

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 99- 9177**

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

The Supreme Court of Texas hereby appoints the Honorable Craig Fowler, Judge of the 255th District Court of Dallas County, Texas, to preside in the Disciplinary Action styled:

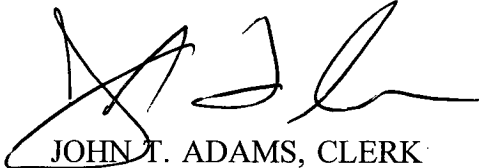
**The Commission for Lawyer Discipline v. Don E. Rabinowitz**

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,

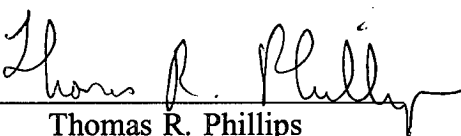
with the Seal thereof affixed at the City  
of Austin, this 27th day of September, 1999.

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

JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9177, 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

COPY

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

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
DON E. ROBINOWITZ	§	_____ 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, **DON E. ROBINOWITZ** (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 2 Discovery Control Plan. Pursuant to Rule 190.3(a), TRCP, Petitioner affirmatively pleads that it seeks only monetary relief 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. Respondent may be served by and through his attorney, John Gladney, at 440 Louisiana, Suite 800, Houston, Texas 77002.

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

On or about July 17, 1998 Tawana C. Aikens (hereinafter referred to as "Aikens") and Margaret Moore (hereinafter referred to as "Moore") were involved in an automobile accident. On or about July 24, 1998, Moore was getting on the elevator after a physical therapy appointment and was approached by Respondent who had an office in the same building. He began a conversation with Moore and asked her what was wrong. She informed him that she and a passenger friend Aikens had been in an automobile accident. Respondent informed Moore that he was an attorney and that he could help her friend Aikens. He gave Moore his business card and made an appointment for both Moore and Aikens to come to his office the next day, Saturday, July 25, 1998 at 8:00 a.m. to discuss their case.

On Saturday, July 25, 1998, Moore and Aikens went to Respondent's office. Aikens signed a contract with Respondent to represent her. On or about August 11, 1998, Aikens called Respondent's office and left a message with his secretary as to the status of her case. Respondent failed to return Aikens' call.

On August 11, 1998, Aikens contacted her adjuster to see if they had received a letter of representation from Respondent as of August 18, 1998. On August 18, 1998, Aikens went to Respondent's office and give him a letter of release in person. He asked Aikens to visit with him and discuss her reasons for his release from the case. Aikens informed Respondent that she was not satisfied with his services. He then asked Aikens who or what had changed her mind as to his representation and Aikens informed Respondent that she did not want to discuss anything further. Aikens then requested her file. Respondent refused because he informed Aikens that he was not able to give Aikens her file or provide her with any bills at this moment because Aikens owed him for work he had performed in her case.

On August 19, 1998, Respondent continued to work on Aikens' file despite the release. Respondent contacted Aikens' insurance company, informed them that he was the attorney of record, told them he was faxing them a letter of representation and to inform him when they received it. Respondent also contacted the physical therapy office where Aikens was being treated and tried to persuade them to get Aikens to continue to keep him as the attorney of record. Respondent then billed Aikens an hourly rate and insisted that Aikens owed him for work performed even after he had been released from the case. The contract signed was based on a contingency basis, not a fee arrangement.

## **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 **1.04(a)** [for entering into an arrangement for, charging or collecting an illegal fee or unconscionable fee; **4.01(a)**] [for making a false

statement of material fact or law to a third person.; and 7.03(a)[a lawyer shall not by in person or telephone contact seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or non-client who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization's members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services; 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 © and 8.04(a)(3)[for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation].

### 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 TAWANA C. AIKENS'S filing of a complaint on or about November 23, 1998.

### **PRAYER FOR RELIEF**

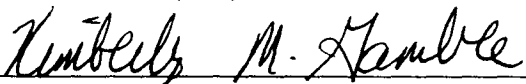
**WHEREFORE, PREMISES CONSIDERED,** Petitioner, the **COMMISSION FOR LAWYER DISCIPLINE**, respectfully prays that this Court discipline Respondent, **TAWANA C. AIKENS**, by reprimand, suspension, or disbarment, as the facts shall warrant; order restitution to Complainant; and grant all other relief to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

Respectfully submitted,

**DAWN MILLER**  
Acting General Counsel

**KIMBERLY M. GAMBLE**  
Assistant General Counsel

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

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

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

# STATE BAR OF TEXAS



Office of the General Counsel

August 10, 1999

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

**Re: Commission for Lawyer Discipline v. Don E. Robinowitz**

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 Don E. Robinowitz. Mr. Robinowitz 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:

Don E. Robinowitz  
c/o John Gladney  
440 Louisiana, Suite 800  
Houston, Texas 77002

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**



Mr. John Adams

August 10, 1999

Page 2

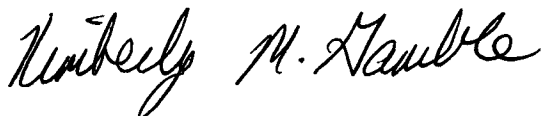
---

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,

A handwritten signature in cursive script that reads "Kimberly M. Gamble".

Kimberly M. Gamble  
Assistant General Counsel

KMG/lp

encls.



## 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

OCT 07 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 ASS'T  
WILLIAM L. WILLIS

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. Don E. Rabinowitz  
c/o John Gladney  
440 Louisiana, Suite 800  
Houston, Texas 77002

Dear Ms. Gamble and Mr. Rabinowitz:

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 Craig Fowler, Judge of the 255<sup>th</sup> District Court, Dallas, Texas to preside in

*Commission for Lawyer Discipline v. Don E. Robinowitz*

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

OCT 07 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 ASS'T  
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T  
JIM HUTCHESON

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. Don E. Rabinowitz*, and a copy of the Supreme Court's order appointing the Honorable Craig Fowler, Judge of the 255<sup>th</sup> District Court, Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Honorable Craig Fowler  
Ms. Kimberly M. Gamble  
Mr. Don E. Rabinowitz  
Ms. Melissa Dartez



# 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

OCT 07 1999

DEPUTY EXECUTIVE ASS'T  
JIM HUTCHESON

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

Honorable Craig Fowler  
Judge, 255<sup>th</sup> District Court  
600 Commerce Street, 5<sup>th</sup> Floor  
Dallas, Texas 75202

Dear Judge Fowler:

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. Rabinowitz 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