

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99- 9156

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

The Supreme Court of Texas hereby appoints the Honorable Scott Wisch, Judge of the 372nd District Court of Tarrant County, Texas, to preside in the Disciplinary Action styled:

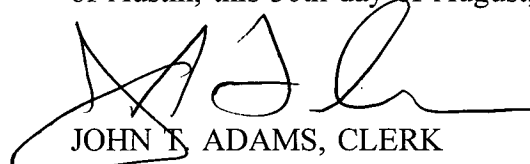
The Commission for Lawyer Discipline v. Lewis W. Jost

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.

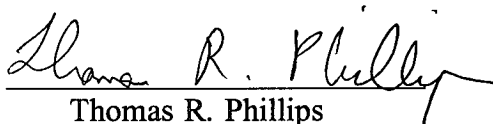
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 30th day of August, 1999.


JOHN F. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9156, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 31 day of August, 1999.


Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR LAWYER
DISCIPLINE

V.

LEWIS W. JOST

§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, the Commission For Lawyer Discipline, a committee of the State Bar of Texas, complaining of Respondent, LEWIS W. JOST and would respectfully show unto the Court the following:

I.

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

II.

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.

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar

of Texas. Respondent's residence and principal place of practice is Harris County, Texas. Respondent can be served with citation at his business located at The Phoenix Tower, 3200 Southwest Freeway, Suite 2300, Houston, Texas 77027.

IV.

On September, 1994, Dale W. King was served with a citation in Cause No. 92-56429; styled Mr. and Mrs. Stephen P. Brierty, et al v Pulte Home Corporation, Presley Surveying Company, Inc., et al. The Plaintiffs were represented by the respondent, Lewis W. Jost. The Respondent had served the wrong Dale W. King, who was not involved in the transactions concerning the lawsuit.

King timely filed an answer to the lawsuit. Respondent failed to realize King had filed an answer and a Default Judgment was entered against King in February 1995.

King contacted the Respondent in order to provide him with personal information to establish evidence that the lawsuit pertained to another person. Upon receipt of this information, Respondent's failed to take any action to withdraw the judgment against King and to pursue the matter against the appropriate party. This failure by the Respondent caused King to retain two (2) attorneys, pay Ten Thousand Dollars (\$10,000.00) in attorneys fees, and two (2) years to obtain a release from the lawsuit.

V.

By failing to establish the true identity of the Defendant in Cause No. 92-56429; the Respondent engaged in conduct in violation of Rule 3.01 [a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that

there is a basis for doing so that is not frivolous]; and by failing to ascertain that King had filed an answer on October 17, 1994, thereby preventing the entering of a Default Judgment. the Respondent engaged in conduct in violation of Rule 3.02 [a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter], of the Texas Disciplinary Rules of Professional Conduct.

By failing to affirm that King was not the person named in the lawsuit, the Respondent engaged in conduct in violation of Rule 3.03(b) [if a lawyer has offered material evidence and comes to know of its falsity the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts] of the Texas Disciplinary Rules of Professional Conduct.

By failing to remedy the improper judgment, the Respondent engaged in conduct in violation of Rule 8.04(a)(3) [engaging in conduct involving dishonesty, fraud, deceit or misrepresentation] of the Texas Disciplinary Rules of Professional Conduct as defined by Rule 1.06(Q) of the Texas Rules of Disciplinary Procedure.

VI.

The complaint which forms the basis of this action was brought to the attention of the Office of the General Counsel of the State Bar of Texas by Dale S. King's filing a complaint on or about February 21, 1998.

PRAYER

WHEREFORE, PREMISES CONSIDERED. Petitioner, the Commission For Lawyer Discipline, respectfully prays that this Court discipline Respondent, **LEWIS W. JOST**, by

reprimand, suspension, or disbarment, as the facts shall warrant; and grant all other relief to which Petitioner may show itself to be justly entitled, including costs of Court and attorney's fees.

Respectfully submitted,

Steven W. Young
General Counsel

Mary F. Klapperich
Assistant General Counsel
Office of the General Counsel
State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6931
(713) 752-2158 FAX


MARY F. KLAPPERICH
State Bar No. 11550700

ATTORNEYS FOR PETITIONER
COMMISSION FOR LAWYER DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

June 30, 1999

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

Re: Commission for Lawyer Discipline v. Lewis W. Jost

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 Lewis W. Jost. Mr. Jost 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:

Lewis W. Jost
The Phoenix Tower
3200 Southwest Freeway, Suite 2300
Houston, TX 77027

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.

Mr. John Adams
June 30, 1999
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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.

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,



Mary F. Klapperich
Assistant General Counsel

MFK/rr
Enclosures



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

SEP 03 1999

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 ASST
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASST
NADINE SCHNEIDER

Ms. Mary F. Klapperich
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Lewis W. Jost
The Phoenix Tower
3200 Southwest Freeway, Suite 2300
Houston, Texas 77027

Dear Ms. Klapperich and Mr. Jost:

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 Scott Wisch, Judge of the 372nd District Court, Fort Worth, Texas to preside in

Commission for Lawyer Discipline v. Lewis W. Jost

Sincerely,

A handwritten signature in dark ink, appearing to read "John T. Adams".

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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SEP 03 1999

CLERK
JOHN T. ADAMS

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WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
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ALBERTO R. GONZALES

Honorable Scott Wisch
Judge, 372nd District Court
401 W. Belknap Street
Fort Worth, Texas 76196-7119

Dear Judge Wisch:

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. Jost and Ms. Klapperich, 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,

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

SEP 03 1999

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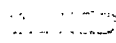
ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

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. Lewis W. Jost*, and a copy of the Supreme Court's order appointing the Honorable Scott Wisch, Judge of the 372nd District Court, Fort Worth, Texas, to preside in this Disciplinary Action.

Sincerely,


John T. Adams
Clerk

cc: Honorable Scott Wisch
Ms. Mary F. Klapperich
Mr. Lewis W. Jost
Ms. Melissa Dartez