

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 96- 9038

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

The Supreme Court of Texas hereby appoints the Honorable Frank T. Carmona, Judge of the 122nd District Court of Galveston County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Daniel Rutherford

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Bexar 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.

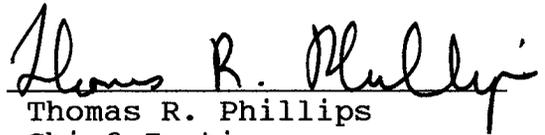
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 22nd day of January, 1996.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9038, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 24 day of January, 1996.


Thomas R. Phillips
Chief Justice

No. _____

FILE COPY

COMMISSION FOR LAWYER
DISCIPLINE

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§
§

IN THE DISTRICT COURT OF

V.

BEXAR COUNTY, TEXAS

DANIEL RUTHERFORD

____TH JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Petitioner, COMMISSION FOR LAWYER DISCIPLINE, complaining of Respondent, DANIEL RUTHERFORD, and in support thereof would respectively show the Court the following:

Parties

Petitioner is the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas. Respondent, DANIEL RUTHERFORD, State Bar No. 17450000, is an attorney licensed to practice law in the State of Texas and is a member of the State Bar of Texas. Respondent is a resident of Bexar County, Texas and may be served at 825 South St. Mary's St., San Antonio, Bexar County, Texas 78205, his usual place of employment. No service is requested at this time.

Venue

Respondent's principal place of law practice is in Bexar County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Bexar County, Texas.

Professional Misconduct

I.

Petitioner brings this disciplinary action pursuant to State Bar Act, Tex. Gov't. Code Ann., Sec. 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 this action was filed on May 5, 1995. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

II.

On or about September 5, 1991, Darryl Elliott hired Respondent to represent him in a claim for personal injury damages as a result of an automobile accident which occurred on or about October 6, 1989. On behalf of Mr. Elliott, Respondent filed suit against EE Operation Corporations d/b/a West Contract Services and Buddy Davidson. In late 1994, the litigation was settled for \$90,000.00 and a release was signed by Mr. Elliott on November 18, 1994 releasing all claims he had against the above defendants and their insurer, CNA Insurance Company.

III.

On or about November 18, 1994, Mr. Elliott was presented with a settlement summary which he signed. Respondent knowingly misrepresented numerous expenditures in Mr. Elliott's settlement summary and made false statements to Mr. Elliott regarding the amount of these expenditures. The settlement summary contains numerous irregular entries for expenses which cannot be explained. Per page charges for photocopies range from \$.25 to \$4.50 per page.

Additionally, the settlement summary sheet contains deductions for investigation and expert witness expenses which were not incurred for Mr. Elliott's case.

IV.

Out of Mr. Elliott's settlement funds, Respondent retained money for payment to medical care providers and a records service and knowingly failed to disburse the settlement funds to those persons entitled to receive the funds. These funds were not returned to Mr. Elliott nor were they accounted for.

V.

During the investigation of this disciplinary complaint, Respondent represented to the District 10A Grievance Committee of the State Bar of Texas that he personally sat down with Mr. Elliott and went over each of the line items on the settlement summary. Mr. Elliott denies that a face-to-face meeting with Respondent relating to the settlement summary ever took place.

VI.

The conduct of Respondent described above constitutes violations of Texas Disciplinary Rules of Professional Conduct, Rules 1.14 (b); 1.14 (c); 8.01 (a); and/or 8.04 (a) (3).

Prayer

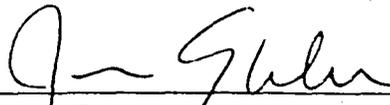
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent, DANIEL RUTHERFORD, and that Petitioner have such other relief to which it is entitled, including costs of court and attorney's fees.

Respectfully submitted,

James M. McCormack
General Counsel

James Ehler
Assistant General Counsel

Office of the General Counsel
State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205
Telephone: (210) 271-7881
Telecopier: (210) 271-9642



James Ehler
State Bar No. 06484650

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Z 354 196 904



December 13, 1995

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

Office of the General Counsel
Regional Office
Soledad Plaza West
425 Soledad, Suite 300
San Antonio, Texas 78205
(210) 271-7881
FAX: (210) 271-9642

RE: Commission for Lawyer Discipline v. Daniel R. Rutherford

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 Daniel Rutherford. Mr. Rutherford has designated Bexar County 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 made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Daniel Rutherford
825 S. St. Mary's Street
San Antonio, Texas 78205-3408

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 as 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 and the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Bexar County, Texas, with the request that the suit be filed, and a filemarked copy of the petition returned to the undersigned.

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Bexar County, Texas and a return envelope to be sent to the District Clerk of Bexar County, Texas, for the Clerk's use in returning a filemarked copy of the petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Ehler". The signature is fluid and cursive, with the first letter "J" being particularly large and stylized.

James Ehler
Assistant General Counsel

Enclosures

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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

January 26 , 1996

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

The Honorable David J. Garcia
District Clerk of Bexar County
100 Dolorosa Street
San Antonio, Texas 78205-1205

Dear Mr. Garcia:

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. Daniel Rutherford. and a copy of the Supreme Court's order appointing the Honorable Frank T. Carmona, Judge of the 122nd District Court, Galveston, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Frank T. Carmona
Mr. Daniel Rutherford
Mr. James M. McCormack



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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CLERK
JOHN T. ADAMS

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WILLIAM L. WILLIS

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PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

Honorable Frank T. Carmona
Judge, 122nd District Court
County Courthouse
722 Moody Avenue
Galveston, Texas 77550

Dear Judge Carmona:

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. Rutherford and Mr. McCormack, and a copy of the letter to the District Clerk of Bexar County.

It is recommended that, six to eight weeks after receipt of this letter, you or your coordinator contact the Bexar County Administrative Office (210 220-2300) to find out the district court to which this disciplinary case has been assigned, names and addresses of counsel, etc. We then recommend that, either before or immediately after you set the case for trial, you contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (210-769-3519) to reserve a courtroom, provide for a court reporter, etc. and to obtain information 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

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

CLERK
JOHN T. ADAMS

TEL: (512) 463-1312

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RAUL A. GONZALEZ
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FAX: (512) 463-1365

January 26, 1996

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

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

Mr. Daniel Rutherford
825 South St. Mary's
San Antonio, Texas 78205-3408

Dear Mr. McCormack and Mr. Rutherford:

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 Frank T. Carmona, Judge of the 122nd District Court, Galveston, Texas to preside in

Commission for Lawyer Discipline v. Daniel Rutherford

Sincerely,

SIGNED

John T. Adams
Clerk