

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99- 9176

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

The Supreme Court of Texas hereby appoints the Honorable Sally L. Montgomery, Judge of the 95th District Court of Dallas County, Texas, to preside in the Disciplinary Action styled:

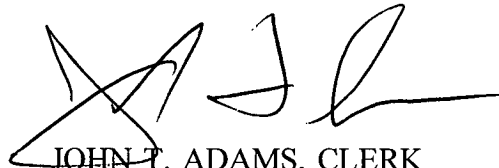
The Commission for Lawyer Discipline v. John L. Sutter

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,

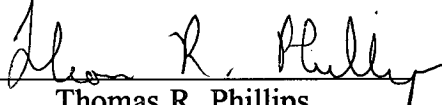
with the Seal thereof affixed at the City
of Austin, this 27th day of September, 1999.

A handwritten signature in black ink, appearing to read 'J. Adams', written over a printed name.

JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9176, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 27 day of September, 1999.


Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER
DISCIPLINE

§
§
§
§
§

IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

JOHN J. SUTTER

_____ 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 (hereinafter referred to as "Petitioner"), complaining of Respondent, JOHN J. SUTTER, (hereinafter referred to as "Respondent"), and would show the Court the following:

I. DISCOVERY CONTROL PLAN

Pursuant to Rules 190.1 and 190.2, TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level 2 Discovery Control Plan. Pursuant to Rule 190.3(a), Petitioner affirmatively pleads that it seeks only monetary relief excluding costs, pre-judgment interest and attorney's fees.

II. NATURE OF PROCEEDING

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* were filed on or after May 1, 1992.

III. VENUE

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; therefore, venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the TEXAS RULES OF DISCIPLINARY PROCEDURE. Respondent may be served by and through his attorney, John Gladney, at 440 Louisiana, Suite 800, Houston, Texas 77002.

IV. CAUSE OF ACTION

The Complainant Irma Vargas (hereinafter referred to as "Vargas") was involved in an automobile accident on September 1, 1996 and Respondent settled Vargas's personal injury case without her permission.

On or about February 19, 1997, Vargas approved the settlement and executed a settlement agreement. In the intervening period Respondent disbursed Two Thousand Four Hundred Forty-Eight and No/100 Dollars (\$2,448.00) of the settlement proceeds to Lawson Chiropractic and Kantex Corporation. Respondent failed to explain the disbursement breakdown of the settlement in order for Vargas to make an informed decision.

Respondent failed to inform Vargas that One Thousand Four Hundred and Forty-Eight and No/100 Dollars (\$1,448.00) of the Two Thousand Four Hundred Forty-Eight and No/100 Dollars (\$2,448.00) reflected on the settlement sheet as paid to Lawson Chiropractic, was actually paid to Kantex Corporation, a company owned by the Respondent's father.

V. RULE VIOLATIONS

The acts and/or omissions of Respondent described in Paragraph IV above which occurred on or before January 1, 1990, constitute conduct in violation of Rules 1.01 a lawyer shall not

accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence; **1.02(a)(2)** a lawyer shall abide by a client's decisions whether to accept an offer of settlement of a matter, except as otherwise authorized by law; **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)** a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; **1.14(a)** a lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person; **1.14(b)** upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property; **1.14(c)** when in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. All funds in a trust or escrow account shall be disbursed only to those persons entitled to receive them by virtue of the representation or by law. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved, and the undisputed portion shall be distributed

appropriately; **2.01** in advising or otherwise representing a client, a lawyer shall exercise independent professional judgment and render candid advice; and **8.04(a)(3)** a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

VI.

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 Irma Vargas' filing of a complaint on or about December 23, 1998.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner, **COMMISSION FOR LAWYER DISCIPLINE,** respectfully prays that this Court discipline Respondent, **JOHN J. SUTTER,** by reprimand, suspension, or disbarment, as the facts shall warrant; restitution; and all other relief to which Petitioner may show itself to be justly entitled, including costs of court and attorneys' fees.

Respectfully submitted,

Dawn Miller
Acting General Counsel

Kimberly M. Gamble
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



KIMBERLY M. GAMBLE
State Bar No. 00789804

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

STATE BAR OF TEXAS



Office of the General Counsel

August 12, 1999

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

Re: Commission for Lawyer Discipline v. John J. Sutter

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 John J. Sutter. Mr. Sutter 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 hereby made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

John J. Sutter
c/o John Gladney
440 Louisiana, Suite 800
Houston, Texas 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.], 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.

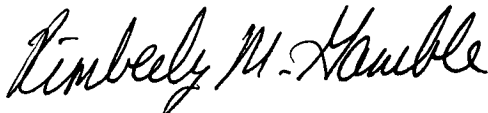
Mr. John T. Adams, Clerk
Supreme Court of Texas
August 12, 1999
Page 2

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 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,



Kimberly M. Gamble
Assistant General Counsel

KMG/lp

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

OCT 07 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

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 J. Sutter*, and a copy of the Supreme Court's order appointing the Honorable Sally L. Montgomery, Judge of the 95th District Court, Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Sally L. Montgomery
Ms. Kimberly M. Gamble
Mr. John J. Sutter
Ms. Melissa Dartez



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

CLERK
JOHN T. ADAMS

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EXECUTIVE ASS'T
WILLIAM L. WILLIS

OCT 07 1999

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

Ms. Kimberly M. Gamble
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. John J. Sutter
c/o John Gladney
440 Louisiana, Suite 800
Houston, Texas 77002

Dear Ms. Gamble and Mr. Sutter:

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 Sally L. Montgomery, Judge of the 95th District Court, Dallas, Texas to preside in

Commission for Lawyer Discipline v. John J. Sutter

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

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OCT 07 1999

CLERK
JOHN T. ADAMS

EXECUTIVE ASST
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASST
NADINE SCHNEIDER

Honorable Sally L. Montgomery
Judge, 95th District Court
600 Commerce Street, 3rd Floor
Dallas, Texas 75202

Dear Judge Fowler:

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. Sutter and Ms. Gamble, 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