

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 98-9821

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

The Supreme Court of Texas hereby appoints the Honorable Pat Boone, Judge of the 57th District Court of Bexar County, Texas, to preside in the Disciplinary Action styled:

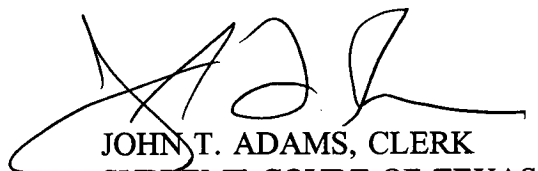
The Commission for Lawyer Discipline v. Edward Heller

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.

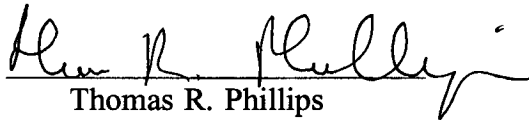
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 21st day of December, 1998.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 98-9221, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 22 day of December, 1998.

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 IN THE DISTRICT COURT OF

VS. HARRIS COUNTY, T E X A S

EDWARD HELLER _____ 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, EDWARD HELLER, showing the Court:

I.

Petitioner brings this disciplinary action pursuant to the State Bar Act, the 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.

II.

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent is a resident of Harris County, 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. An officer may serve citation on Respondent at his business address located at 3050 Post Oak Blvd., Suite 1090, Houston, Harris County, Texas 77056-6525.

III.

Karen E. Gross and Elsie Gross, both of Eggertsville, New York hired Respondent to represent them in a probate matter. Texas resident Allen E. Gross died intestate on January 23, 1996. Karen Gross is the sister of Allen Gross, and Elsie is Allen's mother. These two women are the only apparent heirs to Allen Gross' estate. Karen was named independent administratrix of the estate. The two women came to Texas and hired Respondent to help in the probate of the estate.

Respondent converted or attempted to convert some of the property from the estate to his own use. Neither Karen nor Elsie Gross gave the Respondent, while representing them on the probate matter, permission to convert some of the property of the estate to his own use. Respondent justified this conversion of property by stating he would apply the value of the items to his fees. However, neither Karen nor Elsie Gross has been provided any type of accounting of the property involved in the estate.

Respondent took several items of oriental art from the decedent's house for appraisal in February 1996. He stored these items in a closet of his home. In May, 1996, he moved to temporary living quarters, and placed furniture and other personal belongings in storage, including the oriental art taken for appraisal. The items were stored in such a manner that the oriental art belonging to the estate of Allen Gross was commingled with Respondent's own personal property. Respondent did not have easy access to these items in storage. When Karen and Elsie Gross came to Houston to retrieve property from Allen Gross' estate, they were not able to obtain the items Respondent placed in storage with his personal property. Respondent asked that they wait until renovations to his home were completed before he retrieved the items from

storage. Karen and Elsie Gross continued to try to recover the 6 items of oriental art Respondent had in storage. Respondent did not return the property until after January, 1997.

Respondent sold numerous assets of the estate at an auction. He has failed to produce either an accounting of the assets sold at auction, or the proceeds of the auction. Instead, he applied the proceeds of the auction against his legal fees, despite the fact that he was paid over Two Thousand Dollars (\$2,000.00) by Karen and Elsie Gross for handling the auction.

Allen Gross had worked for Compaq Computer Corporation. Respondent took possession of a Compaq computer that was part of the estate. Karen Gross instructed Respondent to preserve everything that was on the computer hard drive for her. She stated the hard drive contained possible work product of her brother that she wished to preserve. Respondent hired a computer expert to upgrade the hard drive in the computer, but failed to instruct the expert to save what was on the hard drive, as Karen Gross had requested. To the best of Karen Gross' knowledge, what was on the hard drive of her brother's computer at the time of his death has been destroyed through the carelessness of the Respondent. To this date, Karen Gross and the Respondent have not resolved their differences regarding the computer.

IV.

The acts and/or omissions of the Respondent described in Paragraph III above, which occurred on or after January 1, 1990, constitute conduct in violation of Rules: **1.14(a)** for failing to hold funds or other property belonging in whole or in part to client separate from his own property; **1.14(b)** for failing to promptly deliver to a client any

funds or other property they are entitled to receive and for failing to promptly render a full accounting regarding such property; **1.14(c)** failure to keep property in which the lawyer and another person claim an interest separate until there is an accounting and severance of interest; **8.04(a)(1)** violating these rules; and **8.04(a)(3)** engaging in conduct involving deceit, fraud, dishonesty, or misrepresentation; of the Texas Disciplinary Rules of Professional Conduct.

V.

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 William Hayes filing a complaint on or about May 16, 1997.

Prayer

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

MARY F. KLAPPERICH

State Bar No. 11550700

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the General Counsel

November 18, 1998

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

Re: Commission for Lawyer Discipline v. Edward Heller

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 Edward Heller. Mr. Heller 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:

Edward Heller
Attorney-at-Law
3050 Post Oak Blvd., Suite 1090
Houston, Texas 77056-6525

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.

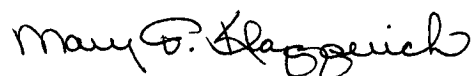
Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Harris County, Texas, with the request that the suit be filed, service be obtained,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

Mr. John Adams
Supreme Court of Texas
November 18, 1998
Page Two

Also enclosed are two (2) pre-addressed envelopes for your use in transmitting the Disciplinary 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 Disciplinary 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

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
CRAIG T. ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON

DEC 28 1998

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. Edward Heller*, and a copy of the Supreme Court's order appointing the Honorable Pat Boone, Judge of the 57th District Court of San Antonio, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Pat Boone
Ms. Mary F. Klapperich
Mr. Edward Heller
Ms. Melissa Dartez



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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CLERK
JOHN T. ADAMS

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GREG ABBOTT
DEBORAH G. HANKINSON

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

DEC 28 1998

Honorable Pat Boone
Judge, 57th District Court
100 Dolorosa Street
San Antonio, Texas 78205

Dear Judge Boone:

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. Heller 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,

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

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DEC 28 1998

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

Mr. Edward Heller
Attorney-at-Law
3050 Post Oak Boulevard, Suite 1090
Houston, Texas 77056-6525

Dear Ms. Klapperich and Mr. Heller:

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 Pat Boone, Judge of the 57th District Court of San Antonio, Texas to preside in

Commission for Lawyer Discipline v. Edward Heller

Sincerely,

SIGNED

John T. Adams
Clerk