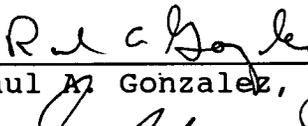


injury as a result of his professional misconduct and that he has agreed to provide for such restitution as described in the Motion filed by him in this Court. It is so ORDERED.

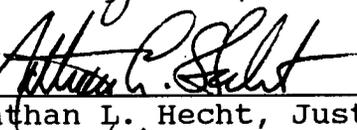
By the Court, en banc, in chambers, on this 26th day of _____

April, 1994.

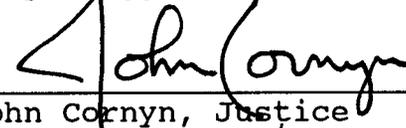

Thomas R. Phillips, Chief Justice


Raul M. Gonzalez, Justice


Jack Hightower, Justice

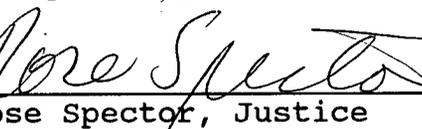

Nathan L. Hecht, Justice


Lloyd Doggett, Justice


John Cornyn, Justice


Bob Gammage, Justice


Craig Enoch, Justice


Rose Spector, Justice

STATE BAR OF TEXAS



Office of the General Counsel

April 12, 1994
HAND DELIVERY

Mr. John Adams, Clerk
Supreme Court of Texas
Supreme Court Bldg.
201 W. 14th St., Room 104
Austin, Texas 78701

Re: In the Matter of H. Kimball McMahan, Jr., An Attorney

Dear Mr. Adams:

Please find enclosed herewith for filing in the above-styled and numbered cause an original and eleven (11) copies of the Resignation and Response of the Chief Disciplinary Counsel to the Resignation of H. Kimball McMahan, Jr., An Attorney, along with an Order regarding same.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mary F. Klapperich".

Mary F. Klapperich
Assistant General Counsel

MFK/db
Enclosures

cc: H. Kimball McMahan, Jr., 2617 Arbuckle, Houston, Texas 77005
CMRRR #384 629 733

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

OF

H. KIMBALL McMAHAN, JR.

TO THE HONORABLE SUPREME COURT OF TEXAS:

Movant, *H. Kimball McMahan, Jr.*, moves the Court to accept his 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 disciplinary sanction for having committed professional misconduct.

II.

Movant is currently incarcerated for a criminal conviction for the felony offense of theft in cause number 657966, styled The State of Texas v. H. Kimball McMahan, Jr., in the 180th Judicial District Court of Harris County, Texas, and does not have access to his License and permanent State Bar Card issued by the Court in October, 1967. Movant declares that within thirty (30) days of his release from incarceration he will surrender his License and permanent State Bar Card to the Supreme Court of Texas.

III.

Movant's State Bar Card number is 13771000. Movant's current address is 2617 ARBUCKLE, HOUSTON, TEXAS 77005,

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

Respectfully submitted,

April 5, 1994
Date

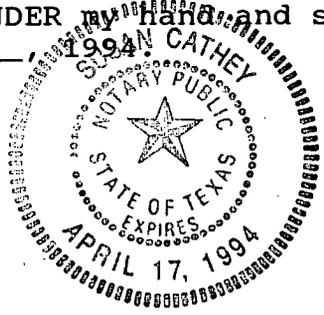
H. Kimball McMahan, Jr.
H. Kimball McMahan, Jr.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF Harris §

BEFORE ME the undersigned, a Notary Public in and for said County and State, on this day personally appeared H. Kimball McMahan, Jr., known to me to be the person whose name is subscribed to the foregoing Motion, and acknowledged to me that he executed the same for the purposes therein expressed and that all the facts stated are within his personal knowledge and are true and correct.

GIVEN UNDER my hand and seal of office this the 5 day of April, 1994.



Susan Cathey
NOTARY PUBLIC in and for
the State of Texas

IN THE
SUPREME COURT OF TEXAS

IN THE MATTER OF §
H. KIMBALL McMAHAN, JR. §
AN ATTORNEY §
§
§

RESPONSE OF THE CHIEF DISCIPLINARY COUNSEL
TO THE RESIGNATION OF
H. KIMBALL McMAHAN, JR., AN ATTORNEY

TO THE HONORABLE SUPREME COURT OF TEXAS:

COMES NOW the Chief Disciplinary Counsel of the State Bar of Texas on behalf of the Commission for Lawyer Discipline, and pursuant to Rule 10.02, Texas Rules of Disciplinary Procedure, makes this response to the Motion for Acceptance of Resignation as Attorney and Counselor at Law of H. Kimball McMahan, Jr.:

1. H. Kimball McMahan, Jr., Movant, is an attorney licensed to practice law in this State and a member of the State Bar of Texas. His permanent Bar Card No. is 13771000.
2. Movant has filed his Motion for Acceptance of Resignation as Attorney and Counselor at Law with this Court. Such Motion for Resignation is in lieu of disciplinary action and the acceptance of such resignation by this Court is in the best interests of the public and profession.
3. Movant is the subject of a disciplinary action pending in the 152nd Judicial District Court of Harris County, Texas, Cause No. 93-56722; styled The State Bar of Texas v. H. Kimball McMahan, Jr., in which Movant is alleged to have committed various acts of professional misconduct. A detailed statement of the professional misconduct with which Movant is charged is as follows:

A. **ARNOLD COMPLAINT.** In and around August, 1982, Mary Arnold (hereinafter "Arnold") hired Respondent to represent her on various legal matters. On or about December 11, 1985, Arnold was granted

letters of administration and appointed administratrix of the estate of Ethyl Drake. She served as the administratrix of the estate until on or about December 11, 1989, when a successor administrator was appointed. During the time that Arnold was Administratrix of the estate, Respondent was her legal representative and handled all legal and financial matters relating to the estate; however, Respondent was not a signatory on the estate bank account.

Between December 1988 and November 1989, Respondent presented to Arnold for her signature eight (8) checks drawn on the estate's bank account at Texas Commerce Bank in Houston, Texas. The checks, which totaled \$54,750.00, were payable to eight heirs of the estate, and were purportedly going to be used to pay each heir his or her share of the inheritance. However, Respondent failed to distribute the checks to the rightful heirs, but instead converted the check proceeds for his own use and benefit by forging the payee's endorsement and cashing each check.

In connection with the Arnold complaint, Respondent was charged by indictment with the felony offense of Theft-Aggregate, in Cause No. 665822; styled The State of Texas v. H. Kimball McMahan, in the 183rd District Court of Harris County, Texas. Respondent was convicted of the offense on February 8, 1994, and sentenced to seven (7) years in the Institutional Division of the Texas Department of Criminal Justice. Felony Theft-Aggregate is an Intentional Crime as defined in Part 1.06(O) of the Texas Rules of Disciplinary Procedure.

In connection with the ARNOLD COMPLAINT, Respondent has committed professional misconduct in violation of DR's 1-102(A)(3), 1-102(A)(4), 1-102(A)(6), 7-101(A)(1), and 7-101(A)(3) of the Texas Disciplinary Rules of Professional Conduct in effect at the time of Respondent's conduct.

4. As a result of Respondent's professional misconduct as described above, clients have suffered pecuniary losses and are entitled to receive restitution from the Respondent. Respondent is obligated to pay restitution to Mary Arnold in the amount of Fifty-four Thousand Seven Hundred Fifty Dollars (\$54,750.00).

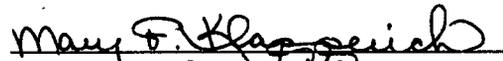
WHEREFORE, the Chief Disciplinary Counsel prays that the Honorable Supreme Court of Texas accept the resignation of Movant as an attorney and counselor at law in this state by approving the Order submitted herewith and for such other and further relief as it may be justified.

Respectfully submitted,

James M. McCormack
General Counsel

Mary F. Klapperich
Assistant General Counsel

Office of the General Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
512/463-1463
512/477-4607 (FAX)


Mary F. Klapperich
State Bar Card No. 11550700
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Response of the Chief Disciplinary Counsel to the Resignation of an Attorney, H. Kimball McMahan, Jr., has been served on H. Kimball McMahan, Jr., at 2617 Arbuckle, Houston, Texas 77005, by delivery of a true and correct copy to him by certified mail, return receipt requested, by depositing same, enclosed in a postpaid, properly addressed wrapper in an official depository under the care and custody of the United States Postal Service on the 12th day of April, 1994.

Mary F. Klapperich
Mary F. Klapperich