

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97-9083

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

The Supreme Court of Texas hereby appoints the Honorable Lana McDaniel, Judge of the 203rd District Court of Dallas County, Texas, to preside in the Disciplinary Action styled:

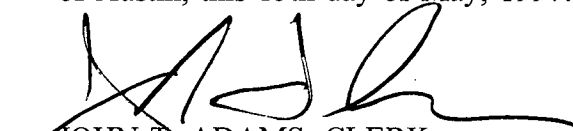
The Commission for Lawyer Discipline v. James A. McGuire

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,

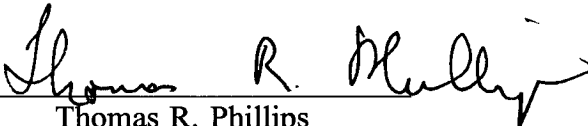
with the Seal thereof affixed at the City
of Austin, this 15th day of May, 1997.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 97-9083, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 16 day of May, 1997.

A handwritten signature in cursive script, reading "Thomas R. Phillips", written over a horizontal line.

Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
JAMES A. MCGUIRE	§	_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

Petitioner the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas (hereinafter referred to as the "CFLD"), complains of Respondent James A. McGuire (hereinafter referred to as "Respondent") as follows:

I.

Procedural Basis for Suit

The CFLD 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.

Venue and Service

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent's principal place of practice is Harris County, Texas, 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 3737 Westheimer, Houston, Texas, 77227.

III.

First Cause of Action

In or about February 1991, Respondent agreed to represent Dorothy Kelley (hereinafter referred to as "Kelley") and her husband, at the time, Oliver Ray Gibson (hereinafter referred to as "Gibson"), in a personal injury claim against Montgomery Ward. At that time, a contingency fee agreement was executed which provided that Respondent would receive 45% of any funds received without the filing of a lawsuit or 55% of any funds received subsequent to the filing of a lawsuit. In July 1993, Kelley and Gibson divorced. The personal injury claim was pending at the time of the divorce and at no time did Respondent advise Kelley or Gibson that, subsequent to their divorce, their interests in the personal injury claim might conflict. Respondent continued to represent both Kelley and Gibson in the personal injury claim.

IV.

On or about August 9, 1993, the balance of Respondent's IOLTA account number 3310114694 (hereinafter referred to as "IOLTA account") was \$8,915.06. At no time on or before August 9, 1993, did Respondent receive or deposit any portion of the proceeds from Gibson's and Kelley's settlement into his IOLTA account. On or before August 9, 1993, Respondent issued check number 2930, drawn upon his IOLTA account in the amount of \$900.00, to Susan S. Soussan as payment of her mediation fee in Gibson's and Kelley's personal injury matter. Because Respondent had not yet received or deposited any settlement funds on

behalf of Gibson and Kelley, check number 2930 was issued upon funds which were being held in Respondent's IOLTA account on behalf of other clients and/or third parties.

V.

On or before August 10, 1993, Respondent settled Gibson's and Kelley's personal injury claim for the amount of \$126,000.00. Per the settlement agreement, Gibson was to receive \$12,600.00 and Kelley was to receive \$113,400.00. On or about August 10, 1993, Aetna, insurer for Montgomery Ward, issued settlement draft number 45650220 to Respondent in settlement of Kelley's personal injury claim. Draft number 45650220 was made payable to Respondent, Kelley and Athem Mutual Life Ins. Co., as subrogee, in the amount of \$113,400.00. On or about August 10, 1993, Aetna also issued draft number 45650221 to Respondent in settlement of Gibson's claim. Draft number 45650221 was made payable to Respondent and Gibson in the amount of \$12,600.00. On or about August 16, 1993, Respondent presented Aetna draft number 45650221 for payment. Instead of depositing the entire amount into his IOLTA account, Respondent "split" the deposit by depositing \$6,930.00 into his IOLTA account and depositing the remaining \$5,670.00 into his operating account.

VI.

On or about August 18, 1993, the balance of Respondent's IOLTA account was \$22,160.00. On or about August 18, 1993, Respondent issued check number 2937, in the amount of \$39,000.00, drawn upon his IOLTA account, to Athem Mutual Life Ins. ("Subrogee") which represented payment of Subrogee's lien on Gibson and Kelley's personal injury claim. Because Respondent had not yet deposited a sufficient portion of the settlement proceeds from the Gibson and Kelley personal injury claim to cover the \$39,000.00 check;

writing check number 2937 caused a negative balance in the Respondent's IOLTA account. Respondent's check number 2937 was issued upon funds which were being held in Respondent's IOLTA account on behalf of other clients and/or third parties.

VII.

On or about August 19, 1993, Respondent presented Aetna draft number 4565220 for payment. Instead of depositing the entire amount in his IOLTA account, Respondent "split" the deposit by depositing \$62,370.00 into his IOLTA account and depositing the remaining \$51,030.00 of the settlement proceeds into his operating account.

VIII.

On or about August 31, 1993, the balance of Respondent's IOLTA account was \$17,527.19. On or about September 1, 1993, Respondent issued check number 2958, drawn upon his IOLTA account, to Paula Lewis in the amount of \$21,000.00, thereby causing a negative balance in the IOLTA account. Respondent's check number 2958 represented final payment of Kelley's portion of the settlement proceeds. The "Final Settlement" check was written in the name of "Paula Lewis", who was Kelley's daughter-in-law, and Kelley's identification was not in her possession for the purpose of cashing the settlement check. Respondent's check number 2958 was issued upon funds which, in part, were to be held in Respondent's IOLTA account on behalf of other clients and/or third parties.

IX.

On or about September 2, 1993, Kelley executed an amended fee agreement. In the agreement, Respondent reduced his fee from 45% to 40% of the gross settlement proceeds due to Kelley. Additionally, the agreement provided that Respondent would: 1) negotiate with

Gibson, on behalf of Kelley, and 2) to reduce the amount of Gibson's portion of the settlement proceeds. The Kelley agreement was in direct conflict with Respondent's obligations to Gibson.

X.

On or about September 7, 1993, Respondent issued check number 2964, drawn upon an unidentified account, to Gibson in the amount of \$4,430.00. Respondent's check number 2964 represented payment of Gibson's portion of the settlement proceeds less Respondent's legal fees and less \$2,600.00, the purported negotiated reduction.

XI.

Between April 30, 1991 and August 26, 1993, Respondent wrote checks drawn upon his IOLTA account and made payable to various individuals as advances on settlement proceeds. The checks were written for amounts between \$50.00 and \$4,000.00. However, the funds used to advance money to these clients did not belong to Respondent because Respondent split the deposit of settlement funds and immediately deposited his fees into his operating account. These funds should have been held in Respondent's IOLTA account on behalf of other clients and/or third parties.

XII.

Between May 13, 1991 and April 15, 1992, Respondent made payments to various third parties for payment of office expenses, payroll expenses and personal donations from his IOLTA account, instead of his operating account. The funds used to cover these checks did not belong to Respondent and should have been held in Respondent's IOLTA account on behalf of other clients and /or third parties.

XIII.

In July 1993, several checks drawn upon Respondent's IOLTA account were returned due to non-sufficient funds. Thus, Respondent failed to hold funds belonging to clients and/or third parties in his IOLTA account.

XIV.

Respondent advanced funds to clients from monies received from Ron McGuire when Respondent's IOLTA account did not have sufficient funds to cover settlement distributions. Ron McGuire was later reimbursed by Respondent using Respondent's IOLTA account funds.

XV.

The acts and/or omissions of the Respondent described in Paragraphs III-XV above, which occurred on or after January 1, 1990, constitute conduct in violation of Rules **1.06(b)(1)** [a lawyer shall not represent a person if the representation of that person involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client]; **1.06(d)** [a lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties], **1.14(a)** [a lawyer shall hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property]; **1.14(c)** [a lawyer shall keep funds or other property in which both the lawyer and another person claim interests separate until there is an accounting and severance of their interests]; 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 ("TDRPC").

XVI.

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 Dorothy Kelley's filing of a complaint on or about January 13, 1994.

Prayer

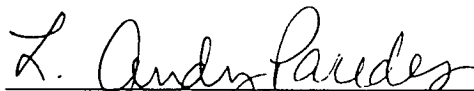
WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent James A. McGuire as the facts shall warrant; and that the CFLD have all other relief to which it may show itself to be justly entitled, including costs of court and attorney's fees.

Respectfully submitted,

Steven W. Young
General Counsel

L. Andy Paredes
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) 752-2158



L. ANDY PAREDES
State Bar No. 00788162

ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

April 10, 1997

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

Re: Commission for Lawyer Discipline v. James A. McGuire

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 James A. McGuire. James A. McGuire 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:

James A. McGuire
3737 Westheimer
Houston, Texas 77227

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, citation be issued, and citation, along with a file-stamped 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 10, 1997
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If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,



L. Andy Paredes
Assistant General Counsel
State Bar of Texas

LAP/sr

Enclosures

J:\McGuire\CFLD.Lap\Clerk1.Sct



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

May 16, 1997

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. James A. McGuire, and a copy of the Supreme Court's order appointing the Honorable Lana McDaniel, Judge of the 203rd District Court, Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Lana McDaniel
Mr. James A. McGuire
Mr. L. Andy Paredes



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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JOHN T. ADAMS

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GREG ABBOTT

TEL: (512) 463-1312

FAX: (512) 463-1365

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

May 16, 1997

Mr. L. Andy Paredes
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. James A. McGuire
3737 Westheimer
Houston, Texas 77227

Dear Mr. Paredes and Mr. McGuire:

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 Lana McDaniel, Judge of the 203rd District Court, Dallas, Texas to preside in

Commission for Lawyer Discipline v. James A. McGuire

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

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JOHN T. ADAMS

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WILLIAM L. WILLIS

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PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

May 16, 1997

Honorable Lana McDaniel
Judge, 203rd District Court
Frank Crowley Courts Building
133 N. Industrial Blvd.
Dallas, Texas 75207

Dear Judge McDaniel:

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. McGuire and Mr. Paredes, 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 or your coordinator 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 (713 755-7593) 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 [409 538-8176] 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