

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 98- 9013**

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

The Supreme Court of Texas hereby appoints the Honorable Robert P. Brotherton, Judge of the 30th District Court of Wichita County, Texas, to preside in the Disciplinary Action styled:

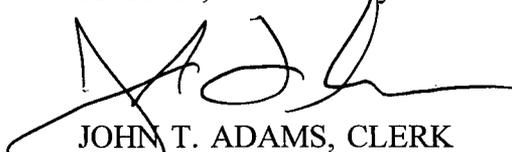
**The Commission for Lawyer Discipline v. John M. O'Quinn, C. Benton Musslewhite, Charles B. Musslewhite, Jr., and Carl D. Shaw**

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,

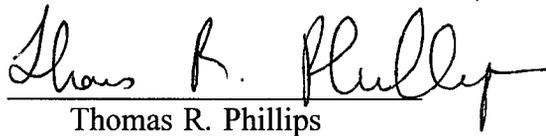
with the Seal thereof affixed at the City  
of Austin, this 26th day of January, 1998.



JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 98-9013, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 30 day of January, 1998.

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

NO.

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
JOHN M. O'QUINN,	§	_____ JUDICIAL DISTRICT
C. BENTON MUSSLEWHITE,	§	
CHARLES B. MUSSLEWHITE, JR., AND	§	
CARL D. SHAW	§	

**NOTICE OF APPEARANCE AND DESIGNATION OF ATTORNEY IN CHARGE**

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"), and pursuant to Rule 8, Texas Rules of Civil Procedure, files this entry of appearance and designation of lead counsel showing:

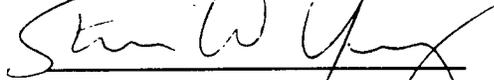
I.

That the Commission for Lawyer Discipline hereby designates Lonny D. Morrison, Special Assistant Disciplinary Counsel, as attorney in charge in this action.

II.

The undersigned hereby gives notice to the court and to all parties that all future communications concerning this case should be directed to Lonny D. Morrison, Special Assistant Disciplinary Counsel, State Bar of Texas, Morrison & Shelton, 807 Eighth St., P.O. Drawer 5008, Wichita Falls, TX 76307-5008, or by telephone at (940) 322-2929.

Respectfully submitted,



Steven W. Young  
Chief Disciplinary Counsel  
Bar Card No. 22207250

STATE BAR OF TEXAS  
P.O. Box 12487  
Austin, Texas 78711-2487  
512/463-1463; 800/204-2222  
512/477-4607 (facsimile)

**ATTORNEYS FOR PETITIONER**

lead coun.frm

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

COMMISSION FOR LAWYER DISCIPLINE §  
V. §  
JOHN M. O'QUINN, §  
C. BENTON MUSSLEWHITE, §  
CHARLES B. MUSSLEWHITE, JR., AND §  
CARL D. SHAW §  
§ IN THE DISTRICT COURT OF  
§ HARRIS COUNTY, TEXAS  
§  
§ \_\_\_\_\_ JUDICIAL DISTRICT  
§

### **DISCIPLINARY PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, the Commission for Lawyer Discipline, complaining of Respondents, John M. O'Quinn, C. Benton Musslewhite, Charles B. Musslewhite, and Carl D. Shaw, and would respectfully show the Court the following:

#### **I.**

#### **INTRODUCTORY STATEMENT**

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 about November 8, 1996.

#### **II.**

#### **PARTIES**

2.1. Commission For Lawyer Discipline, Petitioner, is a committee of the State Bar of Texas and in this petition will be referred to as "**Petitioner.**"

2.2. - Respondents are each attorneys licensed to practice law in Texas. As such, each Respondent is a member of the State Bar of Texas. Respondents will hereinafter be collectively called "**Respondents.**" Respondents are each residents of and have their principal place of practice in Harris County, Texas. A constable, sheriff, or authorized process server may serve citation on Respondents at their respective business addresses located at:

2.2.1. John M. O'Quinn  
440 Louisiana St.  
Suite 2300  
Houston, Texas 77002

2.2.2. C. Benton Musslewhite  
405 Main Street  
Suite 600  
Houston, Texas 77002

2.2.3. Charles B. Musslewhite, Jr.  
440 Louisiana St.  
Suite 590  
Houston, Texas 77002

2.2.4. Carl D. Shaw  
440 Louisiana St.  
Suite 2300  
Houston, Texas 77002

### **III.**

#### **FACTS**

3.1. Respondents will be referred to individually in this petition as follows:

- |                                    |                          |
|------------------------------------|--------------------------|
| 3.1.1. John M. O'Quinn             | <b>"O'Quinn"</b>         |
| 3.1.2. C. Benton Musslewhite       | <b>"Musslewhite"</b>     |
| 3.1.3. Charles B. Musslewhite, Jr. | <b>"Musslewhite Jr."</b> |
| 3.1.4. Carl D. Shaw                | <b>"Shaw"</b>            |

3.2 O'Quinn and Musslewhite have maintained a long-standing financial relationship for a number of years wherein O'Quinn has financed Musslewhite's law practice by advancing monies secured by liens on essentially all existing and future assets, including expectancies of fees in lawsuits belonging to Musslewhite. In exchange for such financing, O'Quinn has had a right of first refusal on any lawsuits signed up by Musslewhite. Over a period of years under this relationship, Musslewhite became indebted to O'Quinn in an amount in excess of several million dollars.

3.3 Musslewhite Jr. is the son of Musslewhite.

3.4 At all relevant times, Shaw was an attorney employed by O'Quinn and Darlene Hopper (hereinafter called "**Hopper**") was a non-lawyer employee of O'Quinn.

3.5 On July 2, 1994, USAir Flight 1016 crashed in North Carolina (hereinafter called "USAir crash"). Thirty-seven people died in the USAir crash. Twenty others were seriously injured. Shortly thereafter, Respondents conspired (as such term is defined in Article 15.02, Texas Penal Code)<sup>1</sup>, to unlawfully solicit professional employment of one or more of such attorneys by victims and/or victims' family members of the USAir crash as set forth below. In so doing, the Respondents agreed to violate the barratry law<sup>2</sup> of this state and agreed that one or more of such attorneys would take action that constitutes barratry. Such actions included in-person and telephone solicitation seeking professional employment, direct mail solicitation within thirty days following the USAir crash, and the unlicensed practice of law. As set forth

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<sup>1</sup> Article 15.02, Texas Penal Code provides in pertinent part: (a) A person commits criminal conspiracy if, with intent that a felony be committed: (1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and (2) he or one or more of them performs an overt act in pursuance of the agreement.

<sup>2</sup> Article 38.12, Texas Penal Code.

below, numerous overt acts were thereafter taken by one or more of the co-conspirator Respondents in furtherance of the conspiracy.

3.6. Shortly after the July 2, 1994, USAir crash, Musslewhite telephoned a non-lawyer, Betty Edward (hereinafter called "**Edward**"), and asked her to work with George Dillard (hereinafter called "**Dillard**"), another non-lawyer, in signing up relatives of Dorian Doucette (hereinafter called "**Doucette**"), who was injured in the USAir crash. Edward and Dillard agreed to cooperate. Thereafter, Edward and/or Dillard delivered to the Doucettes materials which included an O'Quinn power of attorney. Edward and/or Dillard arranged a meeting between Musslewhite, Musslewhite Jr., and the Doucettes. Prior to such meeting none of the Respondents had any then-existing or former attorney-client relationship with the Doucettes, nor had the Doucettes sought advice regarding employment or any other matter from the Respondents, nor was there any family relationship between the Doucettes and any of the Respondents. As a result of the meeting, the Doucettes executed a power of attorney employing O'Quinn to represent them in connection with the USAir crash.

3.7. Having successfully solicited the Doucettes, on or about July 13, 1994, Musslewhite contacted O'Quinn to seek O'Quinn's agreement to finance efforts in South Carolina to obtain additional clients for O'Quinn from among the victims and/or families of victims of the USAir crash. O'Quinn agreed to do so, paying or authorizing to be paid from his law firm's bank account the sums of \$50,000.00 to C. Benton Musslewhite individually and \$50,000.00 payable jointly to Carolyn Musslewhite, a non-lawyer and the wife of C. Benton Musselwhite, and to C. Benton Musslewhite.

3.8. The Respondents entered into an agreement among themselves to divide any fees which arose from the representation of clients out of the USAir crash as follows: O'Quinn would receive sixty-seven percent (67%) of the fees, Musslewhite would receive twenty-two percent (22%) of the fees, and Musslewhite Jr. would receive eleven percent (11%) of the fees. O'Quinn would continue to be responsible for paying Shaw and Hopper as his employees. O'Quinn would either pay or facilitate reimbursement of travel expenses of those involved in making contact with prospective clients out of the USAir crash. It was decided that Musslewhite would send Edward and Dillard to South Carolina to sign up clients, Musslewhite Jr. would spend some time in South Carolina supervising Edward and Dillard, and Hopper would coordinate the activities from South Carolina and keep O'Quinn and Shaw informed of the progress of the operation. Edward and Dillard were engaged to solicit and procure, by telephone and/or in-person contact, the employment of one or more of the Respondents to represent on a contingent fee basis injured passengers and/or family members of deceased passengers on USAir Flight 1016.

3.9. Respondents, with the intent of obtaining an economic benefit, paid, gave and/or offered to pay Edward to solicit, by telephone and/or in person, professional employment for one or more of the Respondents to represent on a contingent fee basis injured passengers and/or family members of deceased passengers of the USAir crash.

3.10. Respondents, with the intent of obtaining an economic benefit, paid, gave, and/or offered to pay Dillard to solicit, by telephone and/or in person, professional employment for one or more of the Respondents to represent on a contingent fee basis injured passengers and/or family members of deceased passengers of the USAir crash.

3.11. Respondents, with the intent of obtaining an economic benefit, paid, gave, and/or offered to pay Hopper to solicit, by telephone and/or in person, professional employment for one or more of the Respondents to represent on a contingent fee basis injured passengers and/or family members of deceased passengers of the USAir crash.

3.12. Respondents, with the intent of obtaining an economic benefit, paid, gave, and/or offered to pay John Bozman (hereinafter called "**Bozman**"), a non-lawyer, to solicit, by telephone and/or in person, professional employment for one or more of the Respondents to represent on a contingent fee basis injured passengers and/or family members of deceased passengers of the USAir crash.

3.13. Respondents, with the intent of obtaining an economic benefit, paid, gave, and/or offered to pay Shaw to solicit, by telephone and/or in person, professional employment for one or more of the Respondents to represent on a contingent fee basis injured passengers and/or family members of deceased passengers of the USAir crash.

3.14. Shaw prepared and delivered to O'Quinn, Musslewhite, and/or Musslewhite Jr. a memorandum containing the names, home towns, and known next of kin of the deceased and injured passengers of USAir Flight 1016. Musslewhite Jr. furnished a copy of this list, with notations, to Edward and/or Dillard to assist them in identifying and contacting potential clients. Included among the list of deceased passengers were: **Stephen Mattox, Rita Mattox, Charnesha Jeter, Jerome Price, Patricia Price, Bertha Cantey, Edna Fisher, Joseph A. Phillips and Nathaniel Plowden.** In addition to **Dorian Doucette**, the surviving passengers included **Rodney Willingham and Rahsaan Corbin.**

3.15. -On or about July 15, 1994, Musslewhite Jr., Edward and Dillard flew to Charlotte, North Carolina, for the purpose of making telephone and/or in-person contact with injured passengers and/or families of passengers killed in the USAir crash. Prior to their departure, Musslewhite delivered both to Edward and to Dillard an airline ticket and cash in excess of Nine Thousand and no/100 (\$9,000.00) Dollars. O'Quinn provided to Musslewhite and/or Musslewhite Jr. the monies used to make the payments to Edward and/or Dillard. O'Quinn either provided to Musslewhite Jr. the funds to procure the airline tickets for Edward and/or Dillard or agreed to reimburse Musslewhite and/or Musslewhite Jr. for the purchase of the airline tickets for Edward and/or Dillard. On or about July 16, 1994, Musslewhite Jr. returned to Houston.

3.16. On or about July 16, 1994, Edward and Dillard traveled to Columbia, South Carolina, which was both the point of origination of USAir Flight 1016 and the vicinity where many of the crash victims had resided. Acting as the instrumentality of the Respondents, Edward and Dillard checked into the Adam's Mark Hotel situated in Columbia, South Carolina, where both stayed for the duration of their trips, and began the process of screening and then contacting, by telephone and/or in person, the injured passengers and/or families of passengers killed in the USAir crash. Edward remained in the Columbia, South Carolina, area until approximately August 9, 1994. Dillard remained in the Columbia, South Carolina, area until approximately July 21, 1994. Both Edward's and Dillard's hotel bills from the Adam's Mark Hotel were paid from the bank account of John M. O'Quinn or his law firm.

3.17. During this period of time Edward and/or Dillard made in-person contact with **Rodney Willingham** (hereinafter called "**Willingham**") for the purpose of soliciting the professional employment of O'Quinn as an attorney for Willingham to recover damages resulting

from the injuries he sustained in the USAir crash. Prior to such contact none of the Respondents had any then-existing or former attorney-client relationship with Willingham, nor had Willingham sought advice regarding employment or any other matter from the Respondents, nor was there any family relationship between Willingham and any of the Respondents.

3.18. On or about July 13, 1994, Bozman, a non-lawyer resident of Texas, was engaged to solicit and procure, by telephone and/or in-person contact, the employment of one or more of the Respondents to represent on a contingent fee basis injured passengers and family members of deceased passengers on USAir Flight 1016. Respondents, with the intent of obtaining an economic benefit, paid, gave and/or offered to pay Bozman to solicit, by telephone and/or in person, professional employment for one or more of the Respondents to represent on a contingent fee basis injured passengers and/or family members of deceased passengers of the USAir crash. On or about July 13, 1994, Bozman, as an instrumentality of the Respondents, began the process of screening and then contacting, by telephone and/or in person, the injured passengers and/or families of passengers killed in the USAir crash. On or about July 25, 1994, Bozman arrived in Columbia, South Carolina, where he remained for several days, staying at the Adam Mark's Hotel. At the conclusion of his stay, Bozman's hotel bill was paid from the bank account of John M. O'Quinn or his law firm.

3.19. On or about July 19, 1994, Musslewhite Jr. flew to Columbia, South Carolina, where he remained until or about July 21, 1994. While in the Columbia, South Carolina, area he stayed at the Adam's Mark Hotel. During this time, Musslewhite Jr. visited with Emma Mattox (hereinafter called "**Mattox**"), the mother of **Stephen Mattox** who, along with his wife, **Rita Hamilton Mattox** (whom he had married the day of the crash), was killed in the USAir crash.

Prior to Musslewhite Jr.'s visit with Mattox, Mattox's daughter, Jean Mattox Lewis (hereinafter called "Lewis") had been contacted by telephone by Edward and/or Charles (a/k/a "Carlos") Williams, Jr. (hereinafter called "**Williams**"), a non-lawyer resident of South Carolina, either and/or both of whom facilitated Musslewhite Jr.'s in-person meeting with Mattox and/or Lewis. Prior to such meeting none of the Respondents had any then-existing or former attorney-client relationship with either Mattox or Lewis, nor had either Mattox or Lewis sought advice regarding employment or any other matter from the Respondents, nor was there any family relationship between Mattox and/or Lewis and any of the Respondents. At the conclusion of his stay at the Adam's Mark Hotel, Musslewhite Jr.'s hotel bill was paid from the bank account of John M. O'Quinn or his law firm.

3.20. During the latter part of July, Musslewhite Jr. and/or Edward flew to Atlanta, Georgia, rented a car, and drove to Troy, Alabama, in order to visit Anna Lois McNabb (hereinafter called "**McNabb**"), at McNabb's home. McNabb was the mother of **Charnesha Jeter** who had died in the crash along with her husband, **Charles Jeter**, and three children. Subsequently, Edward contacted McNabb by telephone on more than one occasion. Both the in-person contact and the telephone contacts were made to solicit the employment of O'Quinn to represent on a contingent fee basis the family members of Charnesha Jeter. Prior to such contact none of the Respondents had any then-existing or former attorney-client relationship with McNabb and/or Charnesha Jeter, nor had McNabb sought advice regarding employment or any other matter from the Respondents, nor was there any family relationship between McNabb and/or Charnesha Jeter and any of the Respondents.

3.21. On or about July 25, 1994, Shaw arrived in Columbia, South Carolina, where he remained for several days. While in South Carolina, Shaw worked with and supervised the unlawful solicitation efforts of Edward, Hopper and others on behalf of, at the direction of, and/or with the approval of the Respondents. During his stay in the Columbia, South Carolina, area Shaw stayed at the Adam's Mark Hotel. At the conclusion of his stay at the Adam's Mark Hotel, Shaw's hotel bill was paid from the bank account of John M. O'Quinn or his law firm.

3.22. On or about July 20, 1994, Williams was engaged to solicit and procure, by telephone and/or in-person contact, the employment of one or more of the Respondents to represent on a contingent fee basis injured passengers and family members of deceased passengers on USAir Flight 1016. Respondents, with the intent of obtaining an economic benefit, paid, gave and/or offered to pay Williams to solicit, by telephone and/or in person, professional employment for one or more of the Respondents to represent on a contingent fee basis injured passengers and/or family members of deceased passengers of the USAir crash. Beginning on or about July 20, 1994, Williams, as an instrumentality of the Respondents, engaged in screening and then contacting, by telephone and/or in person, the injured passengers and/or families of passengers killed in the USAir crash.

3.23. Two of the victims of the USAir crash were **Jerome Price** and **Patricia Stephenson Price**, who both died intestate, leaving an 18-month old son, Ryan Price. Musslewhite Jr. emphasized to Edward, Hopper and/or Williams the importance of signing up as clients of O'Quinn whomever was or became the guardian or guardians of Ryan Price. To that end, on or about July 17, 1994, Edward and/or Hopper located the home of Thelma Price, Ryan Price's paternal grandmother, and attempted to visit with Thelma Price at her home. Although

Thelma Price was not home at that time, Edward and/or Hopper met with Greg Waters, Thelma Price's adopted son, who sent them away. On or about July 22, 1994, Edward and/or Williams met with Thelma Price, her daughter, Sharon Price, and two adopted children, Angela Waters and Greg Waters. The purpose of the visit was to solicit the professional employment of O'Quinn to represent the putative guardians of Ryan Price on a contingent fee basis to recover damages sustained as a result of the USAir crash. Prior to such contact none of the Respondents had any then-existing or former attorney-client relationship with Thelma Price and/or Ryan Price, nor had Thelma Price sought advice regarding employment or any other matter from the Respondents, nor was there any family relationship between Thelma Price and/or Ryan Price and any of the Respondents. As a result of the visit, an O'Quinn power of attorney was executed purporting to document Thelma Price's and Ryan Price's hiring of O'Quinn as their attorney. Subsequently, Musslewhite Jr. returned to have documents again executed by Thelma Price regarding the hiring of O'Quinn.

3.24. Shortly after Edward's and Williams' visit with Thelma Price, Sharon Price, Angela Waters, and Greg Waters, Sharon Price and Greg Waters appeared at the home of Sally Stephenson, the maternal grandparents of Ryan Price, who had physical custody of Ryan Price at that time. Sharon Price and Greg Waters asked to keep Ryan Price overnight. Stephenson agreed, with the understanding that Ryan Price would be returned at a certain time. When Ryan Price was not timely returned to Stephenson's home, Charlie Stephenson, Ryan Price's maternal uncle and Stephenson's son, telephoned Greg Waters, who indicated that Charlie Stephenson should "talk to our attorney" about securing Ryan Price's return.

3.25. On or about July 24, 1994, Edward and/or Williams made contact in-person with Sally Stephenson for the purpose of soliciting the employment of O'Quinn as the attorney for Ryan Price. In the course of such conversation, Williams intimated that, should Sally Stephenson not retain O'Quinn, Stephenson might not see her grandson, Ryan Price, again, or words to that effect. Prior to such contact none of the Respondents had any then-existing or former attorney-client relationship with Sally Stephenson and/or Charlie Stephenson, nor had either Sally Stephenson or Charlie Stephenson sought advice regarding employment or any other matter from the Respondents, nor was there a family relationship between Sally Stephenson and/or Charlie Stephenson and any of the Respondents. Edward and/or Williams, as instrumentalities of Respondents, engaged in conduct described herein which involved dishonesty, fraud, deceit or misrepresentation.

3.26. The Respondents, acting through Shaw, made contact by telephone on or about July 27, 1994, with Sally Stephenson in an attempt to solicit the professional employment of O'Quinn as an attorney for Ryan Price, in the event that Sally Stephenson and/or Charlie Stephenson became the legal guardians of Ryan Price, to recover damages resulting from the death of his mother, Sally Stephenson's daughter, in the USAir crash. Prior to such contact none of the Respondents had any then-existing or former attorney-client relationship with Sally Stephenson and/or Charlie Stephenson, nor had either Sally Stephenson or Charlie Stephenson sought advice regarding employment or any other matter from the Respondents, nor was there any family relationship between Sally Stephenson and/or Charlie Stephenson and any of the Respondents. The conduct of Shaw described herein involved dishonesty, fraud, deceit and/or misrepresentation.

3.27. - The Respondents, acting through Shaw, made personal contact on or about July 27, 1994, with Sally Stephenson in an attempt to solicit the professional employment of O'Quinn as an attorney for Sally Stephenson's minor grandchild to recover damages resulting from the death of his mother, Sally Stephenson's daughter, in the USAir crash. The conduct of Shaw described herein involved dishonesty, fraud, deceit and/or misrepresentation.

3.28. During the period from on or about July 16, 1994, to on or about August 8, 1994, frequent telephone communications took place between the Respondents' instrumentalities staying at the Adam's Mark Hotel in Columbia, South Carolina, and O'Quinn and/or Musslewhite in Houston.

3.29. O'Quinn, on behalf of himself and in furtherance of the conspiracy, with the intent of obtaining an economic benefit, paid, gave and/or offered to pay Hopper to solicit, by telephone and/or in person, professional employment for one or more of the Respondents to represent on a contingent fee basis injured passengers and/or family members of deceased passengers of the USAir crash. Hopper, a non-lawyer employee of O'Quinn's law firm in Houston, arrived in Columbia, South Carolina, on or about July 17, 1994, and remained there until on or about August 8, 1994. Hopper brought with her a supply of information packets about O'Quinn and his firm for use in soliciting as clients crash victims and/or their families. While in South Carolina, Hopper worked with and supervised the unlawful solicitation efforts of Edward, Williams, and/or Bozman on behalf of, at the direction of, and with the approval of the Respondents. During her stay in the Columbia, South Carolina area, Hopper stayed in the Adam's Mark Hotel. At the conclusion of her stay, Hopper's hotel bill was paid from the bank account of John M. O'Quinn or his law firm.

3.30. Edward returned to the Columbia, South Carolina, area on or about August 18, 1994, checking into the Whitney Hotel, and remained there until on or about September 5, 1994. At the conclusion of her stay, her hotel bill was paid by Musslewhite Jr. During this period of time, Edward and/or Williams contacted the family of **Bertha Cantey** (hereinafter called "**Cantey**"), who had died in the USAir crash. Although the Cantey family had already retained an attorney named Ray Chandler (hereinafter called "**Chandler**") to represent them, Edward and/or Williams persisted in efforts to convince the family to discharge Chandler and retain O'Quinn as their attorney. As a direct result of the efforts of Edward and/or Williams, the family signed an O'Quinn power of attorney.

3.31. Musslewhite Jr. returned to Columbia, South Carolina, on or about August 31, 1994, checking into the Whitney Hotel. He remained there until on or about September 2, 1994. While he was there, he again visited with Mattox, as a result of which Mattox executed an O'Quinn power of attorney.

3.32. Between on or about July 2, 1994, and on or about September 5, 1994, the Respondents acting by or through Musslewhite, Musslewhite Jr., Edward, Dillard, Bozman, Hopper, Williams, and/or others contacted for the purpose of soliciting the employment of O'Quinn: (1) the family of **Charles Jeter** who had died in the USAir crash; (2) the family of **Edna Fisher**, who had died in the USAir crash; (3) the family of **Joseph A. Phillips**, who had died in the USAir crash; (4) the family of **Nathaniel Plowden**; and/or (5) **Rahsaan Corbin**, a victim of the USAir crash. At all times relevant, prior to the contacts by Respondents, acting by and through Musslewhite, Musslewhite Jr., Edward, Dillard, Bozman, Hopper, Williams, and/or others, none of the persons identified in this paragraph as either victims or family members of

victims of the USAir crash had any then-existing or former attorney-client relationship with the Respondents, nor had any of such persons sought advice regarding employment or any other matter from the Respondents, nor was there any family relationship between any of such persons and any of the Respondents.

3.33. The Respondents knowingly financed and/or invested funds which they knew or had reason to believe would be utilized to further the commission of the offense of barratry under Article 38.12(a) of the Texas Penal Code in connection with claims arising out of the USAir crash.

3.34. O'Quinn accepted employment as an attorney in connection with one or more cases arising out of the USAir crash knowing that each such employment resulted from the solicitation of employment in violation of Rule 7.02 (currently 7.03[a]) of the Texas Disciplinary Rules of Professional Conduct and/or in violation of Article 38.12(a) of the Texas Penal Code. Each such acceptance of employment, under the circumstances, is a separate violation of Rules 7.03 (currently 7.03[d]) of the Texas Disciplinary Rules of Professional Conduct and/or constitutes barratry under Article 38.12(b) of the Texas Penal Code.

3.35. At all relevant times, pecuniary gain was a significant motive for the above-described actions of each of the Respondents and/or their non-lawyer employees.

#### IV.

### VIOLATIONS OF STATUTES AND TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

4.1. **Conspiracy**: The conduct of the Respondents, as described above, constitutes a conspiracy as defined by Article 15 of the Texas Penal Code.

4.2. **Barratry**: The conduct of each of the Respondents, as described above, constitutes barratry, as defined in Articles 38.12(a) and/or 38.12(b) of the Texas Penal Code.

4.3. **Texas Disciplinary Rules of Professional Conduct**: The conduct on the part of Respondents, collectively and/or individually, and/or their non-lawyer employees, as is described above, inclusive, constitutes professional misconduct as that term is defined by Rule 106(q), is violative of Rules 5.01(a) (ordering, encouraging, or knowingly permitting the misconduct of another lawyer who is a partner or under one's supervision); 5.01(b) (knowingly failing to take remedial action to mitigate the misconduct of another lawyer who is a partner or under one's supervision); 5.03(a) (failing to make reasonable efforts to ensure that any associated non-lawyer's conduct is compatible with the lawyer's professional obligations); 5.03(b) (ordering, encouraging, or permitting the prohibited conduct of an associated non-lawyer); 5.05(1) (currently 5.05[a]) (practicing in a jurisdiction in a manner violative of that jurisdiction's professional rules); 5.05(2) (currently 5.05[b]) (assisting another in the unlicensed practice of law); 7.02 (currently 7.03[a]) (seeking professional employment by prohibited in-person or telephone contact); 5.04(a) (currently 7.03[b]) (sharing or promising to share legal fees with a non-lawyer); 1.08(d) (currently 7.03[c]) (giving or offering to give prohibited financial assistance to a prospective client); 8.04(a)(2) (committing a serious crime); 8.04(a)(3) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and/or 8.04(a)(8) (currently 8.04[a][9]) (engaging in barratry) of the Texas Disciplinary Rules of Professional Conduct. In addition to or in the alternative, Respondents, collectively and/or individually, in having knowledge of the conduct of the other Respondents as described above which was violative of the Texas Disciplinary Rules of Professional Conduct and which raises a substantial question as to that

lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, and in failing to so inform the appropriate disciplinary authority, have engaged in conduct violative of rule 8.03(a) of the Texas Disciplinary Rules of Professional Conduct.

V.

### JURY DEMAND

Petitioner respectfully demands trial by jury.

VI.

### PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner, Commission for Lawyer Discipline, respectfully seeks judgment that each of the Respondents be disciplined as warranted by the facts with an appropriate sanction of either disbarment or suspension, and, in either event, reasonable attorneys' fees, all direct expenses associated with this process, as well as such other and further relief, legal or equitable, general or special, to which it may show itself entitled, including costs of court.

Respectfully submitted,



Lonny D. Morrison (signed with permission by Steven W. Young)

*Signed with permission by Steven W. Young*  
State Bar No. 00000068

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Broadus A. Spivey

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Counsel

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State Bar of Texas

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**ATTORNEYS FOR THE COMMISSION  
FOR LAWYER DISCIPLINE,  
PETITIONER**

# STATE BAR OF TEXAS



Office of the General Counsel

December 30, 1997

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

Re: Commission for Lawyer Discipline v. John M. O'Quinn, C. Benton Musslewhite, Charles B. Musslewhite, Jr., and Carl D. Shaw; In the District Court of Harris County, Texas; \_\_\_\_\_ Judicial District

Dear Mr. Adams:

Enclosed please find an original and five (5) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against John M. O'Quinn, C. Benton Musslewhite, Charles B. Musslewhite, Jr., and Carl D. Shaw. Each of the respondents 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 the Respondents reside to preside in this case. Upon appointment, request is made that you notify each of the Respondents at his respective address shown below and the undersigned of the identity and address of the judge assigned:

John M. O'Quinn  
O'Quinn & Laminack  
440 Louisiana St.  
Suite 2300  
Houston, TX 77002

C. Benton Musslewhite  
405 Main Street  
Suite 600  
Houston, TX 77002

**P. O. BOX 12487, CAPITOL STATION, AUSTIN, TEXAS 78711-2487, 512-463-1463 OR 1-800-204-2222**

John T. Adams  
December 30, 1997  
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Charles B. Musslewhite, Jr.  
440 Louisiana St.  
Suite 590  
Houston, TX 77002

Carl D. Shaw  
O'Quinn & Laminack  
440 Louisiana St.  
Suite 2300  
Houston, TX 77002

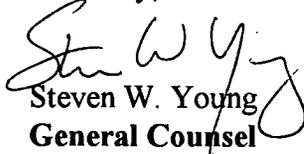
As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to: (1) whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure; and (2) whether he or she can accommodate compliance with Mellon Service Co., et al v. Touche Ross Co., 946 S.W.2d 862 (Tex. App. - Houston [14th Dist.] 1997), which requires that all proceedings incident to a case occur in the county of proper venue. If not, I would respectfully request that an alternate appointment be made.

Once a trial judge has been appointed, please forward the original and five (5) 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, service be obtained, and a file-marked copy of the petition be returned to the undersigned.

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., 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-marked copy of the Petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,

  
Steven W. Young  
General Counsel

SWY:dm  
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  
CRAIG T. ENOCH  
ROSE SPECTOR  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON

EXECUTIVE ASS'T  
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

February 6, 1998

Mr. Steven W. Young  
General Counsel, State Bar of Texas  
400 W. 15<sup>th</sup> Street, Suite 1500  
P.O. Box 12487  
Austin, Texas 78711

Mr. Charles B. Musslewhite, Jr.  
440 Louisiana Street, Suite 590  
Houston, Texas 77002

Mr. John M. O'Quinn  
O'Quinn & Laminack  
440 Louisiana Street, Suite 2300  
Houston, Texas 77002

Mr. Carl D. Shaw  
O'Quinn & Laminack  
440 Louisiana Street, Suite 2300  
Houston, Texas 77002

Mr. C. Benton Musslewhite  
405 Main Street, Suite 600  
Houston, Texas 77002

Dear Mr. Young, Mr. O'Quinn, Mr. Musslewhite, Mr. Musslewhite and Mr. Shaw:

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 P. Brotherton, Judge of the 30<sup>th</sup> District Court of Wichita Falls, Texas to preside in

Commission for Lawyer Discipline v. John M. O'Quinn, C. Benton Musslewhite,  
Charles B. Musslewhite, Jr., and Carl D. Shaw

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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JOHN T. ADAMS

JUSTICES  
RAUL A. GONZALEZ  
NATHAN L. HECHT  
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ROSE SPECTOR  
PRISCILLA R. OWEN  
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EXECUTIVE ASS'T  
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

February 6, 1998

The Honorable Charles Bacarisse  
District Clerk of Harris County  
P.O. Box 4651  
Houston, Texas 77002

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. John M. O'Quinn, C. Benton Musslewhite, Charles B. Musslewhite, Jr., and Carl D. Shaw, and a copy of the Supreme Court's order appointing the Honorable Robert P. Brotherton, Judge of the 30<sup>th</sup> District Court of Wichita Falls, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Hon. Robert P. Brotherton  
Mr. John M. O'Quinn  
Mr. C. Benton Musslewhite  
Mr. Charles B. Musslewhite, Jr.  
Mr. Carl D. Shaw  
Mr. Steve Young



## 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  
CRAIG T. ENOCH  
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EXECUTIVE ASS'T  
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

February 6, 1998

Honorable Robert P. Brotherton  
Judge, 30<sup>th</sup> District Court  
900 7<sup>th</sup> Street, #360  
Wichita Falls, Texas 76301

Dear Judge Brotherton:

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. O'Quinn, Mr. Musslewhite, Mr. Musslewhite, Jr., and Mr. Shaw, 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