

**ORDER OF THE SUPREME COURT OF TEXAS**

**9010**

Misc. Docket No. 01-----

Appointment of a District Judge to Rule on a Motion  
to Recuse filed in a State Bar Disciplinary Action

The Supreme Court of Texas hereby appoints the Honorable Betty Ann Caton, Judge of the 296th District Court of Collin County, Texas, to preside in the Disciplinary Action styled:

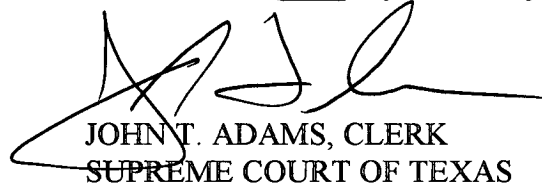
**The Commission for Lawyer Discipline v. John M. McDermott**

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 the Disciplinary Petition and this Order for filing and service pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

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

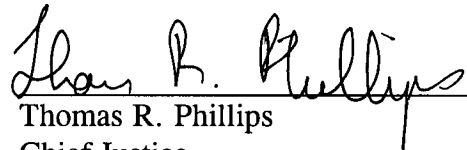
With the Seal thereof affixed at the City  
Of Austin, this 5<sup>th</sup> day of January, 2001.



JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9010, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 8 day of January, 2001.

  
\_\_\_\_\_  
Thomas R. Phillips  
Chief Justice

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

COMMISSION FOR LAWYER DISCIPLINE,

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

Petitioner

vs.

HARRIS COUNTY, TEXAS

JOHN M. McDERMOTT,

Respondent

\_\_\_\_\_ 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, JOHN M. McDERMOTT (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 1 Discovery Control Plan. Pursuant to Rule 190.2(a)(1), TRCP, Petitioner affirmatively pleads that it seeks only monetary relief aggregating fifty thousand and no/100 dollars (\$50,000.00) or less, 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.

### 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 at his business address, 411 Fannin, Suite 310, Houston, Harris County, Texas 77002.

### IV. CAUSE OF ACTION

On or about March 18, 1999, BRENDA STEWART (hereinafter referred to as "Complainant") employed Respondent as an attorney for legal representation in an uncontested divorce. Complainant paid Respondent a total of three hundred and ninety-eight and no/100 dollars (\$398.00) for the representation. On or about April 23, 1999, Respondent filed an *Original Petition for Divorce* on behalf of Complainant. Although citation was issued on May 18, 1999, Complainant's husband was not served until June 7, 1999. Nine (9) days later, on June 16, 1999, the incomplete service return was filed with the court. On July 17, 1999, Complainant paid an additional sum of fifty and no/100 dollars (\$50.00), as requested, directly to Respondent's process server.

The first divorce hearing was scheduled for July 23, 1999; however, Respondent failed to appear and failed to timely advise Complainant of his schedule conflict. Throughout the representation, Respondent failed to properly communicate with Complainant.

The case was reset for July 30, 1999. At that time, the court informed Respondent that the service return had not been properly executed. The case was again reset for August 20, 1999.

On or about August 19, 2000, Respondent (or his agent) called Complainant and, without explanation, left a message that the August 20, 1999, hearing would be canceled. Complainant later learned from Respondent that there were additional concerns about the designated process server, Mr. Johnson. In addition to the unexecuted return of service, Mr. Johnson was allowing a non-approved process server to deliver court documents. Complainant requested a refund of the fees paid and Respondent refused.

Unbeknownst to Complainant, Respondent allowed Mr. Johnson another opportunity to serve her ex-husband. After several weeks, Mr. Johnson did not effectuate service. Due to both the time delay and the notice afforded Complainant's ex-husband of the pending suit, further efforts to properly serve Complainant's ex-husband failed.

On or about December 20, 1999, Respondent filed an *Opposed Motion for Withdrawal of Counsel*. Thereafter, Complainant proceeded *pro se* and the Court granted the uncontested divorce.

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

The acts and/or omissions of Respondent described in Paragraph IV, above, constitute conduct in violation of Rules **1.01(b)(1)** [neglecting a legal matter entrusted to the lawyer]; **1.01(b)(2)** [frequently failing to carry out completely the obligations owed to a client]; **1.03(a)** [failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; and **1.15(d)** [failing, upon termination of representation, to reasonably protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is

entitled and refunding any advance payments of fee that has not been earned] of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

**VI.**

The complaint that forms the basis of this cause of action was brought to the attention of the Office of the Chief Disciplinary Counsel of the STATE BAR OF TEXAS by BRENDA STEWART's filing of a complaint on or about August 31, 1999.

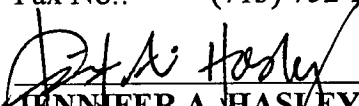
**PRAYER FOR RELIEF**

**WHEREFORE, PREMISES CONSIDERED,** Petitioner, **COMMISSION FOR LAWYER DISCIPLINE,** respectfully prays that this Court discipline Respondent, **JOHN M. McDERMOTT,** 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,**  
Chief Disciplinary Counsel

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

  
\_\_\_\_\_  
**JENNIFER A. HASLEY**  
Assistant Disciplinary Counsel  
State Bar No. 00792818

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

Cause No. \_\_\_\_\_

COMMISSION FOR LAWYER DISCIPLINE

Plaintiff §  
§  
§  
§  
Defendant §

IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
\_\_\_\_\_ JUDICIAL DISTRICT

*John M. McDermott*

CIVIL CASE INFORMATION SHEET

This form must be completed and filed with every original petition, and a copy attached to every original petition served. The information should be the best available at the time of filing, understanding that such information may change before trial. This form does not constitute a discovery request, response, or supplementation, and is not admissible at trial.

Service must be obtained promptly. Notice is hereby given that, per Harris County Local Rule 3.6, any case in which no answer has been filed or default judgement signed SIX (6) MONTHS from filing will be eligible for DISMISSAL FOR WANT OF PROSECUTION.

Type of Action:     Commercial     Personal Injury     Death     Other

Check all claims pled:

<input type="checkbox"/> Account due	<input type="checkbox"/> Defamation	<input type="checkbox"/> Fraud	<input type="checkbox"/> Product liability
<input type="checkbox"/> Admiralty	<input checked="" type="checkbox"/> Disbarment	<input type="checkbox"/> Garnishment	<input type="checkbox"/> Post judgment
<input type="checkbox"/> Assault	<input type="checkbox"/> Discrimination	<input type="checkbox"/> Injunction/TRO	<input type="checkbox"/> Railroad
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Dram shop	<input type="checkbox"/> Insurance bad faith	<input type="checkbox"/> Real estate
<input type="checkbox"/> Auto	<input type="checkbox"/> DTPA	<input type="checkbox"/> Malicious prosecution	<input type="checkbox"/> Securities fraud
<input type="checkbox"/> Bill of review	<input type="checkbox"/> Employment discharge	<input type="checkbox"/> Malpractice/Legal	<input type="checkbox"/> Sequestration
<input type="checkbox"/> Business dissolution	<input type="checkbox"/> Environmental tort	<input type="checkbox"/> Malpractice/Medical	<input type="checkbox"/> Silicone implant
<input type="checkbox"/> Conspiracy	<input type="checkbox"/> Expiration	<input type="checkbox"/> Malpractice/Other	<input type="checkbox"/> Tax
<input type="checkbox"/> Contract	<input type="checkbox"/> False imprisonment	<input type="checkbox"/> Name change	<input type="checkbox"/> Tortious interference
<input type="checkbox"/> Deed restriction	<input type="checkbox"/> Foreclosure	<input type="checkbox"/> Note	<input type="checkbox"/> Trespass
<input type="checkbox"/> Declaratory judgment	<input type="checkbox"/> Forfeiture	<input type="checkbox"/> Premises liability	<input type="checkbox"/> Workers compensation
<input type="checkbox"/> Other _____			

Has this dispute previously been in the Harris County courts?     No     Yes, in the following court: \_\_\_\_\_

Monetary damages sought:     less than \$100,000     greater than \$100,000

Estimated time needed for discovery     0-3 months     4-6 months     7-12 months     >1 year

Estimated time needed for trial:     1-2 days     3-5 days     6-10 days     >10 days

Is there a likelihood of experts other than treating physicians or experts on attorney's fees?     Yes     No

Is immediate ADR requested?     Yes     No

Name of party filing this cover sheet:    COMMISSION FOR LAWYER DISCIPLINE

Signature of attorney or pro se filing cover sheet:    \_\_\_\_\_

Name printed: JENNIFER A. HASLEY    *Jennifer A. Hasley*  
Phone No.: (713) 759-6931    Bar No.: 00792818

**FOR COURT USE ONLY:**

Track assigned     Track 1     Track 2     Track 3

Court Coordinator    \_\_\_\_\_    Date: \_\_\_\_\_

# STATE BAR OF TEXAS



## OFFICE OF THE CHIEF DISCIPLINARY COUNSEL

November 13, 2000

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

**RE: *Commission for Lawyer Discipline v. John M. McDermott***

Dear Mr. Adams:

Enclosed please find an original and two (2) copies of the *Original Disciplinary Petition* being filed by the Commission for Lawyer Discipline against John M. McDermott. Mr. McDermott 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:

John M. McDermott  
411 Fannin, Suite 310  
Houston, Harris County, Texas, 77002.

As a practical matter, we respectfully suggest that an inquiry be made as to whether the judge will be able to comply with the one hundred and eighty (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, we 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 *Original Disciplinary Petition*, the *Civil Case Information Sheet*, the filing fee check (all 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.

Additionally, enclosed please find 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

J\MCDERMOT.JM6CORRESP\C\_ADAMS.011

**1111 FANNIN, SUITE 1370, HOUSTON, TEXAS 77002, (713) 759-6931**



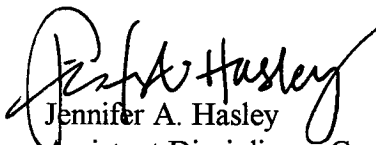
John T. Adams, Clerk  
Supreme Court of Texas  
November 13, 2000

Page 2

the *Original Disciplinary Petition* to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,

  
Jennifer A. Hasley  
Assistant Disciplinary Counsel

JAH/sml

Enclosures

1. Original Disciplinary Petition (original and two (2) copies)
2. Civil Case Information Sheet
3. Filing Fee Check
4. Pre-Addressed Envelope to District Clerk
5. Pre-Addressed Envelope to STATE BAR OF TEXAS



# 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

JAN 12 2001

Ms. Jennifer A. Hasley  
Assistant General Counsel, State Bar of Texas  
1111 Fannin, Suite 1370  
Houston, Texas 77002

Mr. John M. McDermott  
411 Fannin, Suite 310  
Houston, Texas 77002

Dear Ms. Hasley and Mr. McDermott:

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 Betty Ann Caton, Judge of the 296<sup>th</sup> District Court, McKinney, Texas to preside in

*Commission for Lawyer Discipline v. John M. McDermott*

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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JIM HUTCHESON

ADMINISTRATIVE ASSISTANT  
NADINE SCHNEIDER

JAN 12 2001

Honorable Betty Ann Caton  
Judge, 296<sup>th</sup> District Court  
424 Courthouse  
210 S. McDonald Street  
McKinney, Texas 75069

Dear Judge Caton:

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. McDermott Harvey and Ms. Hasley, 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

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  
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EXECUTIVE ASSISTANT  
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST  
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT  
NADINE SCHNEIDER

JAN 12 2001

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. John M. McDermott*, and a copy of the Supreme Court's order appointing the Honorable Betty Ann Caton, Judge of the 296<sup>th</sup> District Court, McKinney, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Honorable Betty Caton  
Ms. Jennifer A. Hasley  
Mr. John M. McDermott  
Ms. Melissa Dartez