

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 99-9102**

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

The Supreme Court of Texas hereby appoints the Honorable Martin E. Richter, Judge of the 116th District Court of Dallas County, Texas, to preside in the Disciplinary Action styled:

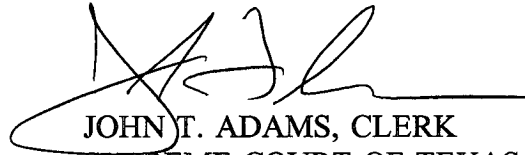
**The Commission for Lawyer Discipline v. Philip J. Smith**

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.

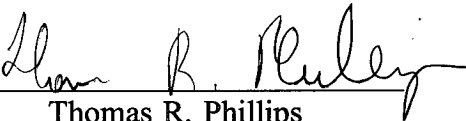
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City  
of Austin, this 12th day of May, 1999.

  
JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9102, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 14 day of May, 1999.

  
Thomas R. Phillips  
Chief Justice

CAUSE NO. \_\_\_\_\_

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
PHILLIP J. SMITH	§	_____ JUDICIAL DISTRICT

**ORIGINAL 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 referred to as "Petitioner"), complaining of Respondent, **PHILLIP J. SMITH** (hereinafter referred to as "Respondent"), and would respectfully show unto the Court the following:

**I. DISCOVERY CONTROL PLAN**

Pursuant to Rules 190.1 and 190.2, TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level 1 Discovery Control Plan. Pursuant to Rule 190.2(a)(1), TRCP, Petitioner affirmatively pleads that it seeks only monetary relief aggregating Fifty Thousand Dollars (\$50,000.00) or less, excluding costs, pre-judgment interest and attorneys' fees.

**II. NATURE OF PROCEEDING**

Petitioner 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 *Original Disciplinary Petition* was filed on or after May 1, 1992.

### **III. VENUE**

Respondent is an attorney licensed to practice law in Texas and is a member of the STATE BAR OF TEXAS. Respondent's residence and 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. Petitioner requests that a citation be issued and served upon Respondent at his business address located at 4610 Beechnut, #103, Houston, Texas 77005.

### **IV. CAUSE OF ACTION**

Respondent was retained to represent JUDY LINTON (hereinafter referred to as ("LINTON")) on a personal injury suit that took place on April 11, 1995. On August 10, 1995, CHARLES JONES (hereinafter referred to as ("JONES")), owner of Jones Chiropractic Clinic, received a Letter of Protection from the Respondent for his client LINTON. JONES contacted Respondent's office on several occasions to verify the status of the settlement in LINTON's case. Respondent informed JONES the case was still pending.

In early April of 1997, Respondent called JONES' office to see if he would reduce his medical bill in the LINTON case. JONES refused to lower LINTON's medical bill in the amount of One Thousand Nine Hundred Ninety-Four Dollars and Five Cents (\$1,994.05).

On or about July 14, 1997, JONES contacted Ms. Jerri Chaudoir of the State Farm Subrogation office in Houston. Ms. Chaudoir informed JONES the claim had been settled on April

9, 1997 and the draft was cashed on April 10, 1997 by the Respondent's office. JONES contacted LINTON who confirmed receipt of Respondent's settlement check in April 1997. JONES called Respondent's office several times during the week of July 14, 1997, and after numerous attempts, JONES spoke to Respondent. Respondent informed JONES that he would pay him soon but would never give him a specific date.

On July 21, 1997, JONES unable to reach the Respondent by phone, called the State Bar and was informed that Respondent's license had been placed on suspension on April 1, 1996 to December 4, 1997 for non-payment of the Texas Attorney Occupation Tax; and on September 1, 1996, to December 4, 1997 for non-payment of dues. The Respondent had failed to inform LINTON and JONES of his inability to accept the case due to his suspensions.

On May 13, 1998, the Grievance Panel for 4F held an Investigatory Hearing in this case and placed the case on a continued basis in order to subpoena the Respondent's IOLTA bank records for the period of April 1, 1997 to February 28, 1998. Upon review of these records, the bank records reflect that on or about April 10, 1997, Respondent received the State Farm Mutual Automobile Insurance Company's check number 1 25 877568, dated April 9, 1997, in the amount of Six Thousand Dollars (\$6,000.00), made payable to LINTON and Respondent, the check had been deposited in the Respondent's IOLTA account at Wells Fargo Bank. The bank records further revealed that the Respondent's check number 1297, written on the same IOLTA account, dated April 9, 1997, was made payable to LINTON in the amount of Two Thousand Three Hundred Fifty-Five Dollars (\$2,355.00) and had cleared on April 11, 1997. However, the Respondent failed to pay JONES One Thousand Nine Hundred Ninety-Four Dollars and Five Cents (\$1,994.05) for his medical

services. The bank records further disclosed checks and withdrawal slips written by the Respondent and made payable to Respondent from his IOLTA account without an explanation for the transactions.

## **V. RULE VIOLATIONS**

The acts and/or omissions of Respondent described in Paragraph IV above, which occurred on or after January 1, 1990, constitute conduct in violation of Rules **1.14(a)** [for failing to 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. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person]; **1.14(b)** [for failing, upon receiving funds or other property in which a client or third person has an interest, to promptly notify the client or third person and render a full accounting upon request]; **1.14(c)** [for disbursing all funds in a trust or escrow account to be disbursed only to those persons entitled to receive them by virtue of the representation or by law] **8.01(a)** [for knowingly making a false statement of material fact]; **8.04(a)(3)** [for engaging in conduct involving dishonesty, fraud deceit or misrepresentation]; and **8.04(a)(11)** [a lawyer shall not engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII 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 of the STATE BAR OF TEXAS by CHARLES JONES' filing of a complaint on or about July 24, 1997.

**PRAYER FOR RELIEF**

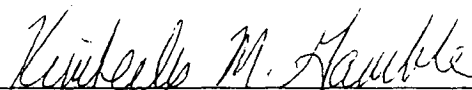
**WHEREFORE, PREMISES CONSIDERED,** Petitioner, the **COMMISSION FOR LAWYER DISCIPLINE**, respectfully prays that this Court discipline Respondent, **PHILLIP J. SMITH**, by reprimand, suspension, or disbarment, as the facts shall warrant; order restitution to Complainant; and grant all other relief to which Petitioner may show itself to be justly entitled, including costs of court and attorneys' fees.

Respectfully submitted,

**STEVEN W. YOUNG**  
General Counsel

**KIMBERLY M. GAMBLE**  
Assistant General Counsel

**STATE BAR OF TEXAS**  
1111 Fannin, Suite 1370  
Houston, Texas 77002  
Phone: (713) 759-6931  
Fax No.: (713) 752-2158



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**KIMBERLY M. GAMBLE**  
State Bar No. 00789804

**ATTORNEYS FOR PETITIONER,  
THE COMMISSION FOR  
LAWYER DISCIPLINE**



# STATE BAR OF TEXAS



Office of the General Counsel

April 8, 1999

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

**Re: Commission for Lawyer Discipline v. Philip J. Smith**

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 Philip J. Smith. Philip J. Smith 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 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:

Philip J. Smith  
Attorney at Law  
4610 Beechnut, #103  
Houston, Texas 77005

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to: (1) 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, and (2) 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 two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing

**1111 Fannin, Suite 1370, Houston, Texas 77002, (713)759-6931**

Mr. John Adams

April 8, 1999

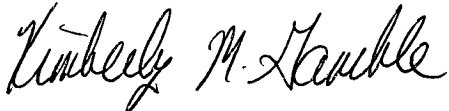
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order to the District Clerk of Harris County, Texas, with the request that the suit be filed, service be obtained, and a file-marked copy of the petition be returned to the undersigned.

I have enclosed 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 file-marked copy of the Petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,



Kimberly M. Gamble  
Assistant General Counsel

KMG/lp

Enclosures

J:\SMITH.P\CFLD1.KMG\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 ASST  
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST  
JIM HUTCHESON

ADMINISTRATIVE ASST  
NADINE SCHNEIDER

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

MAY 17 1999

Ms. Kimberly M. Gamble  
Assistant General Counsel, State Bar of Texas  
1111 Fannin, Suite 1370  
Houston, Texas 77002

Mr. Philip J. Smith  
Attorney at Law  
4610 Beechnut, #103  
Houston, Texas 77005

Dear Ms. Gamble and Mr. Smith:

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 Martin E. Richter, Judge of the 116<sup>th</sup> District Court, Dallas, Texas to preside in

*Commission for Lawyer Discipline v. Philip J. Smith*

Sincerely,

SIGNED

John T. Adams  
Clerk



## THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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ALBERTO R. GONZALES

MAY 17 1999

Honorable Martin B. Richter  
Judge, 116<sup>th</sup> District Court  
600 Commerce Street  
Dallas, Texas 75202

Dear Judge Richter:

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. Smith and Ms. Gamble, 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

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HARRIET O'NEILL  
ALBERTO R. GONZALES

MAY 17 1999

The Honorable Charles Bacarisse  
District Clerk of Harris County  
P.O. Box 4651  
Houston, Texas 77002

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. Philip J. Smith*, and a copy of the Supreme Court's order appointing the Honorable Martin E. Richter, Judge of the 116<sup>th</sup> District Court, Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Honorable Martin E. Richter  
Ms. Kimberly M. Gamble  
Mr. Philip J. Smith  
Ms. Melissa Dartez