

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 96- 9149

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

The Supreme Court of Texas hereby appoints the Honorable Homer Salinas, Judge of the 92nd District Court of Hidalgo County, Texas, to preside in the Disciplinary Action styled:

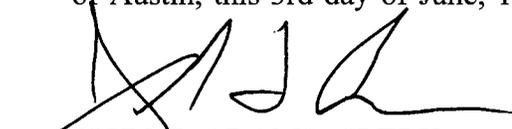
The Commission for Lawyer Discipline v. Marcus E. Faubion, Jr.

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.

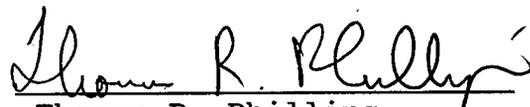
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 3rd day of June, 1996.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9149, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 4 day of June, 1996.

Handwritten signature of Thomas R. Phillips in cursive script.

Thomas R. Phillips
Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE §
v. §
MARCUS E. FAUBION, JR. §

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW, Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas (hereinafter called "Petitioner"), complaining of Respondent, Marcus E. Faubion, Jr. (hereinafter called "Respondent"), showing the Court:

I.

Petitioner 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.

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 Harris County, Texas, and therefore venue is appropriate in Harris County, Texas, pursuant to Rule

3.03 of the Texas Rules of Disciplinary Procedure. Respondent may be served at his business address located at 9000 Gulf Freeway, Suite 100, Houston, Harris County, Texas, 77017.

III.

On or about June 25, 1993, Barry Wagenknecht (hereinafter called "Barry") was killed in an automobile accident. On or about July 1, 1993, Respondent signed a contingent fee contract with Shelley Wagenknecht (hereinafter called "Shelley"), Barry's wife and the designated administratrix of Barry's estate, to represent Shelley in a wrongful death action and in the matter of the estate. On or about July 6, 1993, Respondent also signed contingent fee contracts with Barry's daughter, Amber Wagenknecht (hereinafter called "Amber"), and Barry's parents, Ray and June Wagenknecht (hereinafter called "Ray" and "June" respectively), to represent them in the wrongful death action and in the matter of the estate.

IV.

Thereafter, Amber, Ray, and June became concerned that Respondent's representation of Shelley was in direct conflict with their interests. By letter dated March 9, 1994, Amber, Ray, and June terminated Respondent's services. Respondent was requested to withdraw as their attorney of record and to forward their file to them. By letter dated March 14, 1994, Respondent refused to do so.

V.

Thereafter, Respondent settled the wrongful death action for \$525,000.00 in or around October 1994, and deposited the proceeds into his trust account. Respondent was aware that a dispute had arisen amongst Shelley, Amber, Ray, and June concerning each person's respective interest in the settlement. Even so, by check number 2216 and dated October 21,

1994, Respondent disbursed the remaining \$337,354.99 of the settlement to Shelley, rather than keeping the funds separate until the dispute could be resolved, and thereby protecting the interests of all of his clients, Shelley, Amber, Ray, and June.

VI.

In or around April 1995, Amber, Ray, and June filed a lawsuit, which was based on the same matter or a substantially related matter as the original wrongful death suit, against Respondent, Shelley, and the original defendants in the original wrongful death suit. Thereafter, on or about June 1, 1995, without the consent of Amber, Ray, and June, Respondent filed the Defendant's Original Answer on behalf of the Cloverleaf Volunteer Fire Department (hereinafter called "Cloverleaf"), even though he had represented Shelley, Amber, Ray, and June against Cloverleaf in the original wrongful death suit. Respondent also filed an answer on behalf of Craig Johnson, another of the defendants in the original wrongful death action.

VII.

The acts and/or omissions of the Respondent described in Paragraphs III-VI above, which occurred on or after January 1, 1990, constitute conduct in violation of Rules 1.14(c), 1.15(a)(3), 1.15(d), and 1.09(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

VIII.

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 Ray and June Wagenknecht's filing of a complaint on or about October 17, 1995.

Prayer

WHEREFORE, PREMISES CONSIDERED, Petitioner the Commission for Lawyer Discipline respectfully prays that this Court discipline Respondent Marcus E. Faubion, Jr., 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 attorney's fees.

Respectfully submitted,

James M. McCormack
General Counsel

Stephen D. Statham
Assistant General Counsel

Office of the General Counsel
STATE BAR OF TEXAS
1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6931
Fax No. (713) 759-1932



STEPHEN D. STATHAM
State Bar No. 19082500

ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

April 22, 1996

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

Re: Commission for Lawyer Discipline v. Marcus E. Faubion, Jr.

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 Marcus E. Faubion, Jr. Mr. Faubion has designated Harris 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 practices to preside in this case. Upon appointment, request is hereby made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Marcus E. Faubion, Jr.
9000 Gulf Freeway, Suite 100
Houston, Harris County, Texas 77017

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 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, the Civil Case Information Sheet, and 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 filemarked copy of the petition be returned to the undersigned.

Also enclosed is a pre-addressed envelope for your use in transmitting the above referenced documents 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 filemarked copy of the petition to the undersigned.

Mr. John T. Adams, Clerk
Supreme Court of Texas
April 22, 1996
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If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen D. Statham". The signature is written in a cursive, flowing style with a prominent initial "S".

Stephen D. Statham
Assistant General Counsel

SDS/sml
enclosures



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

CLERK
JOHN T. ADAMS

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

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

June 5, 1996

The Honorable Charles Bacarisse
District Clerk of Harris County
P.O. Box 4651
Houston, Texas 77210

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. Marcus E. Faubion, Jr., and a copy of the Supreme Court's order appointing the Honorable Homer Salinas, Judge of the 92nd District Court, Edinburg, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Homer Salinas
Mr. Marcus E. Faubion, Jr.
Mr. James M. McCormack



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
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GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

June 5, 1996

Honorable Homer Salinas
Judge, 92nd District Court
100 N. Closner
Edinburg, Texas 78539

Dear Judge Salinas:

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. Faubion and Mr. McCormack, 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

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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June 5, 1996

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JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

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

Mr. Marcus E. Faubion, Jr.
9000 Gulf Freeway, Suite 100
Houston, Texas 77017

Dear Mr. McCormack and Mr. Faubion:

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 Homer Salinas, Judge of the 92nd District Court, Edinburg, Texas to preside in

Commission for Lawyer Discipline v. Marcus E. Faubion, Jr.

Sincerely,

SIGNED

John T. Adams
Clerk