

ORDER OF THE SUPREME COURT OF TEXAS

MISC. DOCKET NO. 00- 9176

IN THE MATTER OF DONNA FINAN McCARTY

The Court has reviewed the Motion for Acceptance of Resignation as Attorney and Counselor at Law of Donna Finan McCarty 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 Donna Finan McCarty to withdraw her 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 Donna Finan McCarty's resignation is in the best interest of the public and the profession.

Therefore, the law license of Donna Finan McCarty of Houston, Texas. State Bar Number 13376600 is canceled. Donna Finan McCarty must immediately surrender her 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 she cannot.

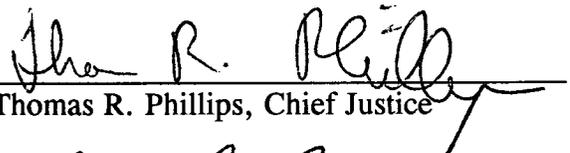
Consequently, Donna Finan McCarty is prohibited from practicing law in the State of Texas. This includes holding herself out as an attorney at law, performing legal services for others, giving legal advice to others, accepting any fees directly or indirectly for legal services appearing as counsel or 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

herself out to others or using her name in any manner in conjunction with the “Attorney at Law,” or “Lawyer.”

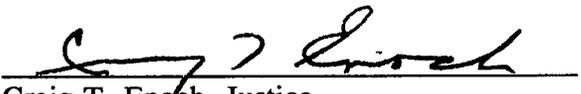
Finally, Donna Finan McCarty shall, within thirty (30) days after the date of this Order notify in writing each justice of the peace, judge, magistrate, and chief justice of each court in which Donna Finan McCarty has any matter pending of the terms of this Order, the style and cause number of the pending matters and the name, address and telephone number of the client(s) Donna Finan McCarty is representing in court. Donna Finan McCarty shall file with the State Bar of Texas, Office of the Disciplinary Counsel, Post Office Box 12487, Austin, Texas 78711-2487, within thirty (30) days of the date of this Order an affidavit stating that she has notified in writing each justice of the peace, judge, magistrate, and chief justice of each court in which she has any matter pending of the terms of this Order, the style and cause number of the pending matters, and the name, address and telephone number of the client(s) she is representing in Court.

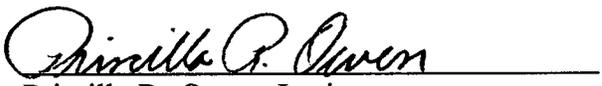
Additionally, Donna Finan McCarty must immediately notify in writing each of her current clients of her resignation. She shall also return any files, papers, unearned monies and other property in her possession belonging to any client or former client to the respective client or former client or to another attorney at the client’s or former client’s request. Donna Finan McCarty shall file with the State Bar of Texas, Office of the Disciplinary Counsel, Post Office 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 her resignation and that all files, papers, monies, and other property belonging to all clients and former clients have been returned.

IT IS ORDERED the 6th day of December, 2000.


Thomas R. Phillips, Chief Justice


Nathan L. Hecht, Justice

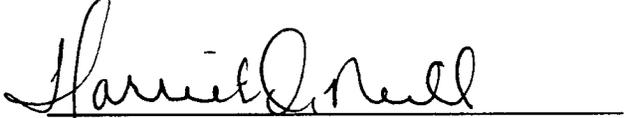

Craig T. Enoch, Justice

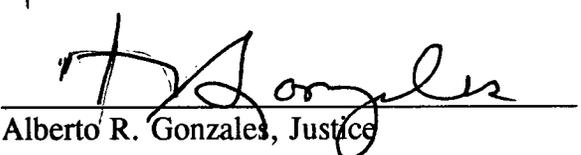

Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice


Deborah G. Hankinson, Justice


Harriet O'Neill, Justice


Alberto R. Gonzales, Justice

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

October 6, 2000

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

Re: Resignation of Donna Finan McCarty, State Bar Card No. 13376600

Dear Mr. Adams:

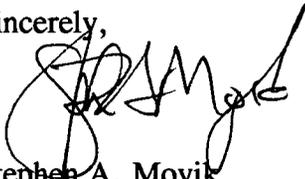
Pursuant to Part X of the Texas Rules of Disciplinary Procedure, please find enclosed herewith the following:

- (1) Motion for Acceptance of Resignation as Attorney and Counselor at Law of Donna Finan McCarty, dated May 24, 2000;
- (2) Response of Chief Disciplinary Counsel to Motion for Acceptance of Resignation as Attorney and Counselor at Law of Donna Finan McCarty;
- (3) Law License of Donna Finan McCarty, dated May 10, 1985;
- (4) Affidavit of Donna Finan McCarty, dated May 24, 2000, stating that she is unable to locate her bar card; and
- (5) Original and one (1) copy of proposed Order for review and entry by the Court accepting the resignation of Donna Finan McCarty as Attorney and Counselor at Law.

Mr. John Adams
October 6, 2000
Page Two

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,

A handwritten signature in black ink, appearing to read 'S. Moyik', written over a horizontal line.

Stephen A. Moyik
Assistant Disciplinary Counsel

SAM:aa
Enclosure

cc: Mr. John Gladney, Attorney at Law, 440 Louisiana, Suite 800, Houston, Texas 77002
CMRRR Z 746 077 910

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

TO THE HONORABLE SUPREME COURT OF TEXAS:

Movant, Donna Finan McCarty, moves the Court to accept her resignation as an Attorney and Counselor at Law showing the Court:

I.

Movant hereby resigns as an Attorney and Counselor at Law in lieu of discipline for having committed professional misconduct and having pled guilty to engaging in organized criminal activity predicated by misapplication of fiduciary funds, which is a serious crime as defined in Rule 8.04(a)(2).

II.

Movant Law License is attached hereto. Movant's permanent State Bar card issued by the Court on May 10, 1985, has been lost or destroyed.

III.

Movant's State Bar card number is 13376600. Movant's mailing address is 2513 South Guessner, Suite 317, Houston, Texas 77063.

Movant prays that the Court accept her resignation as an Attorney and Counselor at Law and remove her name from the list of persons licensed to practice law in the State of Texas.

Respectfully submitted

May 24, 2000
Date


DONNA FINAN McCARTY
State Bar Card No. 13376600

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 DONNA FINAN MCCARTY**

TO THE HONORABLE SUPREME COURT OF TEXAS:

COMES NOW, Dawn Miller, Chief Disciplinary Counsel for 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, Donna Finan McCarty, State Bar No. 13376600, has filed her motion for Acceptance of Resignation as Attorney and Counselor at Law, dated May 24, 2000. Such Motion for Acceptance of Resignation is in lieu of compulsory disciplinary action being filed against her.

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

The Commission for Lawyer Discipline believes 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 the following Professional Misconduct:

IV. THE COMPULSORY DISCIPLINE CASE

On or about April 14, 1996, Donna Finan McCarty pled guilty to the offense of engaging in organized criminal activity in Cause No. 00-00004, *State of Texas vs. Donna McCarty*, In the

167th Judicial District Court of Travis County, as a result of which imposition of sentence was suspended and Respondent was placed on Community Supervision for ten (10) years. A true and correct copy of the Community Supervision Judgment is attached as Exhibit "A" and made a part hereof for all intent and purposes as if same were copied verbatim herein.

Engaging in Organized Criminal Activity constitutes an "intentional crime" as that term is defined in Section 1.06 (Q) of the Texas Rules of Disciplinary Procedure and subjects Donna Finan McCarty to Compulsory Discipline under Part VIII of the Rules.

V. DISCIPLINARY ACTIONS

Disciplinary actions currently pending against Donna Finan McCarty are the following: Cause No. H0129922066, styled *Linda Primera - Donna Finan McCarty*, and Cause H0129922067, styled *State Bar of Texas - Donna Finan McCarty*, before the Evidentiary Panel of District 4J.

Disciplinary action H0129922066 seeks the discipline of Donna Finan McCarty, for her actions relating to the complaint filed by Linda Primera, Special Investigator for Nationwide Insurance Enterprise on April 29, 1999.

Francisco Sierra was involved in an automobile accident collision on or about September 10, 1998. Representatives from Donna Finan McCarty's went to Sierra's home the day following the accident to solicit her case. Sierra was not related to nor a former client of McCarty's. Sierra never met McCarty and the claim was handled by her legal assistants. On or about October 13, 1998, McCarty received Nationwide Insurance check No. 91943933 made payable to Sierra, in the amount of Four Hundred Twenty-Two Dollars and Twenty-Two Cents (\$422.22), for

reimbursement of rental car expenses. McCarty converted the funds, forged Sierra's endorsement and on November 19, 1998 deposited same in her Houston Texas checking account.

Donna Finan McCarty's conduct as set forth in the Primera complaint violated Rules: **1.01(b)(1), 5.01(a), 5.03(3), 8.04(a)(1), 8.04(a)(2), 8.04(a)(3), 8.04 (a)(9) and 8.04(a)(12)** of the Texas Disciplinary Rules of Professional Conduct.

Disciplinary action H0129922067 seeks the discipline of Donna Finan McCarty, for her actions relating to the complaint initiated by The State Bar of Texas on April 6, 1999.

Jesus Olmos was involved in an automobile collision on or about August 1998. Representatives from Donna Finan McCarty's office went to Olmos home following the accident to solicit his case. Olmos was not related to nor a former client of McCarty. During the course of the solicitation, McCarty representatives contacted other parties involved in the accident in order to obtain legal representation. The other parties were not related to nor former clients of McCarty.

Donna Finan McCarty's conduct as set forth in the State Bar of Texas complaint violated Rules: **7.03(b), 8.04(a)(1), 8.04(a)(2), 8.04(a)(3) and 8.04(a)(12)** of the Texas Disciplinary Rules of Professional Conduct.

In view of Donna Finan McCarty's Motion for Acceptance of Resignation as Attorney and Counselor at Law, dated May 24, 2000, and in anticipation of the Court's acceptance of same, the Chief Disciplinary Counsel does not anticipate going forward with compulsory disciplinary action against Donna Finan McCarty.

VI. PRAYER

The Commission for Lawyer Discipline prays that this Honorable Court accept the Motion for Acceptance of Resignation as Attorney and Counselor at Law of Donna Finan McCarty, State Bar Card No. 13376600, and that such motion to resign is in lieu of compulsory discipline of Donna Finan McCarty, pursuant to Part X and any other applicable provisions of the Texas Disciplinary Rules of Professional Conduct be granted, and for such other relief as they may be entitled.

Respectfully Submitted:

Dawn Miller
Chief Disciplinary Counsel

Stephen D. Statham
Regional Counsel

Office of Chief Disciplinary Counsel
State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6931
(713) 752-2158 FAX



STEPHEN D. STATHAM
State Bar No. 19082500

OFFENSE: ENGAGING IN ORGANIZED CRIMINAL ACTIVITY - COUNT I
FIRST DEGREE FELONY

NO.: 0000004

THE STATE OF TEXAS

vs.

IN THE 167TH JUDICIAL
DISTRICT COURT OF
TRAVIS COUNTY, TEXAS

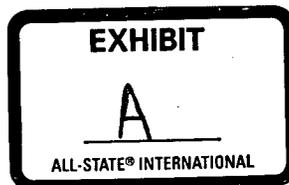
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DONNA MCCARTY

JUDGMENT OF COMMUNITY SUPERVISION

On the 14th day of April, A.D., 2000, was regularly reached and called for trial the above numbered and entitled cause, and the State appeared by her District Attorney, and the defendant, Donna McCarty, appeared in person, defendant's counsel, Dain Whitworth also being present; thereupon the District Attorney announced ready for trial, and it appearing to the Court that the defendant, defendant's counsel and the State's attorney have agreed in writing in open court to waive a jury in the trial of this cause and to submit this cause to the Court and the Court having consented to the waiver of a jury herein, the reading of the indictment was waived Thereupon the State elected to waive Counts II and III and proceeded on Count I Paragraph I and the defendant, upon being asked by the Court as to how defendant pleaded, entered a plea of "Guilty" to the charge in the indictment relied upon by the State; thereupon the defendant was admonished by the Court of the range of punishment attached to the offense; that the recommendation of the prosecuting attorney as to punishment is not binding on the Court; that if the plea of guilty is the result of a plea bargaining agreement and the Court does not accept the agreement, that he could withdraw his plea of guilty and the fact that the defendant had entered a plea of guilty nor any statements made by him at the hearing on the plea of guilty may be used against him on the issue of guilt or punishment in any subsequent criminal proceedings and that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, the trial Court must give its permission to the defendant before he may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial and it appearing to the Court that the said defendant is mentally competent to stand trial, that the said plea of "Guilty" is freely and voluntarily made and the defendant was aware of the consequences of said plea, the said plea of "Guilty" is by the Court received and is here now entered of record in the minutes of

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DONNA MCCARTY
CAUSE NO: 0000004

the Court as the plea herein of said defendant, and after having heard all evidence for the State and defendant, and having heard argument of counsel, is of the opinion that there is sufficient evidence to substantiate a finding of Guilty beyond any reasonable doubt and recesses this cause for a pre-sentence investigation report by the Community Supervision and Corrections Department.

On the 19th day of May, A.D., 2000, this cause being again called, the State appeared by her District Attorney and the defendant, Donna McCarty, appeared in person with counsel, Dain Whitworth, also being present, the Court is of the opinion and so finds that the said defendant is guilty as confessed of the offense of Engaging in Organized Criminal Activity - Count I, First Degree Felony, committed on January 1, 1995, and the Court after having all the evidence for the State and for the defendant presented for the purpose of determining the punishment to be assessed, and having heard argument of counsel, is of the opinion and so finds that the punishment of the defendant should be fixed at confinement in the Texas Department of Criminal Justice Institutional Division for a period of Ten (10) years.

It is therefore CONSIDERED ORDERED, ADJUDGED AND DECREED by the Court that the defendant, Donna McCarty, is guilty of the offense of Engaging in Organized Criminal Activity - Count I, First Degree Felony, committed on January 1, 1995 as found from the evidence previously presented and that he be punished as had been determined by the Court by confinement in the Texas Department of Criminal Justice Institutional Division for a period of Ten (10) years.

However, the defendant having made application for community supervision the Court is of the opinion and so finds, that the ends of justice and the best interest of both the public and the defendant will be subserved if the imposition of the sentence in this cause be suspended and the defendant be placed on community supervision under the supervision of the Court.

It is therefore ORDERED, by the Court that the imposition of the sentence in this cause be, and the same is hereby suspended during the good behavior of the defendant, and the defendant, Donna McCarty is hereby placed on community supervision for a term of Ten (10) years beginning on this date under the supervision of the Court and the duly appointed and acting Community Supervision Officer of Travis County, Texas, subject to the following conditions of community supervision, the defendant shall, during the term of community supervision:

DONNA MCCARTY
CAUSE NO: 0000004

- (1) Obey all orders of the Court and the Community Supervision Officer.
- (2) Commit no offense against the laws of this or any State or of the United States.
- (3) Avoid injurious or vicious habits.
- (4) Avoid the use of all narcotics, habit forming drugs, alcoholic beverages, and controlled substances.
- (5) Avoid persons or places of disreputable or harmful character (including association with any person previously convicted of a felony crime without the permission of the Community Supervision Officer).
- (6) Report to your Community Supervision Officer on the second Wednesday of each month at 9:00 AM and at any subsequent time as instructed by your Community Supervision Officer.
- (7) Permit the Community Supervision Officer to visit you at your home or elsewhere.
- (8) Work faithfully at suitable employment as far as possible and, if unemployed, participate in the Community Supervision and Corrections Department's Pre-Employment Program as directed by the Court and/or Community Supervision Officer.
- (9) Register with and remain registered with the Texas Workforce Commission during periods of unemployment.
- (10) Do not change place of residence without the permission of the Community Supervision Officer and report within five days of any change in employment or marital status.
- (11) Remain within Travis County, Texas, unless permitted to depart by the Court or the Community Supervision Officer.
- (12) Register with and remain registered with the Travis County Domestic Relations Office, if ordered by the Court and/or your Community Supervision Officer.
- (13) Support your dependents.

DONNA MCCARTY
CAUSE NO: 0000004

- (14) Pay to and through the Community Supervision and Corrections Department of Travis County, Texas, the following:
- a. COMMUNITY SUPERVISION FEE in the amount \$40.00 each month, starting on 5-19-2000 and on the 19th day of each month thereafter;
 - b. COURT COSTS in the amount of \$197.25(estimated), in payments of \$10.00 each month starting on 6-19-2000 and on the 19th day of each month thereafter until the total is paid;
 - c. FINE in the amount of \$_____, in payments of \$____ each month starting on _____ and on the _____ day of each month thereafter until the total is paid;
 - d. RESTITUTION in the amount of \$_____, in payments of \$_____ each month starting on _____ and on the _____ day of each month thereafter until the total is paid;
 - e. ATTORNEY FEES in the amount of \$_____, in payments of \$_____ each month starting on _____ and on the _____ day of each month thereafter until the total is paid;
 - f. CRIME STOPPERS FEE in the amount of \$ 30.00 by 7-19-2000.
 - g. PERSONAL BOND FEE of \$20.00 (or) _____ within thirty (30) days to the Personal Bond Office.
- (15) All Court ordered monies must be paid off sixty (60) days prior to discharge.
- (16) While on community supervision, you must have on your person at all times a current, valid Texas Department of Public Safety photo identification card or a valid Texas Department of Public Safety photo driver's license. You must obtain this photo identification within thirty (30) days of the date of your community supervision.
- (17) Refrain from disorderly conduct, abusive language, or disturbing the peace while present at the office of the Department.

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DONNA MCCARTY
CAUSE NO: 0000004

- (18) Report to the Day Resource Center for orientation and any subsequent program designated, i.e. Pre-Employment Program, if unemployed, adult education classes, or counseling classes as needed.
- (19) Do not operate a motor vehicle without a valid Texas driver's license and proof of automobile liability insurance.
- (20) Submit a urine specimen at the direction of the Community Supervision Officer, daily if ordered, and pay all costs if required.

- XX (21) Report to
 - _____ Travis County Counseling & Educational Services Multiple Offender or equivalent program in county of residence
 - _____ T.A.I.P. screening within 60 days in the county of residence and follow all recommendations (pay \$45.00 fee)
 - _____ TCADA licensed intensive outpatient treatment and aftercare
 - _____ Inpatient treatment
 - _____ S.M.A.R.T. and S.M.A.R.T. Aftercare. Pay a treatment fee of \$_____ in payments of \$_____, monthly starting on _____, and on the _____ of each month.
 - _____ SACA'S fifteen (15) hour Drug Offender Education Program or equivalent in county of residence
 - _____ Austin Stress Clinic for assessment and placement, follow all recommendations
 - _____ Day Reporting Center and follow any counseling and/or treatment
 - XX Any counseling/treatment designated by your Community Supervision Officer, follow all recommendations
 - _____ Victim Impact Panel

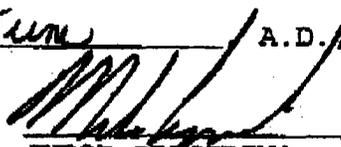
on the date designated by your Community Supervision Officer, cooperate and participate while you are a client thereof, pay all costs of treatment, and remain until successfully discharged by the proper authorities.

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DONNA MCCARTY
CAUSE NO: 0000004

- ___ (22) Assigned to Intensive Community Supervision for Specialized Caseload - _____ (in lieu of incarceration in IDTDCJ) for a period of two (2) years or until the level of supervision is changed by the Court and/or Community Supervision Officer.
- ___ (23) Show proof of a high school diploma within ninety (90) days or obtain GED within _____ year(s).
- XX (24) Complete 320 hours of Community Service Restitution at a place approved by the Court and designated by the Community Supervision and Corrections Department.
- ___ (25) Attend Alcoholics/ Narcotics/ Cocaine Anonymous meetings _____ times per week and provide proper documentation to your Community Supervision Officer.
- XX (26) Serve 30 days in the Travis County Jail, beginning 6-2-2000; Weekends.
- ___ (27) Do not open or maintain a checking account until approved, in writing, by the Court and/or your Community Supervision Officer.
- ___ (28) Have no contact with the victim(s), _____ in this cause, either in writing, in person, by phone, or through third parties.
- ___ (29) Have no contact with gangs or gang members during term of community supervision.
- XX (30) Have no contact and do not associate with co-defendants.

SIGNED this the 27th day of June A.D., 2000.



JUDGE PRESIDING

APPROVED AS TO FORM:

Assistant District Attorney

AMALIA RODRIGUEZ-MENDOZA, District Clerk
Travis County, Texas, do hereby certify that this
is a true and correct copy as same appears in
record in my office. Witness my hand and seal
in office on: 6-28-00
AMALIA RODRIGUEZ-MENDOZA



DISTRICT CLERK
County: William Lopez

STATE BAR OF TEXAS



COPY

Office of the Chief Disciplinary Counsel

September 21, 2000

CMRRR Z 746 077 906

Mr. John Gladney
Attorney at Law
440 Louisiana, Suite 800
Houston, Texas 77002

Re: Resignation in Lieu of Discipline of Donna Finan McCarty

Dear Mr. Gladney:

Enclosed please find a copy of the Response of the Chief Disciplinary Counsel of the State Bar of Texas to Motion for Resignation in Lieu of Discipline.

Thank you for your cooperation in this matter.

Sincerely,

Stephen A. Moyik
Assistant Disciplinary Counsel

SAM:aa
Enclosure

AFFIDAVIT

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

“I, Donna Finan McCarty, am unable to locate my Bar Card issued to me by the Supreme Court of Texas. I have searched and not found the document, and agree that if it is discovered, I will promptly return it to the Court”

“I understand that the Bar Card is the property of the Supreme Court of Texas.”

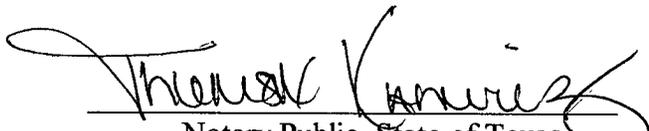
Signed this 24th day of May, 2000.



DONNA FINAN McCARTY

SUBSCRIBED AND SWORN TO before me by the said Donna Finan McCarty, on this 24th day of May, 2000.

(Seal) 



Notary Public, State of Texas