

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 94- 9165

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

The Supreme Court of Texas hereby appoints the Honorable Harold Entz, Judge of the 194th District Court of Dallas County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. J. Monty Bray

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 31st day of October, 1994.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 94-9165 , is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 31st day of October , 1994.


Thomas R. Phillips
Chief Justice



THE SUPREME COURT OF TEXAS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CHIEF JUSTICE
THOMAS R. PHILLIPS

JUSTICES
RAUL A. GONZALEZ
JACK HIGHTOWER
NATHAN L. HECHT
LLOYD DOGGETT
JOHN CORNYN
BOB GAMMAGE
CRAIG ENOCH
ROSE SPECTOR

CLERK
JOHN T. ADAMS

EXECUTIVE ASST.
WILLIAM L. WILLIS

ADMINISTRATIVE ASST.
NADINE SCHNEIDER

November 7, 1994

The Honorable Katherine Tyra
District Clerk of Harris County
Post Office Box 4651
Houston, Texas 77210

Dear Ms. Tyra:

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. J. Monty Bray and a copy of the Supreme Court's order appointing the Honorable Harold Entz, Judge of the 194th District Court, Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Harold Entz
Mr. J. Monty Bray
Mr. James M. McCormack



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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WILLIAM L. WILLIS

ADMINISTRATIVE ASST.
NADINE SCHNEIDER

November 7, 1994

Mr. James M. McCormack
General Counsel, State Bar of Texas
P.O. Box 12487
Austin, Texas 78711

Mr. J. Monty Bray
915 Winbern, Suite 200
Houston, Texas 77002-9509

Dear Mr. McCormack and Mr. Bray:

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 Harold Entz, Judge of the 194th District Court, Dallas, Texas to preside in

Commission for Lawyer Discipline v. J. Monty Bray

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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ADMINISTRATIVE ASST.
NADINE SCHNEIDER

November 7, 1994

Honorable Harold Entz
Judge, 194th District Court
133 N. Industrial Boulevard
Dallas, Texas 75207

Dear Judge Entz:

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. Bray and Mr. McCormack, and a copy of the letter to the District Clerk of Harris County.

It is recommended that, about a month or six weeks after receipt of this letter, you or your coordinator contact the Harris County District Court Administrative Office (713-755-6576) to find out in which court the case has been filed, 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

NO. _____

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
V.	§	HARRIS COUNTY, TEXAS
J. MONTY BRAY	§	_____ 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, J. Monty Bray (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 complaints which form the basis of the Disciplinary Petition were filed after May 1, 1992.

II.

Respondent is an attorney who is a member of the State Bar of Texas. Respondent's license to practice law in Texas is presently administratively suspended due to Respondent's failure to comply with the Minimum Continuing Legal Education requirements set forth in Article XII of the State Bar Act. Respondent has been so suspended since on or about August 14, 1992. Respondent is a resident of and has his principal place of practice in Harris County, Texas. An officer may serve citation on Respondent at 915 Winbern, Suite 200, Houston, Harris County, Texas.

FIRST CAUSE OF ACTION

III.

On or about January 20, 1989, Sharon Gaines (hereinafter called "Gaines") was involved in an automobile accident in which she sustained physical injuries. Thereafter, she retained Respondent to represent her interests in seeking recovery for her injuries and damages. On or about February 22, 1989, Respondent executed in favor of Westway Physical Therapy, Inc. (hereinafter called "Westway"), an instrument which, among other things, gave a lien to Westway against any settlement, claim, judgment or verdict obtained in Gaines' personal injury case (hereinafter called "Gaines protection agreement"). On or about July 3, 1989, Respondent as well executed the Gaines protection agreement which, among other things, acknowledged the lien created in favor of Westway and agreed to withhold from any settlement or judgment amount funds sufficient to satisfy the amount of the lien. Thereafter, Gaines' personal injury case was settled by Respondent. Respondent failed and/or refused to pay Westway in accordance with the Gaines protection agreement, although funds were withheld from the proceeds of settlement by Respondent to pay Westway.

IV.

On or about July 8, 1989, Mary Alcoba (hereinafter called "Alcoba") was involved in an automobile accident in which she sustained physical injuries. Thereafter, she retained Respondent to represent her interests in seeking recovery for her injuries and damages. On or about October 12, 1989, Respondent executed in favor of Westway an instrument which, among other things, gave a lien to Westway against any settlement, claim, judgment or verdict obtained in Alcoba's personal injury case (hereinafter called "Alcoba protection agreement"). On or

about October 19, 1989, Respondent as well executed the Alcoba protection agreement which, among other things, acknowledged the lien created in favor of Westway and agreed to withhold from any settlement or judgment amount funds sufficient to satisfy the amount of the lien. Thereafter, Alcoba's personal injury case was settled by Respondent. Respondent failed and/or refused to pay Westway in accordance with the Alcoba protection agreement, although funds were withheld from the proceeds of settlement by Respondent to pay Westway.

V.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs III. and IV. hereinabove constitute conduct violative of Rules 1.14(a), 1.14(b), 1.14(c), and/or 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

VI.

The complaint which forms the basis of the First Cause of Action hereinabove set forth was brought to the attention of the Office of General Counsel, State Bar of Texas, by Amy Burns' filing of a complaint on or about May 18, 1992.

SECOND CAUSE OF ACTION

VII.

By letter dated June 16, 1992, the Grievance Committee for State Bar District 4I urged Respondent to provide information in response to a complaint presented against him by Burns which complaint was brought to the attention of the General Counsel of the State Bar of Texas by the filing of the complaint with the State Bar of Texas on or about May 18, 1992. Respondent knowingly failed to respond to a lawful demand for information from a disciplinary

authority, to-wit, the Grievance Committee for State Bar District 4I, thereby engaging in professional misconduct in violation of Rule 8.01(b) of the Texas Disciplinary Rules of Professional Conduct.

VIII.

The complaint which forms the basis of the Second Cause of Action hereinabove set forth was brought to the attention of the General Counsel of the State Bar of Texas by the State Bar of Texas' filing of a complaint on or about December 1, 1992.

THIRD CAUSE OF ACTION

IX.

In or around June of 1989, Donald R. Olson (hereinafter called "Olson") hired Respondent to act as his attorney to represent him in connection with seeking recovery for personal injuries sustained in a Randall's Food Market. Thereafter, Respondent neglected the legal matter entrusted to him by Olson. Although Respondent filed suit before the running of the statute of limitations, Respondent failed to obtain service upon one of the defendants until some twenty (20) months after suit was filed and some three (3) years and three (3) months after the alleged injuries had occurred, as a result of which said defendant obtained summary judgment in its favor because of Respondent's lack of diligence in obtaining service. In fact, such defendant received notice of the lawsuit not because Respondent had obtained service but because another defendant filed a cross-action with which it served that defendant. Respondent failed to keep Olson apprised of the status of his matter and failed to respond to requests for information regarding the status of Olson's matter.

X.

Such acts and/or omissions on the part of Respondent as are described in Paragraph IX. hereinabove which occurred prior to January 1, 1990, constitute conduct violative of Disciplinary Rules 6-101(A)(3), 7-101(A)(1), 7-101(A)(2) and/or 7-101(A)(3) of the Texas Code of Professional Responsibility. Such acts and/or omissions on the part of Respondent as are described in Paragraph IX. hereinabove which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.01(b)(1), 1.03(a), and/or 1.03(b) of the Texas Disciplinary Rules of Professional Conduct.

XI.

The complaint which forms the basis of the Third Cause of Action hereinabove set forth was brought to the attention of the Office of General Counsel, State Bar of Texas, by Olson's filing of a complaint on or about August 13, 1992.

FOURTH CAUSE OF ACTION

XII.

By letter dated October 30, 1992, the Grievance Committee for State Bar District 4I urged Respondent to provide information in response to a complaint presented against him by Olson which complaint was brought to the attention of the General Counsel of the State Bar of Texas by the filing of the complaint with the State Bar of Texas on or about August 13, 1992. Respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority, to-wit, the Grievance Committee for State Bar District 4I, thereby engaging in professional misconduct in violation of Rule 8.01(b) of the Texas Disciplinary Rules of Professional Conduct.

XIII.

The complaint which forms the basis of the Fourth Cause of Action hereinabove set forth was brought to the attention of the General Counsel of the State Bar of Texas by the State Bar of Texas' filing of a complaint on or about January 11, 1993.

FIFTH CAUSE OF ACTION

XIV.

By letter dated January 7, 1991, the Grievance Committee for State Bar District 4I urged Respondent to provide information in response to a complaint presented against him by John A. Paige (hereinafter called "Paige") which complaint was brought to the attention of the General Counsel of the State Bar of Texas by the filing of the complaint with the State Bar of Texas on or about November 19, 1990. Respondent asserted by letter dated on or about January 26, 1991, that Paige no longer desired to pursue his complaint but did not otherwise respond to the allegations contained in Paige's complaint. In truth and in fact, it was not true that Paige no longer desired to pursue his complaint. By letters dated August 12, 1991, September 13, 1991, October 23, 1991, and December 19, 1991, the Grievance Committee for State Bar District 4I sought a response from Respondent to the allegations contained in Paige's complaint which complaint had been furnished to Respondent in the January 7, 1991, letter above-referenced. Each of said letters was mailed by certified mail, return receipt requested, and each of said letters was returned by the United States Postal Service marked "Unclaimed". Respondent, in choosing not to accept such certified mail and in failing to provide the information requested in the January 7, 1991, letter, was knowingly failing to respond to a lawful demand for information from a disciplinary authority, to-wit, the Grievance Committee for State Bar District 4I, thereby

engaging in professional misconduct in violation of Rule 8.01(b) of the Texas Disciplinary Rules of Professional Conduct.

XV.

The complaint which forms the basis of the Fifth Cause of Action hereinabove set forth was brought to the attention of the General Counsel of the State Bar of Texas by the State Bar of Texas' filing of a complaint on or about June 11, 1992.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disbarred, suspended, or reprimanded as the facts shall warrant; and that Petitioner have such other relief to which entitled, including costs of court and attorney's fees.

Respectfully submitted,

James M. McCormack
General Counsel

Dawn Miller
Senior Assistant General Counsel

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ATTORNEYS FOR PETITIONER