

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 01-9002

Appointment of a District Judge to Rule on a Motion
to Recuse filed in a State Bar Disciplinary Action

The Supreme Court of Texas hereby appoints the Honorable Cynthia Stevens Kent, Judge of the 114th District Court of Smith County, Texas, to preside in the Disciplinary Action styled:

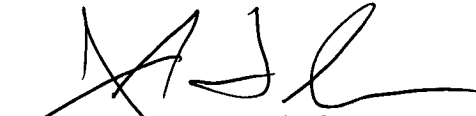
The Commission for Lawyer Discipline v. Stephen Whitson Mitchell

to be filed in a District Court of Tarrant County, Texas.

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Tarrant County, Texas, a copy of the Disciplinary Petition and this Order for filing and service pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

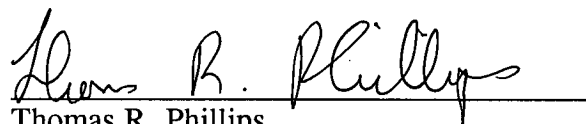
As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City
Of Austin, this 5th day of January, 2001.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9002, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 8 day of January, 2001.


Thomas R. Phillips
Chief Justice

NO. _____

COMMISSION FOR LAWYER DISCIPLINE § IN THE DISTRICT COURT OF
 §
V. § TARRANT COUNTY, TEXAS
 §
STEPHEN WHITSON MITCHELL § _____ 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 (hereinafter called "Petitioner"), complaining of Respondent, Stephen Whitson Mitchell (hereinafter called "Respondent"), 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 on or after May 1, 1992. Pursuant to Rule 190.1, Texas Rules of Civil Procedure (TRCP), Petitioner intends that discovery in this case be conducted under Discovery Control Plan - Level 2, as provided in Rule 190.3, TRCP.

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, Tarrant County, Texas. An officer may serve citation on Respondent by and through his attorney Michael Logan Ware at 111 North Houston, Suite 210, Fort Worth, Texas 76102.

III.

Respondent is a personal injury attorney and maintains a separate trust account for settlement monies. In March and October, of 1996, the trust account had an insufficient balance. Due to that insufficient balance, one client's check was returned insufficient. Funds owned by other clients were not properly safeguarded and were not held in the Respondent's trust account. Respondent failed to promptly notify clients and third persons of the receipt of funds held by Respondent and failed to promptly deliver such funds to the persons entitled thereto. Respondent disbursed funds held by him for clients and third persons to persons not entitled to such funds and failed to maintain disputed funds in his trust account pending resolution of the dispute.

IV.

Respondent had legal assistants working under his direct supervision bill his clients for work which they performed in receiving records affidavits from doctors (medical records proveup). When the money was received, Respondent would retain a portion of that money. This process was not explained to the clients and the settlement documents listing disbursements for medical prove-up were drafted so as to make it appear that an entity other than Respondent and his employees had performed the prove-up service. Respondent engaged in conduct involving dishonesty, fraud, and deciet and received an unconscionable fee by allowing his paralegals to charge for work which would have been done as part of their employment by Respondent.

V.

The conduct described in the two above paragraphs constitutes a violation of Rule(s) 1.04(a), 1.14(a), 1.14(b), 1.14(c) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, State Bar Rules, effective January 1, 1990.

VI.

The complaint which forms the basis of the cause of action hereinabove set forth was brought to the attention of the Office of the Chief Disciplinary Counsel of the State bar of Texas by a complaint filed by Colleen Rae Hamon on or about March 24, 1998.

PRAYER.

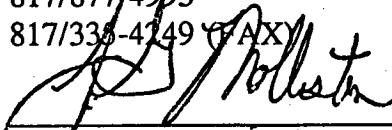
WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined as the facts shall warrant; and that Petitioner have such other relief to which entitled, including costs of Court and attorneys' fees.

Respectfully submitted,

Dawn Miller
Chief Disciplinary Counsel

J.G. Molleston
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
STATE BAR OF TEXAS
500 Throckmorton Street, Suite 2600
Fort Worth, TX 76102
817/877-4993
817/336-4149 FAX



J.G. Molleston
State Bar Card No. 00795924

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

November 7, 2000

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

Re: Commission for Lawyer Discipline v. Stephen Whitson Mitchell

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 Stephen Whitson Mitchell. Mr. Mitchell has designated Tarrant 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:

Stephen W. Mitchell
c/o Michael Ware
111 North Houston, #210
Fort Worth, Texas 76102

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 the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Tarrant 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.

Mr. John Adams
November 7, 2000
Page Two

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Tarrant County, Texas, and a return envelope to be sent to the District Clerk of Tarrant 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,

A handwritten signature in cursive script, appearing to read "J. G. Molleston".

J. G. Molleston
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas

JGM/



Cynthia Stevens Kent
*Judge One Hundred Fourteenth Judicial
District Court
Tyler, Texas 75702*

*Court Reporter
903-535-0617*

*Court Coordinator
903-535-0613*

December 14, 2000

Mr. William Willis
Executive Assistant
201 West 14th Street
P. O. Box 12248
Austin, Texas 78711

RE: Letter dated December 12, 2000
Assignment in a disciplinary case
Commission for Lawyer Discipline v. Stephen Whitson Mitchell

Dear Mr. Willis:

I have received your letter dated December 12, 2000 notifying me that the Supreme Court desire to assign me to a District Court of Tarrant County to preside in a disciplinary case styled Commission for Lawyer Discipline v. Stephen Whitson Mitchell.

I currently know of no conflict or disqualification from this assignment.

I will await the order of assignment and then proceed according to the procedure outlined in your correspondence and the Texas rules of Disciplinary Procedure 3.01 through 3.16.

Very truly yours,



HONORABLE CYNTHIA STEVENS KENT

CSK:CM



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 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

JAN 12 2001

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

Mr. J.G. Molleston
Assistant General Counsel, State Bar of Texas
500 Throckmorton, Suite 2600
Fort Worth, Texas 76102

Mr. Stephen W. Mitchell
c/o Michael Ware
111 North Houston, #210
Fort Worth, Texas 76102

Dear Mr. Molleston and Mr. Mitchell:

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 Cynthia Stevens Kent, Judge of the 114th District Court, Tyler, Texas to preside in

Commission for Lawyer Discipline v. Stephen Whitson Mitchell

Sincerely,

SIGNED

John T. Adams
Clerk



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

JUSTICES
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GREG ABBOTT
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JAN 12 2001

CLERK
JOHN T. ADAMS
EXECUTIVE ASSISTANT
WILLIAM L. WILLIS
DEPUTY EXECUTIVE ASST
JIM HUTCHESON
ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

Honorable Cynthia Stevens Kent
Judge, 114th District Court
202 Courthouse
100 N. Broadway Avenue
Tyler, Texas 75702

Dear Judge Kent:

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. Mitchell and Mr. Molleston, and a copy of the letter to the District Clerk of Tarrant County.

It is recommended that, six to eight weeks after receipt of this letter, your coordinator contact the District Clerk of Tarrant County (817-884-1574) to learn the names, addresses, and telephone numbers of counsel for purposes of scheduling a conference. Also, either before or immediately after you set the case for trial, you should contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (817-884-1558) to reserve a courtroom, provide for a court reporter, etc., and to obtain 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

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

JUSTICES
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CRAIG T. ENOCH
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HARRIET O'NEILL
ALBERTO R. GONZALES

JAN 12 2001

CLERK
JOHN T. ADAMS
EXECUTIVE ASSISTANT
WILLIAM L. WILLIS
DEPUTY EXECUTIVE ASST
JIM HUTCHESON
ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

The Honorable Thomas A. Wilder
District Clerk of Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0402

Dear Mr. Wilder:

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. Stephen Whitson Mitchell*, and a copy of the Supreme Court's order appointing the Honorable Cynthia Stevens Kent, Judge of the 114th District Court, Tyler, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Cynthia Stevens Kent
Mr. J. G. Molleston
Mr. Stephen Whitson Mitchell