

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 02 - **9108**

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

The Supreme Court of Texas hereby appoints the Honorable Burt Carnes, Judge of the 368th District Court of Williamson County, Texas, to preside in the Disciplinary Action styled

The Commission for Lawyer Discipline v. B. Joe Thomson

to be filed in the 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 pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

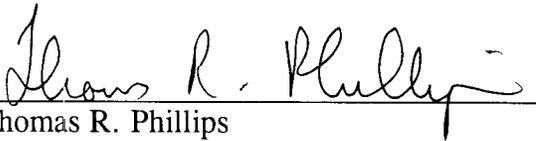
As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City
Of Austin, this 7th day of June, 2002.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 02-9108, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code, §74.057.

Signed this 10 day of June, 2002.



Thomas R. Phillips
Chief Justice



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
XAVIER RODRIGUEZ

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JUN 14 2002

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. B. Joe Thomson* and a copy of the Supreme Court's order appointing the Honorable Burt Carnes, Judge of the 368th District Court, Georgetown, Texas.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Burt Carnes
J.G. Molleston
Mr. B. Joe Thomson
Ms. Melissa Dartez



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12243 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

CLERK
JOHN T. ADAMS

JUSTICES
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EXECUTIVE ASSISTANT
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DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JUN 14 2002

The Honorable Burt Carnes
Judge, 368th District Court
405 Martin Luther King Street, Box 8
Georgetown, Texas 78626

Dear Judge Carnes:

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. Thomson and Mr. Molleston, 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 (936-538-8176) 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

CAUSE NO. _____

COPY

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
VS.	§	HARRIS COUNTY, TEXAS
B. JOE THOMSON	§	_____ 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 (hereinafter referred to as the "CFLD"), complains of B. JOE THOMSON ("hereinafter referred to as "Respondent") as follows:

**I.
DISCOVERY CONTROL PLAN**

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

**II.
PROCEDURAL BASIS FOR SUIT**

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.

III.
VENUE AND SERVICE

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent's principal place of practice is Harris County, Texas, and therefore venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure. The Harris County District Clerk may service citation upon Respondent located at P.O. Box 61057, Houston, Texas 77208-1057 via certified mail, return receipt requested in accordance with Rule 103 of the Texas Rules of Civil Procedure.

IV.
FIRST CAUSE OF ACTION

In or around July 1982, Moses Muzquiz, Jr., M.D. (hereinafter referred to as "Complainant") retained Respondent for representation in a bankruptcy matter. On or about July 12, 1982, a Chapter 7 Bankruptcy was filed under 82-01953 in the United States Bankruptcy Court for the Southern District, Houston Division. During the pendency of the bankruptcy matter, Complainant informed Respondent that Complainant had a property interest in Mexico. However, Respondent failed to disclose this information to the Bankruptcy Trustee.

In January 1995, Complainant retained Respondent to appeal a decision rendered in 95-20057; Muzquiz v. Weissfisch. Respondent and Complainant agreed to a \$150.00 per hour fee, however such agreement was not put in the form of a written contract. Throughout the course of this representation, Respondent was paid approximately \$10,000.00.

On or about January 16, 1996, the Fifth Circuit Court of Appeals affirmed the decision rendered in 95-20057. Thereafter Respondent sent statements to Complainant that were unclear, contained duplications, billing for clerical duties at an attorneys rate and the entries did not explain in

detail the services Complainant was to pay for. Additionally, Complainant was charged for Respondent purchased a Federal Rules of Civil and Appellate Procedure book. Respondent contacted Complainant on numerous occasions via collect and later charged Complainant for long distance calls. Respondent double billed activities and repeatedly failed to acknowledge or records payments received by Complainant. Complainant disputed Respondent's fees and refused to pay them. During this dispute of the attorneys' fees that were due, Complainant made numerous requests for the status of his matter, to which Respondent stated that no new information had been received. However, Respondent continued to bill for services as if he were actively pursuing the matter. In or around 1999, Respondent filed suit against Complainant to collect his past due attorney fees for representing Complainant in H-99-4256; Thomson – Musquiz alleging federal racketeering claims.

On or about May 18, 1999, Respondent sent a letter to Complainant demanding payment of the attorneys' fees in the appeal matter and threatened to sue Complainant.

On or about January 11, 2000, Respondent sent a letter to Complainant informing Complainant that if Complainant did not pay the attorneys fees, Respondent would use confidential information regarding Complainant to present criminal charges against him. Respondent engaged in this activity solely to gain an advantage in the civil matter.

On or about May 30, 2000, the court entered a final judgment of dismissal with prejudice in H-99-4256; Thomson-Musquiz.

On or about June 27, 2000, Respondent again resorted to extortion tactics by sending written correspondence to Complainant threatening to divulge confidential information regarding Complainant to authorities. Respondent's coercive threats constituted a criminal act. Further, this

letter was sent during a time in which Complainant was represented by James Fogo. Respondent had full knowledge of this representation.

On or about October 3, 2000, Respondent sent letter to Complainant threatening Complainant with re-opening the 1982 bankruptcy case because of Complainant's failure to disclose the Mexico property. Respondent sent this letter as a threat against Complainant to pay the attorneys' fees for Respondent's representation of the appeal in 95-20057.

The acts and/or omissions of the Respondent described in Paragraph III(A) above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

3.01 for bringing or defending a proceeding, or asserting or controverting an issue therein, without a reasonable belief that there is a basis for doing so that is not frivolous.

1.05(b)(2) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly use confidential information of a client to the disadvantage of the client unless the client consents after consultation.

1.05(b)(3) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly use privileged information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

1.05(b)(4) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly use confidential information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.

4.02(a) in representing a client, for communicating, causing or encouraging another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

4.02(b) In representing a client a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

4.04(a) in representing a client, for using 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.

4.04(b)(1) for presenting, participating in presenting, or threatening to present criminal or disciplinary charges solely to gain an advantage in a civil matter;

8.04(a)(1) for violating these Rules, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

8.04(a)(2) for committing a serious crime or any other criminal act that reflects adversely on the lawyer's honesty trustworthiness or fitness as a lawyer in other respects;

8.04(a)(3) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;

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 Moses Muzquiz filing a complaint on or about August 7, 2000.

Prayer

WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent by reprimand, suspension or disbarment, 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.

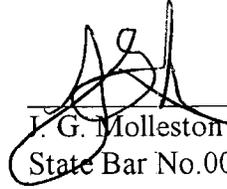
Respectfully submitted,

Dawn Miller
Chief Disciplinary Counsel

J. G. Molleston
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
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Houston, Texas 77002
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J. G. Molleston
State Bar No. 00795924

ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE