

ORDER OF THE SUPREME COURT OF TEXAS

MISC. DOCKET NO. 01- 9040

IN THE MATTER OF DAVID E. DAVIS

The Court has reviewed the *Motion for Acceptance of Resignation as Attorney and Counselor at Law of David E. Davis* and the *Response of the Chief Disciplinary Counsel for the Commission for Lawyer Discipline*. The Court concludes each meets the requirements of Part X of the TEXAS RULES OF DISCIPLINARY PROCEDURE. In the absence of a request by David E. Davis to withdraw his motion, the Court deems the professional misconduct detailed in the *Response of the Chief Disciplinary Counsel* conclusively established for all purposes. The Court further concludes that acceptance of David E. Davis' resignation is in the best interest of the public and the profession.

Therefore, the law license of David E. Davis, of Wichita Falls, Texas, State Bar Card Number 05477000, is canceled. David E. Davis must immediately surrender his State Bar Card and Texas law license to the Clerk of the Supreme Court of Texas.

Consequently, David E. Davis is prohibited from practicing law in the State of Texas. This includes holding himself out as an attorney at law, performing 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 "Attorney at Law," "Counselor at Law," or "Lawyer."

Additionally, David E. Davis must immediately notify in writing each of his current clients of his resignation. He shall also return any files, papers, unearned monies and other property in his possession belonging to any client to the respective client or to another attorney at the client's request. David E. Davis shall file with the STATE BAR OF TEXAS, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, Texas, 78711-2487, within thirty (30) days of the date of this Order, an affidavit stating that all current clients have been notified of his resignation and that all files, papers, monies and other property belonging to all clients have been returned.

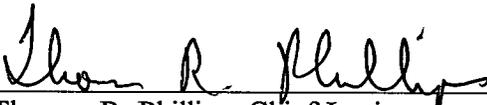
David E. Davis shall, within thirty (30) days after the date of this Order, notify in writing each justice of the peace, judge, magistrate, and chief justice of each court in which he has any matter pending of the terms of this Order, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) he is representing in court. David E. Davis shall file with the STATE BAR OF TEXAS, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, Texas, 78711-2487, within thirty (30) days of the date of this Order, an affidavit stating that he has notified in writing each justice of the peace, judge, magistrate, and chief justice of each court in which he has any matter pending of the terms of this Order, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) he is representing in Court.

David E. Davis shall pay restitution to Shirley McAllister in the amount of Thirty-Five Thousand and No/100 Dollars (\$35,000.00) via certified or cashier's check. All checks shall be made payable to Shirley McAllister and delivered to the STATE BAR OF TEXAS, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, Texas, 78711-2487, for forwarding to Ms. McAllister. Payment of this restitution is an absolute condition precedent to reinstatement.

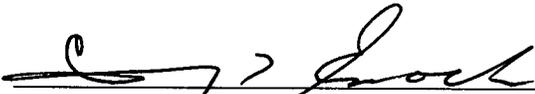
David E. Davis shall satisfy the terms of the *Agreed Judgment of Public Reprimand* with the payment of restitution as ordered and agreed in Case No. F0019908671, styled *Complaint Against David Edward Davis, Wichita Falls, Texas.* Payment of this restitution is an absolute condition precedent to reinstatement.

Finally, David E. Davis shall satisfy the terms of the *Agreed Judgment of Fully Probated Suspension* with the payment of attorneys' fees and restitution and the attendance of a Law Office Management course as ordered and agreed in Case No. F0029807512, styled *Complaint Against David Edward Davis, Wichita Falls, Texas.* Payment of these attorneys' fees and restitution, as well as the attendance in a Law Office Management course are absolute conditions precedent to reinstatement.

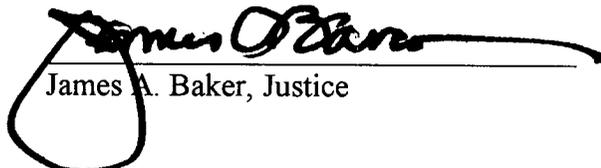
IT IS ORDERED the 20th day of March, 2001.


Thomas R. Phillips, Chief Justice


Nathan L. Hecht, Justice

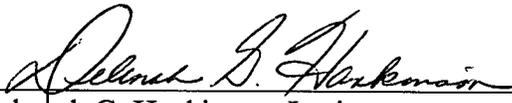

Craig T. Enoch, Justice


Priscilla R. Owen, Justice

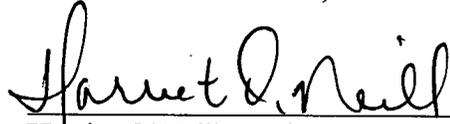

James A. Baker, Justice



Greg Abbott, Justice



Deborah G. Hankinson, Justice



Harriet O'Neill, Justice

STATE BAR OF TEXAS



OFFICE OF THE CHIEF DISCIPLINARY COUNSEL

Facsimile No. (713) 752-2158

March 2, 2001

*Via Certified Mail No. Z-271 943 234,
Return Receipt Requested*

John Adams, Clerk
SUPREME COURT OF TEXAS
Supreme Court Building
P.O. Box 12248
Austin, Texas 78711

RE: Resignation of David E. Davis, Bar Card No. 05477000

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 David E. Davis*, dated January 19, 2001, and effective April 18, 2001;
- (2) *Response of the Chief Disciplinary Counsel of the State Bar of Texas to Motion for Resignation in Lieu of Discipline of David E. Davis*, a copy of which was transmitted to David E. Davis on February 2, 2001, at least ten (10) days prior to today's date; and
- (3) Original and one (1) copy of proposed *Order of the Supreme Court of Texas* for review and entry by the Court, accepting the resignation of David E. Davis as Attorney and Counselor at Law.

Please be advised that pursuant to the attached *Rule 11 Agreement*, Mr. Davis will surrender his License and State Bar card to our office on April 1, 2001, since his resignation would not be effective until April 18, 2001. Once we receive the License and State Bar card, we will immediately forward same to you.

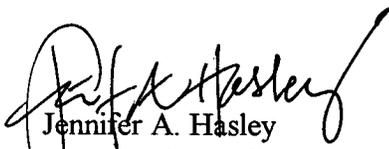
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1111 FANNIN, SUITE 1370, HOUSTON, TEXAS 77002, (713) 759-6931

John Adams, Clerk
SUPREME COURT OF TEXAS
March 2, 2001
Page 2

Please present the enclosed *Order* to the Court for review and entry. Upon entry of the *Order* by the Court, please transmit a true and correct copy of the same to the undersigned so that we may properly give notice to all parties of the Court's decision.

Sincerely,


Jennifer A. Hasley
Assistant Disciplinary Counsel

JAH/sml
Enclosures

cc: David E. Davis
c/o Ron Poole
P.O. Box 417
Wichita Falls, Texas 76307-0417
***Via Certified Mail No. Z-271 943 235,
Return Receipt Requested***

**IN THE SUPREME COURT OF TEXAS
MOTION FOR ACCEPTANCE OF RESIGNATION AS
ATTORNEY AND COUNSELOR AT LAW**

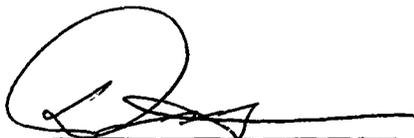
OF

DAVID E. DAVIS

NOW COMES your Applicant, David E. Davis, and hereby resigns as an Attorney and Counselor at Law in the State of Texas effective April 18, 2001; and hereby submits to the Court his resignation as an Attorney and Counselor at Law; and prays that the Court accept said resignation.

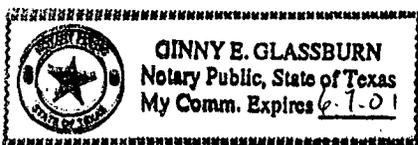
Attached hereto ^{on April 1, 2001} is the License and permanent State Bar card issued by this Court to the Applicant, David E. Davis, as an Attorney and Counselor at Law on May 12, 1966. Said License and permanent State Bar card ^{will} ~~are~~ _{be} hereby surrendered by the Applicant. ^{on April 1, 2001,}

Your applicant is voluntarily resigning and withdrawing from the practice of law; Applicant does so in lieu of discipline for professional misconduct; and Applicant prays that his name be dropped and deleted from the list of persons licensed to practice law in Texas; and that his resignation be accepted.



David E. Davis
State Bar No. 05477000

SUBSCRIBED AND SWORN to before me by the said David E. Davis this the 19th day of January, 2001.



Ginny E. Glassburn
NOTARY PUBLIC in and for
the State of Texas

David E. Davis
c/o Ron Poole
P.O. Box 417
Wichita Falls, Texas 76307-0417

IN THE SUPREME COURT OF TEXAS
RESPONSE OF THE CHIEF DISCIPLINARY COUNSEL OF
THE STATE BAR OF TEXAS
TO MOTION FOR RESIGNATION IN LIEU OF DISCIPLINE
OF DAVID E. DAVIS

TO THE HONORABLE SUPREME COURT OF TEXAS:

COMES NOW, Jennifer A. Hasley, Assistant Disciplinary Counsel, and Dawn Miller, Chief Disciplinary Counsel of the STATE BAR OF TEXAS, and in accordance with Part X of the TEXAS RULES OF DISCIPLINARY PROCEDURE, would show unto the Court as follows:

I. RESIGNATION OF MOVANT

Movant, David E. Davis, State Bar No. 05477000, has filed his *Motion for Acceptance of Resignation as Attorney and Counselor at Law*, dated January 19, 2001, and to be effective on or after April 18, 2001. Such *Motion for Acceptance of Resignation* is in lieu of discipline for professional misconduct.

**II. ACCEPTANCE OF RESIGNATION IS IN THE
BEST INTERESTS OF THE PUBLIC AND THE PROFESSION**

The COMMISSION FOR LAWYER DISCIPLINE contends that the acceptance of Movant's *Motion for Acceptance of Resignation* is in the best interests of the public and the profession.

III. DISCIPLINARY CHARGES

The COMMISSION FOR LAWYER DISCIPLINE has information regarding Respondent's professional misconduct:

McAllister Complaint

In or about the early 1990's, Respondent was retained by SHIRLEY McALLISTER (hereinafter referred to as "McAllister") for representation in the dissolution of a partnership

agreement with her ex-husband, T.H. STONE. In or around February of 1993, Respondent represented McAllister in the sale of her home. Thereafter, McAllister presented Respondent with a check in the amount of Thirty-Five Thousand and No/100 Dollars (\$35,000.00) for the purpose of creating a trust that would pay her a monthly income and preserve the principal for her and/or her heirs use at a later date. Respondent verbally advised McAllister that he could establish a trust which would generate monthly dividend checks at an interest rate higher than the rate available through more conventional means. McAllister never signed or received any written agreement.

Without McAllister's knowledge and/or consent, Respondent created and signed an *Installment Promissory Note* dated February 15, 1993, whereby Respondent agreed to pay McAllister monthly installments of interest only. The *Installment Promissory Note* failed to accurately reflect the terms of the agreement with McAllister; failed to specify the duration of the agreement; and provided that Respondent could unilaterally renew for a period of five (5) years. This business transaction was unfair and unreasonable; Respondent failed to fully disclose the terms of the agreement in a manner which could be reasonably understood by McAllister; McAllister was not given a reasonable opportunity to seek the advice of independent counsel; and McAllister never consented in writing to the agreement.

From 1993 to 1995, McAllister was unsuccessful in her attempts to communicate with Respondent about the status of the trust. In or around August of 1995, concerned that she had not received any documentation supporting the existence of the trust, McAllister drafted and presented to Respondent a proposed *Revocable Living Trust, Assignment of Property to Trust, and Schedule of Beneficiaries and Distributive Shares*. After several rounds of revisions, nothing was ever reduced to writing.

From 1996 to 1999, McAllister made repeated attempts to obtain written documentation that supported the existence of the trust; however, Respondent never complied. In 1998, Respondent informed McAllister that he was renewing the “trust”; however, again, nothing was reduced to writing. In the latter part of 1998 or early part of 1999, after a visit from two (2) INTERNAL REVENUE SERVICE agents regarding an ongoing investigation involving Respondent, McAllister’s concern escalated.

On or about May 19, 1999, McAllister filed a grievance with the STATE BAR OF TEXAS complaining that Respondent failed to provide written documentation regarding the existence of the trust; that two (2) interest checks were returned for insufficient funds; and that Respondent failed to provide a copy of the client file which had been requested since 1995.

After the filing of the grievance, Respondent requested a meeting with McAllister. In or around August of 1999, Respondent drafted an “agreement” which allegedly reflected the intent of the parties regarding the original transaction in 1993. This new agreement included the term “declaration of trust.” The parties signed the “agreement” on August 4, 1999. This transaction was unfair and unreasonable; Respondent failed to fully disclose the terms of the agreement in a manner which could be reasonably understood by McAllister; and McAllister was not given a reasonable opportunity to seek the advice of independent counsel.

On or about May 28, 1999, Respondent received notice of the complaint and was directed to provide a written response to the allegations of professional misconduct within thirty (30) days of his receipt of same. Respondent failed to timely respond, as the written response was not received until the grievance hearing.

Respondent's conduct as set forth in the McAllister complaint violated Rules 1.02(a)(1), 1.03(a), 1.03(b), 1.08(a)(1), 1.08(a)(2), 1.08(a)(3), 1.14(b), 8.04(a)(3), and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

Further, in a *Motion to Exclude Evidence* filed with the trial court, the COMMISSION FOR LAWYER DISCIPLINE alleged that Respondent forged McAllister's signature on a letter purportedly reflecting McAllister's written consent to the terms of the 1993 agreement. No response to the Motion was filed by Respondent.

IV. CONDITIONS FOR REINSTATEMENT

- A. Respondent should be ordered to pay restitution to Shirley McAllister in the amount of Thirty-Five Thousand and No/100 Dollars (\$35,000.00). Payment of this restitution should be ordered as an absolute condition precedent to reinstatement.
- B. On February 12, 2000, Respondent entered into an *Agreed Judgment of Public Reprimand*, in Case No. F0019908671, styled *Complaint Against David Edward Davis, Wichita Falls, Texas*. Pursuant to the terms of the Judgment, Respondent agreed to pay restitution to the Complainant in the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00). Payment of the restitution as ordered and agreed should be an absolute condition precedent to reinstatement.
- C. On February 16, 1999, Respondent entered into an *Agreed Judgment of Fully Probated Suspension*, in Case No. F0029807512, styled *Complaint Against David Edward Davis, Wichita Falls, Texas*. Pursuant to the terms of the Judgment, Respondent agreed to pay attorneys' fees in the amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) and restitution to the Complainant in the amount of One Thousand Six Hundred

Nine and 03/100 Dollars (\$1,609.03). Respondent further agreed to attend a Law Office Management course. Payment of the attorneys' fees and restitution, as well as attendance in a Law Office Management course as ordered and agreed should be absolute conditions precedent to reinstatement.

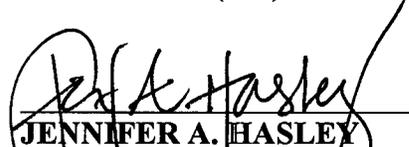
V.

WHEREFORE, the Chief Disciplinary Counsel of the STATE BAR OF TEXAS moves the Court to grant the *Motion for Acceptance of Resignation as Attorney and Counselor at Law* filed by Movant, effective on or after April 18, 2001, order Movant to pay restitution to Shirley McAllister in the amount of Thirty-Five Thousand and No/100 Dollars (\$35,000.00), and order all restitution and other terms of compliance be satisfied as an absolute condition precedent to reinstatement.

Respectfully submitted,

DAWN MILLER,
Chief Disciplinary Counsel

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



JENNIFER A. HASLEY
Assistant Disciplinary Counsel
State Bar No. 00792818

ATTORNEYS FOR PETITIONER,
COMMISSION FOR LAWYER DISCIPLINE

CERTIFICATE OF SERVICE

I hereby certify that on **February 2, 2001**, a true and correct copy of the *Response of the Chief Disciplinary Counsel of the State Bar of Texas to Motion for Resignation in Lieu of Discipline of David E. Davis* was delivered to the Respondent, by and through his attorney of record, via certified mail, return receipt requested:

**Ron Poole
P.O. Box 417
Wichita Falls, Texas 76307-0417**



JENNIFER A. HASLEY

STATE BAR OF TEXAS FILED FOR RECORD
AT _____ o'clock _____ M



JAN 22 2001

DORSEY R. TRAPP, Clerk Dist.
Courts & County Courts at Law
Wichita County, Texas

By _____ Deputy

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL

Facsimile (713) 752-2158

January 19, 2001

Mr. Ron Poole
LAW OFFICES OF RON POOLE, P.C.
P.O. Box 417
Wichita Falls, Texas 76307-0417

Via Facsimile 946-767-0559

RE: FINAL SETTLEMENT
Cause No. 153,658-C; Commission for Lawyer Discipline v. David E. Davis; In the 89th
Judicial District Court of Wichita County, Texas.

Dear Mr. Poole:

Pursuant to our telephone conversation on today's date, it is our understanding that we have settled the above-referenced matter pursuant to the following terms and conditions:

1. Respondent agrees to resign in lieu of discipline effective April 18, 2001;
2. Respondent shall immediately surrender his Bar card and license to you, his attorney of record, for forwarding to the undersigned attorney.
on April 11, 2001

This settlement encompasses both the above-referenced disciplinary case and any potential cause of action related to the disputed document dated February 12, 1993.

If this accurately reflects our agreement, please sign in the space indicated below and return to our office via facsimile at (713) 752-2158. It is also agreed that a signature to this letter sent by facsimile shall be as valid as an original.

If you have any questions or need additional information, please contact the undersigned at your earliest convenience.

Sincerely yours,

Jennifer A. Hasley
Jennifer A. Hasley
Assistant Disciplinary Counsel

Ron Poole
Ron Poole
Attorney for Respondent
David E. Davis
1-19-01
Date