

**IN THE
SUPREME COURT OF TEXAS
IN THE MATTER OF
FRANK PAUL SMARZIK, JR.**

MISC. DOCKET NO. 94- 9086

ORDER

On this day, the Court considered the Motion for Acceptance of Resignation as Attorney and Counselor at Law of Frank Paul Smarzik, Jr. together with the Response of Chief Disciplinary Counsel to Motion for Acceptance of Resignation as Attorney and Counselor at Law of Frank Paul Smarzik, Jr. The Court has reviewed said Motion and Response and finds that each meets the requirements of Part X of the Texas Rules of Disciplinary Procedure. In conformity with Part X, Section 10.02, of the Texas Rules of Disciplinary Procedure, the Court considers the detailed statement of professional misconduct contained within the Response of Chief Disciplinary Counsel to be deemed conclusively established for all purposes. The Court, being advised that the acceptance of the resignation is in the best interest of the public and the profession, hereby concludes that the following Order is appropriate.

IT IS ORDERED that the law license of Frank Paul Smarzik, Jr. of Las Vegas, Nevada, State Bar Card Number 18524500, heretofore issued by the Court, be cancelled and his name be dropped and deleted from the list of persons licensed to practice law in Texas.

IT IS FURTHER ORDERED that Frank Paul Smarzik, Jr. immediately surrender his State Bar Card to the Clerk of the Supreme Court of Texas or file with the Court an affidavit stating the cause of his inability to do so. The Court acknowledges receipt of the Texas law license of Frank Paul Smarzik, Jr.

IT IS FURTHER ORDERED that Frank Paul Smarzik, Jr. be, and he is hereby, permanently enjoined and prohibited from practicing law in the State of Texas, holding himself

out as an attorney at law, performing any 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".

IT IS FURTHER ORDERED that Frank Paul Smarzik, Jr. shall, within thirty (30) days after the date on which this Order is signed by the Court, notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every Texas court in which Frank Paul Smarzik, Jr. may have any client matter pending, advising each court of his resignation, of the style and cause number of any matter pending in that court, and of the name, address and telephone number of the client(s) he is representing in that court. Frank Paul Smarzik, Jr. is ORDERED to send copies of all such notifications to the Office of the General Counsel, State Bar of Texas, P. O. Box 12487, Capitol Station, Austin, Texas 78711.

IT IS FURTHER ORDERED that Frank Paul Smarzik, Jr. shall make restitution to Toni A. Jones in the amount of Nine Hundred and no/100 (\$900.00) Dollars by cashier's check or money order made payable to Toni A. Jones and delivered by certified mail, return receipt requested, care of the Office of General Counsel, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711, as an absolute condition precedent to making application for reinstatement to admission to the State Bar of Texas.

IT IS FURTHER ORDERED that Frank Paul Smarzik, Jr. shall make restitution to

Rebecca Hernandez in the amount of Two Hundred Eighty and no/100 (\$280.00) Dollars by cashier's check or money order made payable to Rebecca Hernandez and delivered by certified mail, return receipt requested, care of the Office of General Counsel, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711, as an absolute condition precedent to making application for reinstatement to admission to the State Bar of Texas.

IT IS FURTHER ORDERED that Frank Paul Smarzik, Jr. shall make restitution to Kevin F. Callahan in the amount of Seven Hundred Sixty-eight and 00/100 (\$768.00) Dollars by cashier's check or money order made payable to Kevin F. Callahan and delivered by certified mail, return receipt requested, care of the Office of General Counsel, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711, as an absolute condition precedent to making application for reinstatement to admission to the State Bar of Texas.

IT IS FURTHER ORDERED that Frank Paul Smarzik, Jr. shall make restitution to Robin D. Hoelman in the total amount of Two Thousand Three Hundred and no/100 (\$2,300.00) Dollars by cashier's check or money order made payable to Robin D. Hoelman and delivered by certified mail, return receipt requested, care of the Office of General Counsel, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711, as an absolute condition precedent to making application for reinstatement to admission to the State Bar of Texas.

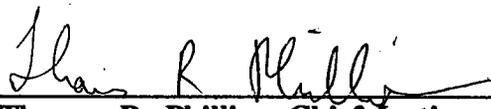
IT IS FURTHER ORDERED that Frank Paul Smarzik, Jr. shall make restitution to Daniel F. Lopez the amount of One Thousand Four Hundred and no/100 (\$1,400.00) Dollars by cashier's check or money order made payable to Daniel F. Lopez and delivered by certified mail, return receipt requested, care of the Office of General Counsel, State Bar of Texas, P. O.

Box 12487, Austin, Texas 78711, as an absolute condition precedent to making application for reinstatement to admission to the State Bar of Texas.

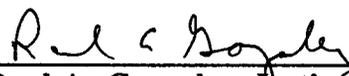
IT IS FURTHER ORDERED that Frank Paul Smarzik, Jr. shall make restitution to Kathy G. Cody in the amount of One Thousand Thirty-seven and no/100 (\$1,037.00) Dollars by cashier's check or money order made payable to Kathy G. Cody and delivered by certified mail, return receipt requested, care of the Office of General Counsel, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711, as an absolute condition precedent to making application for reinstatement to admission to the State Bar of Texas.

IT IS FURTHER ORDERED that Frank Paul Smarzik, Jr. shall make restitution to Khelifi-Touhami Said in the amount of One Hundred Seventy-five and no/100 (\$175.00) Dollars by cashier's check or money order made payable to Khelifi-Touhami Said and delivered by certified mail, return receipt requested, care of the Office of General Counsel, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711, as an absolute condition precedent to making application for reinstatement to admission to the State Bar of Texas.

By the Court, en banc, in chambers, on this the 13th day of June, 1994.



Thomas R. Phillips, Chief Justice



Raul A. Gonzalez, Justice



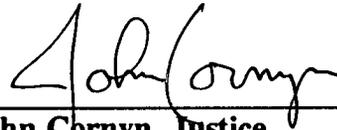
Jack Hightower, Justice



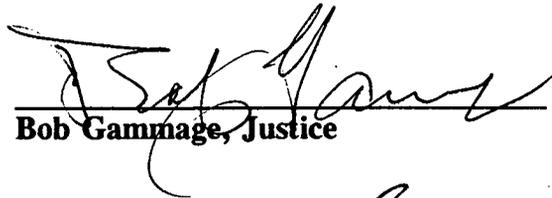
Nathan L. Hecht, Justice



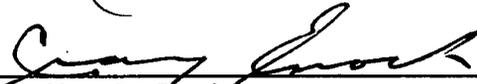
Lloyd Doggett, Justice



John Cornyn, Justice



Bob Gammage, Justice



Craig Enoch, Justice



Rose Spector, Justice

STATE BAR OF TEXAS



Office of the General Counsel

June 2, 1994

INTERAGENCY MAIL

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

RE: Resignation of Frank Paul Smarzik, Jr., Bar Card No. 18524500

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 Frank Paul Smarzik, dated May 23, 1994, which was received by the Chief Disciplinary Counsel on May 31, 1994;
- (2) Response of Chief Disciplinary Counsel of Motion for Acceptance of Resignation as Attorney and Counselor at Law of Frank Paul Smarzik; and,
- (3) Original and one (1) copy of proposed Order for review and entry by the Court accepting the resignation of Frank Paul Smarzik as Attorney and Counselor at Law.

If no motion to withdraw the Motion for Acceptance has been filed by Mr. Smarzik with the Court by June 13, 1994, please present the enclosed Order to the Court for review and entry.

Mr. John Adams
June 2, 1994
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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 Mr. Smarzik, the District 9 Grievance Committee, and the Commission for Lawyer Discipline of the Court's disposition of such motion.

Sincerely,



E. Lynn Rodriguez
Assistant General Counsel

ELR/cr
Enclosures

cc: Frank Paul Smarzik, Jr., General Delivery, Las Vegas, Nevada 89125-9999
CERTIFIED MAIL # P 116 547 173 - RETURN RECEIPT REQUESTED

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

FRANK PAUL SMARZIK, JR.

TO THE HONORABLE SUPREME COURT OF TEXAS:

Movant, Frank Paul Smarzik, 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 a compulsory disciplinary sanction for having committed professional misconduct.

II.

Movant's License and permanent State Bar Card issued by the Court on December 4, 1973 are presently lost or misplaced, and could not be located despite diligent search. Should Movant find his License and permanent State Bar Card at a future date, Movant will immediately surrender the same to the Court.

III.

Movant's State Bar Card number is 18524500. Movant's current address is General Delivery, Las Vegas, Nevada 89125-9999. Movant prays that the Court accept his resignation as an Attorney and Counselor at Law and remove his name from the list of persons licensed to practice law in the State of Texas.

Respectfully submitted,


Frank Paul Smarzik, JR.

State Bar Card No. 18524500

5-23-94
Date

ACKNOWLEDGMENT

STATE OF NEVADA

§

COUNTY OF CLARK

§

§

BEFORE ME the undersigned, a Notary Public in and for said County and State, on this day personally appeared Frank Paul Smarzik, 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 fact stated are within his personal knowledge and are true and correct.

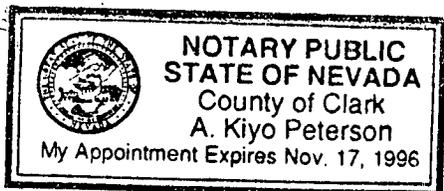
GIVEN UNDER my hand and seal of office this the 23rd day of May, 1994.

Frank Paul Smarzik, Jr.
Frank Paul Smarzik, Jr.

A. Kiyoo Peterson
Notary Public in and for the
State of Nevada

11/17/96
My commission expires:

A. Kiyoo Peterson
Printed Name of Notary



IN THE SUPREME COURT OF TEXAS

**RESPONSE OF THE CHIEF DISCIPLINARY COUNSEL
OF THE
STATE BAR OF TEXAS
REGARDING
FRANK PAUL SMARZIK, JR.**

TO THE HONORABLE SUPREME COURT OF TEXAS:

I, James M. McCormack, Chief Disciplinary Counsel of the State Bar of Texas, in accordance with Part X of the Texas Rules of Disciplinary Procedure, hereby file a response on behalf of the State Bar of Texas, acting by and through the Commission for Lawyer Discipline, to the Motion for Acceptance of Resignation as Attorney and Counselor at Law of Frank Paul Smarzik, Jr., dated on May 23, 1994. The acceptance of the resignation of Frank Paul Smarzik, Jr. in the best interests of the public and the profession. There is currently a disciplinary action against Frank Paul Smarzik, Jr., Cause No. 94-2475-I, styled Commission for Lawyer Discipline v. Frank Paul Smarzik, Jr., In the 162nd Judicial District Court of Dallas County (hereinafter called the "disciplinary suit").

The professional misconduct with which Frank Paul Smarzik, Jr. (hereafter called "Smarzik"), is charged in the disciplinary suit is as follows:

In and around December, 1988, Toni A. Jones (hereinafter called "Jones") hired Smarzik to modify a child custody agreement. At that time, Jones paid Smarzik a \$1,000.00 retainer fee. Smarzik thereafter failed to file the motion to modify until on or about November 27, 1989, and then failed to obtain timely service of citation on Complainant's ex-husband. The district court where the motion was pending issued a scheduling order on or about November 29, 1989. Smarzik failed to comply with the deadlines set out in such scheduling order, and the case was dismissed for want of prosecution on or about March 29, 1990. Smarzik thereafter refiled the

motion to modify on or about May 24, 1991, more than one year after the previous dismissal. The case was again placed on the dismissal docket in July, 1991 and in August, 1991. The case was transferred to Harris County in September, 1991 pursuant to Smarzik's request. In May, 1992, Smarzik set the case for trial in July, 1992. The July, 1992 trial setting was passed, and there was no further action on the case, which was dismissed for want of prosecution on or about August 1, 1993. Smarzik later promised to refund Jones' \$1,000.00 retainer fee. To date, he has repaid only \$100.00 of the total retainer. Such acts and/or omissions on the part of Smarzik as are described hereinabove which occurred prior to January 1, 1990, constitute conduct which violates Rules 6-101(A)(3), 7-101(A)(1) and/or 7-101(A)(2) of the Texas Code of Professional Responsibility. Such acts and/or omissions on the part of Smarzik as are described hereinabove which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.01(b)(1), 1.01(b)(2), 1.03(a) and/or 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

On or about July 28, 1992, Rebecca Hernandez (hereinafter called "Hernandez") hired Smarzik to represent her in modifying a child custody agreement. She agreed to pay him \$400.00 in attorney's fees, and paid an initial \$200.00 deposit. In addition, she paid Smarzik \$80.00 for filing and service fees. Before Smarzik could file the motion to modify, the attorney representing Hernandez' ex-husband (hereinafter called "opposing counsel") filed a motion to modify on behalf of the ex-husband. Smarzik and opposing counsel engaged in settlement negotiations in order to prepare a draft of an agreed order on the motion to modify that would be acceptable to all parties. Hernandez was unhappy with the draft of the agreed order presented to her by Smarzik and fired him on or about September 28, 1992. A hearing on the motion to

modify was held the following day on or about September 29, 1992. Smarzik did not take the steps reasonably necessary to protect Hernandez' interests prior to the hearing, such as notifying the court of the termination of his employment or advising that the hearing be reset until such time that Hernandez hired another lawyer. Hernandez represented herself pro se at the hearing, at which time she signed off on the agreed order prepared by opposing counsel. Such acts and/or omissions on the part of Smarzik as are described hereinabove which occurred on or after January 1, 1990, constitute conduct which violates Rule 1.15(d) of the Texas Disciplinary Rules of Professional Conduct.

On or about October 25, 1991, Kevin F. Callahan (hereinafter called "Callahan") hired Smarzik to represent him in a family law matter, and paid Smarzik \$768.00 for attorney's fees and court costs. Smarzik thereafter neglected Callahan's case, and failed to keep him informed about the status of the matter. Smarzik later closed his office and moved away from the area but failed to provide Callahan with notice of his whereabouts, and further failed to return his file or refund unearned attorney's fees and court costs to Callahan. Such acts and/or omissions on the part of Smarzik as are described hereinabove which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.01(b), 1.03(a), 1.03(b)(1), 1.03(b)(2), 1.15(d) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

On or about January 11, 1992, Robin D. Hoevelman (hereinafter called "Hoevelman") hired Smarzik to represent him in a family law matter, and paid Smarzik \$2,300.00 for attorney's fees and court costs. Smarzik thereafter neglected Hoevelman's case, and failed to keep him informed about the status of the matter. Smarzik later closed his office and moved away from the area but failed to provide Hoevelman with notice of his whereabouts, and further

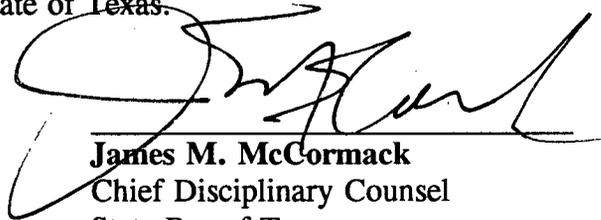
failed to return his file or refund unearned attorney's fees and court costs to Hoevelman. Such acts and/or omissions on the part of Smarzik as are described hereinabove which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.01(b), 1.03(a), 1.03(b)(1), 1.03(b)(2), 1.15(d) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

On or about May 26, 1993, Daniel F. Lopez (hereinafter called "Lopez") hired Smarzik to represent him in a criminal matter, and paid Smarzik \$1,400.00 for attorney's fees. Smarzik thereafter neglected Lopez' case, and failed to keep him informed about the status of the matter. Smarzik later closed his office and moved away from the area but failed to provide Lopez with notice of his whereabouts, and further failed to return his file or refund unearned attorney's fees and court costs to Lopez. Such acts and/or omissions on the part of Smarzik as are described hereinabove which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.01(b), 1.03(a), 1.03(b)(1), 1.03(b)(2), 1.15(d) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

On or about August 5, 1992, Kathy G. Cody (hereinafter called "Cody") hired Smarzik to represent her in a divorce proceeding, and paid Smarzik \$1,037.00 for attorney's fees. Smarzik thereafter neglected Cody's case, and failed to keep her informed about the status of the matter. Smarzik later closed his office and moved away from the area but failed to provide Cody with notice of his whereabouts, and further failed to return her file or refund unearned attorney's fees and court costs to Cody. Such acts and/or omissions on the part of Smarzik as are described hereinabove which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.01(b), 1.03(a), 1.03(b)(1), 1.03(b)(2), 1.15(d) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

On or about June 7, 1993, Khelifi-Touhami Said (hereinafter called "Said") hired Smarzik to represent him in a criminal law matter, and paid Smarzik \$175.00 for attorney's fees. Smarzik thereafter neglected Said's case, and failed to keep him informed about the status of the matter. Smarzik later closed his office and moved away from the area but failed to provide Said with notice of his whereabouts, and further failed to return his file or refund unearned attorney's fees and court costs to Said. Such acts and/or omissions on the part of Smarzik as are described hereinabove which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.01(b), 1.03(a), 1.03(b)(1), 1.03(b)(2), 1.15(d) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

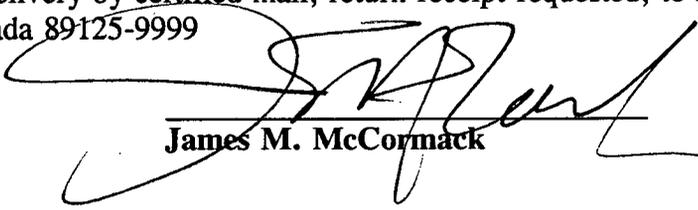
In view of Frank Paul Smarzik, Jr.'s execution on or about May 23, 1994 of his resignation as an attorney and counselor at law, and in anticipation of the Court's acceptance of same, the Chief Disciplinary Counsel does not anticipate going forward with the pending disciplinary lawsuit and intends to obtain an Order of Non-Suit in said disciplinary lawsuit upon entry of Order by the Supreme Court of Texas deleting Frank Paul Smarzik, Jr. from the list of persons licensed to practice law in the State of Texas.

A handwritten signature in black ink, appearing to read "James M. McCormack", is written over a horizontal line. The signature is stylized and cursive.

James M. McCormack
Chief Disciplinary Counsel
State Bar of Texas

CERTIFICATE OF SERVICE

A true and correct copy of this Response of the Chief Disciplinary Counsel of the State Bar of Texas Regarding Frank Paul Smarzik, Jr. has been served upon Frank Paul Smarzik, Jr. on this 15th day of June, 1994, by delivery by certified mail, return receipt requested, to him at General Delivery, Las Vegas, Nevada 89125-9999


James M. McCormack