

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 97- 9028**

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

The Supreme Court of Texas hereby appoints the Honorable Harold C. Gaither, Judge of the 304th District Court of Dallas County, Texas, to preside in the Disciplinary Action styled:

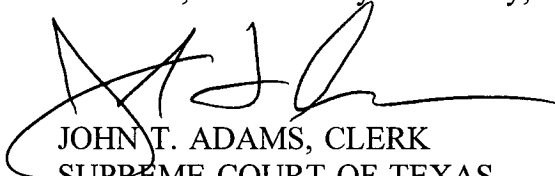
**The Commission for Lawyer Discipline v. Cecil W. Bain**

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 29th day of January, 1997.



JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 97-9028, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 29 day of January, 1997.

  
Thomas R. Phillips  
Chief Justice

COPY

No. \_\_\_\_\_

COMMISSION FOR LAWYER  
DISCIPLINE

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

V.

BEXAR COUNTY, T E X A S

CECIL W. BAIN

\_\_\_\_th JUDICIAL DISTRICT

**PETITIONER'S ORIGINAL DISCIPLINARY PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Petitioner, COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas, complaining of Respondent, CECIL W. BAIN, and in support thereof would respectfully show the Court the following:

**Parties**

Petitioner is the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas. Respondent, CECIL W. BAIN, at all times relevant to this cause of action, 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 San Antonio, Bexar County, Texas and may be served with process at 1931 N.W. Military Highway, The Centre Pointe, Suite 100, San Antonio, Bexar County, Texas 78213, his usual place of employment.

**Venue**

Respondent maintains his principal place of practice in Bexar County, Texas. The alleged professional misconduct occurred 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 or about April 12, 1996 by Melba Rodriguez. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

### II.

On or about August 6, 1992, Melba Rodriguez and Respondent entered into a contract of employment whereby Ms. Rodriguez agreed to pay Respondent a retainer fee of \$20,000.00 to investigate the re-opening of her divorce case and to investigate a possible libel and/or slander action against Ms. Rodriguez' former husband.

### III.

On or about September 22, 1992, Respondent notified Ms. Rodriguez, that in his opinion, there was nothing that could be done on the libel and/or slander suit and that he was unable to re-open Ms. Rodriguez 1993 divorce. Although Respondent determined there was nothing he could do for Ms. Rodriguez, he presented to Ms. Rodriguez a billing statement which showed substantial billing entries after September 22, 1992. Respondent continued to bill against the retainer until December 10, 1992. Respondent entered into a contract for and charged Ms. Rodriguez an unconscionable fee for the work performed in this matter. The \$20,000.00 retainer fee charged by Respondent for the work performed is not a fee customarily charged in Bexar County, Texas for similar services and a competent lawyer could not have formed a reasonable belief that \$20,000.00 fee was reasonable in this case.

**Disciplinary Rules of Professional Conduct**

IV.

The conduct of Respondent described above was in violation of the following Texas Disciplinary Rules of Professional Conduct:

Rule 1.04(a) -- A lawyer shall not enter into an agreement for, charge, or collect an unconscionable fee;

**PRAYER**

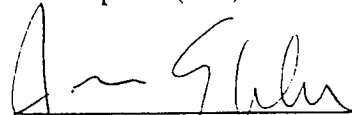
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including, but not limited to, costs of court, all direct expenses associated with these proceedings and reasonable attorney's fees as provided in Rule 1.06(T)(8)(b) of the Texas Rules of Disciplinary Procedure at a rate of \$150.00 per hour.

Respectfully submitted,

Steven W. Young  
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  
P 583 840 612

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

December 19, 1996

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

RE: Commission for Lawyer Discipline v. Cecil W. Bain; In the District Courts of  
Bexar County, Texas

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 Cecil W. Bain. Mr. Bain 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:

Robert C. Hinton, Jr.  
Robert Hinton & Associates, P.C.  
10440 North Central Expressway, Ste. 1400  
Dallas, Texas 75231

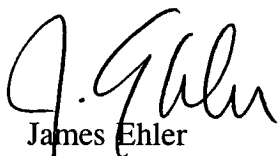
As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial as set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure. If not, I would 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, service be obtained, 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 written in a cursive style with a large initial "J" and a long, sweeping underline.

James Ehler  
Assistant General Counsel

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

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

February 4, 1997

Honorable Harold C. Gaither  
Judge, 304<sup>th</sup> District Court  
Henry Wade Juvenile Justice Center  
2600 Lone Star Drive  
Dallas, Texas 75212

Dear Judge Gaither:

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. Ehler and Mr. Bain, 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, obtain a court reporter, obtain 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

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ROSE SPECTOR  
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JAMES A. BAKER  
GREG ABBOTT

EXECUTIVE ASS'T  
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

February 4, 1997

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. Cecil W. Bain and a copy of the Supreme Court's order appointing the Honorable Harold C. Gaither, Judge of the 304<sup>th</sup> District Court, Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams  
Clerk

cc: Hon. Harold C. Gaither  
Mr. James Ehler  
Mr. Cecil W. Bain



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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JAMES A. BAKER  
GREG ABBOTT

EXECUTIVE ASST  
WILLIAM L. WILLIS

ADMINISTRATIVE ASST  
NADINE SCHNEIDER

February 4, 1997

Mr. James Ehler  
Assistant General Counsel, State Bar of Texas  
425 Soledad, Suite 300  
San Antonio, Texas 78205

Mr. Cecil W. Bain  
c/o Robert C. Hinton, Jr.  
Robert Hinton & Associates, P.C.  
10440 North Central Expressway, Suite 1400  
Dallas, Texas 75231

Dear Mr. Ehler and Mr. Bain:

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 C. Gaither, Judge of the 304<sup>th</sup> District Court, Dallas, Texas to preside in

Commission for Lawyer Discipline v. Cecil W. Bain

Sincerely,

SIGNED

John T. Adams  
Clerk