

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99-9053

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

The Supreme Court of Texas hereby appoints the Honorable Harold C. Gaither, Judge of the 304th District Court of Dallas County, Texas, to preside in the Disciplinary Action styled:

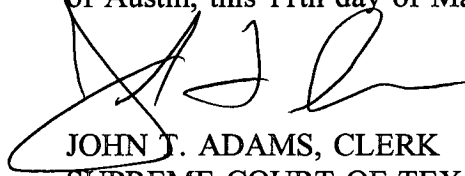
The Commission for Lawyer Discipline v. Michael W. Johnson

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,

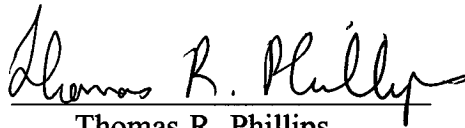
with the Seal thereof affixed at the City
of Austin, this 11th day of March, 1999.

A handwritten signature in black ink, appearing to read 'J. Adams', is written over the typed name and title.

JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9053, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 12 day of March, 1999.

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

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE §
v. §
MICHAEL W. JOHNSON §
§
§
§

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
_____ 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 (hereinafter referred to as the "CFLD"), complains of MICHAEL W. JOHNSON ("hereinafter referred to as "Respondent") as follows:

**I.
DISCOVERY CONTROL PLAN**

Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, CFLD intends discovery in this case to be conducted under Discovery Control Plan - Level 2 as provided in Rule 190.3 of the Texas Rules of Civil Procedure.

**II.
NATURE OF PROCEEDING**

Petitioner brings this disciplinary action pursuant to the State Bar Act, the 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 complaints that form the basis of this petition were filed on or after May 1, 1992.

**III.
VENUE AND SERVICE**

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent is a resident of Harris County, 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. An officer may serve citation on Respondent, by and through his attorney of record, C.Conn Gutmann, located at 10777 Northwest Freeway, Ste. 410, Houston, Texas 77092.

**IV.
FIRST CAUSE OF ACTION
HAMILTON COMPLAINT**

In or about December 1994, Dr. Alan Hamilton (hereinafter referred as "Hamilton") began doing business with the Respondent. Respondent operated a law office in Austin, Texas at that time. Respondent's law office specialized in personal injury practice on a contingent fee basis. Hamilton owned and operated Capital Chiropractic Center in Austin, Texas. Hamilton was contacted by a paralegal employed in Respondent's office about rendering medical services on Respondent's clients.

Hamilton rendered treatment on several personal injury cases referred to him by Respondent and/or paralegals in Respondent's office. In 1995, Hamilton rendered treatment to eight (8) patients referred to him by Respondent and/or paralegals in Respondent's office. Those cases are as follows:

- | | |
|-----------------------|---------------------|
| 1. Sandra Coggeshall | 2. Guadalupe Garcia |
| 3. David (Tony) Handy | 4. Mueng-Gun Jun |
| 5. Nicodemus Lopes | 6. Dianne Predney |
| 7. Ascencion Vega | 8. Robert Zamarippa |

Respondent issued letters of protection to Hamilton on those cases, agreeing to protect Hamilton's reasonable treatment bills regarding the above-referenced cases.

In or around May 1996, Hamilton became concerned as he had not received payment for services rendered on those cases. He also had not received any type of status on those cases from

Respondent. Hamilton then contacted the patients and discovered the cases had been settled in late 1995. The funds (including those in which Hamilton had an interest) had been received and deposited by Respondent. However, Hamilton never received payment for the services he rendered and work he performed on those cases. In each case, the medical expenses were deducted from the settlements but Hamilton was never paid. The total amount withheld but not paid to Hamilton was \$14,821.00.

The acts and/or omissions of the Respondent described in Paragraph IV above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

1.14(a) failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property;

1.14(b) 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;

8.04(a)(1) violating the Texas Disciplinary Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship; and

8.04(a)(3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

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 Hamilton's filing of a complaint on or about June 4, 1996.

**V.
SECOND CAUSE OF ACTION
HALL COMPLAINT**

During 1994, Eleanor Hall (hereinafter referred to as "Hall"), owner of Hall Chiropractic, came into contact with Respondent. Hall Chiropractic was providing medical treatment for

several patients who were clients of the Respondent. In this connection, Respondent signed letters of protection on five (5) cases, agreeing to pay the chiropractor's fee out of the settlement of the respective cases. Those cases in which Respondent signed letters of protection with Hall Chiropractic are:

1. Jackie Stark
2. Mary Lopez
3. Antonio Castillo
4. LaEsther Pickens
5. Patrick Johnson

The Respondent settled the above cases and failed to remit to Hall the amount of money for medical treatments that he agreed to collect and pay. Respondent owes approximately \$10,000.00 to Hall for services rendered to the above clients of Respondent.

The acts and/or omissions of the Respondent described in Paragraph V above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

1.14(a) failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property;

1.14(b) 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;

8.04(a)(1) violating the Texas Disciplinary Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship; and

8.04(a)(3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

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 Hall's filing of a complaint on or about July 10, 1996.

VI.
THIRD CAUSE OF ACTION
KAPSNER COMPLAINT

During 1994, Dr. Michael Kapsner (hereinafter referred to as "Kapsner"), owner of Kapsner Chiropractic Center, came into contact with Respondent. Kapsner was the doctor/chiropractor chosen by Respondent's clients to render treatment for injuries sustained in automobile accidents. Kapsner treated three (3) patients who were clients of the Respondent. They are as follows:

1. Roberto Salas
2. Concepcion Salas
3. Jesse Taylor

On or about April 21, 1994, Respondent signed letters of protection to Kapsner agreeing to protect Kapsner's interest in the cases by paying him from the settlement proceeds of the above-referenced cases.

Kapsner rendered treatment on Roberto Salas, Concepcion Salas and Jesse Taylor. The total amount for the services rendered on Roberto Salas totaled approximately \$1,986.00. The total amount for the services rendered on Concepcion Salas totaled approximately \$3,134.00. The total amount for the services rendered on Jesse Taylor totaled approximately \$3,108.00.

The last treatment on each was July 1994, July 1994 and April 1995, respectively. Once treatment was completed, Kapsner contacted Respondent to determine the status of the cases. Kapsner was repeatedly told by staff in Respondent's Austin Office that the cases were still pending and no settlement funds had been received. The last contact Kapsner had with Respondent's office was in October 1994, when he called the office and was again informed that

the cases had not settled. Shortly thereafter, Kapsner contacted Respondent's office regarding payment for services rendered on the cases and received no response.

Sometime later, Kapsner contacted the patients (Roberto Salas, Concepcion Salas and Jesse Taylor) and was informed the cases had settled and they (Roberto Salas, Concepcion Salas and Jesse Taylor) received their settlement funds. Kapsner never received payment for the services rendered on the Salas' & Taylor cases.

The acts and/or omissions of the Respondent described in Paragraph VI above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

1.14(a) failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property;

1.14(b) 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;

8.04(a)(1) violating the Texas Disciplinary Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship; and

8.04(a)(3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

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 Kapsner's filing of a complaint on or about September 5, 1996.

**VII.
FOURTH CAUSE OF ACTION
PREDNEY COMPLAINT**

On or about July 7, 1995, Dianne M. Predney (hereinafter referred to as "Predney") was involved in an automobile accident. Shortly thereafter, Predney met with Tom Plonowski

(hereinafter referred to as "Plonowski"), an Assistant Manager and Legal Investigator with Respondent's law firm. Plonowski agreed to represent Predney in negotiations against the insurance company of the person who hit her vehicle.

Plonowski referred Predney to Capital Chiropractic, owned by Dr. Alan Hamilton, for medical treatment. Plonowski went to Capital Chiropractic and received medical treatments for injuries sustained in the above-referenced automobile accident. Some months later, Plonowski contacted Predney and advised her the case had settled and he was in possession of funds for her. In or around October 1995, Predney met with Plonowski and received her settlement funds. Thereafter, Predney learned that Plonowski did not pay Capital Chiropractic for their services rendered in her case.

The acts and/or omissions of the Respondent described in Paragraph VII above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

1.14(a) failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property;

1.14(b) 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;

8.04(a)(1) violating the Texas Disciplinary Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship; and

8.04(a)(3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

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 Predney's filing of a complaint on or about September 5, 1996.

VIII.
FIFTH CAUSE OF ACTION
CHRISTIE COMPLAINT

On or about July 15, 1994, Josephine Ruiz, Francisco Ruiz and Elisa Ruiz (hereinafter referred to as "the Ruiz's"), were involved in an automobile accident. They retained Respondent to represent them and Respondent referred them to Christie Chiropractic (hereinafter referred to as "Christie") for treatment for injuries sustained in the automobile accident. Respondent executed a letter of protection to Christie Chiropractic on or about August 1, 1994, and agreed to protect Christie's bills by paying Christie from the Ruiz's settlement.

After the Ruiz's completed their treatments, Christie contacted Respondent's office regarding payment of the bills for services rendered. Christie again contacted Respondent's office in March 1996 and was informed by an employee that they would look into the matter and determine the status. In or around May 1996, Christie learned that Respondent's office had moved and was given a new telephone number. When Christie contacted that number, he found it was disconnected. Christie then contacted the Ruiz's to determine the whereabouts of Respondent. The Ruiz's did not have any knowledge of the Respondent's whereabouts. The Ruiz's case had been settled, however, Christie never received his portion of the settlement funds belonging to him for medical treatment rendered to the Ruiz's.

The acts and/or omissions of the Respondent described in Paragraph VIII above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

1.14(a) failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property;

1.14(b) 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;

8.04(a)(1) violating the Texas Disciplinary Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship; and

8.04(a)(3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

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 Christie's filing of a complaint on or about July 11, 1996.

**IX.
SIXTH CAUSE OF ACTION
LOPEZ COMPLAINT**

On or about April 4, 1995, Nicodemus Lopez (hereinafter referred to as "Lopez"), was involved in an automobile accident. Thereafter, he received a letter from an employee of Respondent's offering legal assistance. Lopez retained Respondent to represent him. Respondent and/or an employee employed by Respondent referred Lopez to Capital Chiropractic to receive treatment for the injuries sustained in the automobile accident. Respondent executed a letter of protection to Capital Chiropractic and agreed to protect Capital Chiropractic's bills by paying Capital Chiropractic from the Ruiz's settlement. Lopez went to Capital Chiropractic and received treatment(s).

Upon settlement of his case, Lopez was contacted by Respondent and/or an employee of Respondent to receive his settlement funds. Lopez was informed by Respondent and/or an employee of Respondent that Capital Chiropractic would be paid out of the settlement. Lopez subsequently learned from Capital Chiropractic that Capital Chiropractic was not paid their

portion of the Lopez settlement for treatment rendered to Lopez. The amount of the bill for services Capital Chiropractic rendered in the Lopez case is approximately \$2,353.00.

The acts and/or omissions of the Respondent described in Paragraph IX above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

1.14(a) failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property;

1.14(b) 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;

8.04(a)(1) violating the Texas Disciplinary Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship; and

8.04(a)(3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

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 Lopez's filing of a complaint on or about June 4, 1996.

Prayer

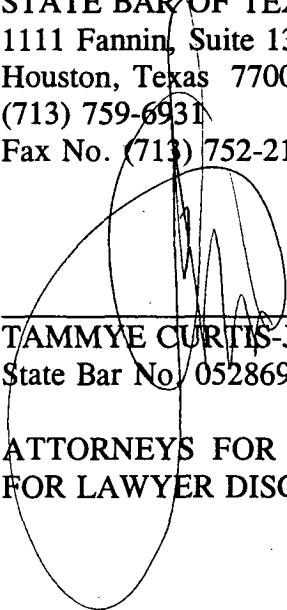
WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent, MICHAEL W. JOHNSON, by reprimand, suspension or disbarment, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself to be justly entitled, including costs of court and attorneys' 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
(713) 759-6931
Fax No. (713) 752-2158



TAMMYE CURTIS-JONES
State Bar No. 05286900

ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE

J:JOHNSON.MWM:JOHNSON.DP

STATE BAR OF TEXAS



Office of the General Counsel

February 10, 1999

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

Re: Commission for Lawyer Discipline v. Michael W. Johnson

Dear Mr. Adams:

Enclosed please find an original and two (2) copies of an Original Disciplinary Petition being filed by the Commission for Lawyer Discipline against Michael W. Johnson. Mr. Johnson has designated his principal place of practice as 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 made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Michael W. Johnson
C/O C. Conn Gutmann
10777 Northwest Freeway, Ste. 410
Houston, Texas 77092

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 two (2) copies of this 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.

1111 Fannin, Suite 1370, Houston, Texas 77002, (713)759-6931

Mr. John Adams
February 10, 1999
Page Two

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,



Tammye Curtis-Jones
Assistant General Counsel

TCJ/yr

Enclosures

J:\JOHNSON.MW\CLERK1.SCT



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

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

MAR 23 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. Michael W. Johnson*, and a copy of the Supreme Court's order appointing the Honorable Harold C. Gaither, Judge of the 304th District Court, Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Harold C. Gaither
Ms. Tammye Curtis-Jones
Mr. Michael W. Johnson
Ms. Melissa Dartez



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
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

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

MAR 23 1999

Honorable Harold C. Gaither
Judge, 304th District Court
Henry Wade Juvenile Justice Center
2600 Lone Star Drive
Dallas, Texas 75212

Dear Judge Gaither:

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. Johnson 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
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NADINE SCHNEIDER

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JAMES A. BAKER
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DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

MAR 23 1999

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

Mr. Michael W. Johnson
c/o C. Conn Gutmann
10777 Northwest Freeway, Suite 410
Houston, Texas 77092

Dear Ms. Curtis-Jones and Mr. Johnson:

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 Harold C. Gaither, Judge of the 304th District Court, Dallas, Texas to preside in

Commission for Lawyer Discipline v. Michael W. Johnson

Sincerely,

SIGNED

John T. Adams
Clerk