

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99-9157

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

The Supreme Court of Texas hereby appoints the Honorable Bonnie Sudderth, Judge of the 352nd District Court of Tarrant County, Texas, to preside in the Disciplinary Action styled:

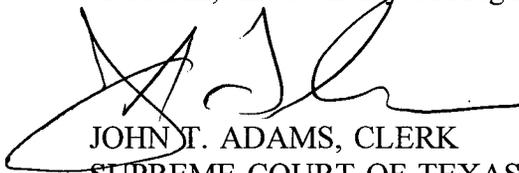
The Commission for Lawyer Discipline v. Howard M. Kahn

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,

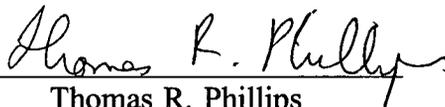
with the Seal thereof affixed at the City
of Austin, this 30th day of August, 1999.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9157, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 31 day of August, 1999.


Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR LAWYER
DISCIPLINE

§
§
§
§
§
§

IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

HOWARD M. KAHN

_____ JUDICIAL DISTRICT

ORIGINAL 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, **HOWARD M. KAHN**, and would respectfully show unto the Court the following:

I.

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

II.

Petitioner 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 Original Disciplinary Petition was filed on or after May 1, 1992.

III.

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent's residence and principal place of practice is Harris County, Texas. Respondent can be served with citation at his business located at 1001 West Loop South, Suite 219, Houston, Texas 77027.

IV.

Sarah Keplinger was renting a house owned by Sherry and Herb Lancaster. Sherry Lancaster is the daughter of Sarah Keplinger. Sarah Keplinger is a licensed real estate agent. Ms. Keplinger and the Lancasters entered into a written agreement. The Lancasters thought the agreement reflected Ms. Keplinger's intent to purchase the property in the future, along with a recitation of the amount of rent Ms. Keplinger was to pay each month. Ms. Keplinger maintains it was a crude deed conveying the property from the Lancasters to her.

Sarah Keplinger had found a prospective buyer of the property, and would sell it for a profit of approximately \$60,000.00. Keplinger did not inform the Lancasters that she had this prospective buyer. She planned to transfer the property herself, and keep the profits. Ms. Keplinger hired the Respondent, Howard Kahn, to represent her in this transaction.

The Respondent drafted a Special Warranty Deed and Lis Pendens which indicated Sherry and Herb Lancaster were transferring title in the rental property to Sarah Keplinger. The Deed was signed by the grantee, Sarah Keplinger. Signed the deed. The Respondent filed the Special Warranty Deed and Lis Pendens with the County Clerk of Harris County, Texas despite the fact that there was no litigation concerning the property

pending at the time. The Respondent admitted that he filed the Lis Pendens to slander the title and to prevent the Lancasters from selling the property. Respondent knew a lawsuit was not pending at the time he filed the Lis Pendens. At the time of these actions, the Respondent had no information, other than the statements of Sarah Keplinger, that the Lancasters either intended to sell the property, or to dispossess Sarah Keplinger of the property. The Respondent did not send the Lancasters a copy of either the Special Warranty Deed or the Lis Pendens.

V.

By filing a fraudulent Special Warranty Deed with the County records pertaining to real estate, the Respondent engaged in conduct in violation of Rules **4.01(a)** [in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person]; **4.01(b)**[in the course of representing a client, a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client]; and **8.04(a)(3)**[a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation] of the Texas Disciplinary Rules of Professional Conduct, as defined by Section **1.06(Q)** of the Texas Rules of Disciplinary Procedure..

By filing a Lis Pendens against the Lancaster's property when no litigation with respect to the property was pending at the time of filing in order to slander the title so that the property could not be sold, the Respondent engaged in conduct in violation of Rules **4.01(a)** [in the course of representing a client, a lawyer shall not knowingly make a false

statement of material fact or law to a third person]; **4.01(b)**[in the course of representing a client, a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client]; and **8.04(a)(3)**[a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation] of the Texas Disciplinary Rules of Professional Conduct, as defined by Rule **1.06(Q)** of the Texas Rules of Disciplinary Procedure.

By failing to send a copy of the Special Warranty Deed and the Lis Pendens to Sherry and Herb Lancaster, the Respondent engaged in conduct in violation of Rules **4.01(b)**[in the course of representing a client a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.]; and **8.04(a)(3)** [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation] of the Texas Disciplinary Rules of Professional Conduct as defined by Rule **1.06(Q)** of the Texas Rules of Disciplinary Procedure.

VI.

The complaint which forms the basis of this action was brought to the attention of the Office of the General Counsel of the State Bar of Texas by Sherry Lancaster filing a complaint on or about November 1, 1998.

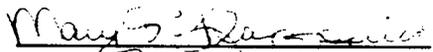
PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner, the Commission For Lawyer Discipline, respectfully prays that this Court discipline Respondent, **HOWARD M. KAHN**, by reprimand, suspension, or disbarment, as the facts shall warrant; and grant all other relief to which Petitioner may show itself to be justly entitled, including costs of Court and attorney's fees.

Respectfully submitted,

Dawn Miller
Interim Acting 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) 759-6931
(713) 752-2158 FAX


MARY F. KLAPPERICH
State Bar No. 11550700

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the General Counsel

July 15, 1999

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

Re: Commission for Lawyer Discipline v. Howard M. Kahn

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 Howard M. Kahn. Mr. Kahn 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 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:

Howard M. Kahn
1001 West Loop South, Suite 219
Houston, TX 77027

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.

Mr. John Adams
July 15, 1999
Page 2

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, service be obtained, and a file-marked copy of the petition be returned to the undersigned.

I have enclosed 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,



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

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINÉ SCHNEIDER

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

SEP 03 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. Howard M. Kahn*, and a copy of the Supreme Court's order appointing the Honorable Bonnie Sudderth, Judge of the 352nd District Court, Fort Worth, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Bonnie Sudderth
Ms. Mary F. Klapperich
Mr. Howard M. Kahn
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

SEP 03 1999

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

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

Honorable Bonnie Sudderth
Judge, 352nd District Court
401 W. Belknap Street
Fort Worth, Texas 76196-7283

Dear Judge Sudderth:

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. Kahn and Ms. Klapperich, and a copy of the letter to the District Clerk of Harris County.

It is recommended that, six to eight weeks after receipt of this letter, you contact the Harris County District Court Administrative Office (713-755-7593) to find out the district court to which this disciplinary case has been assigned. We then recommend that, either before or immediately after you set the case for trial, you again contact the Harris County District Court Administrative Office (713-755-6593) to reserve a courtroom, provide for a court reporter, etc. Finally, you should contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (713-471-3911) to obtain information on lodging, allowable expenses, and claims forms for your expenses incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk



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

SEP 03 1999

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

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

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

Mr. Howard M. Kahn
1001 West Loop South, Suite 219
Houston, Texas 77027

Dear Ms. Klapperich and Mr. Kahn:

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 Bonnie Sudderth, Judge of the 352nd District Court, Fort Worth, Texas to preside in

Commission for Lawyer Discipline v. Howard M. Kahn

Sincerely,

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

John T. Adams
Clerk