

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99- 9027

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

The Supreme Court of Texas hereby appoints the Honorable Wayne F. Salvant, Judge of the Criminal District Court No. 2 of Tarrant County, Texas, to preside in the Disciplinary Action styled:

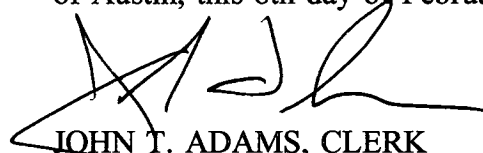
The Commission for Lawyer Discipline v. Robert Gary Stephens

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.

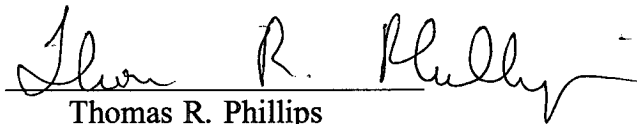
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 8th day of February, 1999.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9027, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 7 day of February, 1999.

A handwritten signature in cursive script, reading "Thomas R. Phillips", written over a horizontal line.

Thomas R. Phillips
Chief Justice

NO. _____

COMMISSION FOR LAWYER DISCIPLINES

IN THE DISTRICT COURT OF

VS

§
§
§
§

HARRIS COUNTY, TEXAS

ROBERT GARY STEPHENS

_____ 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, Robert Gary Stephens, showing the Court:

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 with the State Bar of Texas 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 and has his principal place of practice in Harris County, Texas. An officer may serve citation on Respondent at his place of business located at 520 Post Oak Blvd., Suite 600, Houston, Texas 77027-9405.

III.

On or about November 21, 1990, Respondent entered into an agreement with George Berry and John Berry (hereinafter called "the Berrys"). The parties agreed that Respondent would pay the Berrys one-third of the attorney's fees Respondent received for the polybutylene plumbing ("PB") cases that the Berrys brought to him. From about November 1990 through early 1992, the Berrys solicited PB cases for the Respondent. Neither John Berry nor George Berry is an attorney licensed to practice law in the State of Texas, any other State or Federal jurisdiction.

On or about December 26, 1990, Respondent was hired by Waterford Company and George W. Berry to represent them in their civil case involving defective polybutylene plumbing. On or about January 4, 1991, Respondent was hired by John B. Berry in his civil case involving defective polybutylene plumbing ("PB").

In or around early 1991, Respondent referred the Berrys' cases to George M. Fleming, a joint venturer with Complainant, James R. Moriarty. Between early 1991 and June 1992, Respondent referred approximately thirty-nine (39) of the PB cases, which the Berrys had solicited, to Fleming and Moriarty.

Respondent did not advise the clients, which he had referred to Fleming and Moriarty, that he had referred the cases and had entered into a agreement for the division of fees.

Beginning in late 1991, Respondent paid the Berrys five to six advances of approximately Thirty-Five Thousand Dollars (\$35,000.00) each. On or about March 20, 1992, Respondent made a payment to the Berrys in the amount of One Hundred One Thousand Three Hundred Thirty-Three Dollars (\$101,333.00).

The business relationship relating to the polybutylene plumbing cases between Respondent and the Berrys continued into June, 1992, when the Berrys' attorney sent a demand letter to Respondent for settlement funds they expected from some polybutylene plumbing cases Respondent had recently settled.

On or about October 1, 1996, Respondent received Complainant's amended grievance against Respondent. On or about October 1, 1996, Respondent requested thirty (30) days to respond to the amended grievance. On or about October 4, 1996, Respondent was given until November 1, 1996 to respond. On or about October 31, 1996, Respondent requested that the due date of the response be postponed until November 8, 1996. Respondent's request was not granted. On or about November 8, 1997, Respondent responded to Complainant's amended grievance.

IV.

By allowing agreeing to divide legal fees with nonlawyers, namely John and George Berry, Respondent engaged in conduct in violations of Rule **5.04(a)**[a lawyer or law firm shall not share or promise to share legal fees with a non-lawyer] of the Texas Disciplinary Rules of Professional Conduct, and of Rule **1.06(Q)** of the Texas Rules of Disciplinary Procedure.

By referring PB cases to George Fleming and James Moriarty without the consent of his clients, and by sharing legal fees with Fleming and Moriarty, Respondent engaged in conduct in violation of Rule **1.04(f)(2)**[a division or agreement for division of a fee between lawyers who are not in the same firm shall not be made unless the client is advised of, and does not object to, the participation of all the lawyers involved] of the Texas Disciplinary Rules of Professional Conduct and of Rule **1.06(Q)** of the Texas Rules of

Disciplinary Procedure.

By entering into an agreement whereby nonlawyers George Berry and John Berry would solicit clients for him with respect to the polybutylene plumbing lawsuits, Respondent engaged in conduct in violation of Rules **5.03(a)** [a lawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer]; 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 Rule **1.06(Q)** of the Texas Rules of Disciplinary Procedure.

By failing to furnish a written response to the allegations contained in the complaint filed against him, Respondent engaged in conduct in violation of Rule **8.04(a)(8)**[failing to timely furnish to a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure] 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 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 filing of a complaint by James R. Moriarty on or about January 10, 1996.

PRAYER


WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent 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 No. 11550700

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the General Counsel

December 15, 1998

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

Re: Commission for Lawyer Discipline v. Robert Gary Stephens

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 Robert Gary Stephens. Mr. Stephens 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. Robert G. Stephens
Attorney-at-Law
520 Post Oak Blvd., Suite 600
Houston, Texas 77027-9405

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

1111 FANNIN, SUITE 1370, HOUSTON, TEXAS 77002, (713)759-6931

Mr. John T. Adams, Clerk
Supreme Court of Texas
December 15, 1998
PAGE 2

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 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
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

FEB 17 1999

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

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

Mr. Robert G. Stephens
520 Post Oak Boulevard, Suite 600
Houston, Texas 77027-9405

Dear Ms. Klapperich and Mr. Stephens:

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 Wayne F. Salvant, Judge of the Criminal District Court No. 2, Fort Worth, Texas to preside in

Commission for Lawyer Discipline v. Robert Gary Stephens

Sincerely,

A handwritten signature in black ink, appearing to be "J. Adams", written over a large, stylized scribble or flourish.

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
JOHN T. ADAMS

JUSTICES
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JAMES A. BAKER
GREG ABBOTT
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JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

FEB 17 1999

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. Robert Gary Stephens*, and a copy of the Supreme Court's order appointing the Honorable Wayne F. Salvant, Judge of the Criminal District Court No. 2, Fort Worth, Texas, to preside in this Disciplinary Action.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Adams".

John T. Adams
Clerk

cc: Honorable Wayne F. Salvant
 Ms. Mary F. Klapperich
 Mr. Robert Gary Stephens
 Ms. Melissa Dartez



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
JOHN T. ADAMS

JUSTICES
NATHAN L. HECHT
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WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

FEB 17 1999

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

Honorable Wayne F. Salvant
Judge, Criminal District Court No. 2
401 W. Belknap
Fort Worth, Texas 76196-0225

Dear Judge Salvant:

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. Stephens 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,

A handwritten signature in black ink, appearing to be "John T. Adams", written over a horizontal line.

John T. Adams
Clerk