

ORDER OF THE SUPREME COURT OF TEXAS

MISC. DOCKET NO. 02- 9736

IN THE MATTER OF MILES H. APPLEBERRY, JR.

The Court has reviewed the Motion for Acceptance of Resignation as Attorney and Counselor at Law of Miles H. Appleberry, Jr., 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 Miles H. Appleberry, Jr., to withdraw his motion, the Court deems the professional misconduct detailed in the Response of Chief Disciplinary Counsel conclusively established for all purposes. The Court further concludes that acceptance of Miles H. Appleberry, Jr.'s resignation is in the best interest of the public and the profession.

Therefore, the law license of Miles H. Appleberry, Jr., of San Antonio, Texas, State Bar Card Number 01279000 is canceled. Miles H. Appleberry, Jr., must immediately surrender his State Bar Card and Texas law license to the Clerk of the Supreme Court of Texas or file with the court an affidavit stating why he cannot.

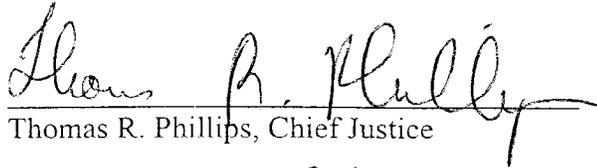
Consequently, Miles H. Appleberry, Jr., is prohibited from practicing law in the State of Texas. This includes holding himself out as an attorney at law, performing legal services for others, giving legal advice to others, accepting any fee directly or indirectly for legal services, appearing as counsel 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 the words "Attorney at Law," "Counselor at Law," or "Lawyer."

Additionally, Miles H. Appleberry, Jr., 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 or former client to the respective client or former client or to another attorney at the client's or former client's request. Miles H. Appleberry, Jr., shall file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, 425 Soledad, Suite 300, San Antonio, Texas 78205, 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 and former clients have been returned.

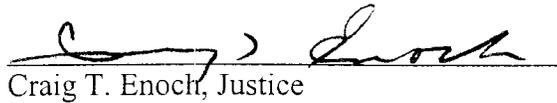
It is further ordered that payment of restitution to Complainant Cecelia J. Black in the amount of one hundred fifty-four thousand, one hundred ninety-five dollars and 83/100 (\$154,195.83) shall be a condition precedent to any application by Miles H. Appleberry for readmission to the State Bar of Texas

Finally, Miles H. Appleberry, Jr., 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 Miles H. Appleberry, Jr., 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) Miles H. Appleberry, Jr., is representing in court. Miles H. Appleberry, Jr., shall file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, 425 Soledad, Suite 300, San Antonio, Texas 78205, 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.

IT IS ORDERED the 11th day of June, 2002.

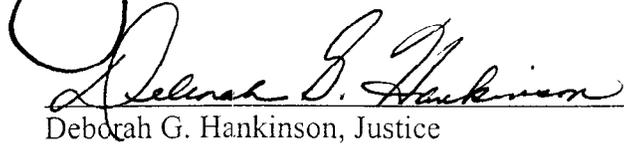

Thomas R. Phillips, Chief Justice


Nathan L. Hecht, Justice

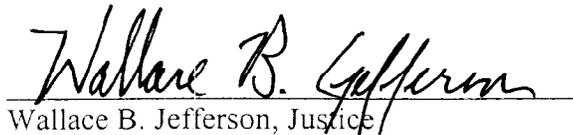

Craig T. Enoch, Justice

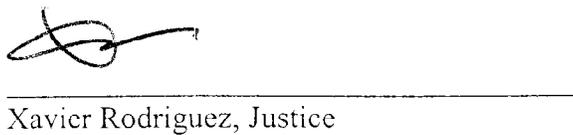

Priscilla R. Owen, Justice


James A. Baker, Justice


Deborah G. Hankinson, Justice


Harriet O'Neill, Justice


Wallace B. Jefferson, Justice


Xavier Rodriguez, Justice

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

OF

MILES H. APPLEBERRY, JR.

MISC. DOCKET NO. _____

TO THE HONORABLE SUPREME COURT OF TEXAS:

Pursuant to Part X of the Texas Rules of Disciplinary Procedure, the Chief Disciplinary Counsel of the State Bar of Texas, acting by and through the Commission for Lawyer Discipline, hereby files this Response to the Motion for Acceptance of Resignation in Lieu of Discipline filed by Miles H. Appleberry, Jr. and would show as follows:

I.

The acceptance by the Court of the Resignation of Miles H. Appleberry, Jr. is in the best interest of the public and of the profession.

II.

In connection with such resignation, Applicant acknowledges the following

Findings of Fact and Conclusions of Law

- (1) Applicant is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
- (2) Complainant hired Applicant on or about June 29, 1996 for representation in the probate of her mother's estate.
- (3) Applicant neglected to perform his duties by failing to address issues regarding past due taxes and other pressing matters.
- (4) Applicant failed to finalize the probate by failing to complete an inventory or finalize time-critical matters regarding the sale of real estate, payment of delinquent taxes,

and other problems associated with the estate.

- (5) Applicant failed to return Complainant's phone calls or respond to her correspondence.
- (6) Applicant failed to provide information or an accounting of the financial status of the estate and Complainant's trust so that she could make informed decisions regarding the distribution of estate funds for debts.
- (7) Applicant commingled his personal and/or law practice funds with Complainant's trust account. Applicant also paid Complainant amounts owed with third party checks from clients, rather than with funds through the trust account.
- (8) Applicant failed to provide an accounting of trust funds to Complainant after numerous requests.
- (9) Applicant sold Complainant's stocks and bonds managed through a PaineWeber account worth in excess of \$154,000.00 without her knowledge or consent and depleted the estate by using funds for personal use and making equity investments into at least three start up businesses belonging in part to another client or family member in which Applicant also held an interest and part ownership.
- (10) Applicant acted as an intermediary between the start up clients and Complainant, through his capacity as Trustee of her trust, and failed to advise Complainant of the advantages and risks involved in the investments. Applicant failed to obtain Complainant's written approval to act as intermediary. Applicant failed to maintain impartiality as to Complainant's best interests and failed to consult with Complainant concerning decisions to be made.
- (11) Applicant failed to obtain Complainant's consent in writing or otherwise to enter into business transactions with Applicant. Applicant further failed to advise Complainant of the transactions or provide her the opportunity to seek independent counsel regarding the equity investments.
- (12) Applicant used his knowledge of Complainant's circumstances to benefit himself, family members and other clients or third persons.
- (13) Applicant sold profitable stocks and bonds and reinvested the money into at least three start-up corporations in which Applicant held an interest and without regard to the Complainant's best interests. Applicant failed to advise Complainant of the effect of selling the stocks and bonds and reinvesting the funds and also the high risks involved.
- (14) Applicant was notified in writing on or about November 27, 2000 to provide the grievance committee certain documents and failed to respond. Applicant was served

with a subpoena duces tecum on February 23, 2001, for production of documents instant, but no later than March 9, 2001, and knowingly failed to respond to this request from the office of the Chief Disciplinary Counsel.

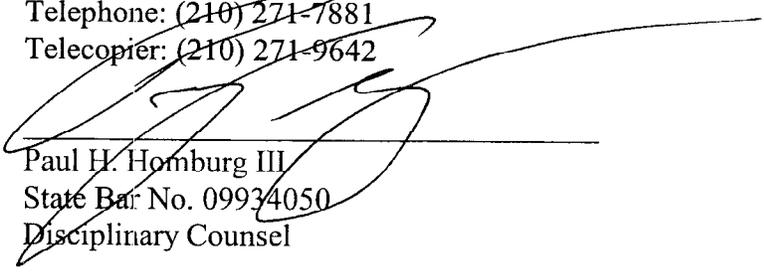
- (15) Applicant further acknowledges that restitution in the amount of \$154,195.83 is due and payable to Complainant, Cecilia J. Black, by Applicant.
- (16) Applicant further acknowledges that attorney fees and costs in the amount of \$1,000.00 are due and payable to the State Bar of Texas for the investigation and hearing of this Complaint.
- (17) Applicant further acknowledges that by his conduct he has violated Rule(s) 1.01(b)(1), 1.01(b)(2), 1.03(a), 1.03(b), 1.05(b)(4), 1.07(a)(1), 1.07(a)(2), 1.07(a)(3), 1.07(b), 1.08(a)(1), 1.08(a)(2), 1.08(a)(3), 1.14(a), 1.14(b), and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, State Bar Rules, effective January 1, 1990.

III.

WHEREFORE, the State Bar of Texas moves the Court to accept the resignation in lieu of discipline and grant the motion filed by Applicant.

Respectfully Submitted,

Office of the Chief Disciplinary Counsel
State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205
Telephone: (210) 271-7881
Telecopier: (210) 271-9642



Paul H. Homburg III
State Bar No. 09934050
Disciplinary Counsel

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon Miles H. Appleberry, Jr., by hand delivery on this 9th day of May, 2002.



Paul H. Homburg III

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

OF

MILES H. APPLEBERRY, JR.

MISC. DOCKET NO. _____

NOW COMES Applicant, Miles H. Appleberry, Jr., State Bar No. 01279000, and hereby resigns as an Attorney and Counselor at Law in the State of Texas. Applicant hereby submits to the Court his resignation as an Attorney and Counselor at Law; and prays that the Court accept said resignation.

I.

Attached hereto is the License and permanent State Bar card issued by this Court to the Applicant, Miles H. Appleberry, Jr., as an Attorney and Counselor at Law on September 18, 1967. Said License and permanent State Bar card are hereby surrendered by the Applicant.

II.

In connection with such resignation, Applicant acknowledges the following

Findings of Fact and Conclusions of Law

- (1) Miles H. Appleberry ("Applicant") is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
- (2) Cecilia J. Black ("Complainant") hired Applicant on or about June 29, 1996 for representation in the probate of her mother's estate.
- (3) Applicant neglected to perform his duties by failing to address issues regarding past due taxes and other pressing matters.

- (4) Applicant failed to finalize the probate by failing to complete an inventory or finalize time-critical matters regarding the sale of real estate, payment of delinquent taxes, and other problems associated with the estate.
- (5) Applicant failed to return Complainant=s phone calls or respond to her correspondence.
- (6) Applicant failed to provide information or an accounting of the financial status of the estate and Complainant=s trust so that she could make informed decisions regarding the distribution of estate funds for debts.
- (7) Applicant commingled his personal and/or law practice funds with Complainant=s trust account. Applicant also paid Complainant amounts owed with third party checks from clients, rather than with funds through the trust account.
- (8) Applicant failed to provide an accounting of trust funds to Complainant after numerous requests.
- (9) Applicant sold Complainant=s stocks and bonds managed through a PaineWeber account worth in excess of \$154,000.00 without her knowledge or consent and depleted the estate by using funds for personal use and making equity investments into at least three start up businesses belonging in part to another client or family member in which Applicant also held an interest and part ownership.
- (10) Applicant acted as an intermediary between the start up clients and Complainant, through his capacity as Trustee of her trust, and failed to advise Complainant of the advantages and risks involved in the investments. Applicant failed to obtain Complainant=s written approval to act as intermediary. Applicant failed to maintain impartiality as to Complainant=s best interests and failed to consult with Complainant concerning decisions to be made.
- (11) Applicant failed to obtain Complainant=s consent in writing or otherwise to enter into business transactions with Applicant. Applicant further failed to advise Complainant of the transactions or provide her the opportunity to seek independent counsel regarding the equity investments.
- (12) Applicant used his knowledge of Complainant=s circumstances to benefit himself, family members and other clients or third persons.
- (13) Applicant sold profitable stocks and bonds and reinvested the money into at least three start up corporations in which Applicant held an interest and without regard for the Complainant=s best interests. Applicant failed to

advise Complainant of the effect of selling the stocks and bonds and reinvesting the funds and also the high risks involved.

- (14) Applicant was notified in writing on or about November 27, 2000 to provide the grievance committee certain documents and failed to respond. Applicant was served with a subpoena duces tecum on February 23, 2001 for production of documents instanter, but no later than March 9, 2001, and knowingly failed to respond to this request from the office of the Chief Disciplinary Counsel.
- (15) Applicant further acknowledges that restitution in the amount of \$154,195.83 is due and payable to Complainant, Cecilia J. Black, by Applicant.
- (16) Applicant further acknowledges that attorney fees and costs in the amount of \$3,000.00 are due and payable to the State Bar of Texas for the investigation and hearing of this Complaint.
- (17) Applicant further acknowledges that by his conduct he has violated Rule(s) 1.01(b)(1), 1.01(b)(2), 1.03(a), 1.03(b), 1.05(b)(4), 1.07(a)(1), 1.07(a)(2), 1.07(a)(3), 1.07(b), 1.08(a)(1), 1.08(a)(2), 1.08(a)(3), 1.14(a), 1.14(b), 8.04(a)(2), 8.04(a)(3) and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, State Bar Rules, effective January 1, 1990.

III.

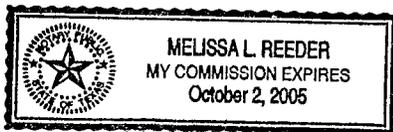
Applicant is voluntarily resigning and withdrawing from the practice of law and does so in lieu of discipline for professional misconduct. Applicant prays that his name be dropped and deleted from the list of persons licensed to practice law in Texas and that his resignation be accepted.



Miles H. Appleberry, Jr.

State Bar No. 01279000

19 SUBSCRIBED AND SWORN to before me by the said Miles H. Appleberry, Jr. this the day of April, 2002.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

May 9, 2002

Miles H. Appleberry, Jr.
1842 Lockhill-Selma, Suite 102
San Antonio, Texas 78213

VIA HAND DELIVERY

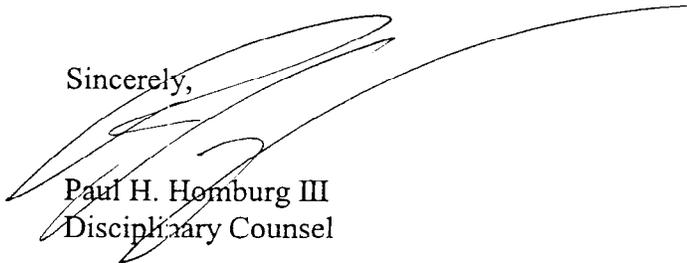
Re: Cause No. 2001-CI-11849; *Commission for Lawyer Discipline vs. Miles H. Appleberry*, 408th District Court, Bexar County, Texas

Dear Mr. Appleberry:

Pursuant to Part X of the Texas Rules of Disciplinary Procedure, enclosed is a copy of the Response of the Chief Disciplinary Counsel to the Motion for Acceptance of Resignation.

Also enclosed is a copy of Texas Penal Code Chapter 38.112, which makes it a felony to falsely hold oneself out as an attorney.

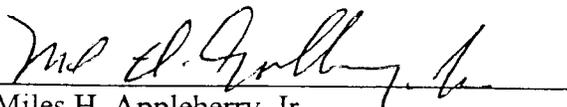
Sincerely,



Paul H. Homburg III
Disciplinary Counsel

Enc.

Received by:


Miles H. Appleberry, Jr.

5/9/2002

Date

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

May 22, 2002

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

Re: Misc. Docket No. _____; Motion for Resignation of Miles
H. Appleberry, Bar Card No. 01279000

Dear Mr. Adams:

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

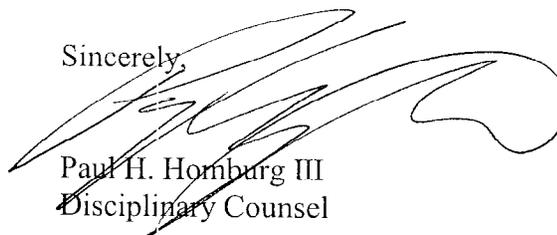
- (1) Original executed Motion for Acceptance of Resignation as Attorney and Counselor at Law for the above referenced attorney;
- (2) Original and two (2) copies of the Response of the Chief Disciplinary Counsel to Motion for Acceptance of Resignation as Attorney and Counselor at Law for the above referenced attorney;
- (3) Permanent State Bar Card and Affidavit of the above referenced attorney; and
- (4) Original Order of Resignation for the Court's signature.

Pursuant to Rule 10.02 of the Texas Rules of Disciplinary Procedure, the required ten (10) day timeframe has passed and the above-referenced attorney has made no attempt to withdraw the Motion for Acceptance of Resignation. Therefore, the detailed statement of professional misconduct is deemed to have been conclusively established for all purposes.

John Adams, Clerk
May 22, 2002
Page Two

I will appreciate your bringing this to the Court's attention. Please return a fully executed copy of the Order to our office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul H. Homburg III", written over the typed name and title.

Paul H. Homburg III
Disciplinary Counsel

Encl.

cc: Miles Appleberry (w/enclosures)

Hon. David Garner (w/enclosures)
10th Judicial District
503 Courthouse
722 Moody Avenue
Galveston, Texas 77550