

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 98- 9177

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

The Supreme Court of Texas hereby appoints the Honorable Gus J. Strauss, Judge of the 2nd 25th District Court of Lavaca County, Texas, to preside in the Disciplinary Action styled:


The Commission for Lawyer Discipline v. William H. Ervine, Jr.

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.

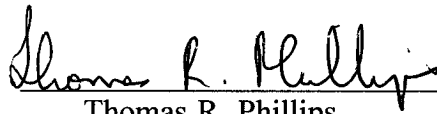
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 13th day of October, 1998.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 98-9177, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 14 day of October, 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

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§

IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

WILLIAM H. ERVINE, JR.

_____ 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 (hereinafter referred to as "Petitioner"), complaining of Respondent, WILLIAM H. ERVINE, JR., (hereinafter referred to as "Respondent"), and would show the Court the following:

I. NATURE OF PROCEEDING

Petitioner brings this disciplinary action pursuant to the State Bar Act, the Tex. Gov't 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 were filed on or after May 1, 1992.

II. VENUE

Respondent is an attorney who is a defendant in two derivative shareholder lawsuits. Respondent's alleged Professional Misconduct occurred in whole or in part in Harris County, Texas; 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 through

his attorney of record, Wayne Paris, at his business address located at 3100 S. Gessner, Suite 600, Houston, Harris County, Texas 77063.

III. CAUSE OF ACTION

On or about February 7, 1997, a complaint was filed with the State Bar of Texas against Respondent. The complaint alleged that Respondent in connection with his practice of law, maintained a joint IOLTA account with Respondent's wife Fran Brchstein, also an attorney. During 1993 through 1994 Respondent failed to keep the funds belonging to his clients separate from Respondent's own property. Respondent made deposits of his own personal funds into this IOLTA account and disbursements of funds for his personal expenses from this account.

IV.

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 Alan J. Winters's filing of a complaint on or about February 7, 1997.

V. RULE VIOLATIONS

The acts and/or omissions of Respondent described in Paragraph III above which occurred on or before January 1, 1990, constitute conduct in violation of Rules 1.14(a) [a lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the

lawyer, and shall be preserved for a period of five years after termination of the representation]; and 8.04(a)(1) [a lawyer shall not violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship].

PRAYER

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

Respectfully submitted,

Steven W. Young
General Counsel

Kimberly M. Gamble
Assistant General Counsel

Office of the General Counsel
State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6932
(713) 752-2158 FAX



KIMBERLY M. GAMBLE
State Bar No. 00789804

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

STATE BAR OF TEXAS



Office of the General Counsel

September 8, 1998

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

Re: Commission for Lawyer Discipline v. William H. Ervine, Jr.

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 William H. Ervine Jr.. Mr. Ervine has designated Harris County, Texas, as his the place where the alleged Professional Misconduct occurred. 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:

William H. Ervine, Jr.
c/o Wayne Paris
3100 S. Gessner, Suite 600
Houston, Texas 77063

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.

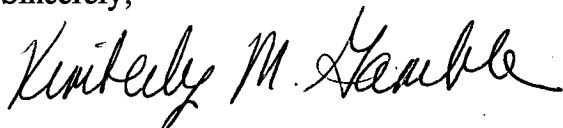
Mr. John Adams
September 8, 1998
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Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk 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,



Kimberly M. Gamble
Assistant General Counsel

KMG/lp

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

OCT 20 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. William H. Ervine, Jr.* and a copy of the Supreme Court's order appointing the Honorable Gus J. Strauss, Judge of the 2nd 25th District Court of Hallettsville, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Gus J. Strauss
 Ms. Kimberly M. Gamble
 Mr. William H. Ervine, Jr.



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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DEBORAH G. HANKINSON

OCT 20 1998

Honorable Gus J. Strauss
Judge, 2nd 25th District Court
P.O. Box 511
Hallettsville, Texas 77964-0511

Dear Judge Strauss:

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. Ervine 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



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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OCT 20 1998

Ms. Kimberly M. Gamble
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. William H. Ervine, Jr.
C/o Wayne Paris
3100 S. Gessner, Suite 600
Houston, Texas 77063

Dear Ms. Gamble and Mr. Ervine:

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 Gus J. Strauss, Judge of the 2nd 25th District Court of Hallettsville, Texas to preside in

Commission for Lawyer Discipline v. William H. Ervine, Jr.

Sincerely,

SIGNED

John T. Adams
Clerk