

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99- 9213

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

The Supreme Court of Texas hereby appoints the Honorable Brenda Garrett Green, Judge of the 256th District Court of Dallas County, Texas, to preside in the Disciplinary Action styled:

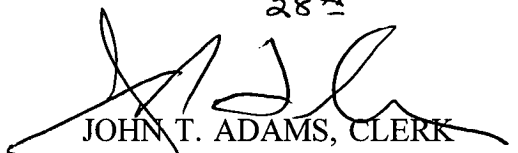
The Commission for Lawyer Discipline v. Kalu Diogu

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.

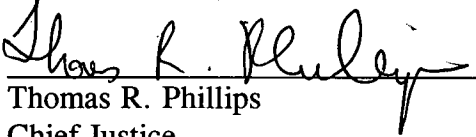
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this ~~26th~~^{28th} day of October, 1999.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9213, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code, §74.057.

Signed this 1 day of November, 1999.



Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
VS.	§	HARRIS COUNTY, TEXAS
KALU DIOGU	§	_____ 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 (hereinafter referred to as the "CFLD"), complains of KALU DIOGU ("hereinafter referred to as "Respondent") as follows:

**I.
DISCOVERY CONTROL PLAN**

Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, CFLD intends discovery in this case to be conducted under Discovery Control Plan - Level 2 as provided in Rule 190.3 of the Texas Rules of Civil Procedure.

**II.
PROCEDURAL BASIS FOR SUIT**

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.

**III.
VENUE AND SERVICE**

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent's principal place of practice is Harris County, Texas, and therefore venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure. An officer may service citation upon Respondent by and through his attorney of record, John Lee Arellano located at 2211 Norfolk, Ste. 820, Houston, Texas 77098.

**IV.
CAUSE OF ACTION**

In Cause Number 97-37054, a divorce proceeding pending before the 309th Judicial District Court of Harris County, Texas, Sarnie A. Randle, Jr. (hereinafter referred to as "Complainant") represented Samuel Benjamin Magnus-Lawson. Respondent represented Rachel Rene Waldon.

In early 1998, during these pendency of the divorce proceedings, in phone conversations with Complainant and also by letter, Respondent made threats to Complainant on more than one occasion. Specifically, Respondent threatened that he and/or his client, Rachael Waldon, would file criminal charges against Complainant if they did not agree to settle the underlying divorce case. Respondent threatened to present or participated in threatening to present criminal charges solely to gain advantage in the divorce matter.

During a December 17, 1997, deposition that was conducted by Complainant, a tape of a recorded telephone conversation of two people was offered by Complainant in an attempt to refresh the recollection of a witness. Respondent was present at that deposition. Prior to playing the tape, the witness (whose voice appeared on the tape) was specifically asked whether she wanted to listen to the tape to which she responded affirmatively. Subsequently a grievance was filed with the State

Bar of Texas and during an Investigatory Hearing held on or about September 23, 1998, Respondent testified under oath before a District Grievance Committee that Complainant did not advise the witness he was about to play the tape recorded telephone conversation. This was a false statement to the disciplinary committee and dishonest conduct intended to deceive the District Grievance Committee as Respondent was present and was well aware that Complainant obtained the witness' consent prior to playing the tape.

The acts and/or omissions of the Respondent described in Paragraph III(A) above, which occurred on or after January 1, 1990, constitute conduct in violation of the following Rules of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"):

3.03(a)(1) for making a false statement of material fact or law to a tribunal;

4.04(b)(1) for presenting, participating in presenting, or threatening to present criminal or disciplinary charges solely to gain an advantage in a civil matter;

8.04(a)(1) for violating these Rules, knowingly assisting or inducing another to do so, or doing so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

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

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 Sarnie A. Randle, Jr. filing a complaint on or about October 7, 1998.

Prayer

WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent by reprimand,

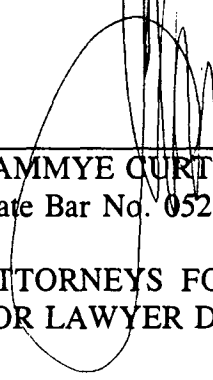
suspension or disbarment, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself to be justly entitled, including costs of court and attorneys' fees.

Respectfully submitted,

Dawn Miller
Acting General Counsel/Chief Disciplinary
Counsel

Tammye Curtis-Jones
Assistant General Counsel

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



TAMMYE CURTIS-JONES
State Bar No. 05286900

ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

October 4, 1999

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

Re: Commission for Lawyer Discipline v. Kalu Diogu

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 Kalu Diogu. Mr. Dioug 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:

Kalu Diogu
C/O John Le Arellano
2211 Norfolk, Ste. 820
Houston, Texas 77098

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 trial as 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 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.

Mr. John Adams
October 4, 1999
Page Two

Also enclosed are 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,



Tammye Curtis-Jones
Assistant General Counsel

TCJ/vr

Enclosures

J:\DIOGU.K\CFLD.TSC\CLERK1.SCT



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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

TEL: (512) 463-1312
FAX: (512) 463-1365

EXECUTIVE ASST
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASST
NADINE SCHNEIDER

NOV 05 1999

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. Kalu Diogu*, and a copy of the Supreme Court's order appointing the Honorable Brenda Garrett Green, Judge of the 256th District Court, Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Brenda Garrett Green
Ms. Tammye Curtis-Jones
Mr. Lloyd Alan Dunn
Ms. Melissa Dartez



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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

TEL: (512) 463-1312
FAX: (512) 463-1365

EXECUTIVE ASST
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASST
NADINE SCHNEIDER

NOV 05 1999

Ms. Tammye Curtis-Jones
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Kalu Diogu
c/o John Le Arellano
2211 Norfolk, Suite 820
Houston, Texas 77098

Dear Ms. Curtis-Jones and Mr. Diogu:

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 Brenda Garrett Green, Judge of the 256th District Court, Dallas, Texas to preside in

Commission for Lawyer Discipline v. Kalu Diogu

Sincerely,

SIGNED

John T. Adams
Clerk



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 ASST
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASST
NADINE SCHNEIDER

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

NOV 05 1999

Honorable Brenda Garrett Green
Judge, 256th District Court
600 Commerce Street, 6th Floor
Dallas, Texas 75202

Dear Judge Green:

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. Diogu and Ms. Curtis-Jones, 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