

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 00-9107

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

The Supreme Court of Texas hereby appoints the Honorable Ben Hardin, Judge of the 23rd District Court of Brazoria County, Texas, to preside in the Disciplinary Action styled:

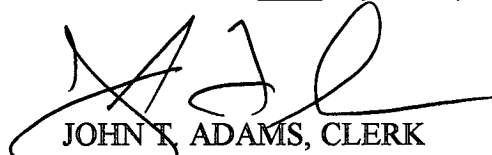
The Commission for Lawyer Discipline v. Morris J. Kirschberg

to be filed in a District Court of Bexar County, Texas.

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Bexar 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.

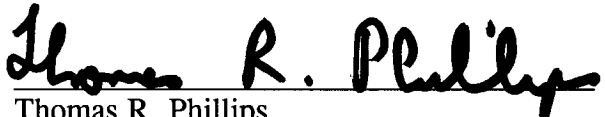
As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City
Of Austin, this 14th day of July, 2000.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 00-9107, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 18 day of July, 2000.


Thomas R. Phillips
Chief Justice

Cause No. _____

COMMISSION FOR
LAWYER DISCIPLINE,
Petitioner

vs

MORRIS J. KIRSCHBERG,
Respondent

§
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§

IN THE DISTRICT COURT

____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Commission for Lawyer Discipline, Petitioner, and would respectfully show the following:

I.

DISCOVERY CONTROL PLAN

Discovery proceedings in this cause should be conducted on Level 2 pursuant to Tex.R.Civ.P. Rule 190.3.

II.

PARTIES

Petitioner is the Commission for Lawyer Discipline, a committee of the State Bar of Texas. Respondent, Morris J. Kirschberg, State Bar No. 11533300, is a member of the State Bar of Texas and is presently licensed to practice law in the State of Texas.

Respondent maintains his principle place of practice in San Antonio, Bexar County, Texas. Respondent may be served with process in this proceeding at his office at 4550 N. W. Loop 410, Suite 100, San Antonio, Texas 78229.

III.

JURISDICTION, VENUE AND CONDITIONS PRECEDENT

The cause of action and the relief sought in this case are within the jurisdictional requirements of this Honorable Court. Venue of this case is proper in Bexar County, Texas pursuant to Texas Rules of Disciplinary Procedure Rule 3.03, because Bexar County is the county of the Respondent's residence. All conditions precedent to proceeding with this cause have been performed or fulfilled.

IV.

PROFESSIONAL MISCONDUCT

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex.Gov't.Code §81.001 *et seq.*, the Disciplinary Rules of Professional Conduct ("DRPC") and the Texas Rules of Disciplinary Procedure ("TRDP"). The complaint which forms the basis of this action was filed on or about May 20, 1999 by Muriel Eppinger Phelps ("Phelps"). The acts and omissions of Respondent, as hereinafter alleged, constitute professional misconduct.

V.

FACTUAL BACKGROUND

Respondent was hired on or about September 30, 1998 to assist Complainant with an insurance matter related to her home in Seguin, Texas. The fees were arranged through legal insurance. Respondent neglected the handling of Complainant's claim against her insurance company by failing to transmit the necessary documents to the insurance adjuster. Respondent failed to respond to Complainant's requests for information and failed to keep her advised of the status of her claim and his representation.

VI.

DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

The conduct described above is in violation of the following Texas Rules of Disciplinary Conduct:

Rule 1.01(b)(1) -- In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.01(b)(2) -- In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

Rule 1.03(a) -- A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.03(b) -- A lawyer shall explain a matter to the extent reasonably

necessary to permit the client to make informed decisions regarding the representation.

VII.

RELIEF SOUGHT

Petitioner would show that This Honorable Court should enter a judgment of professional misconduct and impose a sanction against Respondent which is in the Court's discretion appropriate under the facts established. Additionally, Respondent should be ordered to pay attorney fees and all costs associated with this litigation.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Honorable Court impose an appropriate sanction against Respondent as the facts proved shall warrant. Petitioner further prays to recover costs of court and all expenses associated with these proceedings, including attorney fees as provided in TRDP Rule 1.06(T)(8)(b). Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

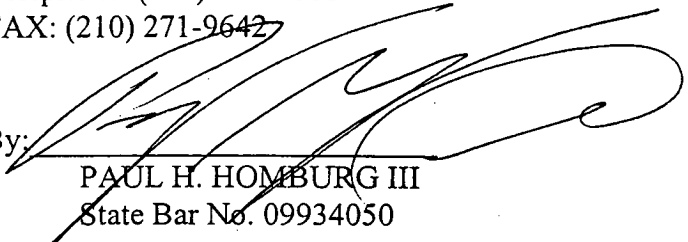
Respectfully submitted,

DAWN MILLER,
Chief Disciplinary Counsel

PAUL H. HOMBURG III,
Assistant Disciplinary Counsel

Office of Chief Disciplinary Counsel
State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205
Telephone: (210) 271-7881
FAX: (210) 271-9642

By:



PAUL H. HOMBURG III
State Bar No. 09934050

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#Z 149 064 490

Regional Office
Soledad Plaza West
425 Soledad, Suite 300
San Antonio, Texas 78205
(210) 271-7881
FAX: (210) 271-9642

June 5, 2000

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

RE: Commission for Lawyer Discipline v. Morris J. Kirschberg

Dear Mr. Adams:

Enclosed please find an original and three (3) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Morris J. Kirschberg. Mr. Kirschberg has designated **Bexar County** 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:

Morris J. Kirschberg
4550 N. W. Loop 410, Suite 100
San Antonio, Texas 78229

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial as set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure. If not, I would respectfully request that an alternate appointment be made.

Once a trial judge has been appointed, please forward the original and three (3) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Bexar County, Texas, with the request that the suit be filed, service be obtained, and a filemarked copy of the petition returned to the undersigned.

Also enclosed is a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Bexar County, Texas and a return envelope to be sent to the District Clerk of Bexar County, Texas, for the Clerk's use in returning a filemarked copy of the petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'PHH', with a long horizontal flourish extending to the right.

Paul H. Homburg, III
Assistant Disciplinary Counsel

Enclosures

PHH/apr



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 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 ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JUL 19 2000

The Honorable Reagan Greer
District Clerk of Bexar County
100 Dolorosa Street
San Antonio, Texas 78205-1205

Dear Mr. Greer:

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. Morris J. Kirschberg*, and a copy of the Supreme Court's order appointing the Honorable Ben Hardin, Judge of the 23rd District Court, Angleton, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Ben Hardin
Mr. Paul H. Homburg, III
Mr. Morris J. Kirschberg



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
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JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JUL 19 2000

Honorable Ben Hardin
Judge, 23rd District Court
402 Courthouse
111 E. Locust Street
Angleton, Texas 77515-4678

Dear Judge Hardin:

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. Kirschberg and Mr. Homburg, and a copy of the letter to the District Clerk of Bexar County.

It is recommended that, six to eight weeks after receipt of this letter, you or your coordinator contact the Bexar County Administrative Office (210-335-2300) to find out the district court to which this disciplinary case has been assigned, names and addresses of counsel, etc. We then recommend that, either before or immediately after you set the case for trial, you contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (210-769-3519) to reserve a courtroom, obtain a court reporter, obtain 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

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

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JOHN T. ADAMS

JUSTICES
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EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JUL 19 2000

Mr. Paul H. Homburg, III
Assistant General Counsel, State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205

Mr. Morris J. Kirschberg
4550 N. W. Loop 410, Suite 100
San Antonio, Texas 78229

Dear Mr. Homburg and Mr. Kirschberg:

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 Ben Hardin, Judge of the 23rd District Court, Angleton, Texas to preside in

Commission for Lawyer Discipline v. Morris J. Kirschberg

Sincerely,

SIGNED

John T. Adams
Clerk