

ORDER OF THE SUPREME COURT OF TEXAS

9172

Misc. Docket No. 01-----

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

The Supreme Court of Texas hereby appoints the Honorable Bonnie Sudderth, Judge of the 352nd District Court of Tarrant County, Texas, to preside in the Disciplinary Action styled

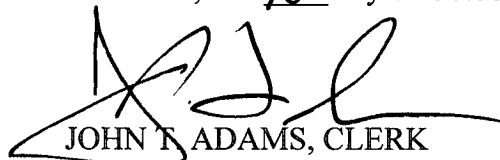
The Commission for Lawyer Discipline v. David H. Falk

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 the Disciplinary petition and this Order for filing and service pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

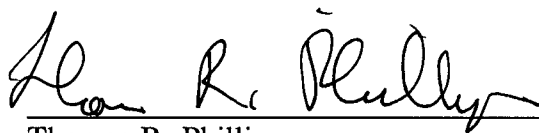
As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City
Of Austin, this 10th day of October, 2001.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9172, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 9 day of October, 2001.



Thomas R. Phillips
Chief Justice

Cause No. _____

COMMISSION FOR LAWYER
DISCIPLINE

Petitioner

v.

DAVID H. FALK

Respondent

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, a committee of the STATE BAR OF TEXAS (hereinafter "Petitioner"), files this Disciplinary Petition, complaining of Respondent, DAVID H. FALK (hereinafter "Respondent"), showing the Court:

1. DISCOVERY CONTROL PLAN

1.1 Pursuant to Rule 190.1 of the TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level Two (2) Discovery Control Plan. Pursuant to Rule 190.3 TRCP, Petitioner affirmatively pleads that it seeks monetary relief aggregating at least Fifty Thousand and 00/100 dollars (\$50,000.00), excluding costs, pre-judgment interest and attorneys' fees.

2. NATURE OF PROCEEDING

2.1 Petitioner brings this disciplinary action pursuant to the State Bar Act, the Texas Government Code Annotated §81.001, *et seq.* (Vernon 1988 and supp. 1994), the TEXAS DISCIPLINARY RULES

OF PROFESSIONAL CONDUCT (TDRPC), and the TEXAS RULES OF DISCIPLINARY PROCEDURE (TRDP).

3. VENUE

3.1 Respondent is an attorney licensed to practice law in Texas and is a member of the STATE BAR OF TEXAS, bar number 00784034. Respondent is a resident of Houston, 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 serve citation on Respondent through his attorney of record, Martin Shellist at his business address located at 1900 W. Loop S., Suite 1910, Houston, Texas 77027.

4. FIRST CAUSE OF ACTION (CASLER)

4.1 On or about October 16, 2000, the State Bar of Texas received a complaint from Tracey Casler (hereinafter "Casler"). On or about October 27, 2000, Respondent received proper notice of the complaint which directed Respondent to provide a written response thereto on or about November 27, 2000. Further, Respondent also received a State Bar of Texas Subpoena, which commanded him to provide a copy of Casler's client file by November 27, 2000. Respondent failed to respond to both requests.

5. RULE VIOLATIONS

5.1 The acts and/or omissions of the Respondent described in Paragraph IV above, constitute conduct in violation of Rule(s) **8.01(b)** [Knowingly failed to respond to a lawful demand for information from a disciplinary authority], and **8.04(a)(8)** [Failed to timely furnish a district

grievance committee a response or other information as required unless he/she timely asserts a privilege or other legal ground for failure to do so] of the TDRPC.

6.

6.1 The complaint that forms the basis of this cause of action was brought to the attention of the Office of the Chief Disciplinary Counsel of the STATE BAR OF TEXAS by Tracey Casler filing a complaint on or about October 16, 2000.

7. SECOND CAUSE OF ACTION (GOODALE)

7.1 In or about December 1999, Kelly Goodale (hereinafter "Goodale"), hired Respondent to represent Goodale in a criminal matter.

7.2 On or about April 24, 2000, Respondent informed Goodale that he had negotiated a plea bargain which guaranteed Goodale a sentence of no jail time if he completed a ninety (90) day drug treatment program. On or about April 25, 2000, Respondent and Goodale met at the courthouse based on Respondent's representation. Goodale assumed if he agreed to a ninety (90) day drug treatment program, he would not have to serve a jail sentence. Goodale signed the plea agreement. Respondent failed to inform Goodale of the details of the agreement before presenting the agreement for Goodale's acceptance. Respondent failed to abide by Goodale's wish for no jail time regarding the plea agreement. As a result, Goodale unknowingly signed an agreement which mandated he serve a two (2) year sentence.

7.3 On November 17, 2000 and December 3, 2000, Goodale sent letters to Respondent requesting a copy of his client file. Respondent failed to respond to this request to return Goodale's

file. On or about November 21, 2000, Goodale filed a complaint against Respondent with the State Bar of Texas. On or about December 22, 2000, Respondent was notified of Goodale's complaint against him and instructed to submit a written response to Goodale's allegations by January 22, 2001. Respondent failed to respond.

8. RULE VIOLATIONS

8.1 The acts and/or omissions of the Respondent described in Paragraph IV above, constitute conduct in violation of Rule(s) **1.02(a)(2)** [Failed to abide by a client's decisions regarding acceptance of an offer of settlement of a matter]; **1.03(a)** [Failed to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; **1.03(b)** [Failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation]; **1.15(d)** [Failed, upon termination of representation, to reasonably protect a client's interests, give notice to the client to seek other counsel, or surrender papers and property which belongs to the client]; **8.01(b)** [Knowingly failed to respond to a lawful demand for information from a disciplinary authority] and **8.04(a)(8)** [Failed to timely furnish a district grievance committee a response or other information as required unless he timely asserts a privilege or other legal ground for failure to do so of the TDRPC.

9.

9.1 The complaint that forms the basis of this cause of action was brought to the attention of the Office of the Chief Disciplinary Counsel of the STATE BAR OF TEXAS by Kelly Goodale filing a complaint on or about November 21, 2000.

10. THIRD CAUSE OF ACTION (LYON)

10.1 In or about March 2000, Dennelle Lyon (hereinafter "Lyon") hired Respondent to represent her in a divorce matter. Respondent was paid Five Thousand and 00/100 Dollars (\$5000.00).

10.2 Thereafter, Lyon requested a itemized statement listing all the legal services and fees for which Respondent performed on her behalf. Respondent failed to provide an itemized billing statement to Lyon as requested. Further, Respondent failed to keep Lyon informed regarding the status of her case. Further, Lyon telephoned Respondent regarding the status of her case. Respondent failed to return Lyon's phone calls.

10.3 On or about October 18, 2000, Lyon filed an complaint against Respondent with the State Bar of Texas. On or about November 3, 2000, Respondent received proper notice of the complaint filed by Lyon and was directed to provide a written response to the Lyon's allegations by December 3, 2000. In addition, Respondent received a State Bar of Texas Subpoena, commanding him to provide a copy of Lyon's client file by December 3, 2000. The Respondent failed to respond to both requests.

11. RULE VIOLATIONS

11.1 The acts and/or omissions of the Respondent described in Paragraph IV above, constitute conduct in violation of Rule(s) **1.03(a)** [Failed to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; **1.04 (c)** [Failed to communicate to the client the basis or rate of the fee before or within a reasonable time after commencing the representation]; **8.01(b)** [Failed to respond to a lawful demand for information from a disciplinary authority]; and **8.04(a)(8)** [Failed to timely furnish a district grievance committee a

response or other information as required unless he timely asserts a privilege or other legal ground for failure to do so of the TDRPC.

12.

12.1 The complaint that forms the basis of this cause of action was brought to the attention of the Office of the Chief Disciplinary Counsel of the STATE BAR OF TEXAS by Dennelle Lyon filing a complaint on or about October 18, 2000.

13. FOURTH CAUSE OF ACTION (YANIEC)

13.1 On or about August 5, 2000, Respondent was employed by John and Joanne Yaniec (hereinafter "the Yaniecs") to provide legal services in a Real Estate matter. Respondent was paid One Thousand and 00/100 Dollars (\$1,000.00). Respondent failed to keep the Yaniecs informed regarding the status of their case. The Yaniecs telephoned Respondent regarding the case, but Respondent failed to return the telephone calls. Further, Respondent promised to produce demand letters he had drafted and mailed on behalf of the Yaniecs. Respondent never produced the correspondence as promised.

13.2 On or about November 22, 2000, the Yaniecs filed a complaint against Respondent with the State Bar of Texas. On or about December 22, 2000, Respondent received proper notice of the Yaniec complaint which notice directed Respondent to provide written response thereto by or about January 22, 2000. The Respondent failed to respond.

13.3 On or about December 22, 1999, the Respondent received a State Bar of Texas Subpoena, which subpoena commanded the Respondent to provide a copy of the Yaniec's client file by January 22, 2000. The Respondent failed to respond.

14. RULE VIOLATIONS

14.1 The acts and/or omissions of the Respondent described in Paragraph IV above, constitute conduct in violation of Rules **1.03(a)** [Failed to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; **1.03(b)** [Failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation]; **8.01(b)** [Failed to respond to a lawful demand for information from a disciplinary authority]; **8.04(a)(3)** [Engaged in conduct involving dishonesty, fraud, deceit or misrepresentation]; and **8.04(a)(8)** [Failed to timely furnish a district grievance committee a response or other information as required unless he timely asserts a privilege or other legal ground for failure to do so] of the Texas Disciplinary Rules of Professional Conduct.

15.

15.1 The complaint that forms the basis of this cause of action was brought to the attention of the Office of the Chief Disciplinary Counsel of the STATE BAR OF TEXAS by John and Joanne Yaniec's filing a complaint on or about November 22, 2000.

PRAYER

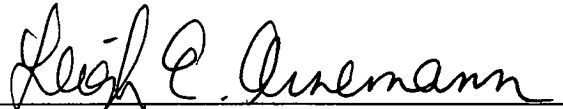
WHEREFORE, PREMISES CONSIDERED, Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, respectfully prays that this Court discipline Respondent, **DAVID H. FALK** by reprimand, suspension or disbarment, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself to be justly entitled, including costs of court and attorneys' fees.

Respectfully submitted,

Dawn Miller
Chief Disciplinary Counsel

Leigh E. Arnemann

Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
STATE BAR OF TEXAS
1111 Fannin, Suite 1370
Houston, Texas 77002
Telephone (713) 759-6931
Facsimile (713) 752-2158



Leigh E. Arnemann
State Bar No. 24025229

**ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE**

STATE BAR OF TEXAS



Office of the General Counsel

August 20, 2001

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

Re: Commission for Lawyer Discipline v. David H. Falk

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 David H. Falk. Mr. Falk 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, through his attorney, at the address shown below and the undersigned of the identity and address of the judge assigned:

c/o Martin Shellist
1900 West Loop South
Suite 1910
Houston, Texas 77027

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to: (1) whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure. If not, I would respectfully request that an alternate appointment be made.

Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of 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
Judge Appointment
David H. Falk
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,



Leigh E. Arnemann
Assistant Disciplinary Counsel

LEA/rr
Enclosures

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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

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON
XAVIER RODRIGUEZ

CLERK
JOHN T. ADAMS

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

OCT 12 2001

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. David H. Falk*, and a copy of the Supreme Court's order appointing the Honorable Bonnie Sudderth, Judge of the 352nd District Court, Fort Worth, Texas.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Bonnie Sudderth
Ms. Leigh E. Arnemann
Mr. David Falk
Ms. Melissa Dartez



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

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EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

OCT 12 2001

Honorable Bonnie Sudderth
Judge, 352nd District Court
401 W. Belknap Street, 8th Floor
Fort Worth, Texas 76196-7283

Dear Judge Sudderth:

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. Falk and Ms. Arnemann, 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



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

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JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

OCT 12 2001

Ms. Leigh E. Arnemann
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. David H. Falk
c/o Martin Shellist
1900 West Loop South, Suite 1910
Houston, Texas 77027

Dear Ms. Arnemann and Mr. Falk:

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 Bonnie Sudderth, Judge of the 352nd District Court, Fort Worth, Texas to preside in

Commission for Lawyer Discipline v. David H. Falk

Sincerely,

SIGNED

John T. Adams
Clerk