

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 98- 9148

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

The Supreme Court of Texas hereby appoints the Honorable John Robert Adamson, Judge of the 2nd District Court of Cherokee County, Texas, to preside in the Disciplinary Action styled:

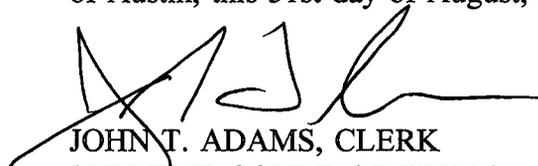
The Commission for Lawyer Discipline v. Elizabeth A. Burkhardt

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.

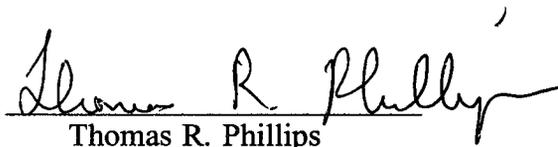
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 31st day of August, 1998.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 98-9148, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 2 day of September, 1998.

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

Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
VS.	§	HARRIS COUNTY, TEXAS
ELIZABETH A. BURKHARDT	§	_____ JUDICIAL DISTRICT

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

Petitioner the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas (the "CFLD"), complains of Respondent Elizabeth A. Burkhardt ("Respondent") as follows:

I.

The CFLD 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 is a member of the State Bar of Texas. Respondent's principal place of practice is Harris County, Texas, and therefore venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure. Any officer may serve citation upon Elizabeth A. Burkhardt, by and through Elizabeth A. Burkhardt's attorney of record, Robert S. Bennett, at 777 Walker, Suite 2500, Houston, Texas 77002.

III. GORMAN COMPLAINT

Respondent was retained to represent Robert and Thomasine Gorman (“Complainants”) in a personal injury case. When the case settled, Respondent withheld approximately \$24,435.87 from the settlement. That amount was to be reimbursed to the Blue Cross insurance carrier for a subrogation lien. Respondent informed Complainants that the amount could be negotiated down. Complaint later discovered that in fact the amount had been negotiated down to approximately \$13,566.41, thus leaving a difference of approximately \$10,869.46. Respondent made no efforts to inform Complainants of this fact. Respondent made no efforts to explain the matter to Complainants. Complainants allege that the \$10,869.46 is owed to them as proceeds of the settlement. Respondent failed to notify Complainants of the settlement with Blue Cross and failed to promptly deliver to the Complainants any funds in which they were entitled to receive. Respondent failed to keep the \$10,869.46 separate and misappropriated those funds for Respondent’s own personal use. Respondent further failed to respond to written and telephonic communication from the Complainants.

Prior to the settlement of the personal injury case, Complainants retained Respondent in a family law matter. Specifically, Respondent was hired to represent Complainants in a pending custody suit involving their grandchildren. When Complaint’s son would not agree to Complainants having custody, Respondent was hired by Complainants to represent their son in the case. Respondent agreed and entered into an agreement with Complainants to recover payment in the family law case from the proceeds of any settlement in the Complainants’ personal injury case. Upon settlement of the family law and personal injury cases, Respondent retained

all of the \$10,869.46 as fees. Respondent failed to inform Complainants of the fees in the family law case and failed to provide an accounting at the Complainants' request. Respondent failed to keep the clients fully informed as to the status of an account.

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 Robert Gorman's filing of a complaint on or about March 3, 1997. Respondent was subpoenaed to provide document to the District Grievance Committee and failed to do so.

The acts and/or omissions of the Respondent described in Paragraph III(A) above, which occurred on or after January 1, 1990, constitute conduct in violation of **1.03(a)** a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; **1.03(b)** for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; **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; **1.14(b)** for failing, upon receiving funds or other property in which a client or third person has an interest, to promptly notify the client or third person and render a full accounting upon request; **1.14(c)** for failing to keep funds or other property in which both the lawyer and another person claim interests separate until there is an accounting and severance of their interests; **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)(2)** commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty trustworthiness or fitness as a lawyer

in other respects; **8.04(a)(8)** for failing to timely furnish a district grievance committee a response or other information as required unless he/she timely asserts a privilege or other legal ground for failure to do so; **8.04(a)(12)** for violating any other laws of this state relating to the professional conduct of lawyers and to the practice of law; and **8.04(b)** As used in subsection (a)(2) of this Rule, "serious crime" means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes of the Texas Disciplinary Rules of Professional Conduct ("TDRPC").

**V.
GAJDEK COMPLAINT**

In or around June 1995, John Gajdek (hereinafter referred to as "Complainant") retained Respondent for representation in a negligence suit against a pesticide company and a building owner for exposure to a toxic chemical.

After several months, Complainant began inquiring about the status of his legal matter as the statute of limitations was due to expire in or around March 1997. Complainant received no responses from Respondent. On or about October 24, 1997, Complainant received notice from Respondent that she could no longer represent him. Respondent forward Complainant his file on or about November 26, 1997 after Complainant requested it on November 5, 1997. Complainant then discovered that a lawsuit for his case had not been filed. Respondent failed to keep Complainant informed of the status of his legal matter and neglected a legal matter entrusted to her. Respondent failed to timely file a lawsuit by allowing the statute of limitations to expire on

Complainant's case. Respondent failed to comply with a reasonable request for information by not returning Complainant's file as requested.

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 John Gajdek's filing of a complaint on or about November 20, 1997.

The acts and/or omissions of the Respondent described in Paragraph III(A) above, which occurred on or after January 1, 1990, constitute conduct in violation of **1.01(b)(1)** for neglecting a legal matter entrusted to the lawyer; **1.01(b)(2)** for frequently failing to carry out completely the obligations owed to a client; **1.01(c)** as used in this Rule "neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients; **1.03(a)** for failing to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information; **8.04(a)(1)** for violating these rules, knowingly assisting or inducing 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; and **8.04(a)(12)** for violating any other laws of this state relating to the professional conduct of lawyers and to the practice of law.

Prayer

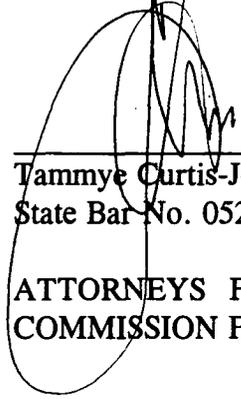
WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent as the facts shall warrant by finding professional misconduct with regard to the above-stated rule violations and imposing a sanction of reprimand, suspension and/or disbarment; and that the CFLD have all other relief to which it may show itself to be justly entitled, including costs of court, restitution to Complainants and attorney's fees.

Respectfully submitted,

Steven W. Young
General Counsel

Tammye Curtis-Jones
Assistant General Counsel

Office of the General Counsel
State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002
Phone: (713) 759-6931
Fax: (713) 752-2158



Tammye Curtis-Jones
State Bar No. 05286900

ATTORNEYS FOR PETITIONER THE
COMMISSION FOR LAWYER

STATE BAR OF TEXAS



Office of the General Counsel

August 4, 1998

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

Re: Commission for Lawyer Discipline v. Elizabeth Burkhardt

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 Elizabeth Burkhardt. Ms. Burkhardt 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:

Elizabeth Burkhardt
C/O Robert S. Bennett
777 Walker, Ste. 2500
Houston, Texas 77002

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 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 citation, along with a file-stamped copy of the petition be returned to the undersigned.

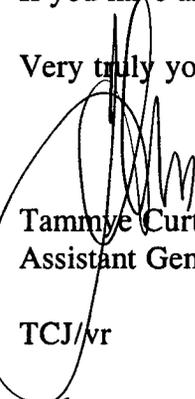
Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Harris County, Texas, and a return envelope to be sent to the District Clerk of

Mr. John Adams
August 4, 1998
Page 2

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,



Tammye Curtis-Jones
Assistant General Counsel

TCJ/vr

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

SEP 14 1998

Ms. Tammye Curtis-Jones
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Ms. Elizabeth Burkhardt
c/o Robert S. Bennett
777 Walker, Suite 2500
Houston, Texas 77002

Dear Ms. Curtis-Jones and Ms. Burkhardt:

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 Robert Adamson, Judge of the 2nd District Court of Rusk, Texas to preside in

Commission for Lawyer Discipline v. Elizabeth A. Burkhardt

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

CLERK
JOHN T. ADAMS

JUSTICES

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ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

SEP 14 1993

Honorable John Robert Adamson
Judge, 2nd District Court
502 N. Main Street
Rusk, Texas 75785

Dear Judge Adamson:

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 Ms. Burkhardt and Ms. Curtis-Jones, 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

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
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ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

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

SEP 14 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. Elizabeth A. Burkhardt*, and a copy of the Supreme Court's order appointing the Honorable John Robert Adamson, Judge of the 2nd District Court of Rusk, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable John Robert Adamson
Ms. Elizabeth A. Burkhardt
Ms. Tammye Curtis-Jones