

IN THE SUPREME COURT OF TEXAS

IN THE MATTER OF  
DONALD L. BUSBY

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MISC. DOCKET NO.  
96- **9158**

**ORDER ACCEPTING RESIGNATION IN LIEU OF DISCIPLINE**

On this day, the Court considered the Motion To Resign In Lieu Of Discipline Of Donald L. Busby together with the Response of the Chief Disciplinary Counsel of the Commission for Lawyer Discipline. The Court finds that the Motion and Response each meet the applicable requirements of the Texas Rules of Disciplinary Procedure. The Court, based upon the record in this proceeding, hereby concludes that the following order is appropriate.

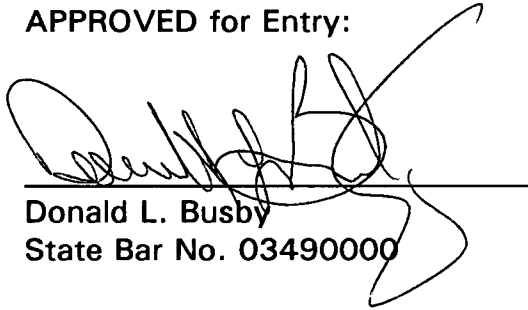
IT IS ORDERED that the resignation of Donald L. Busby of Temple, Texas, a licensee of this Court, as a member of the State Bar of Texas, and as Attorney and Counselor of Law be, and the same is hereby, accepted. Accordingly, it is ordered that the law license of Donald L. Busby and the State Bar membership card of Donald L. Busby be, and the same are hereby, canceled and the name of Donald L. Busby shall be deleted from the list of persons licensed to practice law within the State of Texas. The Court acknowledges receipt of the law license issued by this Court to Donald L. Busby and the receipt of the State Bar membership card issued to him.

IT IS FURTHER ORDERED that Donald L. Busby be, and he is hereby permanently enjoined and prohibited from practicing law in the State of Texas, holding himself out as an attorney at law, performing any legal services for others, giving legal advice to others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any Texas administrative body (whether state, county, municipal, or other), or holding himself out to others or using his name in any manner in conjunction with the words "Attorney at Law," or "Counselor at Law," or "Lawyer".

IT IS FURTHER ORDERED that Donald L. Busby shall, within thirty (30) days after the date of this Order, notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every Texas court in which he is an attorney of record in a pending matter, advising each such court of his resignation and of the style and cause number of any matter pending in such court together with the name, address, and telephone number of his client(s) in each such matter. Donald L. Busby is further ORDERED to send a copy of each such notification letter to the Office of the Chief Disciplinary Counsel, Commission for Lawyer Discipline, P. O. Box 12487, Capitol Station, Austin, Texas 78711-2487, Attn: William E. Minkley, Chief Trial Counsel.

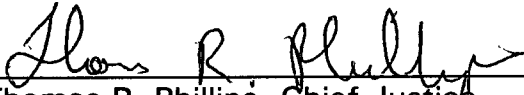
By the Court, en banc, in chambers, on this the 27<sup>th</sup> day of June, 1996.

APPROVED for Entry:



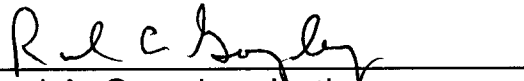
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Donald L. Busby  
State Bar No. 03490000




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Thomas R. Phillips, Chief Justice



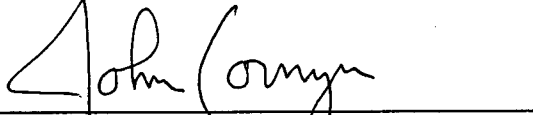
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Raul A. Gonzalez, Justice



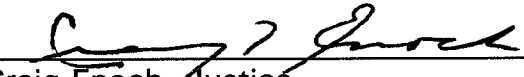
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Nathan L. Hecht, Justice



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John Cornyn, Justice



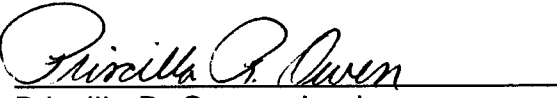
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Craig Enoch, Justice



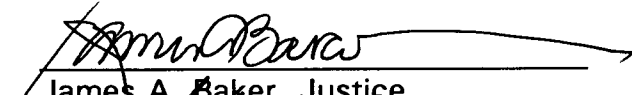
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Rose Spector, Justice



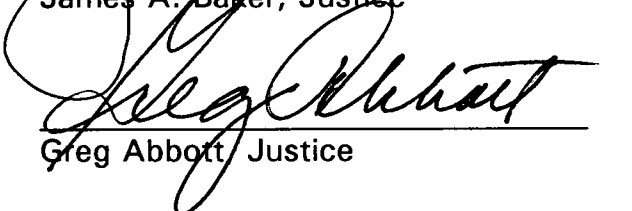
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Priscilla R. Owen, Justice



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James A. Baker, Justice



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Greg Abbott, Justice

# STATE BAR OF TEXAS



Office of the General Counsel

June 21, 1996

## **INTERAGENCY MAIL**

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

**RE: Resignation of Donald L. Busby, Bar Card No. 03490000**

Dear Mr. Adams:

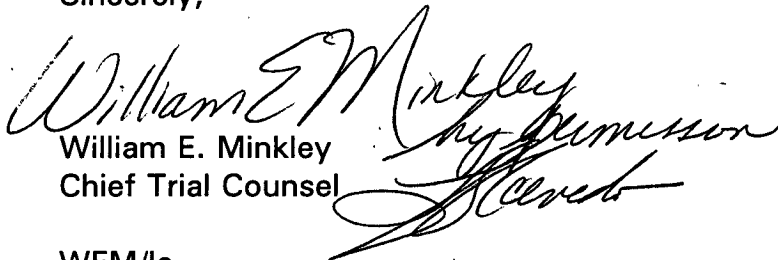
Pursuant to Part X of the Texas Rules of Disciplinary Procedure, please find enclosed herewith the following:

- (1) Motion for Acceptance of Resignation as Attorney and Counselor at Law of Donald L. Busby, dated April 17, 1996, which was received by the Chief Disciplinary Counsel on April 17, 1996;
- (2) Response of Chief Disciplinary Counsel of Motion for Acceptance of Resignation as Attorney and Counselor at Law of Donald L. Busby; and,
- (3) Original and one (1) copy of proposed Order for review and entry by the Court accepting the resignation of Donald L. Busby as Attorney and Counselor at Law.

Page 2  
Mr. John Adams  
June 21, 1996

Upon entry of the Order by the Court, please transmit a true and correct copy of the same to the undersigned in order that this office may properly give notice to all parties of the Court's disposition of such motion.

Sincerely,

  
William E. Minkley  
Chief Trial Counsel

WEM/lc  
Enclosures

cc: Mr. Charles R. Burton, Attorney at Law, 1100 Guadalupe Street, Austin, Texas 78701 by CERTIFIED MAIL # P 116 546 707 - RETURN RECEIPT REQUESTED

Mr. Steven L. Lee, Attorney at Law, 8303 N. Mopac Expressway, Building C, Suite 238, Austin, Texas 78759-8370 by CERTIFIED MAIL # P 116 546 708 - RETURN RECEIPT REQUESTED

Mr. Lonny Morrison, Attorney at Law, 807 Eighth Street, Suite 400, Wichita Falls, Texas 76307-5008 by U.S. First Class Mail

**IN THE SUPREME COURT OF TEXAS**

IN THE MATTER OF ) MISC. DOCKET NO.  
 ) 96-\_\_\_\_\_  
DONALD L. BUSBY )

**MOTION FOR RESIGNATION IN LIEU OF DISCIPLINE**

TO THE HONORABLE SUPREME COURT OF TEXAS:

Donald L. Busby, the Movant, moves this Honorable Court to accept his Resignation In Lieu Of Discipline. In support of this Motion, Movant would respectfully show the Court as follows:

I

Movant hereby resigns in lieu of discipline as a licensee of the Supreme Court of Texas and as a member of the State Bar of Texas.

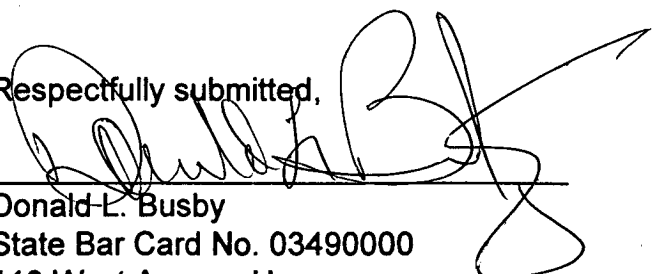
II

Tendered herewith are Movant's law license issued by the Supreme Court of Texas. Movant has lost or misplaced his permanent State Bar membership card. Movant represents to the Supreme Court that he has diligently searched for and has been unable to locate his State Bar membership card and that he will continue to diligently search for the same and will promptly deliver it if it is found. Movant attaches his Affidavit to this effect and request the Supreme Court to approve his resignation and enter it's order accepting his resignation notwithstanding his lost State Bar membership card.

Movant prays that this Honorable Court will accept Movant's resignation and

remove Movant's name from the list of persons licensed to practice law in the State of Texas.

Respectfully submitted,



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Donald L. Busby  
State Bar Card No. 03490000  
113 West Avenue H  
P.O. Box 80  
Temple, Texas 76501  
Telephone: 817/778-4855  
Telecopier: 817/778-0220

VERIFICATION

STATE OF TEXAS

§

COUNTY OF TRAVIS

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BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Donald L. Busby, known to me to be the person whose name is subscribed to the foregoing Motion, and, after first by me being duly sworn as provided by law, stated on his oath that he executed the said Motion for the purposes therein expressed and that all facts stated therein are, within his personal knowledge, true and correct.

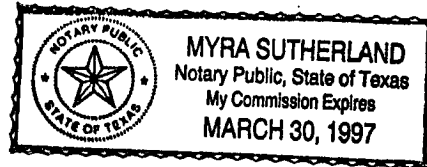
GIVEN UNDER my hand and seal of office this the 17<sup>th</sup> day of April, 1996.

*Myra Sutherland*

Notary Public in and for the State of Texas

My Commission Expires:

3-30-97





IN THE SUPREME COURT OF TEXAS

IN THE MATTER OF )  
DONALD L. BUSBY )  
MISC. DOCKET NO.  
96-\_\_\_\_\_

RESPONSE TO MOTION FOR RESIGNATION  
IN LIEU OF DISCIPLINE

TO THE HONORABLE SUPREME COURT OF TEXAS:

COMES NOW James M. McCormack, the Chief Disciplinary Counsel of the Commission for Lawyer Discipline and, pursuant to Part X of the Texas Rules of Disciplinary Procedure, hereby files this response on behalf of the State Bar of Texas, acting by and through the Commission for Lawyer Discipline, to the Motion For Resignation In Lieu Of Discipline and, for such response, would respectfully show the Court as follows:

I

The acceptance of the resignation of Donald L. Busby is in the best interest of the public and the profession.

II

A disciplinary action is currently pending against the Movant, Donald L. Busby. Such action is identified as the *Commission for Lawyer Discipline v. Donald L. Busby*, Cause No. 153,976-C, In The 169th Judicial District Court of Bell County, Texas. A detailed statement of the professional misconduct with which the Movant is charged is set forth below.

**A. Broxton Matter**

**A.1** On or about February 13, 1992, State Farm Mutual Automobile Insurance Company forwarded to Patrick J. Ridley, in trust, State Farm check no. 1 08 174591 J for \$15,000.00 made payable to "Margaret Broxton and her attorney Patrick J. Ridley." Patrick J. Ridley was then an attorney employed by Busby & Associates, P.C. Such check was forwarded by a claims representative of State Farm with instructions to hold the same in trust subject to the execution and return of a release.

**A.2** On or about April 10, 1992, without the knowledge, consent or authority of either Margaret Broxton or Patrick J. Ridley, Donald L. Busby endorsed the names of Margaret Broxton and Patrick J. Ridley and then deposited it in a Busby & Associates, P.C. trust account numbered as 695-106458-4 at NCNB. At the time of such endorsement, Margaret Broxton had not approved or agreed to the settlement of her claims.

**A.3** Donald L. Busby misappropriated all of the proceeds of the Margaret Broxton settlement check, for his own uses and purposes, by applying the same to cover an overdraft balance of Busby & Associates, P.C. which had existed since at least March 31, 1992. Such funds were not applied for the use and benefit of Margaret Broxton, the claimant, or for the use and benefit of State Farm.

**A.4** On or about July 17, 1992, Donald L. Busby issued check no. 1698 of Busby & Associates, P.C., dated July 17, 1992, drawn on such firm's operating account at Peoples National Bank, payable to the order of Margaret Broxton, in the net amount of \$7,300.00, which purported to be payment in full and final settlement of her personal injury claim. Mrs. Broxton deposited such check to her account but the check did not clear the account

of Busby & Associates, P.C., causing a check of Margaret Broxton to be returned for insufficient funds. After complaining of nonpayment, Mrs. Broxton received, later than she was entitled to receive the same, payment of the amounts due to her from Donald L. Busby. The payment made to Mrs. Broxton was not made from her settlement monies because those monies had been misappropriated, in their entirety, by the Donald L. Busby for his own use and benefit. Mrs. Broxton had to borrow money to cover her own check after the check of Donald L. Busby was not honored by his bank. Mrs. Broxton suffered embarrassment, humiliation, and inconvenience as a result of such actions by Donald L. Busby.

**A.5** The terms of the settlement statement dated July 17, 1992, prepared or caused to be prepared by Donald L. Busby and signed by his client, Margaret Broxton, authorized a retention of monies purportedly held in trust from the settlement proceeds by Donald L. Busby for the payment to Schaffer Chiropractic Clinic and to Highland Rehabilitation and Diagnostics in the combined amount of \$3,085.00. These monies had also been, in their entirety, misappropriated by Donald L. Busby for his own use and benefit at the time Mrs. Broxton accepted the settlement. Such monies were not in fact held or retained for payment to such health care providers. Donald L. Busby delayed payment until on or about March 16, 1993, and then, after many efforts to obtain payment, such health care providers were finally paid by Donald L. Busby. Payment, when finally made, was made by Busby & Associates, P.C., operating account check no. 2501 dated March 15, 1993, drawn on such firm's operating account at Peoples National Bank, made payable to Centex

Health Care Management for \$3,085.00. Centex Health Care Management is a collection company for both Schaffer and Highland.

**A.6** Donald L. Busby failed to keep or maintain proper records of his handling of the monies submitted to him in trust in connection with the claims of Margaret Broxton.

**A.7** Initially, Donald L. Busby misrepresented to the State Bar of Texas the facts regarding the Margaret Broxton matter by contending that the deposit of the Margaret Broxton settlement check and the issuance of his check to Margaret Broxton occurred on the same day. Such representation was untrue and involved dishonesty, fraud, deceit and/or misrepresentation.

**A.8** The acts and conduct of Donald L. Busby, as set forth in Paragraphs A.1 through A.5 hereof, constitute professional misconduct in the following respects:

**Violation No. 1:** Donald L. Busby engaged in conduct involving dishonesty, fraud, deceit, and/or misrepresentation in endorsing the name of Margaret Broxton to her settlement check without her consent to the settlement and without notice. Such conduct is a violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 2:** Donald L. Busby's misappropriation of the settlement monies paid by State Farm for his own use and benefit is a violation of Rules 1.14(a) and 1.14(c), Texas Disciplinary Rules of Professional Conduct, and, additionally, constitutes conduct involving dishonesty, fraud and/or deceit in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 3:** Donald L. Busby's issuance to Margaret Broxton of a "hot" check is a violation of his duty to promptly deliver to his client the funds to which she was entitled in violation of Rule 1.14(b), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 4:** Donald L. Busby's failure to promptly pay Schaffer Chiropractic Clinic the monies due to it from the settlement proceeds was in violation of Rule 1.14(b), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 5:** Donald L. Busby's misappropriation of monies due to Schaffer Chiropractic Clinic is a violation of Rule 1.14(c), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 6:** Donald L. Busby's failure to promptly pay Highland Rehabilitation and Diagnostics the monies due to it from the settlement proceeds was in violation of Rule 1.14(b), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 7:** Donald L. Busby's misappropriation of monies due to Highland Rehabilitation and Diagnostics is a violation of Rule 1.14(c), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 8:** Donald L. Busby's failure to make and preserve for a period of five (5) years a complete record of the settlement funds of Margaret Broxton is a violation of Rule 1.14(a), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 9:** Donald L. Busby's false representation to the State Bar of Texas that the deposit of the Margaret Broxton settlement check and the issuance of his check to Margaret Broxton occurred on the same day involved dishonesty, fraud, deceit

and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**B. Rackley Matter**

**B.1** On or about October 5, 1992, settlement funds of \$80,000.00 belonging in part to a client of Donald L. Busby's named Phillip Rackley were personally deposited by Donald L. Busby into a general operating account numbered 11-2753-5 in the name of Busby & Associates, P.C. with First National Bank of Temple (hereinafter called "FNB operating account"). The FNB operating account was not a trust or escrow account within the meaning of Rule 1.14, Texas Disciplinary Rules of Professional Conduct, and thus such funds were commingled with the monies of Busby & Associates, P.C.

**B.2** Substantially all, if not all, of the monies to which Mr. Rackley was entitled were misappropriated by Donald L. Busby for his own use and benefit before Mr. Rackley received his share of the settlement proceeds.

**B.3** Donald L. Busby failed to promptly deliver to Phillip Rackley, his client, the monies which Mr. Rackley was entitled to receive from the settlement funds. Mr. Rackley received payment, from other funds, at a later time.

**B.4** Donald L. Busby failed to keep or maintain proper records of his handling of the monies received by him in connection with the claims of Phillip Rackley.

**B.5** Such acts and/or omissions on the part of Donald L. Busby as are described in Paragraphs B.1 through B.4 above constitute professional misconduct in violation of the Texas Disciplinary Rules of Professional Conduct, as follows:

**Violation No. 10:** Donald L. Busby's deposit of funds belonging in part to his client, Phillip Rackley, into his firm's general operating account and thus commingling the same with the funds of Busby & Associates, P.C., is a violation of Rule 1.14(a), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 11:** Donald L. Busby's misappropriation for his own use and benefit of monies belonging to his client, Phillip Rackley, is a violation of Rules 1.14(a) and 1.14(c), Texas Disciplinary Rules of Professional Conduct, and, additionally, constitutes conduct involving dishonesty, fraud and/or deceit in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 12:** Donald L. Busby's failure to promptly pay to Phillip Rackley the sums to which he was entitled from the settlement proceeds is a violation of Rule 1.14(b), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 13:** Donald L. Busby's failure to make and preserve for a period of five (5) years a complete record of the settlement funds of Phillip Rackley is a violation of Rule 1.14(a), Texas Disciplinary Rules of Professional Conduct.

**C. Holbrook Matter**

**C.1** During 1993, Donald L. Busby used and controlled a trust account numbered #002446960 in the name of Busby & Associates, P.C., Trust Account with Peoples National Bank, Temple, Texas (hereinafter called "PNB trust account").

**C.2** On or about February 4, 1993, Donald L. Busby received from his client, Frank Holbrook, a check in the amount of \$54,920.73(hereinafter called the "Holbrook check"). Mr. Holbrook tendered such monies to Donald L. Busby in trust for the purpose of

consummating a settlement of a case in which Holbrook was a defendant. Donald L. Busby was to deliver \$51,253.10 from such funds to the plaintiff, David Lynn Havard, and his attorney, Paul Jordan, to consummate such settlement. The remainder of such funds consisted of a mediation fee of \$1,383.03 due to Wright & Greenhill, attorneys, and fees and expenses to Donald L. Busby of \$2,284.60. The Holbrook check was deposited into the PNB trust account but was not thereafter treated as trust funds.

**C.3** On or about February 4, 1993, Donald L. Busby caused to be prepared and personally signed a check to Wright & Greenhill for the \$1,383.03 to which such firm was entitled and a check for the \$2,284.60 to Busby & Associates, P.C., to which sum such firm was entitled. Donald L. Busby also signed a check numbered as 1175, drawn on the PNB trust account, dated February 4, 1993, payable to the order of Paul Jordan and David Havard, in the amount of \$51,253.10 (hereinafter called "PNB Holbrook settlement check") in accordance with the agreement and expectations of his client, Mr. Holbrook. Donald L. Busby tendered such check for \$51,253.10, together with a release to be executed in connection with the settlement of the lawsuit brought by David Havard against Frank Holbrook (hereinafter called "Havard lawsuit") to David Havard's attorney, Paul Jordan. David Havard died on or about February 6, 1993, after signing such compromise settlement agreement but without having endorsed such check.

**C.4** Promptly after the death of David Havard, Donald L. Busby misappropriated for his own use and benefit the entirety of the \$51,253.10 which he purported to hold in trust for his friend and client, Frank Holbrook. Such misappropriations resulted from conduct of Donald L. Busby involving dishonesty, fraud, deceit and/or misrepresentation.



**C.5** A temporary administrator was duly appointed for the estate of David Havard and such temporary administrator, to conclude the settlement on behalf of the estate, presented for payment, on or about May 25, 1993, the said \$51,253.10 check drawn on Donald L. Busby's trust account. The check was returned unpaid by the bank because, as a result of Donald L. Busby's misappropriations, there were insufficient funds on deposit in Donald L. Busby's trust account to cover the check. When Frank Holbrook learned that Donald L. Busby's trust fund check had "bounced," he contacted Donald L. Busby. Donald L. Busby falsely told Mr. Holbrook that he had stopped payment on such check. The false statement of Donald L. Busby to his client was made to induce Frank Holbrook to believe that the return of the trust account check unpaid was not due to an absence of the trust funds supposedly being held by Donald L. Busby. Donald L. Busby's representations to his client were untrue and involved dishonesty, deceit and/or misrepresentation. In addition, Frank Holbrook made inquiry of Donald L. Busby as to whether his funds were safe and was falsely assured by Donald L. Busby that they were safe. Such representations by Donald L. Busby to Frank Holbrook, his client, were untrue and involved dishonesty, fraud, deceit and/or misrepresentation.

**C.6** As a result of the failure of the bank to pay the trust account check when presented for payment, a second lawsuit was filed against Frank Holbrook. That case is identified as the *Estate of David Lynn Havard vs. Frank A. Holbrook*, Cause No. 93-07689, in The 345th District Court of Travis County, Texas. When the second suit was filed, Donald L. Busby borrowed \$40,000.00 from a bank and delivered it to Frank Holbrook in partial repayment of the funds which he had earlier misappropriated. In addition, Mr. Holbrook arranged

credit at the First Texas Bank in Killeen, Texas, for Donald L. Busby to borrow the additional sum of \$11,253.10. The proceeds from that loan, when added to the \$40,000.00 repayment by Donald L. Busby, totaled the amount of the original settlement check, to wit \$51,253.10. The Promissory Note to the First Texas Bank was cosigned by Frank Holbrook and was secured by Certificates of Deposit owned by Frank Holbrook. As a cosigner, Mr. Holbrook was jointly and severally liable to such bank for the payment of such Promissory Note. Later, the case against Mr. Holbrook was settled and the required settlement exceeded the original settlement of \$51,253.10. Donald L. Busby paid or caused to be paid an additional \$11,217.90 incurred as a result of the second suit, in recognition that the same resulted from his fault in misappropriating the funds of his client, Frank Holbrook.

**C.7** Donald L. Busby failed to keep or maintain proper records of his handling of the funds received in trust from Frank Holbrook.

**C.8** The acts and conduct of Donald L. Busby, as set forth in paragraphs C.1 through C.7 hereof, constitute professional misconduct in the following respects:

**Violation No. 14:** Donald L. Busby misappropriated for his own use and benefit the trust funds of Frank Holbrook in violation of Rule 1.14(c), Texas Disciplinary Rules of Professional Conduct, and Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 15:** Donald L. Busby's false statement to his client, Frank Holbrook, that he had stopped payment on trust fund check no. 1175 for \$51,253.10 was made to

mislead Frank Holbrook about the true facts and was in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 16:** Donald L. Busby's statement to Frank Holbrook that his funds were safe was false and involved dishonesty, fraud, deceit and/or misrepresentation.

**Violation No. 17:** Donald L. Busby's failure to make and preserve for a period of five (5) years a complete record of the settlement funds of Frank Holbrook is a violation of Rule 1.14(a), Texas Disciplinary Rules of Professional Conduct.

**D. Murphy/Glenn Matter**

**D.1** Donald L. Busby was retained in 1991 as the attorney for George Thomas Murphy, Tyrone Anthony Murphy and James Glenn in connection with claims arising out of an automobile collision in which they were each seriously injured.

**D.2** A proceeding was initiated by Donald L. Busby to appoint a guardian for George Thomas Murphy. In such proceeding, Cause No. 17,389, styled The Guardianship of George Thomas Murphy, An Incompetent Person, In County Court at Law Number One, Bell County, Texas (hereinafter called the "guardianship proceeding"), George Thomas Murphy was found to be incompetent. Annemarie Murphy was appointed Guardian of the Estate of George Thomas Murphy by the Court in the guardianship proceeding and George Murphy, Jr. was appointed guardian of the person of George Thomas Murphy. Annemarie Murphy and George Murphy, Jr. are the parents of the ward, George Thomas Murphy.

**D.3** Donald L. Busby filed claims, as an attorney, on behalf of his clients seeking damages incurred as a result of the automobile accident in which George Thomas Murphy,

settled with the defendants' insurer, United States Automobile Association, for a total of \$500,000.00 which was to be divided amongst the plaintiffs as follows: \$75,000.00 to James Glenn, \$125,000.00 to Tyrone Anthony Murphy, and \$300,000.00 to George Thomas Murphy. The settlement checks were delivered to Donald L. Busby.

**D.4** Donald L. Busby withheld \$38,342.28 from the settlement proceeds to pay health care providers of Tyrone Anthony Murphy but did not make payment of such amount to such health care providers. In fact, Donald L. Busby has misappropriated for his own use and benefit the said ~~\$38,342.28~~ <sup>\$38,342.28 we</sup>. Donald L. Busby's conduct in misappropriating such funds involves dishonesty, fraud, deceit and/or misrepresentation.

**D.5** Donald L. Busby has failed to pay to Tyrone Anthony Murphy the funds to which he is entitled from the settlement proceeds. Donald L. Busby owes Tyrone Anthony Murphy, in restitution, the sum of \$35,342.28 plus interest at the rate of 10% per annum, from June 18, 1991.

**D.6** Donald L. Busby withheld \$16,973.63 from the settlement proceeds to pay health care providers of James Glenn but did not make payment of such amount to such health care providers. In fact, Donald L. Busby has misappropriated for his own use and benefit the said \$16,973.63. Donald L. Busby's conduct in misappropriating such funds involves dishonesty, fraud, deceit and/or misrepresentation.

**D.7** Donald L. Busby has failed to pay to James Glenn the funds to which he is entitled from the settlement proceeds. Donald L. Busby owes James Glenn, in restitution, the sum of \$11,282.88 plus interest at the rate of 10% per annum, from June 18, 1991.

**D.8** On or about June 10, 1991, the Court in the guardianship proceeding ordered \$173,613.51 of the \$300,000.00 settlement funds received for the injuries suffered by George Thomas Murphy (said \$173,613.51 being hereinafter referred to as "Murphy trust funds") to be held in trust by Busby & Associates, P.C., Donald L. Busby's law firm, pending resolution of how the money would be divided amongst the various health care providers of George Thomas Murphy (said order being hereinafter referred to as the "June 10, 1991, order"). The funds were placed in a trust account used and controlled by Donald L. Busby with NCNB, in the name of Busby & Associates, P.C., and numbered 695-106458-4 (said account being hereinafter referred to as "NCNB trust account").

**D.9** On or about June 19, 1991, shortly after Donald L. Busby was entrusted with such funds, he purchased a cashier's check through NCNB in the amount of \$211,084.04, payable to the order of CentraLand Title Company, from funds wrongfully withdrawn, by action of Donald L. Busby, from the NCNB trust account of Busby & Associates, P.C. Such cashier's check included the trust account proceeds of the George Thomas Murphy guardianship but was not made for the benefit of George Thomas Murphy, his guardianship, or the health care providers. In fact, such transfer was made to River Farm Ltd., a limited partnership whose general partner was Salado Farms, Inc. Donald Busby was the incorporator of Salado Farms, Inc., and was its president and only director. Specifically, Donald L. Busby took for his own use and benefit the sum of \$211,084.04 on or about June 19, 1991, from his client trust account to close the purchase of a farm which Donald L. Busby was contractually obligated to purchase and for which he had no other source of available funds. Such purchase was made in the name of River Farm, Ltd. It

was never truly intended that George Thomas Murphy or his guardianship have or acquire any equity or ownership interest in such land in River Farm, Ltd. or in the ranch lands it was then purchasing.

**D.10** The transfer by Donald L. Busby of \$211,084.04 from his NCNB trust account to CentraLand Title Company exceeded the required closing costs and the title company was instructed by Mr. Busby to remit the excess, a sum in excess of \$3,500.00, to him or his firm. Donald L. Busby then converted, or caused to be converted, such sum from his trust account. Such conversion involved dishonesty, fraud and/or deceit.

**D.11** Donald L. Busby was not, under any circumstance, authorized by the Court to invest or loan client trust funds and was directed to hold such funds in trust which, in legal parlance, means that such funds should be held in a proper client trust account. The Petitioner will prove that such transfer was a misappropriation of client trust funds by Donald L. Busby for his own use and benefit. Alternatively, the Petitioner alleges that even if such transfer was made for the intended benefit of the guardianship of George Thomas Murphy and/or Tyrone Anthony Murphy, such transfer was a prohibited transfer involving serious conflicts of interest in violation of Rule 1.08(a), Texas Disciplinary Rules of Professional Conduct. Such transfer was not fair to the clients of Donald L. Busby; Donald L. Busby failed to disclose such transfer; no client was provided an opportunity to object; and no client consented to such transaction.

**D.12** Amongst the health care providers which provided medicine, treatment, medical supplies and/or medical services to George Thomas Murphy as a result of the automobile accident which gave rise to the claims of George Thomas Murphy were various Scott and

White entities (hereinafter collectively referred to as "Scott and White"). During 1991, Scott and White made health care claims of \$173,613.51 with respect to the provision of such medicines, treatments, medical supplies and/or medical care services to George Thomas Murphy.

**D.13** More than three (3) years after such funds were entrusted to Donald L. Busby, Scott and White's collection agency sought to collect on a \$181,773.01 indebtedness for the medical care of George Thomas Murphy. Donald L. Busby negotiated with a representative of the collection agency, a reduction of the bill to \$110,000.00. Such reductions are not uncommon. In so doing, Donald L. Busby represented, and lead said collection company's personnel to believe, that the Murphy trust funds were in his trust account. In reliance upon that assurance, Scott and White settled its claims and Donald L. Busby delivered to Scott and White a check in the amount of \$110,000.00, dated May 29, 1994, drawn on a trust account which had been used and controlled by him at Peoples National Bank (hereinafter called "PNB \$110,000.00 check"). The PNB \$110,000.00 check was returned to Scott and White unpaid marked "account closed." The delivery of a check known to be drawn on a closed bank account is conduct involving dishonesty, fraud, deceit and/or misrepresentation in light of the fact that Donald L. Busby had misappropriated such funds more than three (3) years earlier.

**D.14** Donald L. Busby's representations to an agent or representative of Scott and White that the Murphy trust funds remained in his trust account or words to that effect at a time when he knew such statement to be false. Such conduct was misconduct involving dishonesty, fraud, deceit and/or misrepresentation.

**D.15** On or about June 14, 1994, approximately three (3) years after Donald L. Busby's receipt of the settlement funds of the guardianship, he filed in the guardianship proceeding a Request for Determination of Claim, representing that the guardianship funds were being held in trust by Busby & Associates, P.C., for the payment of medical expenses; that the sum of \$173,613.51 was deposited with Busby & Associates, P.C. to be held in trust until a final agreement could be reached with the health providers; and that there were inadequate funds on hand to meet the current demands of Scott and White as well as provide for the future medical needs of George Thomas Murphy. At the time such motion was filed and at the time hearing was held on such motion, Donald L. Busby knew that such funds had been misappropriated by him more than three (3) years earlier.

**D.16** On or about June 21, 1994, Scott and White filed an objection to Donald L. Busby's Request for Determination of Claim in the guardianship proceeding, stating that Scott and White had agreed to accept \$110,000.00 as a compromise for all its claims; that Donald L. Busby had tendered to Scott and White, through its collection agency, a check drawn on Peoples National Bank account number 02446960 designated "Busby & Associates, P.C. Trust Account", numbered 1511, dated May 29, 1994, in the amount of \$110,000.00 made payable to the order of Scott and White Hospital, and executed by Donald L. Busby; that the PNB \$110,000.00 check was returned unpaid and marked account closed; and that the Peoples National Bank account number 002446960 designated "Busby & Associates, P.C. Trust Account" had in fact been closed for several months prior to Donald L. Busby's issuance of such check on May 29, 1994.



**D.17** A hearing was held in the guardianship proceeding on or about August 1, 1994, regarding Donald L. Busby's Request for Determination of Claim. The sitting judge of said Court recused himself and The Honorable Joe E. Briscoe was duly appointed to preside. Donald L. Busby produced or allowed to be produced in open Court false evidence in the form of a photocopy of First State Bank cashier's check number 019441, dated July 14, 1994, in the amount of \$173,613.51, payable to "Busby & Associates, P.C. Trust." Donald L. Busby knew that by presenting the \$173,613.51 check to the Court that the Court would likely believe, and the Court did believe, that the FNB \$173,613.51 check had been purchased from the funds which had been held in trust for George Thomas Murphy pursuant to the June 10, 1991, order since entry of said June 10, 1991, order. In truth and in fact the source of the funds utilized to purchase the \$173,613.51 check were funds other than the Murphy trust funds, a fact known to Donald L. Busby but not revealed by Mr. Busby to the Court. Donald L. Busby participated, knowing the truth, in the process of consciously misleading the Court on August 1, 1994, to believe that the funds were on deposit in his trust account when in fact such funds had previously been misappropriated. This misconduct involved dishonesty, fraud, deceit and/or misrepresentation.

**D.18** The Court entered an order that Scott and White was to receive \$110,00.00 of the funds which were to have been held in trust by Busby & Associates, P.C. and that the remainder of such funds was to be paid by Donald L. Busby into the registry of the Court.

**D.19** Donald L. Busby further indicated to the Court on August 1, 1994, that he thought he could make payment on that day to Scott and White for \$110,000.00 and pay the balance of such funds into the registry of the Court. Donald L. Busby did not at such time

have such funds, having previously misappropriated the same, and knew that such funds were, therefore, unavailable. Donald L. Busby's statement to the Court was a false statement of material fact to the Court in violation of Rule 3.03(a)(1), Texas Disciplinary Rules of Professional Conduct, and involved dishonesty, fraud, deceit and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct. The Court ordered Donald L. Busby to return with the cashier's checks by 11:00 a.m. that day. Donald L. Busby failed to appear or make such payment at 11:00 a.m. but agreed to return to the Court by 2:30 p.m. o'clock on such date. Donald L. Busby failed to appear at that time, failed to make payment and failed to notify the Court that he would not be present at that time. At the time of such scheduled hearing, Donald L. Busby was in the offices of Robert K. Utley, III in Dallas seeking to obtain money to replace that which he had misappropriated.

**D.20** On the next day, August 2, 1994, Donald L. Busby appeared in Court and testified, under oath, that the \$173,613.51 was on deposit in a trust account but that he couldn't get it released from an Internal Revenue Service levy. He further testified that he was in the process of getting the levy released by working with the regional office of the Internal Revenue Service and the banks and that he had on August 1, 1994, been to the regional office of the Internal Revenue Service in Dallas in an attempt to get such funds cleared. Such testimony includes the following statements, made under oath by Donald L. Busby:

Page 5, August 2, 1994, testimony:

Question by Bob Burlison (attorney For Scott and White):

"Mr. Busby, I think everyone is concerned primarily with finding out whether the money is available and why it was not paid yesterday; will you please explain that to His Honor?"

Answer by Mr. Busby:

"Yes. Well, the money is available. Frankly, it's a matter of getting it released because I've had the unfortunate experience of having the I.R.S. levy, not only on regular accounts, but trust accounts. We're in the process of getting that released; that's where I was yesterday, talking not only with them but with the bank, as well."

\* \* \*

Page 7, August 2, 1994, testimony:

Question by Bob Burlison (attorney for Scott and White):

"Is it your testimony that there was, in fact, an account that had that amount of money in it, the total amount of money in it, in a trust account, as evidenced by the check dated July 14 that you showed us?"

Answer by Mr. Busby:

"Yes."

Page 8, August 2, 1996, testimony:

Question by Jack Tarver (attorney for Donald L. Busby):

"Mr. Busby, did you intentionally misrepresent to Judge Briscoe, the last time you were in Court here, that you could provide those funds?"

Answer by Mr. Busby:

"No, I didn't. No. I honestly felt as though I could go up there and get the release and make arrangements with the bank to release the funds."

Page 8, August 2, 1996, testimony:

Question by Jack Tarver (attorney for Donald L. Busby):

"And did you make a diligent effort to try and do that that day?"

Answer by Mr. Busby:

"I sure did. I not only went to Waco, but then went to Dallas to the regional office to try to get that release, as well."

Donald L. Busby's testimony, although given under oath, was false. Donald L. Busby did not have the funds on deposit; there was no tax levy then impeding payments from Donald L. Busby's trust account; and Donald L. Busby did not go to the Internal Revenue Service offices in Dallas on August 1, 1994, about releasing the levy on his trust account. Accordingly, Donald L. Busby's misconduct involved dishonesty, fraud, deceit and/or misrepresentation.

**D.21** On or about August 8, 1994, Donald L. Busby appeared in Court with a \$90,000.00 cashier's check payable to Scott and White and a \$20,000.00 personal check payable to Donald L. Busby which he endorsed over to Scott and White. These monies were not from the trust account and were not from the settlement proceeds of the guardianship. Donald L. Busby borrowed these monies from family and friends to replace funds he had misappropriated. Donald L. Busby made assurances on August 8, 1994, that he would by August 22, 1994, have funds on hand sufficient to comply with the Court's order. The

Court gave Donald L. Busby until 10:30 a.m. on August 22, 1994, to report to the Court and give proof that the remaining \$63,613.51 had been paid into the registry of the Court.

**D.22** Donald L. Busby failed to pay the remaining \$63,613.51 on August 22, 1994, as ordered by the Court. On or about August 29, 1994, the Court held Donald L. Busby in contempt for failure to comply with the Court's order, for misleading the Court by false testimony and for other contemptuous conduct. The Court assessed a fine of \$500.00 against Donald L. Busby. Donald L. Busby quickly paid that fine and did not perfect an appeal from the assessment of the same. The payment of such fine constitutes a judicial admission of guilt on the Court's findings for purposes of this civil proceeding.

**D.23:** Donald L. Busby committed dishonest, fraudulent, and/or deceitful acts and/or engaged in misrepresentations to the Court in an effort to cover up his misdeeds. As set forth above, he fraudulently used a cashier's check to cause the Court and opposing counsel to believe that funds were on hand when they were not; he lied under oath to cause the Court and opposing counsel to believe funds were on hand in his client trust account when they were not; he lied under oath by saying that the funds were affected by a federal tax levy when they were not; and he lied under oath by testifying that he had been to the regional office of the Internal Revenue Service in Dallas on August 1, 1994, in an effort to obtain a release of the funds in his client trust account when he did not go to such office. Such conduct constitutes a criminal offense and certainly involves dishonest, fraudulent and/or deceitful conduct. Thereafter, Donald L. Busby continued in his efforts to distort the truth by preparing a document which he entitled "Confirmation of Beneficial Ownership" in an effort to create a false illusion that his misappropriations of

client trust funds for investment in his ranching venture were proper. Such document was prepared by Donald L. Busby, personally, and not by his staff; such document contained no acknowledgment before a Notary Public, because that would require complicity by some other person, even though the absence of an acknowledgment precluded the recording of such document in the official records of Bell County, Texas; and no party alleged by Donald L. Busby to benefit from such document received a copy of or notice of such document. The fabrication of such fraudulent document involves dishonesty, fraud, deceit and/or misrepresentation.

**D.24** Such acts and/or omissions on the part of Donald L. Busby as are described in paragraphs D.1 through D.23 above constitute professional misconduct in violation of the Texas Disciplinary Rules of Professional Conduct, as follows:

**Violation No. 18:** Donald L. Busby delivered to Scott & White a check known by him to have been drawn on a closed account. Such conduct involved dishonesty, fraud, deceit and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 19:** Donald L. Busby misappropriated funds of the guardianship of George Thomas Murphy in violation of Rule 1.14(c), Texas Disciplinary Rules of Professional Conduct. Donald L. Busby's conduct in misappropriating such funds involved dishonesty, fraud and/or deceit in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct. Alternatively, the use of such funds by Donald L. Busby was a prohibited transaction involving serious conflicts of interest in violation of Rule 1.08, Texas Disciplinary Rules of Professional Conduct.

**Violation No. 20:** Donald L. Busby's misappropriation of in excess of \$3,500.00 of the trust account monies refunded by CentraLand Title Company involved dishonesty, fraud and/or deceit in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 21:** Donald L. Busby's failure to promptly pay Tyrone Anthony Murphy the sums to which he is entitled from the settlement proceeds is a violation of Rule 1.14(b), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 22:** Donald L. Busby's misappropriation of monies belonging to his client, Tyrone Anthony Murphy, by payment of the same to persons other than those entitled to receive the same, is a violation of Rule 1.14(c), Texas Disciplinary Rules of Professional Conduct. Donald L. Busby's conduct in misappropriating such funds involved dishonesty, fraud and/or deceit in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct. Alternatively, the use of such funds by Donald L. Busby was a prohibited transaction in violation of Rule 1.08, Texas Disciplinary Rules of Professional Conduct.

**Violation No. 23:** Donald L. Busby's misappropriation of monies belonging to his client, James Glenn, by payment of the same to persons other than those entitled to receive the same, is a violation of Rule 1.14(c), Texas Disciplinary Rules of Professional Conduct. Donald L. Busby's conduct in misappropriating such funds involved dishonesty, fraud and/or deceit in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 24:** Donald L. Busby's failure to promptly pay James Glenn the sums to which he was entitled from the settlement proceeds is a violation of Rule 1.14(b), Texas Disciplinary Rules of Professional Conduct. Alternatively, the use of such funds by Donald L. Busby was a prohibited transaction in violation of Rule 1.08, Texas Disciplinary Rules of Professional Conduct.

**Violation No. 25:** Donald L. Busby's delivery of the \$110,000.00 check for Scott and White at a time when he knew that such check would not be honored, in fact at a time when he knew such account had been closed is conduct involving dishonesty, fraud, deceit and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 26:** Donald L. Busby's efforts in obtaining the cashier's check dated July 14, 1994, and knowingly manufacturing false evidence for the purpose of deceiving and misleading the Court and the parties into believing that the funds of the guardianship of George Thomas Murphy were being held, intact, in his trust account was conduct which involved dishonesty, fraud, deceit and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 27:** Donald L. Busby's participation in misleading Judge Briscoe on August 1, 1994, to believe that the photocopy of the cashier's check dated July 14, 1994, for \$173,613.51 represented funds on deposit was a violation of Rule 3.03(a)(1), Texas Disciplinary Rules of Professional Conduct. In addition, such conduct involved dishonesty, fraud, deceit and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.



**Violation No. 28:** Donald L. Busby's sworn testimony on August 2, 1994, that the settlement funds of \$173,613.51 were on deposit in a trust account was false. Such conduct violated Rule 3.03(a)(1), Texas Disciplinary Rules of Professional Conduct, and further involved dishonesty, fraud, deceit and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 29:** Donald L. Busby's sworn testimony on August 2, 1994, that the Internal Revenue Service levy had attached to his trust account was false and was not a candid or truthful statement of the facts. Such conduct violated Rule 3.03(a)(1), Texas Disciplinary Rules of Professional Conduct, and further involved dishonesty, fraud, deceit and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 30:** Donald L. Busby's sworn testimony on August 2, 1994, that he had gone to the regional office of the Internal Revenue Service on August 1, 1994, in an attempt to obtain a release of the tax levy was false. Such conduct violated Rule 3.03(a)(1), Texas Disciplinary Rules of Professional Conduct, and further involved dishonesty, fraud, deceit and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

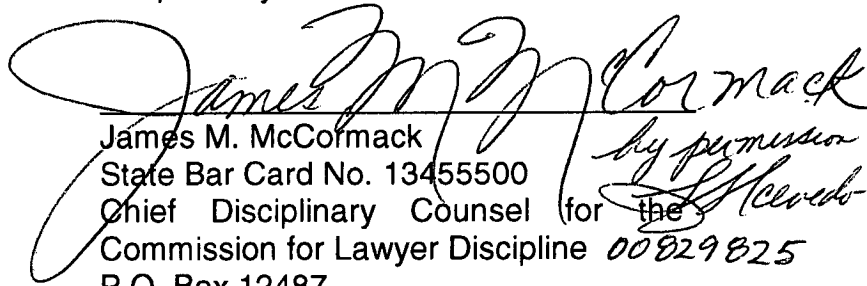
**Violation No. 31:** Donald L. Busby's reaffirmation in sworn testimony on August 2, 1994, that the cashier's check dated July 14, 1994, for \$173,613.51 evidenced the existence of monies on deposit in his trust account was false. Donald L. Busby knew that the July 14, 1994, check did not represent funds of the guardianship, that the funds represented by such check were owned by other clients (primarily Sherrill Hewitt) and that

the funds which were the basis for the issuance of such cashier's check had been distributed in July 1994 to other persons and were no longer available in Donald L. Busby's bank account. Such conduct violated Rule 3.03(a)(1), Texas Disciplinary Rules of Professional Conduct, and further involved dishonesty, fraud, deceit and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

**Violation No. 32:** Donald L. Busby's fabrication and backdating of the document entitled "Confirmation of Beneficial Ownership" in 1994 to misrepresent his intent and action in 1991 involved dishonesty, fraud, deceit and/or misrepresentation in violation of Rule 8.04(a)(3), Texas Disciplinary Rules of Professional Conduct.

WHEREFORE, premises considered, the Commission for Lawyer Discipline prays that this Court grant the Motion For Resignation In Lieu Of Discipline filed herein by Donald L. Busby and that his name be removed from the list of persons licensed to practice law in the State of Texas.

Respectfully submitted,

James M. McCormack  
State Bar Card No. 13455500  
Chief Disciplinary Counsel for the Commission for Lawyer Discipline

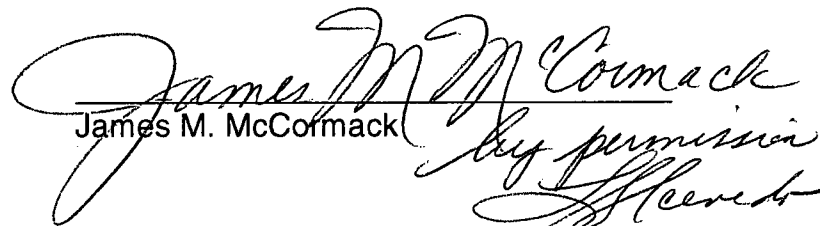
P.O. Box 12487  
Austin, Texas 78711  
Telephone: 512/463-1463  
Telecopier: 512/477-4607

**CERTIFICATE OF SERVICE**

A true and correct copy of this "Response To The Motion For Resignation In Lieu Of Discipline" was served upon all parties to this cause by mailing the same on this 21st day of June, 1996, by certified mail, return receipt requested, to:

Steven L. Lee, Esquire  
Lione & Lee, P.C.  
8303 North Mopac Expressway, Suite 238-C  
Austin, Texas 78759-8370  
(Receipt No. P 116 546 708 )

Charles R. Burton, Esquire  
Minton, Burton, Foster & Collins  
1100 Guadalupe Street  
Austin, Texas 78701  
(Receipt No. P 116 546 707 )

  
James M. McCormack  
*by permission*  
*Sheets*  
00929825