

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97- 9050

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

The Supreme Court of Texas hereby appoints the Honorable Manny Alvarez, Judge of Criminal District Court No. 5 of Dallas County, Texas, to preside in the Disciplinary Action styled:


The Commission for Lawyer Discipline v. Larkin C. Eakin, Jr.

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,

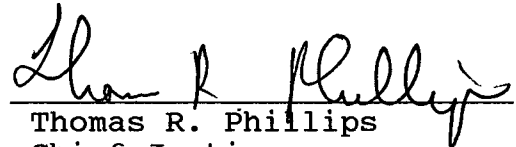
with the Seal thereof affixed at the City
of Austin, this 11th day of March, 1997.

A handwritten signature in black ink, appearing to read 'J. Adams', is written over the printed name of the clerk.

JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 9-9050, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 11 day of March, 1997.


Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINES	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
LARKIN C. EAKIN, JR.	§	_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

The COMMISSION FOR LAWYER DISCIPLINE ("Petitioner") complains of Larkin C. Eakin, Jr. ("Respondent"), showing the Court:

1. 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 complaint that forms the basis of this Disciplinary Petition was filed on or after May 1, 1992.

2. SUBJECT OF PROCEEDING

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. 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, Billy Shepherd, 1850 Two Houston Center, 909 Fannin Street, Houston, Texas, 77010.

3. KUSHNER COMPLAINT

- 3.1** Respondent represented American Exploration Company, the opposing party in a civil lawsuit filed by the Complainant.
- 3.2** On or about January 18, 1995, Mr. Raymond Cooke, Constable of Precinct 1, Waller County, Texas, conducted an illegal NCIC/TCIC search regarding the Complainant's criminal history, for non-law enforcement purposes. Respondent obtained this information from Cooke.
- 3.3** On or about March 14, 1995, the Respondent sent the Complainant a letter threatening to disclose the criminal background information in order to embarrass, coerce and harass, to compel arbitration and to delay a trial setting.
- 3.4** The information that the Respondent obtained was inadmissible under TRCE Rule 609(b) [evidence of a conviction under this rule is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines in the interests of justice that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.]

- 3.5** The Respondent knew the conviction was over ten (10) years old, therefore, also knew that the information was inadmissible and only acquired for impeachment or harassment purposes of the Complainant.
- 3.6** The conduct of the Respondent as alleged above in paragraphs 3.1 through 3.5 which occurred on or after January 1, 1990, constitutes conduct in violation of Rules **4.04(a)** [in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal right of such a person] **8.04(a)(1)** [for knowingly violating the Texas Disciplinary Rules of Professional Conduct] of the Texas Disciplinary Rules of Professional Conduct.
- 3.7** The complaint that forms the basis of this cause of action was brought to the attention of the Office of the General Counsel by Phillip Lee Kushner's filing of a complaint on or about January 23, 1996.

4. PRAYER

Petitioner respectfully prays that this Court discipline Respondent by disbarment, suspension or reprimand, 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

Jeannette M. Duer
Assistant General Counsel

Office of the General Counsel
STATE BAR OF TEXAS
1111 Fannin, Suite 1370
Houston, Texas 77002
Phone: (713) 759-6931
Fax No.: (713) 752-2158



JEANNETTE M. DUER
State Bar No. 00793645

ATTORNEYS FOR PETITIONER/THE
COMMISSION FOR LAWYER
DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

February 12, 1997

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

Re: Commission for Lawyer Discipline v. Larkin C. Eakin, Jr.

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 Larkin C. Eakin. Mr. Eakin 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 practices 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:

Larkin C. Eakin, Jr.
c/o Mr. George William Shepherd, III
1850 Two Houston Center, 909 Fannin
Houston, Texas 77010-1007

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 Civil Case Information Sheet, and 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.

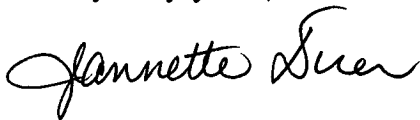
Also enclosed is a pre-addressed envelope for your use in transmitting the above referenced documents to the District Clerk of Harris County, Texas, and a return envelope to be sent to the District Clerk of Harris County, Texas, for the Clerk's use in returning a filemarked

Mr. John T. Adams, Clerk
Supreme Court of Texas
February 12, 1997
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copy of the petition to the undersigned.

If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Jeannette Duer".

Jeannette M. Duer
Assistant General Counsel

JMD/sr
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
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

MAR 17 1997

The Honorable Charles Bacarisse
District Clerk of Harris County
P.O. Box 4651
Houston, Texas 77210

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. Larkin C. Eakin, Jr. and a copy of the Supreme Court's order appointing the Honorable Manny Alvarez, Judge of the Criminal District Court No. 5 of Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Manny Alvarez
Ms. Jeannette M. Duer
Mr. Larkin C. Eakin, Jr.



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

MAR 17 1997

Honorable Manny Alvarez
Judge, Criminal District Court No. 5
Frank Crowley Courts Building
133 N. Industrial Blvd., LB 50
Dallas, Texas 75207

Dear Judge Alvarez:

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. Duer and Mr. Eakin, 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

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GREG ABBOTT

MAR 17 1997

Ms. Jeannette Duer
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Larkin C. Eakin, Jr.
c/o Mr. George William Shepherd, III
1850 Two Houston Center, 909 Fannin
Houston, Texas 77010-1007

Dear Ms. Duer and Mr. Eakin:

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 Manny Alvarez, Judge of the Criminal District Court No. 5 of Dallas, Texas to preside in

Commission for Lawyer Discipline v. Larkin C. Eakin, Jr.

Sincerely,

SIGNED

John T. Adams
Clerk