

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 01- 9126

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

The Supreme Court of Texas hereby appoints the Honorable Sam B. Bournias, Judge of the 87th District Court of Anderson County, Texas, to preside in the Disciplinary Action styled:

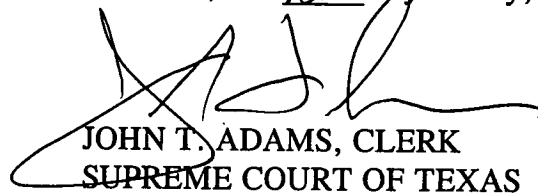
The Commission for Lawyer Discipline v. G. David Heiman

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

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

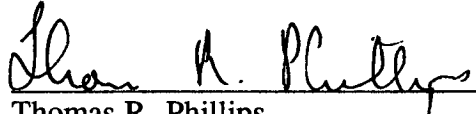
As ordered by the Supreme Court of Texas, in chambers.

With the Seal thereof affixed at the City
of Austin, this 12th day of July, 2001.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9126 is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code, §74.057.

Signed this 16 day of July, 2001.



Thomas R. Phillips
Chief Justice

NO. _____

COMMISSION FOR LAWYER DISCIPLINE § IN THE DISTRICT COURT OF
V. § DENTON COUNTY, TEXAS
G. DAVID HEIMAN § ____ JUDICIAL DISTRICT

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 called "Petitioner"), complaining of Respondent, G. David Heiman (hereinafter called "Respondent"), showing the Court:

I.

Discovery Control Plan

Pursuant to Rules 190.1 and 190.3, Texas Rules Of Civil Procedure, Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.

II.

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex. Gov't. Code Ann. § 81.001, et seq. (Vernon 1988), the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. The complaint which forms the basis of the Disciplinary Petition was filed on or after May 1, 1992.

III.

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent is a resident of Lewisville, Texas and has his principal place of practice in Denton County, Texas. An officer may serve citation on Respondent at 1702 S. Highway 121, #604 Lewisville, Texas 75067-8947.

CAUSE OF ACTION ARISING FROM THE ODOM'S COMPLAINTS

IV.

In or around November 1998, Respondent was retained by Martin and Lisa Odom (hereinafter called "Complainants") to provide legal representation regarding the return of over \$38,000 which was erroneously sent to Complainants, small business owners, by a former client ("Fugro"). Prior to consulting with Respondent, Complainants spent approximately \$6,000 of the funds. Subsequently, Fugro demanded return of the funds. Complainants hired Respondent to determine the extent of their civil or criminal liability and to negotiate the return of the remaining money. Complainants were told by Respondent that they were not criminally in possession of the money.

Respondent, on behalf of Complainants, offered to refund Fugro the remaining money (approximately \$32,000). The attorney for Fugro rejected this offer, requested full payment with a possible payment plan on the funds spent by the Complainants and was willing to assume the check was cashed in error with no criminal intent. Respondent sent a letter withdrawing the offer and stated that the funds "may very-well be already spent." Respondent was aware Complainants were still in possession of the remaining funds. Although, Fugro's attorney gave Respondent notice of possible criminal liability for retention of the funds, Respondent continued to advise Complainants that criminal liability was not a concern. An Investigator from a local police department interviewed the Complainants regarding this matter and Respondent persisted in advising Complainants this was not a criminal matter.

Complainants were arrested and charged with felony theft. One of the Complainants, Martin Odom, is currently on deferred adjudication of a two-year probation stemming from these charges, and the other Complainant, Lisa Odom, was sentenced to 180 days probated over two year plus full restitution.

Respondent's letter also informed Fugro's attorney that her threat to take criminal action was a violation of Texas Disciplinary Rules of Professional Conduct.

V.

By the conduct as alleged above, Respondent has violated Rule(s) 1.01(a); [accepting or continuing employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence]; 7.02(a) [making a false or misleading communication about the qualifications or the services of any lawyer or firm]; and 4.04(b)(1) [threatening to present disciplinary charges solely to gain an advantage in a civil matter]. Such conduct constitutes professional misconduct under Rule 8.04(a)(1) of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, State Bar Rules, effective January 1, 1990.

VI.

The complaint which forms the basis of the cause of action hereinabove set forth was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by complaints filed by Martin and Lisa Odom on or about November 15, 1999.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined as the facts shall warrant; and that Petitioner have such other relief to which entitled, including costs of Court and attorneys' fees.

Respectfully submitted,

Dawn Miller
Chief Disciplinary Counsel

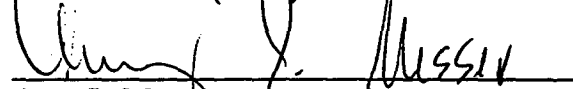
Amy I. Messer
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
STATE BAR OF TEXAS
6100 S.W. Blvd., Suite 320

Fort Worth, TX 76109

817/763-8066

817/763-5827 (FAX)

A handwritten signature in black ink, appearing to read "Amy I. Messer", is written over a horizontal line.

Amy I. Messer

State Bar Card No. 00790705

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

May 30, 2001

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

Re: Commission for Lawyer Discipline v. G. David Heiman

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 G. David Heiman. Mr. Heiman has designated Denton 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:

G. David Heiman
1702 S. Highway 121, #604
Lewisville, Texas 75067-8947

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 Tarrant 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.

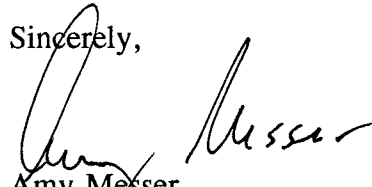
May 30, 2001

Page Two

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

A handwritten signature in black ink, appearing to read "Amy Messer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Amy Messer
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas

AIM/



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
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JUL 19 2001

The Honorable Sherri Adelstein
District Clerk, Denton County
1450 E. McKinney Street
Denton, Texas 76201-4524

Dear Ms. Adelstein:

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. David Heiman*, and a copy of the Supreme Court's order appointing the Honorable Sam B. Bournias, Judge of the 87th District Court, Fairfield, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Sam B. Bournias
Mr. Amy Messer
Mr. G. David Heiman



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
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JUL 19 2001

Honorable Sam B. Bournias
Judge, 87th District Court
P.O. Box 722
Fairfield, Texas 75840

Dear Judge Bournias:

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. Heiman and Ms. Messer, and a copy of the letter to the District Clerk of Denton County.

We then recommend that, four or five weeks after receipt of this letter, you or your coordinator contact the presiding judge or the District Clerk of Denton County 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 date for trial, the judge or coordinator of that court be contacted 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 (817-884-1558) 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
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JUL 19 2001

Ms. Amy Messer
Assistant General Counsel, State Bar of Texas
6100 S.W. Boulevard, Suite 320
Fort Worth, Texas 76109

Mr. G. David Heiman
1702 S. Highway 121, #604
Lewisville, Texas 75067-8947

Dear Ms. Messer and Mr. Heiman:

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 Sam B. Bournias, Judge of the 87th District Court, Fairfield, Texas to preside in

Commission for Lawyer Discipline v. David Heiman

Sincerely,

SIGNED

John T. Adams
Clerk