve Petrou knew Tom Facemyer was represented by an attorney with the law firm Cantey & Hanger in Fort Worth, Texas. Neither Respondent nor Steve Petrou obtained the consent of Tom Facemyer's attorney to speak with Facemyer.

At the time of the telephone conversation, both Respondent and Petrou were

aware of the prohibition against communication with a party to a lawsuit without the prior consent of the party's attorney, but on their own volition chose not to contact Cantey & Hanger before speaking with Facemyer. Petrou recorded his conversation with Facemyer, which involved Petrou asking questions of Facemyer about the subject matter of his representation of Arthur Rodriguez, and Facemyer answering Petrou's questions. Many of the answers obtained during the course of the telephone conversation with Tom Facemyer were arguably adverse to the interests of another party to the lawsuit, Miller Brewing Company. At the time of this telephone conversation, the law firm of Cantey & Hanger represented Miller Brewing Company, as well as Tom Facemyer. The joint representation made Facemyer privileged to confidential, attorney-client privileged and attorney work product information from Miller Brewing Company.

After the telephone conversation, Respondent and Petrou intentionally failed to disclose to Miller Brewing Company or the 348th District Court of Tarrant County, Texas, that they had communicated directly with Tom Facemyer and obtained a statement from him. Both Respondent and Petrou failed to disclose this information despite the fact that a proper request had been made by the attorneys for the defense under Rule 166(b)(2)(g) of the Texas Rules of Civil Procedure for all statements made by Tom Facemyer. This request had been served on the Plaintiffs counsel on September 1, 1993. For nearly one (1) year after the March 13, 1995 telephone conversation, Respondent refused to acknowledge the existence of the statement made by Tom Facemyer, a named defendant. Respondent would not permit his subordinate, Steve Petrou, to acknowledge the existence of the statement made by

Tom Facemyer, a named defendant, and Respondent in fact advised his subordinate, Steve Petrou, to withhold the information about the taped conversation from Miller Brewing Company and its counsel.

Several weeks after the telephone conversation with Tom Facemyer, on March 31, 1995, the Court held a hearing involving Plaintiff's Motion to Compel the deposition of Tom Facemyer. At the time of that hearing neither Miller Brewing Company nor the Court was aware that the telephone conversation of March 13, 1995 had taken place, or that a statement had been taken at that time from Tom Facemyer. Respondent attended the hearing as attorney for Plaintiff, Arthur Rodriguez. At the hearing the Court expressed concern to Respondent that Plaintiff's attorneys had apparently initiated a direct communication with a named Defendant, Tom Facemyer, regarding potential deposition dates. The Court cautioned Respondent against that type of conduct. Respondent, after the caution, failed to disclose to the Court any information about the March 13, 1995 telephone conversation with Defendant Tom Facemyer.

Respondent deposed Tom Facemyer in May of 1995. Plaintiff Arthur Rodriguez was present at the deposition. At the time he took Tom Facemyer's deposition, Respondent knew about the taped conversation between Facemyer and Petrou. Neither Coane, Rodriguez, nor Facemyer advised Miller Brewing Company or its attorneys that any prohibited communications had occurred, or that Tom Facemyer had given a statement to Plaintiff's counsel. No one told Miller Brewing Company or its attorneys that Facemyer's statement on March 13, 1995 contained statements contrary to the interests of Miller Brewing Company.

Neither the Court nor Miller Brewing Company or its attorneys were aware that Arthur Rodriguez and Tom Facemyer frequently met at one another's residences during this period.

In June 1995 Plaintiff voluntarily non-suited Tom Facemyer from the lawsuit. From at least March 13, 1995 through June 1995, Facemyer was secretly aligned with Plaintiff, and Plaintiff and his attorneys conspired to conceal this from Miller Brewing Company, its attorneys, and the Court. As a result of the conspiracy between Arthur Rodriguez, Respondent and his law firm, and Tom Facemyer, Miller Brewing Company's opportunity to fairly defend the lawsuit and to litigate the case on an even playing field was seriously compromised.

Upon learning of the improper behavior of Plaintiff Arthur Rodriguez, his attorneys, and Tom Facemyer, Miller Brewing Company filed a Motion to Dismiss Cause Number 348-147270-93. The Motion was filed on March 7, 1996, during the trial of the cause of action. Both parties presented evidence, and the Court dismissed Plaintiff Arthur Jackson's lawsuit against Miller Brewing Company, et al, with prejudice.

IV.

By engaging in direct communication with Tom Facemyer, a named defendant in a lawsuit in which Respondent represented the Plaintiff by and through his employee subordinate, Steve Petrou, Respondent engaged in conduct in violation of Rules 4.02(a)[in representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject matter of the representation with a person, organization, or entity of government the lawyer knows to be

represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so); 5.01(a)[a lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if the lawyer is a partner or supervising lawyer and orders, encourages, or knowingly permits the conduct involved]; 5.01(b)[a lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if the lawyer is a partner in the law firm in which the other lawyer practices, is the general counsel of a government agency's legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and with knowledge of the other lawyer's violation of these rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation]; 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]; 8.04(a)(3)[a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and 8.04(a)(4)[a lawyer shall not engage in conduct constituting obstruction of justice] of the Texas Disciplinary Rules of Professional Conduct, and of Rule 1.06(Q) of the Texas Rules of Disciplinary Procedure.

V.

By failing to disclose the existence of the statement given by Tom Facemyer to Steve Petrou during their March 13, 1995 telephone conversation to either the Court or to Miller Brewing Company and its attorneys, Respondent engaged in

conduct in violation of Rules 3.03(a)(1)[a lawyer shall not knowingly make a false statement of material fact to a tribunal]; 3.03(a)(2)[a lawyer shall not knowingly fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act]; 3.04(a)[a lawyer shall not unlawfully obstruct another party's access to evidence]; 4.01(b)[in the course of representing a client a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetuated by a client]; 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]; 8.04(a)(3)[a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and 8.04(a)(4)[a lawyer shall not engage in conduct constituting obstruction of justice] of the Texas Disciplinary Rules of Professional Conduct, and of Rule 1.06(Q) of the Texas Rules of Disciplinary Procedure.

VI.

By entering into a conspiracy with Arthur Rodriguez, and Tom Facemyer to conceal the fact of the telephone conversation on March 13, 1995, and the resulting statement by Tom Facemyer from Miller Brewing Company and from the Court, Respondent engaged in conduct which constitutes a violation of Rules 3.03(a)(2)[a lawyer shall not knowingly fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act]; 3.04(a)[a lawyer shall not unlawfully obstruct another party's access to evidence]; 4.01(b)[in the course of

representing a client a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetuated by a client]; **4.02(a)**[in representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject matter of the representation with a person, organization, or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so]; **5.01(a)**[a lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if the lawyer is a partner or supervising lawyer and orders, encourages, or knowingly permits the conduct involved]; **5.01(b)**[a lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if the lawyer is a partner in the law firm in which the other lawyer practices, is the general counsel of a government agency's legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and with knowledge of the other lawyer's violation of these rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation]; **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]; **8.04(a)(3)**[a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and **8.04(a)(4)**[a lawyer shall not engage in conduct constituting obstruction of justice] of the Texas Disciplinary Rules of Professional Conduct, and of Rule 1.06(Q) of the Texas Rules of

Disciplinary Procedure.

VII.

The complaint which forms the basis of this lawsuit as hereinabove set forth was brought to the attention of the Office of the General Counsel of the State Bar of Texas by the opening of a complaint by the State Bar of Texas on or about March 20, 1996.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent, Bruce A. Coane, be disciplined by reprimand, suspension, or disbarment, as the facts shall warrant; and that Petitioner have such other and further relief to which entitled, including costs of Court and attorney's fees.

Respectfully submitted,

Steven W. Young
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) 759-6932
(713) 752-2158 FAX


MARY F. KLAPPERICH
State Bar of Texas No. 11550700

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the General Counsel

June 11, 1997

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

Re: Commission for Lawyer Discipline v. Bruce A. Coane

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 Bruce A. Coane. Mr. Coane is a resident of Harris County, Texas. 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 hereby made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Mr. Bruce A. Coane
Coane and Associates
3D/International Tower
1900 West Loop South, Suite 820
Houston, Texas 77027-3206

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, then 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 Harris County, Texas, with the request that the suit be filed, citation be issued, and the citation, alone with a file-stamped copy of the petition, be returned to the undersigned.

Mr. John T. Adams, Clerk
Supreme Court of Texas
January 2, 1997
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I have enclosed a pre-addressed envelope for your use in transmitting the above reference documents, to the District Clerk of Harris County, Texas, and a return envelope to be sent to the District Clerk of Harris County, Texas, for the Clerk's use in returning a file-stamped 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/rr
enclosures

*The Harris County's District Clerk's office has requested that the appointed Judge's bar number be issued in order to process these documents in their computer system. Thank you.



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 ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

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

JUL 23 1997

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. Bruce A. Coane, and a copy of the Supreme Court's order appointing the Honorable John R. Roach, Judge of the 199th District Court of McKinney, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. John R. Roach
Mr. Bruce A. Coane
Ms. Mary F. Klapperich



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
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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

JUL 23 1997

Ms. Mary F. Klapperich
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Bruce A. Coane
Coane & Associates
3D International Tower
1900 West Loop South, Suite 820
Houston, Texas 77027-3206

Dear Ms. Klapperich and Mr. Coane:

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 John R. Roach, Judge of the 199th District Court of McKinney, Texas to preside in

Commission for Lawyer Discipline v. Bruce A. Coane

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

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CLERK
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EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUL 23 1997

Honorable John R. Roach
Judge, 199th District Court
434 Courthouse
210 S. McDonald Street
McKinney, Texas 75069

Dear Judge Roach:

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. Coane and Ms. Klapperich, 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