

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99-9049

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

The Supreme Court of Texas hereby appoints the Honorable Thomas R. Culver, III, Judge of the 240th District Court of Fort Bend County, Texas, to preside in the Disciplinary Action styled:

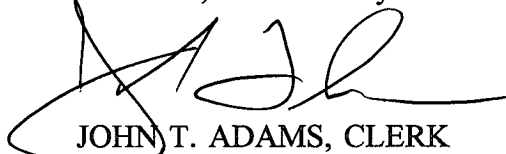
The Commission for Lawyer Discipline v. Kimbel L. Brown

to be filed in a District Court of Comal County, Texas.

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Comal 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.

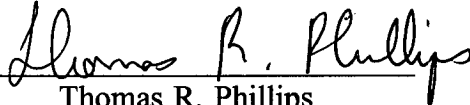
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 11th day of March, 1999.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9049, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 12 day of March, 1999.


Thomas R. Phillips
Chief Justice

No. _____

COMMISSION FOR LAWYER)	IN THE DISTRICT COURT OF
DISCIPLINE)	
)	
V.)	COMAL COUNTY, T E X A S
)	
KIMBEL L. BROWN)	___TH JUDICIAL DISTRICT

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, KIMBEL L. BROWN, 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, KIMBEL L. BROWN, State Bar Number 03149950, was, at the time the following alleged acts of professional misconduct occurred, an attorney licensed to practice law in the State of Texas and a member of the State Bar of Texas. Respondent may be served with process at 123 North Seguin Ave., Suite 216, New Braunfels, Comal County, Texas 78130, his usual place of business.

Venue

At the time the alleged professional misconduct occurred, Respondent maintained a law office in New Braunfels, Comal County, Texas. The alleged acts of professional misconduct occurred in whole or in part in Comal County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Comal County, Texas.

Discovery Level Designation

I.

Pursuant to Tex.R.Civ.P. 190.1, Petitioner designates that discovery in this action should proceed pursuant to Level 2 (Tex.R.Civ.P. 190.3).

Professional Misconduct

II.

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 June 3, 1998 by Allan Majeski. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

III.

On or about February 12, 1998, Respondent was court appointed to represent Allan Majeski on burglary charges from Blanco and Hays Counties, Texas, and violation of parole from Harris County, Texas.

IV.

During the representation of Mr. Majeski, in March of 1998, Respondent undertook the presentation of Michelle L. Russell, Mr. Majeski's spouse. Ms. Russell was arrested on January 30, 1998 for the same burglary charge as Mr. Majeski. The dual representation of Mr. Majeski and Ms. Russell involved substantially related matters. Respondent's representation of Ms. Russell was adversely limited by Respondent's obligations to Mr. Majeski and vice versa.

Respondent failed to promptly withdraw from one or both of the representations when the conflict of interest became evident. Respondent undertook the dual representation without the informed consent of Mr. Majeski and Ms. Russell.

V.

Respondent knowingly revealed confidential information of Mr. Majeski's to his mother. Further, upon termination of the attorney client relationship with Mr. Majeski, in his Motion for Court Appointed Fees, Respondent knowingly revealed confidential information to the detriment of his client.

VI.

During the representation of Mr. Majeski, but prior to being hired by Ms. Russell, Respondent communicated with Ms. Russell about the subject matter of the representation with knowledge that Ms. Russell was represented by counsel. Respondent did not have the consent of Ms. Russell's attorney prior to the communication.

VII.

The conduct of Respondent described above constitutes violations of the following Disciplinary Rules:

Rule 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 of the lawyer.

Rule 1.06(b)(2) -- A lawyer shall not represent a person if the representation of that person reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.

Rule 1.05(b)(1) -- A lawyer shall not knowingly reveal confidential information of a client

or a former client to a person that the client has instructed is not to receive the information or anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.

Rule 1.05(b)(2) -- A lawyer shall not knowingly use confidential information of a client to the disadvantage of the client unless the client consents after consultations.

Rule 1.05(b)(3) -- A lawyer shall not knowingly use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

Rule 4.02(a) -- In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

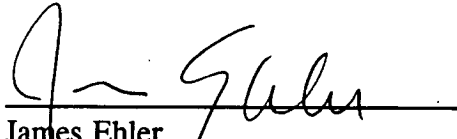
PRAYER

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 costs of court, litigation expenses and attorney's fees.

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
Z 292 150 125**

**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**

February 11, 1999

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

RE: Commission for Lawyer Discipline v. Kimbel L. Brown

Dear Mr. Adams:

Enclosed please find an original and three (3) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Kimbel L. Brown. Mr. Brown has designated **Comal 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 resides 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:

Kimbel L. Brown
123 North Seguin Avenue, Suite 216
New Braunfels, Texas 78130

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she can accommodate compliance with Mellon Service Co., et al v. Touche Ross Co., 946 S.W.2d 862 (Tex.App.- Houston [14th Dist.] 1997), which requires that all proceedings incident to a case occur in the county of proper venue. 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, the filing fee check, also enclosed herewith, and the Court's appointing

order to the District Clerk of Comal 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 Comal County, Texas and a return envelope to be sent to the District Clerk of Comal 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

JE/ch



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
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

MAR 23 1999

The Honorable Margaret Herbrich
District Clerk, Comal County
150 N. Seguin Street
New Braunfels, Texas 78130

Dear Ms. Herbrich:

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. Kimbel L. Brown*, and a copy of the Supreme Court's order appointing the Honorable Thomas R. Culver, III, Judge of the 240th District Court, Richmond, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Thomas R. Culver, III
Mr. James Ehler
Mr. Kimbel L. Brown



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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HARRIET O'NEILL
ALBERTO R. GONZALES

MAR 23 1999

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

Mr. Kimbel L. Brown
123 North Seguin Avenue, Suite 216
New Braunfels, Texas 78130

Dear Mr. Ehler and Mr. Brown:

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 Thomas R. Culver, III, Judge of the 240th District Court, Richmond, Texas to preside in

Commission for Lawyer Discipline v. Kimbel L. Brown

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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ALBERTO R. GONZALES

MAR 23 1999

Honorable Thomas R. Culver, III
Judge, 240th District Court
301 Jackson Street
Richmond, Texas 77469

Dear Judge Culver:

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. Brown and Mr. Ehler, and a copy of the letter to the District Clerk of Comal County.

We then recommend that, four or five weeks after receipt of this letter, you or your coordinator contact the presiding judge or the District Clerk of Comal County 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 date for trial, the judge or coordinator of that court be contacted 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 (210-379-8556) 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