

ORDER OF THE SUPREME COURT OF TEXAS

9058

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 Adolph P. Canales, Judge of the 298th District Court of Dallas County, Texas, to preside in the Disciplinary Action styled:

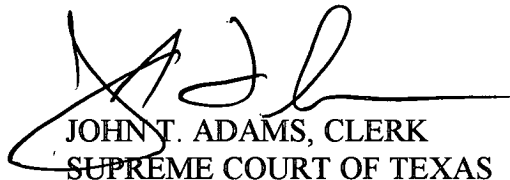
The Commission for Lawyer Discipline v. Robert N. Kennedy

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

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

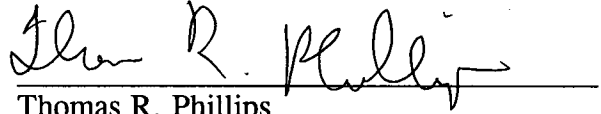
As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City
Of Austin, this 4th day of April, 2001.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9058, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 4 day of April, 2001.

A handwritten signature in cursive script, reading "Thomas R. Phillips", written over a horizontal line.

Thomas R. Phillips
Chief Justice

Cause No. _____

COMMISSION FOR LAWYER DISCIPLINE §
Petitioner §

v. §

ROBERT N. KENNEDY §
Respondent §

IN THE DISTRICT COURT OF
MONTGOMERY COUNTY, TEXAS
_____ JUDICIAL DISTRICT

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas (the "CFLD"), complains of Respondent ROBERT N. KENNEDY ("Respondent") as follows:

1. DISCOVERY CONTROL PLAN

1.1 Pursuant to Rules 190.1 and 190.3, TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level 2 Discovery Control Plan. Pursuant to Rule 190.3(b), TRCP, Petitioner affirmatively pleads that it seeks monetary relief aggregating fifty thousand and no/100 dollars (\$50,000.00) or more, not excluding costs, pre-judgment interest and attorneys' fees

2. NATURE OF PROCEEDING

2.1 The CFLD 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. The complaint that forms the basis of this Disciplinary Petition was filed on or after May 1, 1992.

3. VENUE

3.1 Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent's address and principal place of practice is Montgomery County, Texas; therefore, venue is appropriate in Montgomery County, Texas, pursuant to Rule 3.03 of the TEXAS RULES OF DISCIPLINARY PROCEDURE, (TRDP). Respondent, **ROBERT N. KENNEDY** may be personally served with citation at his place of business located at 513 N. Main Street, Suite 205, Conroe, Texas 77301.

4. JAMES COMPLAINT

PURSUANT TO PART III OF THE TEXAS RULES OF DISCIPLINARY PROCEDURE, PETITIONER REQUESTS THIS COURT DISCIPLINE KENNEDY FOR HIS ACTS OF PROFESSIONAL MISCONDUCT.

4.1 A. KENNEDY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.01 (b)(1) neglecting a legal matter entrusted to the lawyer;

- 1. Mr. Jeffrey James (hereafter referred to as "James") was referred to Respondent on or about December 23, 1997, via Ross & Matthews, P.C. Referral Department.**
- 2. Respondent accepted a retainer to represent James in a lawsuit.**
- 3. Respondent failed to actively pursue or monitor James' lawsuit.**

B. KENNEDY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.01(b)(2) for failing to carry out completely the obligations owed to a client;

1. Respondent accepted employment.
2. Respondent referred the case to another attorney without James' knowledge or permission.
3. Although the petition was filed under a different attorney's name, Respondent failed to monitor the case.
4. The Court placed the matter on the dismissal docket.

C. KENNEDY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.03(a) for failing to keep a client reasonably informed about the status of a matter

1. Respondent failed to stay in contact with James concerning his lawsuit.
2. Respondent knowingly referred the case to another lawyer without his client's permission.
3. Respondent did not send status reports to his client.
4. Respondent did not return his client's phone calls.

D. KENNEDY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.03(b)for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

1. Prior to accepting employment from James, Respondent did not explain the time frames and restrictions of his disciplinary suspension to his client.
2. Respondent failed to explain legal options that James would need to pursue as a result of Respondent's disciplinary suspension.

E. KENNEDY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.15(d) for failing, upon termination of representation, to reasonably protect a client's interests, give notice to the client to seek other counsel, or surrender papers and property which belongs to the client;

1. Respondent did not refund legal fees to his client upon request.
2. Respondent did not return his client's file upon request.

F. KENNEDY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

8.04(a)(3) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;

1. Respondent misled James concerning his disciplinary suspension and ability to pursue his lawsuit.
2. James was misled into retaining Respondent's services as an attorney when Respondent was prohibited to practice law during his disciplinary suspension.

G. KENNEDY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

8.04(a)(11) for engaging in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the STATE BAR RULES relating to Mandatory Continuing Legal Education.

1. Respondent continued to practice law while representing James during his disciplinary suspension.
2. Respondent continued to advise James, as an attorney, during his disciplinary suspension.

5. **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 Jeffrey James filing a complaint on or about December 6, 1999.**

6. SBOT COMPLAINT

PURSUANT TO PART III OF THE TEXAS RULES OF DISCIPLINARY PROCEDURE, PETITIONER REQUESTS THIS COURT DISCIPLINE KENNEDY FOR HIS ACTS OF PROFESSIONAL MISCONDUCT.

6.1 H. KENNEDY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

5.05(a) for practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction;

1. Respondent accepted employment as an attorney during his disciplinary suspension.
2. Respondent accepted payment for legal services as an attorney during his disciplinary suspension.
3. Respondent continued to practice law by representing James during his disciplinary suspension.
4. Respondent continued to advise James, as an attorney, during his disciplinary suspension.

I. KENNEDY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

8.04(a)(7) for violating any disciplinary or disability order or judgment;

1. Respondent continued to practice law while representing James during his disciplinary suspension.
2. Respondent continued to advise James, as an attorney, in violation of his disciplinary suspension.

J. KENNEDY ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

8.04(a)(11) for engaging in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the STATE BAR RULES relating to Mandatory Continuing Legal Education.

1. Respondent continued to practice law while representing James during his disciplinary suspension.
 2. Respondent continued to advise James, as an attorney, in violation of his disciplinary suspension.
7. **The complaint that forms the basis of this cause of action was brought by the office of the Chief Disciplinary Counsel of the State Bar of Texas on or about August 16, 1999.**

PRAYER

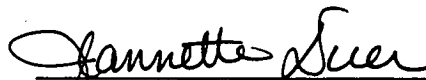
WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent as the facts shall warrant by finding professional misconduct with regard to the above-stated rule violations and imposing a sanction of reprimand, suspension and/or disbarment; and that the CFLD have all other relief to which it may show itself to be justly entitled, including costs of court, restitution to Jeffrey James, and attorneys' fees.

Respectfully submitted,

DAWN MILLER
Chief Disciplinary Counsel

JEANNETTE M. DUER
Assistant Disciplinary Counsel

Office of the General Counsel
State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002
Phone: (713) 759-6931
Fax: (713) 752-2158



JEANNETTE M. DUER
State Bar No. 00793645

ATTORNEYS FOR PETITIONER
THE COMMISSION FOR
LAWYER DISCIPLINE

J:\KENNEDY.ROB\CFLD1.JMD\DP.WPD

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

February 8, 2001

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

Re: Commission for Lawyer Discipline v. Robert N. Kennedy

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 Robert N. Kennedy. Mr. Kennedy has designated Montgomery 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:

Robert N. Kennedy
513 North Main
Suite 205
Conroe, Texas 77301

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. If not, I would respectfully request that an alternate appointment be made.

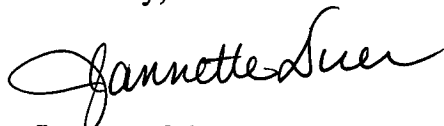
Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Montgomery County, Texas, with the request that the suit be filed, service be obtained,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

Mr. John Adams
Judge assignment (Kennedy)
February 8, 2001
Page Two

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Montgomery County, Texas, and a return envelope to be sent to the District Clerk of Montgomery 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,



Jeannette M. Duer
Assistant Disciplinary Counsel

JMD/dy

Enclosures

J:\KENNEDY.ROB\CFLD1.JMD\CLERK1.SCT



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

APR 10 2001

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

Mr. Robert N. Kennedy
513 N. Main Street, Suite 205
Conroe, Texas 77301

Dear Ms. Duer and Mr. Kennedy:

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 Adolph P. Canales, Judge of the 298th District Court, Dallas,

Commission for Lawyer Discipline v. Robert N. Kennedy

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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EXECUTIVE ASSISTANT
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JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

APR 10 2001

Honorable Adolph P. Canales
Judge, 298th District Court
George L. Allen Sr. Courts Bldg., 6th Floor
600 Commerce Street
Dallas, Texas 75202

Dear Judge Canales:

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. Kennedy and Ms. Duer, and a copy of the letter to the District Clerk of Montgomery County.

It is recommended that, a month or six weeks after receipt of this letter, you or your coordinator contact the presiding judge or the District Clerk of Montgomery County 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 (409/835-8402) 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

CLERK
JOHN T. ADAMS

JUSTICES
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EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

APR 10 2001

The Honorable Peggy Stevens
District Clerk of Montgomery County
P.O. Box 2985
Conroe, Texas 77305-2985

Dear Ms. Stevens:

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. Robert N. Kennedy*, and a copy of the Supreme Court's order appointing the Honorable Adolph P. Canales, Judge of the 298th District Court, Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Adolph P. Canales
Mr. Jeannette M. Duer
Mr. Robert N. Kennedy