

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99-9118

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

The Supreme Court of Texas hereby appoints the Honorable David Brabham, Judge of the 188th District Court of Gregg County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Bernardo Eureste

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.

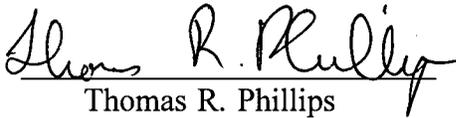
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this ~~18th~~^{21st} day of June, 1999.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9118, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 21 day of June, 1999.

A handwritten signature in cursive script, reading "Thomas R. Phillips". The signature is written in black ink and is positioned above a horizontal line.

Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE §
VS. §
BERNARDO EURESTE §
IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
_____ JUDICIAL DISTRICT

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

Petitioner the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas (hereinafter called the "CFLD"), complains of Respondent, Bernardo Eureste (hereinafter called the "Respondent") as follows:

I. DISCOVERY CONTROL PLAN

Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, CFLD intends discovery in this case to be conducted under Discovery Control Plan - Level 2 as provided in Rule 190.3 of the Texas Rules of Civil Procedure.

II. 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.

III. 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, and therefore venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the Texas Rules of

Disciplinary Procedure. Respondent can be served with notice at 1445 N. Loop W., Ste. 335, Houston, Texas 77008.

IV. CAUSE OF ACTION

An audit by the Texas Workers' Compensation Insurance Fund (hereinafter called "Fund")¹ of Respondent, revealed since 1993, Respondent submitted attorneys' fees claims on behalf of Fund workers' compensation claimants with questionable billing patterns. Respondent routinely and exclusively billed attorney time for work performed by non-attorney assistants (such as the initial interview, completing claim form, reviewing claim form, filing pleadings, etc). In addition to being the sole attorney for performing all services, he billed identical hours on nearly every client without any variation. The audit further revealed Respondent billed and received payments for legal services he did not perform.

Respondent maintains multiple offices in the state of Texas with a main office being located in Houston, Texas. Investigators with the Fund and Texas Worker's Compensation Commission (hereinafter called "TWCC") conducted interviews with former employees and clients of Respondent as well as former contract attorneys and found Respondent did not conduct initial interviews with clients in the appropriate regional offices. The former employees, clients, and former contract attorneys revealed initial interviews were conducted by the secretaries in those offices and that client files were kept in the regional offices. The Investigators found that there were no full-time attorney's assigned to any of the regional offices and a claimant only came into contact with an attorney minutes prior to an administrative hearing.

¹ The Texas Workers' Compensation Insurance Fund is an insurance carrier which provides workers' compensation insurance to Texas employers and benefits to workers who sustain work related injuries.

It was also discovered that all billing for services rendered was generated from the Houston office and some employees received bonuses for each claimant who retained Respondent.

It was also determined Respondent billed an average of ninety (90) hours per day, seven (7) days per week, including weekends and holidays. In reviewing some records, they indicated that Respondent submitted bills for client's outside of Houston. TWCC automatically approves minimum set hours for attorney's fees per month and Respondent took full advantage of the allowance². Respondent's billing procedures were a misrepresentation since regional file are kept in the respective office and not in Houston where the Respondent's conducts his work. Respondent routinely engaged in fraudulent activities by misrepresenting to the TWCC, the Fund, and his clients the amount of billable hours and services her performed relating to the claims. Claimants were often times the most needy and vulnerable (i.e. non-English speaking and do not understand the billing procedures) and Respondent did not explain matters to them. Respondent was routinely paid by TWCC and amount of 25% from claimants weekly TIBs checks.

Respondent charged and collected illegal fees in that he did not perform the work himself, and submitted claims and collected fees with him being the sole attorney performing all work on the submitted claims. Respondent committed a serious crime or other criminal act that reflects adversely on the lawyer's honesty trustworthiness or fitness as a lawyer in other respects in that he was not honest in his billing procedures and claimed that he alone performed all work on

² To receive payment, the representing attorney must submit an Application for Attorney's Fees to the Texas Workers' Compensation Commission by filing TWCC-152 form. The form provides a Table of Codes and a maximum fee limitations as set forth by the TWCC. The Table of Codes details the category of work performed, the attorney who performed the work, the service performed and the and the client for whom the work was performed. The TWCC automatically approves a maximum number of hours for legal services without justification from the representing attorney.

claims he submitted. Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in that he was not honest in his billing procedures, submitted fraudulent billing statements, and misrepresented to the Fund and TWCC that his alone performed all work on claims he submitted.

The acts and/or omissions of the Respondent described in Paragraph III(A) above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

1.03(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;

1.04(a) entering into an arrangement for, charging or collecting an illegal fee or unconscionable fee;

5.03(a) failing to make reasonable efforts to ensure that a nonlawyer's conduct is compatible with the professional obligations of the lawyer;

5.03(b)(1) ordering, encouraging, or permitting the conduct involved of a non-lawyer to be in violation of the rules of the Texas Disciplinary rules of Professional Conduct;

5.03(b)(2)(ii) a lawyer shall be subject to discipline for the conduct of a non-lawyer employed or retained by the lawyer that would be a violation of these rules if engaged in by a lawyer if the lawyer with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that person's misconduct;

5.05(b) assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law;

7.03(b) for paying, giving, or offering to pay or giving anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to any lawyer or firm;

7.03(d) for entering into an agreement for, charging for, or collecting a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c);

8.04(a)(1) violating these rules, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

8.04(a)(2) committing a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty trustworthiness or fitness as a lawyer in other respects; and

8.04(a)(3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

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 Jack Else's filing of a complaint on or about August 29, 1997.

PRAYER

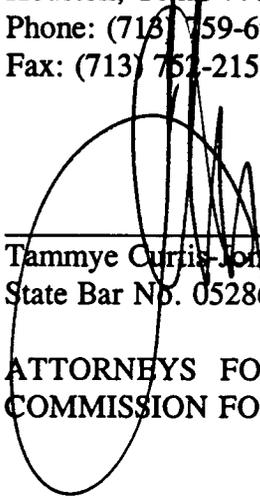
WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent as the facts shall warrant by finding professional misconduct with regard to the above-stated rule violations and imposing a sanction of reprimand, suspension and/or disbarment; and that the CFLD have all other relief to which it may show itself to be justly entitled, including costs of court, restitution to Complainants and attorney's fees.

Respectfully submitted,

Steven W. Young
General Counsel

Tammye Curtis-Jones
Assistant General Counsel

Office of the General Counsel
State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002
Phone: (713) 759-6931
Fax: (713) 757-2158



Tammye Curtis-Jones
State Bar No. 05286900

ATTORNEYS FOR PETITIONER THE
COMMISSION FOR LAWYER

STATE BAR OF TEXAS



Office of the General Counsel

April 23, 1999

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

Re: Commission for Lawyer Discipline v. Bernardo Eureste

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 Bernardo Eureste. Mr. Eurest 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:

Bernardo Eureste
1445 N. Loop W., Ste. 335
Houston, Texas 77008

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.

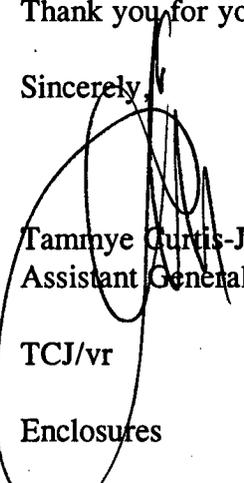
Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Harris County, Texas, with the request that the suit be filed, service be obtained, and a file-marked copy of the petition be returned to the undersigned.

Mr. John Adams
April 23, 1999
Page Two

Also enclosed are 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,



Tammye Curtis-Jones
Assistant General Counsel

TCJ/vr

Enclosures

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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

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

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUN 24 1999

Ms. Tammye Curtis-Jones
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Bernardo Eureste
1455 N. Loop W., Suite 335
Houston, Texas 77008

Dear Ms. Curtis-Jones and Mr. Eureste:

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 David Brabham, Judge of the 188th District Court, Longview, Texas to preside in

Commission for Lawyer Discipline v. Bernardo Eureste

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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EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUN 24 1999

Honorable David Brabham
Judge, 188th District Court
408 Courthouse
101 E. Methvin Street
Longview, Texas 75601

Dear Judge Brabham:

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. Eureste and Ms. Curtis-Jones, 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

TEL: (512) 463-1312

FAX: (512) 463-1365

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HARRIET O'NEILL
ALBERTO R. GONZALES

JUN 24 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. Bernardo Eureste* and a copy of the Supreme Court's order appointing the Honorable David Brabham, Judge of the 188th District Court, Longview, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable David Brabham
Ms. Tammye Curtis-Jones
Mr. Bernardo Eureste
Ms. Melissa Dartez