

ORDER OF THE SUPREME COURT OF TEXAS

9133

Misc. Docket No. 01-----

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

The Supreme Court of Texas hereby appoints the Honorable Don Cosby, Judge of the 67th District Court of Tarrant County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Joseph D. Libby

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 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 9th day of August, 2001.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9133, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 7 day of August, 2001.


Thomas R. Phillips
Chief Justice

Cause No. _____

COMMISSION FOR LAWYER DISCIPLINE §
Petitioner §
§
v. §
§
JOSEPH D. LIBBY §
Respondent §

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 (the "CFLD"), complains of Respondent, **JOSEPH D. LIBBY**("Respondent") as follows:

1. DISCOVERY CONTROL PLAN

1.1 Pursuant to Rules 190.1 and 190.3, 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(b), TRCP, Petitioner affirmatively pleads that it seeks monetary relief aggregating fifty thousand and no/100 dollars (\$50,000.00) or more, not excluding costs, pre-judgment interest and attorneys' fees.

2. NATURE OF PROCEEDING

2.1 The CFLD 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 Disciplinary Petition was filed on or after May 1, 1992.

3. VENUE

3.1 Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent's address and 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, (TRDP). Respondent, **JOSEPH D. LIBBY** may be served with citation by and through his attorney of record, Holly Crampton, 505 Lamar Ave., Wichita Falls, Texas 76301.

4. STATE BAR OF TEXAS INITIATED COMPLAINT

PURSUANT TO PART III OF THE TEXAS RULES OF DISCIPLINARY PROCEDURE, PETITIONER REQUESTS THIS COURT DISCIPLINE LIBBY FOR HIS ACTS OF PROFESSIONAL MISCONDUCT.

A. LIBBY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

8.04(a)(11) for engaging in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the STATE BAR RULES relating to Mandatory Continuing Legal Education.

1. On September 1, 1997, Joseph Damian Libby (hereinafter called "Respondent"), was suspended from the practice of law for non-payment of dues and for non-payment of Texas Attorney Occupational Tax.

2. On October 2, 1997, Respondent filed an Original Petition for Divorce in Cause No. 97-49911, *In The Marriage Of William Edwin Byrd, Jr. and Phyllis Jean Byrd*; in the 245th Judicial District Court of Harris County.
3. State Bar of Texas' Article III, Section 7(A): "When a member, who has been suspended for nonpayment of fees or assessments, removes such default by payment of fees or assessments then owing, plus an additional amount equivalent to one-half the delinquency, the suspension shall automatically be lifted and the member restored to former status. Return to former status shall be retroactive to inception of suspension, but shall not affect any proceeding for discipline of the member for professional misconduct."
4. Respondent engaged in the practice of law while administratively suspended by the State Bar of Texas.
5. **The complaint that forms the basis of this cause of action was brought by the office of the Chief Disciplinary Counsel of the State Bar of Texas on or about June 28, 2000.**

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent as the facts shall warrant by finding professional misconduct with regard to the above-stated rule violations and imposing a sanction of reprimand, suspension and/or disbarment; and that the CFLD have all other relief to which it may show itself to be justly entitled, including costs of court, and attorneys' fees.

Respectfully submitted,

DAWN MILLER
Chief Disciplinary Counsel

JEANNETTE M. DUER
Assistant Disciplinary Counsel

Office of the General Counsel
State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002
Phone: (713) 759-6931
Fax: (713) 752-2158



JEANNETTE M. DUER
State Bar No. 00793645

**ATTORNEYS FOR PETITIONER
THE COMMISSION FOR
LAWYER DISCIPLINE**

J:\LIBBY.JOS\CFLD1.JMD\DP.WPD

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

July 2, 2001

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

Re: Commission for Lawyer Discipline v. Joseph D. Libby

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 Joseph D. Libby. Mr. Libby has designated Harris County, Houston, 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 through his counsel at the address shown below and the undersigned of the identity and address of the judge assigned:

Joseph D. Libby
c/o Holly Crampton
505 Lamar Avenue
Wichita Falls, Texas 76301

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. If not, I would respectfully request that an alternate appointment be made.

Mr. John Adams

July 2, 2001

Page Two

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.

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,



Jeannette M. Duer
Assistant Disciplinary Counsel

dsy

Enclosures

J:\LIBBY.JOS\CFLD1.JMD\CLERK1.SCT



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
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

AUG 15 2001

Honorable Don Cosby
Judge, 67th District Court
401 W. Belknap Street, 8th Floor
Fort Worth, Texas 76196-0222

Dear Judge Cosby:

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. Libby and Ms. Duer, 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

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

CLERK
JOHN T. ADAMS

JUSTICES
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EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

AUG 15 2001

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. Joseph D. Libby*, and a copy of the Supreme Court's order appointing the Honorable Don Cosby, Judge of the 67th District Court, Fort Worth, Texas.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Don Cosby
Ms. Jeannette M. Duer
Mr. Joseph D. Libby
Ms. Melissa Dartez



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
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ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

AUG 15 2001

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

Mr. Joseph D. Libby
c/o Holly Crampton
505 Lamar Avenue
Wichita Falls, Texas 76301

Dear Ms. Duer and Mr. Libby:

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 Don Cosby, Judge of the 67th District Court, Fort Worth, Texas to preside in

Commission for Lawyer Discipline v. Joseph D. Libby

Sincerely,

SIGNED

John T. Adams
Clerk