

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97- 9150

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

The Supreme Court of Texas hereby appoints the Honorable Robert E. May, Judge of the 149th District Court of Brazoria County, Texas, to preside in the Disciplinary Action styled:

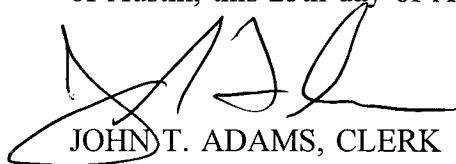
The Commission for Lawyer Discipline v. Daniel Rutherford

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,

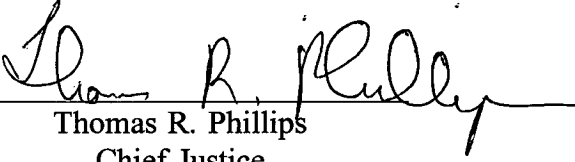
with the Seal thereof affixed at the City
of Austin, this 25th day of August, 1997.

A handwritten signature in black ink, appearing to read 'J. Adams', written over a circular stamp or seal.

JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 97-9150, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 26 day of August, 1997.


Thomas R. Phillips
Chief Justice

No. _____

FILE COPY

COMMISSION FOR LAWYER	§	IN THE DISTRICT COURT OF
DISCIPLINE	§	
	§	
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.

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 or about October 24, 1996 by Jimmie L. Querner, Jr. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

II.

In September of 1993, Gay Zinn retained the legal services of Respondent for representation related to Ms. Zinn's actions as independent executrix of the Estate of Pattie Jean Querner. At the time the attorney client relationship commenced, Ms. Zinn was the executrix for the Estate of Pattie Jean Querner. On October 1, 1993, Respondent presented to the Judge of Bexar County Probate Court No. Two in cause number 92-PC-0044 a hand written letter from Ms. Zinn to Judge Sandee B. Marion requesting Ms. Zinn be allowed to resign as independent executrix of the estate. In open court on October 1, 1993, Judge Marion accepted the resignation of Ms. Zinn and appointed Charles H. Jackson III as successor personal representative of the estate. At the same hearing, the Court also ordered that "[A]ll estate assets should be turned over to the new administrator."

III.

On April 19, 1994 the United States Treasury issued a check in the amount of \$22,172.47 made payable as follows:

Gay Zinn
Pattie J. Querner Estate
% Doug B. Kruppa, Pers. Rep.
7109 Blanco Rd
San Antonio, Texas 78216-5022

The United States Treasury check represented an I.R.S. estate tax refund to the Estate of Pattie Jean Querner. On or before April 25, 1994, with knowledge that the funds belonged in whole or

in part to the Estate of Pattie Jean Querner and with knowledge that Judge Marion had ordered that all assets of the estate be turned over to the newly appointed personal representative, Respondent assisted his client to defraud the estate of these funds by taking possession of the funds and by depositing the funds into his trust account. Soon thereafter, Respondent further assisted his client in the commission of the fraud by accepting the estate funds as payment of his attorney fees to defend Gay Zinn against allegations that Ms. Zinn had embezzled money from the estate.

IV.

Although Respondent knew the United States Treasury check represented funds belonging in whole or in part to the estate, Respondent failed to notify the estate's newly appointed representative of the receipt of funds. Additionally, Respondent failed to keep the funds separate from his own property and failed to disburse the funds to those parties who were entitled to receive the funds.

V.

On May 2, 1994, Judge Marion signed an Order compelling Respondent's client, Gay Zinn, to " * * * deliver to CHARLES H. JACKSON III, Administrator With the Will, all sums of money in her possession or under her control belonging to the Estate of PATTIE JEAN QUERNER * * * by 5:00 o'clock p.m., C.D.T. on May 6, 1994." Respondent, with knowledge that the funds deposited in his trust account belonged to the Estate of Pattie Jean Querner and which were under the control of Ms. Zinn, Respondent advised his client and/or assisted his client to disobey Judge Marion's orders of October 1, 1993 and May 2, 1994. Such violation of the Court's orders was a further act of fraud on behalf of Respondent.

V.

On April 5, 1995, Respondent was called to the stand to answer questions regarding the

disposition of the I.R.S. estate tax refund money. In Court and under oath, Respondent was asked the whereabouts of the funds in question. With full knowledge that the funds were used to pay his attorney fees, Respondent testified that "[T]he money is no longer in my account." Respondent's testimony was either false or was a deliberate attempt to deceive the Court as to the disposition of the funds. Respondent failed to disclose facts to the Court when disclosure was necessary to avoid assisting his client's fraudulent and/or criminal conduct.

VI.

The conduct of Respondent described above constitutes violations of Texas Disciplinary Rules of Professional Conduct as follows:

Rule 1.02(c) -- A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent.

Rule 1.02(d) -- When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.

Rule 3.03(a)(2) -- A lawyer shall not knowingly fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act.

Rule 3.04(d) -- A lawyer shall not knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience.

Rule 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.

Rule 1.14(b) -- Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.

Rule 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. All funds in a trust or escrow account shall be disbursed only to those persons

entitled to receive them by virtue of the representation or by law. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved, and the undisputed portion shall be distributed appropriately.

Rule 8.04(a)(3) -- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

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,

Steven W. Young
General Counsel

James Ehler
Assistant General Counsel

William Lewis Sessions
Specially Appointed 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 551 185 647**

July 16, 1997

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 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:

Dan Rutherford
Dan Rutherford & Associates
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 three (3) 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 cursive script, appearing to read "J. Ehler".

James Ehler
Assistant General Counsel

Enclosures

JAE/tmg



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

September 3, 1997

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

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

Dear Mr. Ehler 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 Robert E. May, Judge of the 149th District Court, Angleton, Texas to preside in

Commission for Lawyer Discipline v. Daniel Rutherford

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

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

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

SEP 03 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. Daniel Rutherford, and a copy of the Supreme Court's order appointing the Honorable Robert E. May, Judge of the 149th District Court, Angleton, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Robert E. May
Mr. James Ehler
Mr. Daniel Rutherford



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 ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

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

SEP 03 1997

Honorable Robert E. May
Judge, 149th District Court
111 E. Locust Street, #302-A
Angleton, Texas 77515-4678

Dear Judge May:

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. Rutherford, 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