

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 969164

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

The Supreme Court of Texas hereby appoints the Honorable Darrell B. Hester, Judge of the 197th District Court of Cameron County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Woodrow Wilson Miller

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 26th day of June, 1996.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9164, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 27 day of June, 1996.

A handwritten signature in cursive script, reading "Thomas R. Phillips". The signature is written in black ink and is positioned above a horizontal line.

Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE
v.
WOODROW WILSON MILLER

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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 WOODROW W. MILLER, (hereinafter called "Respondent"), showing the Court:

I.

Petitioner brings this disciplinary action pursuant to the State Bar Act, the 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 complaints that form 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 is a member of the State Bar of Texas. Respondent is a resident of Harris County, 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. An officer may serve citation on Respondent at his business address located at 705 Main Street, Suite 400, Houston, Harris County, Texas 77002-3306.

III.

Earnest and Jeri Jenkins Complaint

On or about November 9, 1992, Earnest Jenkins, Jr. (hereinafter called "Earnest") and his sister, Jeri Nicole Jenkins (hereinafter called "Jeri") sustained bodily injuries as a result of an automobile accident caused by an uninsured driver. Shortly thereafter, Earnest, Jeri and their mother, Jerdine Williams (hereinafter called "Ms. Williams") consulted with Respondent about filing a claim and getting medical treatment.

As a result of the consultation, Respondent agreed to negotiate the uninsured motorist insurance coverage settlement on behalf of Earnest and Jeri Jenkins. Ms. Williams and Respondent entered into an oral agreement as to Respondent's attorney fees of 33% of the settlement, and in addition, Earnest and Jeri were required to sign a Power of Attorney.

On or about December 9, 1992, Respondent sent a letter of guarantee of payment to medical provider, Houston Physical Therapy Service Center and requested that all reasonable and necessary medical services be rendered to Earnest and Jeri in connection with their accident of November 9, 1992. Respondent thereby agreed to make payment to Houston Physical Therapy Service Center upon the settlement of the Jenkins' claim.

IV.

Over the course of representation, Ms. Williams discovered that Respondent had settled her children's claims with Allstate Insurance Company (hereinafter "insurance company") without her consent or knowledge. Respondent neglected to inform Ms. Williams that a settlement was being negotiated, or that Respondent had fully accepted a settlement offer.

On or about October 15, 1993, Respondent received partial settlement checks from the referenced insurance company. Upon receiving funds from the insurance company, Respondent

failed to promptly notify his clients, or the medical providers as previously agreed. On or about November 18, 1994, Respondent received full and final settlement payments for Earnest and Jeri Jenkins claim. Again, Respondent failed to notify his clients or the medical providers that the referenced claim had been settled. Therefore, from October, 1993 to November, 1994, Respondent failed to inform his clients that he had settled their claim, and in addition, Respondent failed to inform his clients that he had received full and final settlement funds from the insurance company.

As a result of Respondent's failure to communicate the status of his client's cases, Ms. Williams contacted Allstate Claims Representative Lori Trotter. Ms. Trotter informed Ms. Williams that the claims had been settled and checks had been issued to the claimants and Respondent in the following sequence:

<u>DATE</u>	<u>CHECK NUMBER</u>	<u>AMOUNT</u>	<u>ISSUED TO</u>
10/15/93	75951491	\$1,440.00	Earnest Jenkins
10/15/93	75951492	\$ 640.00	Earnest Jenkins
10/15/93	75951493	\$ 640.00	Jeri Jenkins
10/15/93	75951494	\$1,440.00	Jeri Jenkins
11/18/94	74129454	\$4,500.00	Jeri Jenkins
11/18/94	74129455	\$4,500.000	Earnest Jenkins

Ms. Williams contacted Respondent after receiving the information regarding the settlement of her children's claims. Respondent first gave Ms. Williams one excuse after another. Eventually, Respondent finally admitted that as a result of numerous debts, he subsequently misappropriated Earnest and Jeri Jenkins' settlement funds to pay his creditors and other personal bills. Upon receipt of the aforementioned checks, (which totaled \$13,160.00) Respondent endorsed his signature, and also Earnest and Jeri's signature on the back of each

check and deposited it into IOLTA account number 00101384031 at Texas Commerce Bank. Respondent consequently forged Earnest and Jeri's signature on the back of each check without expressed written or oral permission from Ms. Williams, Earnest or Jeri Jenkins to do so.

After receiving heavy pressure and persistence, in or around April, 1995, Respondent issued checks to Jeri and Earnest Jenkins in the amount of Seven-Hundred Fifty dollars (\$750.00) each, with the promise to pay them the balance by May 15, 1995. Respondent has failed to maintain his obligation to do so. On or about May 27, 1995, Ms. Williams sent Respondent a demand letter by certified return receipt mail and first class mail again requesting the balance of their funds. Respondent failed to provide any response to their request. Ms. Williams continued to make numerous calls to Respondent's office; however, she was repeatedly told that Respondent was not in. Respondent refused to return the telephone calls.

V.

In addition, Respondent agreed to make payment to medical provider, Houston Physical Therapy Service Center upon the settlement of Earnest and Jeri's claim. Respondent however, has failed to pay the Two-Thousand eighty dollars (\$2,080.00) due and owing for medical expenses incurred for the treatment of Earnest and Jeri injuries.

VI.

On or about July 12, 1995, the Chief Disciplinary Counsel of the State Bar of Texas issued a subpoena duces tecum to Texas Commerce Bank with regard to Respondent's IOLTA account number 111001150, styled Miller, Cole and Associates, P.C. The result of the State Bar of Texas investigation revealed that Respondent on a regular and routine basis commingled his client's funds with his own personal standard operating funds, and wholly failed to keep the

funds separate from the his own property. In addition, Respondent failed to keep complete records of the contents of account number 111001150 and failed to promptly render a full account regarding Earnest and Jeri Jenkins' property upon request. Respondent failed to fulfill his professional fiduciary obligation to protect his clients interest and safeguard their funds. Respondent consequently and carelessly misused funds belonging in whole or in part to his clients and to Houston Physical Therapy Service Center.

VII.

The acts and/or omissions of the Respondent described in Paragraphs IV, V and VI above, which occurred on or after January 1, 1990, constitute conduct in violation of Rule(s) **1.02(a)(2)** [a lawyer shall abide by a client's decisions whether to accept an offer of settlement of a matter]; **1.03(a)** [a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable request for information]; **1.04 (a)** [a lawyer shall not collect an illegal fee or unconscionable fee]; **1.04(d)** [A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined]; **1.14(a)** [a lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property]; **1.14(b)** [Upon receiving funds or other property in which a client or third persona has an interest, a lawyer shall promptly notify the client or third person. A lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive] **1.14(c)** [when in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and

severance of their interest]; 8.04(a)(2) [a lawyer shall not commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects]; and 8.04(a)(3) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation] 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 by Earnest and Jeri Jenkins' filing of a complaint on or about July 3, 1995.

Prayer

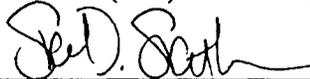
WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent, WOODROW WILSON MILLER, by disbarment, suspension or reprimand, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself 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

May 14, 1996

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

Re: Commission for Lawyer Discipline v. Woodrow Wilson Miller

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 Woodrow Wilson Miller. Mr. Miller is a resident of Harris County, Texas. 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 hereby made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Woodrow Wilson Miller
705 Main Street, Suite 400
Houston, Texas 77002-3306

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 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.

Mr. John T. Adams, Clerk
Supreme Court of Texas
May 14, 1996
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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 filemarked copy of the petition to the undersigned.

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 fluid and cursive, with a long horizontal stroke at the end.

Stephen D. Statham
Assistant General Counsel

SDS/gcp
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

July 3, 1996

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

Mr. Woodrow Wilson Miller
705 Main Street, Suite 400
Houston, Texas 77002-3306

Dear Mr. McCormack and Mr. Miller:

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 Darrell B. Hester, Judge of the 197th District Court, Brownsville, Texas to preside in

Commission for Lawyer Discipline v. Woodrow Wilson Miller

Sincerely,

SIGNED

John T. Adams
Clerk



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
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JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

July 3, 1996

Honorable Darrell B. Hester
Judge, 197th District Court
974 E. Harrison Street
Brownsville, Texas 78520

Dear Judge Hester:

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. Miller 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

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

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

July 3, 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 Lawver Discipline v. Woodrow Wilson Miller and a copy of the Supreme Court's order appointing the Honorable Darrell B. Hester, Judge of the 197th District Court, Brownsville, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Darrell B. Hester
Mr. Woodrow Wilson Miller
Mr. James M. McCormack