

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 99- ~~9174~~**

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

The Supreme Court of Texas hereby appoints the Honorable Ray F. Gresham, Judge of the 336th District Court of Grayson County, Texas, to preside in the Disciplinary Action styled:

**The Commission for Lawyer Discipline v. David H. Oldham**

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,

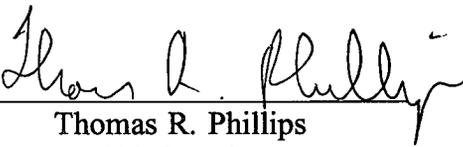
with the Seal thereof affixed at the City  
of Austin, this 27th day of September, 1999.

A handwritten signature in black ink, appearing to read 'J. Adams', written over a horizontal line.

JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9174, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 27 day of September, 1999.

  
Thomas R. Phillips  
Chief Justice

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

COMMISSION FOR LAWYER DISCIPLINE	§ § §	IN THE DISTRICT COURT OF
V.	§	HARRIS COUNTY, TEXAS
DAVID H. OLDHAM	§ §	_____ 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 (hereinafter referred to as "Petitioner"), complaining of Respondent, **DAVID H. OLDHAM**, (hereinafter referred to as "Respondent"), and would show 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 2 Discovery Control Plan. Pursuant to Rule 190.3(a), Petitioner affirmatively pleads that it seeks only monetary relief excluding costs, pre-judgment interest and attorney's 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* were filed on or after May 1, 1992.

### **III. VENUE**

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent is a resident of and has his principal place of practice in Harris County, Texas; therefore, venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the TEXAS RULES OF DISCIPLINARY PROCEDURE. Respondent may be served at 910 Travis Suite 1840, Houston, Texas 77002-5808.

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

On April 1, 1996 a complaint was initiated by the State Bar of Texas against Respondent after receiving a letter, findings of fact, and the Judgment from Susan Staricka, Assistant Attorney General, of the Office of the Attorney General, State of Texas, Consumer Protection Division, Charitable Trusts Section. Ms. Staricka, represented the Estate of Catherine Dumraese in the investigation and prosecution against Respondent in *Cause No. 6802, In The Matter of The Estate of Catherine Dumraese State of Texas v. David Oldham, Individually and as Successor Independent Executor of the Estate of Catherine Dumraese*, In the Probate Court of Colorado County, Texas.

Respondent's father, Beatty Oldham was the original independent executor of the Estate of Catherine Dumraese. Mr. Beatty Oldham died in 1992, and under the terms of the will, Respondent became successor independent executor on June 16, 1992.

On November 8, 1995, the Probate Court of Colorado County after hearing the evidence and arguments of counsel handed down a judgment. The judgment of the court states Respondent, "obtained money and/or property" from the Estate of Dumraese by common law fraud by (a) misrepresentations of material facts, (b) that the misrepresentations made by Respondent were

false, (c) at the time Respondent made such material misrepresentations, he knew they were false or made them recklessly without any knowledge of their truth as a positive assertion, (d) Respondent made such representations with the intent that they be acted upon by the beneficiaries of the will of Dumraese and the beneficiaries of the Dumraese's trust, (e) the beneficiaries of the will of Dumraese and the beneficiaries of the Dumraese trust acted in reliance upon the representations of Respondent and (f) the beneficiaries of the will of Dumraese and the beneficiaries of the Dumraese trust thereby suffered actual damages. The Court found that the actions set forth were committed by Respondent with the intent to harm or conscious indifference to the rights of the beneficiaries of the will of Dumraese and the beneficiaries of the Dumraese's trust.

The Court found that Respondent "Individually and as Successor Independent Executor of the Estate of Dumraese," acted in a fiduciary capacity and owed a fiduciary duty, imposed by law, and that Respondent breached those fiduciary duties by committing fraud, waste and defalcation of property and/or monies in the estate, in bad faith with malice and with willful disregard of the rights of others and of the fiduciary duties imposed on Respondent by law.

The Court found that Respondent, Individually and as Successor Independent Executor of the Estate of Dumraese, acted negligently with respect to the special duties of care imposed upon him in his capacity as a fiduciary. The Court found that the acts and omissions of Respondent constitute a breach of the special duties of care imposed upon Respondent in his capacity as a fiduciary. As a result of such breach, the Court found that the estate of Dumraese, the beneficiaries of the will of Dumraese, and the beneficiaries of the Dumraese trust suffered actual damages. The Court found that such acts and omissions by Respondent resulted from his

conscious indifference as to the rights and welfare of the Estate of Dumraese, the beneficiaries of the will of Dumraese, and the beneficiaries of the Dumraese trust.

As a result the Estate, and beneficiaries of the will and trust suffered actual damages in the amount of Seven Hundred Eighty-Five Thousand One Hundred Seventy-Three Dollars (\$785,173.00) in which the Court ordered Respondent to pay to the Estate of Dumraese. The Court ordered Respondent to pay pre-judgment interest in the amount of Two Hundred Seventy-Five Thousand Three Hundred Thirteen Dollars (\$275,313.00). The Court also ordered Respondent to pay to the Estate of Dumraese exemplary damages in the sum of Seven Hundred Eighty-Five Thousand One Hundred Seventy-Three Dollars (\$785,173.00). The Court ordered that Respondent be hereby permanently enjoined from serving as executor, successor executor, trustee, or in any other capacity of the Estate of Dumraese, Trust of Dumraese, or the Erica Leigh Harrington Trust.

The Court further ordered that Respondent's actions were committed with intent to harm or conscious indifference to the rights of the beneficiaries of the will and the trust. The Court found that Respondent breached his fiduciary duty by committing fraud, waste, and defalcation of property and monies in the estate in bad faith, with malice and with wilful disregard of the rights of others.

#### **V. RULE VIOLATIONS**

The acts and/or omissions of Respondent described in Paragraph IV above which occurred on or before January 1, 1990, constitute conduct in violation of Rules **1.01(b)(1)** [for neglecting a legal matter entrusted to the attorney]; **1.01(b)(2)** [for failing to carry out completely the obligations owed to a client]; **1.01(c)** [as used in this Rule "neglect" signified inattentiveness

involving a conscious disregard for the responsibilities owed to a client or clients]; **1.04(a)** [for entering into an arrangement for, charging or collecting an illegal fee or unconscionable fee; **1.04(b)** [factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other factors, the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered]; **1.06(b)(2)** [for representing a person where 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]; **1.14(a)** [for failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property]; **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]; **8.04(a)(1)** [a lawyer shall not violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship].

**VI.**

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 the State Bar of Texas's filing of a complaint on or about May 8, 1998.

**PRAYER**

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

Respectfully submitted,

**Dawn Miller**  
Acting General Counsel

**Kimberly M. Gamble**  
Assistant General Counsel

Office of the General Counsel  
State Bar of Texas

1111 Fannin, Suite 1370  
Houston, Texas 77002  
(713) 759-6932  
(713) 752-2158 FAX

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

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

# STATE BAR OF TEXAS



Office of the General Counsel

August 18, 1999

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

**Re: Commission for Lawyer Discipline v. David H. Oldham**

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 David H. Oldham. David H. Oldham has designated Harris County, Texas, as her 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:

David H. Oldham  
Attorney at Law  
910 Travis, Suite 1840  
Houston, Texas 77002-5808

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.

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

John T. Adams, Clerk

August 18, 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,



Kimberly M. Gamble  
Assistant General Counsel

KMG/lp

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

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

OCT 07 1999

CLERK  
JOHN T. ADAMS

EXECUTIVE ASST  
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST  
JIM HUTCHESON

ADMINISTRATIVE ASST  
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. David H. Oldham*, and a copy of the Supreme Court's order appointing the Honorable Ray F. Gresham, Judge of the 336<sup>th</sup> District Court, Sherman, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Honorable Ray F. Gresham  
Ms. Kimberly M. Gamble  
Mr. David H. Oldham  
Ms. Melissa Dartez



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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EXECUTIVE ASS'T  
WILLIAM L. WILLIS

OCT 07 1999

DEPUTY EXECUTIVE ASS'T  
JIM HUTCHESON

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

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

Mr. David H. Oldham  
910 Travis, Suite 1840  
Houston, Texas 77002-5808

Dear Ms. Gamble and Mr. Oldham:

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 Ray F. Gresham, Judge of the 336<sup>th</sup> District Court, Sherman, Texas to preside in

Commission for Lawyer Discipline v. David H. Oldham

Sincerely,

**SIGNED**

John T. Adams  
Clerk



## THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

POST OFFICE BOX 12248      AUSTIN, TEXAS 78711

CLERK  
JOHN T. ADAMS

JUSTICES  
NATHAN L. HECHT  
CRAIG T. ENOCH  
PRISCILLA R. OWEN  
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EXECUTIVE ASST  
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JIM HUTCHESON

ADMINISTRATIVE ASST  
NADINE SCHNEIDER

OCT 07 1999

Honorable Ray F. Gresham  
Judge, 336<sup>th</sup> District Court  
200 Crockett Street  
Sherman, Texas 75090

Dear Judge Gresham:

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. Oldham 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