

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97- 9062

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

The Supreme Court of Texas hereby appoints the Honorable Wayne F. Salvant, Judge of the Criminal District Court No. 2 of Tarrant County, Texas, to preside in the Disciplinary Action styled:

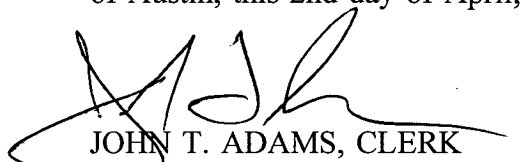
The Commission for Lawyer Discipline v. McCuller C. Stephens, III

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.

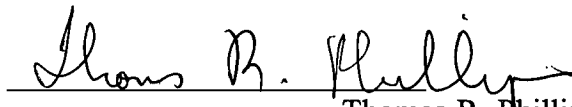
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 2nd day of April, 1997.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 97-9062, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 3 day of April, 1997.


Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COPY

COMMISSION FOR LAWYER DISCIPLINE

§

IN THE DISTRICT COURT OF

V.

§

HARRIS COUNTY, TEXAS

MCCULLER C. STEPHENS, III

§

§

§

_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

The Commission for Lawyer Discipline ("Petitioner"), a permanent committee of the State Bar of Texas, complains of McCuller C. Stephens, III ("Respondent"), an attorney licensed to practice law in the State of Texas, showing the Court as follows:

1. NATURE OF PROCEEDING

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.

2. VENUE

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 located in Harris County, Texas. Therefore venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure.

3. ISSUANCE OF CITATION AND SERVICE OF PROCESS REQUESTED

Petitioner requests that citation be issued and forwarded to Diego J. Vargas, Assistant General Counsel, State Bar of Texas, 1111 Fannin, Suite 1370, Houston, Texas 77002, so that an independent process server may serve Respondent at his business address located at 1300 Main Street, Suite 1835, Houston, Texas 77002.

4. FACTS GIVING RISE TO PROCEEDING

4.01 On or about March 3, 1995, Sandra Aguilar ("Complainant") was involved in an automobile accident in Houston, Harris County, Texas. This accident was caused by Hoang Tran. Hoang Tran and complainant were both insured by the Farmers Insurance Group of Companies.

4.02 Shortly thereafter, Complainant retained Respondent to represent her, and her two minor children, in a claim for personal injuries against Hoang Tran.

4.03 At the time Complainant retained Respondent, Complainant told Respondent's secretary ("Lisa") that Complainant did not want to make a claim against her own insurance policy. Complainant specifically notified Respondent, through Lisa, that she only wanted to seek compensation from Hoang Tran's insurance policy.

4.04 After Complainant notified Respondent that she did not want to file a claim against her insurance policy, Complainant received a letter from her insurance company notifying her that a claim had been made against

her insurance policy. Specifically, Respondent made a claim against Complainant's personal injury protection coverage on Complainant's behalf.

4.05 Respondent failed to abide by Complainant's decision concerning the objectives and general methods of representation in violation of Texas Disciplinary Rule of Professional Conduct 1.02(a)(1). In addition, Respondent failed to explain the employment contract signed by Complainant to the extent reasonably necessary to permit the Complainant to make informed decisions regarding the representation.

4.06 Respondent settled Complainant's, and her children's, claims against Hoang Tran for \$11,600.00. This amount was paid by the Farmer's Insurance Group of Companies. This amount also included funds from Complainant's personal injury protection coverage.

4.07 Respondent retained thirty three and one third percent of the settlement as attorney's fees. This amounted to \$3,862.00. Respondent also retained one third of Complainant's personal injury protection coverage as attorneys' fees.

4.08 Respondent entered into an arrangement for, charged, and collected an unconscionable fee from Complainant in violation of Texas Disciplinary Rule of Professional Conduct 1.04(a).

4.09 Respondent retained one third of Complainant's settlement, \$3,862.00, in order to pay Complainant's medical providers for medical

services provided to Complainant as a result of Complainant's auto accident.

4.10 Respondent represented to Complainant that he would pay Complainant's medical providers with the funds retained for that purpose. However, Respondent did not pay Complainant's medical providers.

4.11 Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation.

5. SPECIFIC VIOLATIONS OF THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

The acts and/or omissions of the Respondent described in Section 4 above, which occurred on or after January 1, 1990, constitute conduct in violation of Rules 1.02(a)(1), 1.03(b), 1.04(a), and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

6. TIMELINESS OF FILING

The complaint that forms the basis of this cause of action was brought to the attention of the Office of the General Counsel by Sandra Aguilar's filing this complaint on or about October 25, 1996.

7. PRAYER

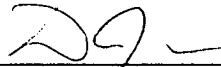
Petitioner prays that this Court discipline Respondent by disbarment, suspension or reprimand, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself to be justly entitled, including costs of court and attorneys' fees.

Respectfully submitted,

Steven W. Young
General Counsel

Diego J. Vargas
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



DIEGO J. VARGAS
State Bar No. 00791847

ATTORNEYS FOR PETITIONER/ THE
COMMISSION FOR LAWYER DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

March 3, 1997

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

Re: Commission for Lawyer Discipline v. McCuller C. Stephens, III

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 McCuller C. Stephens, III. Mr. Stephens 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 practices to preside in this case. Upon appointment, request is hereby made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

McCuller C. Stephens, III
1300 Main Street, Suite 1835
Houston, Texas 77002

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 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 two (2) copies of the Disciplinary Petition, the Civil Case Information Sheet, and 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, citation be issued, and citation, along with a file-stamped copy of the petition be returned to the undersigned.

Also enclosed is a pre-addressed envelope for your use in transmitting the above referenced documents 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 filemarked copy of the petition to the undersigned.

Mr. John T. Adams, Clerk
Supreme Court of Texas
March 3, 1997
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If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink that reads "Diego Vargas" followed by a stylized flourish or initials.

Diego J. Vargas
Assistant General Counsel

DJV/slk
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

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

April 4, 1997

The Honorable Charles Bacarisse
District Clerk of Harris County
P.O. Box 4651
Houston, Texas 77210

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. McCuller C. Stephens, III, and a copy of the Supreme Court's order appointing the Honorable Wayne F. Salvant, Judge of the Criminal District Court No. 2, Fort Worth, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Wayne F. Salvant
Mr. McCuller C. Stephens, III
Mr. Diego J. Vargas



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

April 4, 1997

Honorable Wayne F. Salvant
Judge, Criminal District Court No. 2
Justice Center
401 West Belknap Street
Fort Worth, Texas 76196-0225

Dear Judge Salvant:

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. Stephens and Mr. Vargas, 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

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WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

April 4, 1997

Mr. Diego J. Vargas
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. McCuller C. Stephens, III
1300 Main Street, Suite 1835
Houston, Texas 77002

Dear Mr. Vargas and Mr. Stephens:

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 Wayne F. Salvant, Judge of the Criminal District Court No. 2 of Fort Worth, Texas to preside in

Commission for Lawyer Discipline v. McCuller C. Stephens, III

Sincerely,

SIGNED

John T. Adams
Clerk