

**IN THE  
SUPREME COURT OF TEXAS  
IN THE MATTER OF  
DAVID HARPER FALK**

MISC. DOCKET NO. 02- 9061

**ORDER**

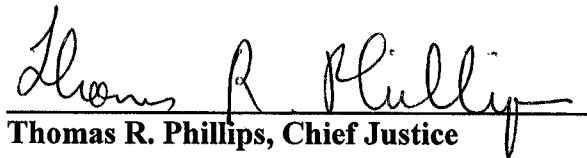
On this day, this Court considered the Motion for Acceptance of Resignation as Attorney and Counselor at Law of David Harper Falk, together with the Response of the Chief Disciplinary Counsel to the Motion for Acceptance of Resignation as Attorney and Counselor at Law of David Harper Falk. This Court has reviewed the 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, after being advised that the acceptance of the resignation is in the best interest of the public and the profession, concludes that the following Order is appropriate.

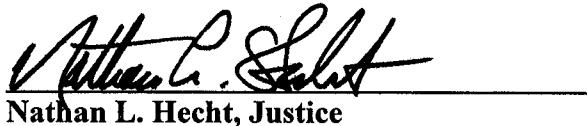
IT IS ORDERED that the law license of David Harper Falk, of Webster, Texas, State Bar card number 00784034, which was previously issued by this Court, is canceled and his name is dropped and deleted from the list of persons licensed to practice law in Texas.

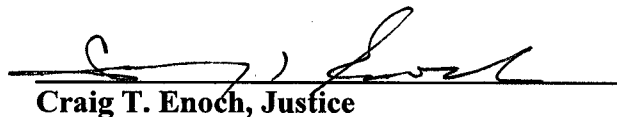
IT IS FURTHER ORDERED that David Harper Falk, is permanently enjoined and prohibited from practicing law in the State of Texas, from holding himself out as an attorney at law, from performing any legal services for others, from giving legal advice to others, from accepting any fee directly or indirectly for legal services, from 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), and from 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 David Harper Falk, within thirty 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 he 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. David Harper Falk is ORDERED to send copies of all of these notifications to the Office of The Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas, 78711.

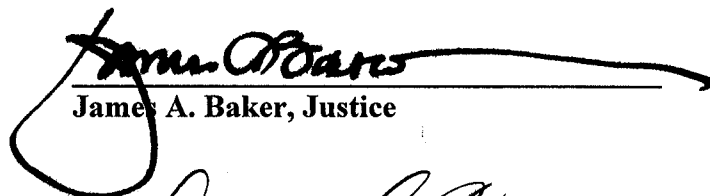
By the Court, en banc, in chambers, on this the 22<sup>nd</sup> day of March, 2002.

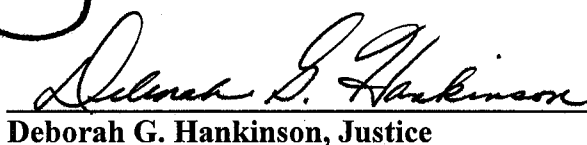
  
Thomas R. Phillips, Chief Justice

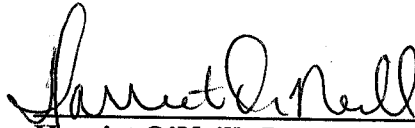
  
Nathan L. Hecht, Justice


  
Craig T. Enoch, Justice

  
Priscilla R. Owen, Justice

  
James A. Baker, Justice

  
Deborah G. Hankinson, Justice

  
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Harriet O'Neill, Justice

  
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Wallace B. Jefferson, Justice

  
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Xavier Rodriguez, Justice

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

OF

DAVID H. FALK

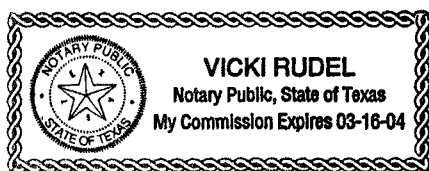
NOW COMES your Applicant, **DAVID H. FALK**, and hereby submits to the Court his resignation as an Attorney and Counselor at Law in the State of Texas and prays that the Court accept said resignation.

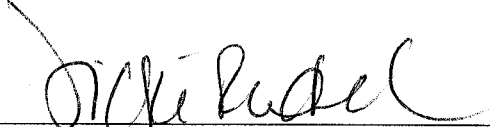
Attached hereto and surrendered by the Applicant are the permanent State Bar card and license to practice law issued by this Court. In lieu thereof, attached hereto is an affidavit attesting to the inability to surrender the State Bar card and/or license issued by this Court to the Applicant.

Your Applicant is voluntarily resigning and withdrawing from the practice of law; Applicant does so in lieu of discipline for professional misconduct for all disciplinary matters currently pending and or filed with the STATE BAR OF TEXAS on or before the date of this *Motion*; Applicant prays that his name be dropped and deleted from the list of persons licensed to practice law in the State of Texas; and Applicant prays that his resignation be accepted.

  
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**DAVID H. FALK**  
State Bar No. 00784034


SUBSCRIBED AND SWORN to before me by the said **DAVID H. FALK** this the  
1 day of *February* 2002.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas

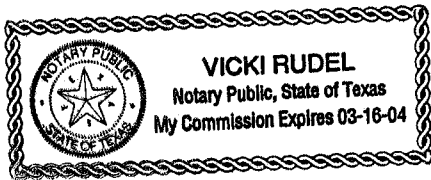
**AFFIDAVIT OF DAVID H. FALK**

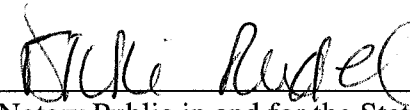
I, **DAVID H. FALK**, having been duly sworn do hereby state under oath that am unable after a diligent search to locate the State Bar of Texas Bar Card issued to me by the Supreme Court of Texas. I acknowledge that the said bar card is the property of the Supreme Court of Texas and, should I locate same, I am obligated to return it to the Supreme Court of Texas.

  
\_\_\_\_\_  
**DAVID H. FALK**

DATE: February 1, 2002

**SUBSCRIBED AND SWORN** to before me, the undersigned Notary Public, by **DAVID H. FALK** on this the 1 day of February, 2002.



  
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Notary Public in and for the State of Texas

**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 DAVID HARPER FALK**

**TO THE HONORABLE SUPREME COURT OF TEXAS:**

COMES NOW, Leigh E. Arnemann, Assistant Disciplinary Counsel, and Dawn Miller, Chief Disciplinary Counsel, of the STATE BAR OF TEXAS, and in accordance with Part X of the TEXAS RULES OF DISCIPLINARY PROCEDURE, hereby files 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 David Harper Falk

**I. RESIGNATION OF MOVANT, DAVID HARPER FALK**

Movant, **David Harper Falk**, State Bar No. 00784034 has filed his *Motion for Acceptance of Resignation as Attorney and Counselor at Law*, dated February 1, 2002. Such *Motion for Acceptance of Resignation* is in lieu of discipline for professional misconduct.

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

THE COMMISSION FOR LAWYER DISCIPLINE contends that the acceptance of Falk's *Motion for Acceptance of Resignation* is in the best interests of the public and the profession.

**III. DISCIPLINARY CHARGES**

The following complaints and disciplinary actions are currently pending against Falk: (1) Maria J. Ayala v. David H. Falk, Case No. H005992754, currently pending before an Evidentiary Panel; (2) Tracey Casler v. David H. Falk, Cause No. H0100024479 currently in Litigation; (3) Brian M. Chipman v. David H. Falk, Cause No. H0100024476 currently in Litigation; (4)

Susan Collins v. David H. Falk, Case No. H0020125273 currently pending before an Evidentiary Panel; (5) John M. Delehanty v. David H. Falk, Case No. H0060126061, currently in negotiations at the First Just Cause level; (6) Fidel DeLeon v. David H. Falk, Case No. H0030125396, currently pending before an Evidentiary Panel; (7) Theodore A. Denzler v. David H. Falk, Case No. H0040125559, currently pending before an Evidentiary Panel; (8) John M. Fitzpatrick v. David H. Falk, Case No. H0060126062, currently in negotiations at the First Just Cause level; (9) Travis D. Gibb v. David H. Falk, Case No. H0040125567, currently pending before an Evidentiary Panel; (10) Kelly John Goodale v. David H. Falk, Cause No. H0120024805, currently in Litigation; (11) Harold G. Grace v. David H. Falk, Case No. H0099921547, currently pending before an Evidentiary Panel; (12) Cole S. Hawkins v. David H. Falk, Case No. H0030125530, currently pending before an Evidentiary Panel; (13) Dennelle Lyon v. David H. Falk, Cause No. H0100024551, currently in Litigation; (14) Helen Miller v. David H. Falk, Case No. H0070023815, currently pending before an Evidentiary Panel; (15) Randy Schattel v. David H. Falk, Case No. H0119921955, currently pending before an Evidentiary Panel; (16) Troy G. Smith v. David H. Falk, Cause No. H0010125097, currently in Litigation; (17) Catherine Stevens v. David H. Falk, Case No. H0070023820, currently pending before an Evidentiary Panel; (18) Fred Stewart v. David H. Falk, Case No. H0020125133, currently pending before an Evidentiary Panel; (19) Wanda Sumrall v. David H. Falk, Cause No. H0020125274, currently in Litigation; (20) John Yaniec v. David H. Falk, Cause No. H0120024806, currently in Litigation.

### **Ayala Complaint**

On or about September 16, 1998, Maria J. Ayala, (hereinafter "Ayala"), hired the Respondent for representation in a civil matter. Ayala spoke with Respondent sometime in February 1999. At that time, Respondent informed Ayala of a court

date on the 5th of May, 1999. However, the Respondent failed to send her additional information concerning the court date. Ayala called Respondent's office and was informed he had gone out of town. Ayala then visited Respondent's office, but Respondent was unavailable. Ayala then left a message for Respondent telling him that it was urgent that he call her. Respondent failed to call Ms. Ayala.

On July 19, 1999, Respondent was served with proper notice of the complaint filed against him by Ayala. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond.

On October 18, 1999, Respondent received a Subpoena (Duces Tecum) that required Respondent to provide a "copy of complete client files in your custody and control pertaining to your representation of Maria J. Ayala" during the final hearing on November 4, 1999. Though duly notified, the Respondent failed to appear before the Grievance Committee and provide the requested files.

Respondent's conduct as set forth in the Ayala complaint violates Rules 1.01(b)(1), 1.01(b)(2), 1.03(a)(b), 8.01(b) and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

#### **Casler Complaint**

On or about October 16, 2000, the State Bar of Texas received a complaint from Tracey Casler (hereinafter "Casler") that alleged misconduct by David H. Falk (hereinafter "Respondent").

On or about October 27, 2000, Respondent was served with proper notice of the complaint filed against him by Casler. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond. Respondent further received a Subpoena (Duces Tecum), which commanded Respondent to provide a complete copy of Casler's file to the investigatory panel. The Respondent failed to respond.

Respondent's conduct as set forth in the Casler complaint violates Rules 8.01(b) and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

#### **Chipman Complaint**

On or about May 1, 1999, Brian M. Chipman (hereinafter referred to as "Chipman") hired Respondent for representation in a divorce case. Chipman paid Respondent Seven Hundred Dollars and 00/100 (\$700.00) for said representation. Thereafter, Respondent failed to communicate with Chipman about the status of



his case and/or respond to Chipman's requests for information. Respondent neglected the case, failed to make timely court appearances and failed to properly advise Chipman of his legal rights. Upon termination of representation, Respondent failed to protect Chipman's interests by surrendering the client file.

On or about November 7, 2000, Respondent was served with proper notice of the complaint filed against him by Chipman. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent was also served with a subpoena that commanded him to produce all documents relating to his representation of Chipman to the grievance committee on or before November 30, 2000. Respondent failed to respond to both requests.

On May 7, 2001, Respondent was served with subpoenas that commanded him to produce certain documents pertaining to Brian M. Chipman and to personally appear before the Grievance Committee for an Investigatory Hearing on June 6, 2001. Respondent failed to produce the documents or appear.

Respondent's conduct as set forth in the Chipman complaint violates rules 1.01(b)(1), 1.01(b)(2), 1.01(c), 1.03(a)(b), 1.04(a), 1.15(d), 8.01(b) and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Collins Complaint**

On or about February 18, 2000, Susan Collins (hereinafter referred to as "Collins") hired Respondent for representation in a civil matter that involved a dispute over the ownership of a piece of property and the avoidance of its foreclosure. Collins paid Respondent Eight Hundred Dollars and 00/100 (\$800.00).

Throughout the representation Collins made repeated attempts by telephone calls, letters, and facsimiles to communicate with Respondent. Respondent failed to return Collins' telephone calls and respond to her letters and facsimiles.

Collins gave Respondent the opportunity to withdraw from her case and refund her fees in order to seek new counsel. Respondent maintained that he would handle her case. Respondent also informed Collins that he would mail and fax a copy of the foreclosure agreement to her. Respondent failed to fax the agreement and failed to return the unearned fees.

On or about April 23, 2001, Respondent was served with proper notice of the complaint filed against him by Collins. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond.

Respondent's conduct as set forth in the Collins complaint violates rules 1.01(b)(1), 1.01(b)(2), 1.03(a)(b), 1.15(d), 8.04(a)(3) and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Delehanty Complaint**

On or about September 1997, John M. Delehanty (hereinafter referred to as "Delehanty") retained Respondent to represent him in a personal injury matter. On or about August 21, 1999, Respondent filed a lawsuit in Cause No. 1999-44451 styled John Delehanty, Plaintiff vs. Water Sports Center of Clear Lake, Inc. D/B/A Jim's Water Sports Center.

On September 14, 2000, the Defendant, Water Sports Center of Clear Lake, Inc. d/b/a Jim's Water Sports Center filed a Motion to Compel Discovery. The Respondent failed to file an answer to the requested discovery on behalf of Delehanty. On March 13, 2001, the Court issued an Order stating that Plaintiff failed to appear and the case was Dismissed for Want of Prosecution.

On or about June 27, 2001, Respondent was served with a proper notice of the complaint filed against him by Delehanty. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond.

Respondent's conduct as set forth in the Delehanty complaint violates rules 1.01(b)(1), 1.01(b)(2), 1.03(a)(b), 1.15(d), and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **DeLeon Complaint**

In or about April 1999, Fidel DeLeon (hereinafter referred to as "DeLeon") hired Respondent for representation in divorce proceedings. DeLeon paid Respondent Seven Hundred Fifty Dollars and 00/100 (\$750.00). On or about December 1, 1999, DeLeon faxed to Respondent, a list of personal property items that he wanted to request in his divorce.

Throughout the representation DeLeon made repeated attempts by telephone calls and in person to communicate with Respondent. Respondent failed to return DeLeon's telephone calls and was unavailable for a scheduled appointment.

On or about October 6, 2001, DeLeon was informed that his divorce had been finalized. He tried to contact Respondent for confirmation, but was unsuccessful. Respondent failed to follow-up on the personal items DeLeon wanted to obtain in the divorce decree. As a result, DeLeon was not awarded his personal property.

On or about April 4, 2001, Respondent was served with notice of the complaint filed against him by DeLeon. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond.

Respondent's conduct as set forth in the DeLeon complaint violates rules 1.01(b)(1), 1.01(b)(2), 1.03(a)(b), and 8.01(b) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Denzler Complaint**

In or about May 2000, Theodore A. Denzler (hereinafter referred to as "Denzler") hired Respondent to represent his stepson, Jason Ryan Legge in a civil lawsuit. In or about August 2000, Denzler and his wife, Lori, were added as defendants to the lawsuit. Respondent agreed to represent all of the defendants, charging hourly, with no additional retainer, in *Cause No. 99CV0967, Southshore Church v. Jason Ryan Legge, et al.* Respondent was paid Five Hundred Dollars and 00/100 (\$500.00).

On or about, October 31, 2000, a default judgment was taken against Denzler and his wife because Falk failed to answer the lawsuit on their behalf. Denzler contacted Respondent, who assured him that there was a "mix-up" and that he would take care of the matter. Shortly thereafter, Denzler made several attempts to communicate with Respondent by telephone, facsimile and correspondence. Respondent failed to reply to any of Denzler's or his new attorney's communication attempts.

On or about April 20, 2001, Respondent was served with notice of the complaint filed against him by Denzler. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond.

Respondent's conduct as set forth in the Denzler complaint violates rules 1.01(b)(1), 1.01(b)(2), 1.03(a)(b), 8.04(a)(3) and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Fitzpatrick Complaint**

On or about August 2000, John M. Fitzpatrick (hereinafter referred to as "Fitzpatrick") hired Respondent for representation in a lawsuit filed against his company. Respondent was given the Original Petition and related documents; however, Respondent failed to file an answer in a timely manner. As a result, a default judgment in the amount of Eighteen Thousand Four Hundred Eighteen Dollars and 75/100 (\$18,418.75) was entered against Fitzpatrick's company.

Respondent further failed to file a motion for new trial or to take other action to set aside the default. Fitzpatrick paid the amount entered in the Default Judgment.

In addition, on or about July 10, 2001, Respondent was served with proper notice of the complaint filed against him by Fitzpatrick. Said notice required Respondent to provide a written response to the allegation of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond.

Respondent's conduct as set forth in the Fitzpatrick complaint violates rules 1.01(b)(1), 1.01(b)(2), and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Gibb Complaint**

In or about August 2000, Travis D. Gibb (hereinafter referred to as "Gibb") hired Respondent to represent him in *Cause No. 47213, Jason Jones vs. Travis Gibb, In the County Court At Law, Galveston County, Texas*. Gibb paid a retainer in the amount of One Thousand Five Hundred Dollars and 00/100 (\$1,500.00). Respondent failed to file an *Answer* and failed to appear for a scheduling conference. As a result, a default judgment was entered against Gibb. Gibb sent a letter to Respondent in reference to the default judgment and requested the return of the retainer fee. Respondent failed to respond and did not return the fee.

On or about April 20, 2001, Respondent was served with notice of the complaint filed against him by Gibb. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond.

Respondent's conduct as set forth in the Gibb complaint violates rules 1.01(b)(1), 1.01(b)(2), 1.03(a)(b), 1.15(d) and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Goodale Complaint**

In or about December 1999, Kelly John Goodale (hereinafter "Complainant"), hired David H. Falk (hereinafter "Respondent") to represent him in a criminal matter.

On or about April 24, 2000, Respondent represented to and informed Goodale that he had negotiated a plea bargain that guaranteed Goodale a sentence with no jail time if he completed a ninety (90) day drug treatment program. On or about April 25, 2000, Respondent and Goodale appeared before the court and Goodale signed

the plea agreement. Unbeknownst to Goodale, he signed an agreement that mandated him to serve a two (2) year jail sentence.

On November 17, 2000 and December 3, 2000, Goodale sent letters to Respondent requesting a copy of his file. Respondent failed to respond.

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 served with proper notice of the complaint against him by Goodale. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond.

Respondent's conduct as set forth in the Goodale complaint violates Rules 1.03(a)(b), 1.15(d) and 8.01(b) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Grace Complaint**

On or about November 15, 1996, Harold G. Grace (hereinafter referred to as "Grace") hired Respondent for representation in a personal injury matter. Respondent accepted the case with the knowledge that the statute of limitations would expire within two (2) months.

In January 1997, Grace called Respondent regarding the statute of limitations deadline and the status of his case. Respondent assured Grace that the case was being handled. Respondent allowed the Statute of Limitations to expire thereby causing his client financial harm. Grace attempted to reach Respondent by telephone and correspondence, but Respondent failed to return any of Grace's telephone calls or respond to Grace's correspondence.

On or about September 27, 1999, Respondent was served with proper notice of the complaint against him by Grace. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond.

Respondent's conduct as set forth in the Grace complaint violates Rules 1.03(a)(b), 1.15(d) and 8.01(b) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Hawkins Complaint**

On or about August 1999, Cole S. Hawkins (hereinafter referred to as "Hawkins") hired Respondent on a divorce matter and paid One Thousand Five Hundred Dollars and 00/100 (\$1,500.00).

On or about February 8, 2000, a hearing was set at 9:30 am. Though property notified, Respondent failed to appear. Repeated telephone calls were made to locate the Respondent. During this time period, Hawkins was instructed by the Judge to be his own counsel in the 411<sup>th</sup> District Court of Trinity County, Texas. Hawkins was placed on the witness stand and questioned by his wife's counsel. Afterwards, Hawkins had to call his witness, his daughter, a minor, which caused him stress, as well as, the other witnesses that appeared on his behalf. Thereafter, Hawkins learned that the Respondent had not called the Court to explain the reason for his delay. The Respondent finally arrived at 12:00 noon.

On or about February 22, 2000, a hearing for Hawkins' children was set. Hawkins learned about the hearing after he called Ms. Baggerly, CPS Caseworker, concerning the status of his children and was asked why he had not attended the hearing. Ms. Baggerly informed Hawkins that the Respondent was again late for the hearing. Respondent failed to inform Hawkins of the hearing scheduled February 22, 2000.

Hawkins called Respondent numerous times, but Respondent failed to return the telephone calls. On April 5, 2000, Hawkins filed a complaint with the State Bar of Texas.

On May 4, 2000, Respondent, was served with proper notice of the complaint filed against him by Hawkins. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to provide a written response.

Respondent's conduct as set forth in the Hawkins complaint violates Rules 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Lyon Complaint**

In or about March 2000, Dennelle Lyon (hereinafter "Lyon") hired David H. Falk (hereinafter "Respondent") to represent her in a divorce matter. Respondent was paid Five Thousand Dollars and 00/100 (\$5000.00) for which Respondent was to bill against for legal services performed. If Lyon's legal expenses exceeded this amount, Respondent was to bill Lyon One Hundred Seventy-Five Dollars and 00/100 (\$175.00) per hour.

Sometime thereafter, Lyon requested a itemized statement listing all the legal services and fees for these services rendered by the Respondent. Respondent failed to provide a itemized billing statement to Lyon.

On or about October 18, 2000, Lyon filed a complaint against Respondent with the State Bar of Texas. On or about November 3, 2000, Respondent was served with proper notice of the complaint filed against him by Lyon. Said notice directed Respondent to provide a written response to the allegations within thirty (30) days of receipt of same. Respondent failed to provide a written response. In addition, Respondent received a State Bar of Texas Subpoena, commanding him to provide a copy of Lyon's file by December 3, 2000. Respondent failed to respond.

Respondent's conduct as set forth in the Lyon complaint violates Rules 1.04(c), 8.01(b), 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Miller Complaint**

On or about September 22, 1998, Helen Miller (hereinafter "Miller"), hired David Falk (hereinafter "Respondent") to represent her in a personal injury claim resulting from an automobile accident. Thereafter, Miller made several attempts to contact Respondent by telephone to obtain the status of her case. Respondent failed to return Miller's telephone calls.

On or about October 6, 1998, Respondent sent a letter to Miller stating that her case was progressing and that she could contact his office at any time. Thereafter, Respondent received and rejected a settlement offer from opposing counsel concerning Miller's claim. Respondent failed to notify Miller of this settlement offer and did not give Miller an opportunity to make an informed decision regarding this settlement offer prior to Respondent's rejection of said offer. Miller made several additional attempts to contact Respondent by telephone and left several messages; however, Respondent failed to return Miller's telephone calls.

On or about June 7, 2000, Miller sent a letter to Respondent stating that she no longer desired to retain him as her attorney. In addition, Miller requested that Respondent forward a copy of the file to her. Respondent failed to return Miller's file. On or about July 19, 2000, Miller filed a complaint against Respondent with the State Bar of Texas. On or about August 23, 2000, Respondent received proper notice of Miller's complaint and was instructed to submit a written response to Lyon's allegations within thirty (30) days of receipt of same. Respondent failed to respond.

Respondent's conduct as set forth in the Miller complaint violates Rules 1.01(b)(1), 1.01(b)(2), 1.02(a)(2), 1.03(a)(b), and 8.01(b) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Schattel Complaint**

On or about December 16, 1999, Respondent was served with proper notice of the complaint filed against him Randy Schattel. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Additionally, Respondent was subpoenaed to provide a copy of Schattel's file by February 24, 2000. The Respondent failed to respond to the complaint and timely respond the subpoena.

On May 25, 2000, Respondent and Schattel appeared before Panel E13 of the District 4 Grievance Committee. Respondent presented a copy of Schattel's file, One Hundred Thirty days (130) after the requested date. This matter was continued to allow Respondent additional time to submit a written response to Schattel's allegations.

On July 27, 2000, the Committee reconvened and again Respondent had failed to respond. Respondent presented a copy of his response to the panel and testified that he had previously submitted his response to the State Bar on June 28, 2000. The Committee decided to reschedule the matter again so Respondent could provide proof that he had submitted his response. Respondent was given a deadline of August 23, 2000, to comply with the committee's request. Respondent has failed provide proof of his previous submission.

Respondent's conduct as set forth in the Schattel complaint violates Rules 8.01(b) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Smith Complaint**

On or about February 7, 1999, Troy G. Smith (hereinafter referred to as "Smith") hired Respondent on a contingency fee basis for representation in a personal injury matter. Respondent failed to provide Smith with a written copy of the contingency fee contract; failed to timely file Smith's case before the expiration of the applicable two (2) year statute of limitations; and failed to communicate with Smith about the status of his case and/or respond to Smith's requests for information. Upon termination of representation, Respondent failed to protect Smith's interests by surrendering the client file and/or presenting same to Smith's new attorney.

On or about February 5, 2001, Respondent was served with proper notice of the complaint filed against him by Smith. Said notice required Respondent to provide



a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond.

On or about May 7, 2001, Respondent was served with subpoenas that commanded him to produce certain documents and to personally appear before the Grievance Committee on June 6, 2001. Respondent failed to comply.

Respondent's conduct as set forth in the Smith complaint violates Rules 1.01(b)(1), 1.01(b)(2), 1.03(a)(b), 1.04(d), 1.15(d), 8.01(b) and 8.04(a)(8) of the TEXAS DISCIPLINARY 8.01(b) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Stevens Complaint**

On or about March 8, 2000, Catherine Stevens (hereinafter called "Stevens") hired David H. Falk (hereinafter called "Respondent") to aid her in obtaining an occupational license. Respondent was paid the sum of Five Hundred Dollars and 00/100 (\$500.00) for his services.

On or about April 14, 2000, Stevens contacted Respondent and was informed that the license was approved and that she would receive it in the mail. When the license was not received in the mail, Stevens' attempted to contact Respondent by phone and obtain a status on the license. Stevens' attempts were unsuccessful.

On or about May 26, 2000, Stevens sent Respondent a Certified letter instructing him to contact her within three (3) days concerning this matter. Respondent received Stevens' letter on May 30, 2000 and failed to respond.

On or about July 25, 2000, Stevens filed a complaint against Respondent with the State Bar of Texas. On or about August 2, 2000, Respondent was served with notice of the complaint filed against him by Stevens. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond. On September 18, 2000, Respondent received a subpoena and was notified of an Investigatory hearing on September 28, 2000 concerning this matter and was instructed to provide a copy of Steven's file for the Committee. On September 28, 2000, Respondent failed to appear before the E13 District 4 Grievance Committee of the State Bar of Texas or provide a copy of the requested file.

Respondent's conduct as set forth in the Stevens complaint violates Rules 1.01(b)(1), 1.01(b)(2), 1.03(a)(b), and 8.01(b) of the TEXAS DISCIPLINARY 8.01(b) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

## Stewart Complaint

On or about July 20, 2000, Fred Stewart (hereinafter referred to as "Stewart") hired Respondent for representation in four (4) separate civil matters. Stewart paid a retainer fee in the amount of Five Hundred Dollars and 00/100 (\$500.00) and entered into a fee agreement with an hourly rate for three (3) of the cases and thirty percent (30%) contingency for the remaining case.

On the first case, Stewart retained Respondent in a divorce matter. At the time of the hearing, Respondent failed to appear; as a result, a contempt charge was filed against Stewart. Subsequently, Stewart had to retain another attorney by paying a retainer of Twelve Thousand Dollars and 00/100 (\$12,000.00). Respondent's failure to attend the hearing caused Stewart's two (2) cars be awarded to his wife, as well as, other personal property originally belonging to Stewart.

On the second case, Stewart retained Respondent for a Real Estate transaction in Galveston County. At the time of closing, the title company failed to hold funds in payment of current taxes. Respondent assured Stewart that a lawsuit would not be filed against him since the error had occurred with the title company. The buyer filed a lawsuit against Stewart in the amount of Four Thousand Seven Hundred Dollars and 00/100 (\$4,700.00). At the time of the hearing, Respondent failed to appear; consequently, the buyer was awarded the amount sought by a Default Judgment.

On the third case, Stewart retained Respondent on a personal injury matter. Respondent's failure to file a lawsuit against the Defendant, before the statute of limitation expired, caused Stewart's insurance company to pay for Defendant's automobile repairs. Stewart did not receive his PIP coverage and was unable to pay his medical bills.

On the fourth case, Stewart retained Respondent for representation in the sale of packaging machinery. After the sale, the purchasing company sent Stewart a non-refundable, down payment check in the amount of Fifteen Thousand Dollars and 00/100 (\$15,000.00). Then without prior notice, the company withdrew from the transaction before the delivery date and requested a Twelve Thousand Dollars and 00/100 (\$12,000.00) refund. Thereafter, the company filed a lawsuit against Stewart's company in Houston, Harris County, Texas. At the time of the hearing, Respondent failed to appear at the scheduled hearing. The purchasing company was awarded a Fifteen Thousand Dollars and 00/100 (\$15,000.00) Judgment. Stewart made restitution to the company as ordered by the court.

On or about February 7, 2001, Respondent was served with notice of the complaint filed against him by Stewart. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same. Respondent failed to respond. A subpoena

was also enclosed with the notice of the complaint that commanded Respondent to provide the grievance committee a copy of Stewart's files by March 7, 2001. Respondent failed to remit these files on or before the due date.

On or about July 23, 2001, Respondent was served with a subpoena for a hearing set August 16, 2001. The Subpoena commanded Respondent to produce certain documents relating to his representation of Stewart. Respondent failed to appear before the grievance committee and failed to produce the documents requested.

Respondent's conduct as set forth in the Stewart complaint violates Rules 1.01(b)(1), 1.01(b)(2), 1.03(a)(b), 1.15(d) and 8.04(a)(8) of the TEXAS DISCIPLINARY 8.01(b) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Sumrall Complaint**

On or about September 13, 1998, Wanda Sumrall (hereinafter referred to as "Sumrall") sustained injuries as a result of an accident at Brighton Manor Apartments. On or about October 1, 1998, Sumrall hired Respondent on a contingency fee basis for representation on a personal injury case. Pursuant to the terms of the contract, Respondent would receive twenty-five percent (25%) of total compensation plus expenses incurred during representation. Respondent, however, failed to timely file Sumrall's case before the expiration of the two (2) year statute of limitations thereby causing his client financial harm. Respondent failed to return Sumrall's telephone calls, respond to her letters and was unavailable for two (2) scheduled appointments.

On or about March 1, 2001, Respondent was served with notice of the complaint filed against him by Sumrall. Said notice required Respondent to provide a written response to the allegations of professional misconduct within thirty (30) days of receipt of same.

On May 7, 2001, Respondent was served with a subpoena that commanded him to produce certain documents relating to his representation of Sumrall and appear at the Investigatory hearing on June 6, 2001. Respondent failed to appear and failed to produce the documents requested.

Respondent's conduct as set forth in the Sumrall complaint violates Rules 1.01(b)(1), 1.01(b)(2), 1.01(c), 1.03(a)(b), 1.04(a), 1.15(d), 8.01(b) and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

### **Yaniec Complaint**

On or about August 5, 2000, John Yaniec (hereinafter referred to as "Yaniec") retained David H. Falk (hereinafter referred to as "Respondent") to write a demand letter and handle a dispute regarding a Real Estate matter. Respondent

requested and received a One Thousand Dollars and 00/100 (\$1,000.00) retainer. Yaniec called the Respondent's office two weeks later to inquire about the demand letter. Respondent informed Yaniec the letter had been mailed. Yaniec never received a copy of the letter or a return call for his numerous telephone inquiries. The Respondent failed to keep Yaniec informed of the case status.

On December 22, 2000, Respondent was served with proper notice of the complaint filed against him by Yaniec. Said notice required Respondent to provide a written response to the written allegations of professional misconduct within thirty (30) days of receipt of same. The Respondent failed to respond.

Respondent's conduct as set forth in the Stevens complaint violates Rules 1.03(a)(b), 8.01(b), 8.04(a)(3) and 8.04(a)(8) of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

#### IV. CONDITIONS FOR REINSTATEMENT

Falk should be ordered to pay restitution to all the named Complainants as follows:

<u>Case Number</u>	<u>Recipient of Restitution</u>	<u>Restitution</u>
H0059920754	Maria Ayala	\$ 250.00
H0100024476	Brian M. Chipman	700.00
H0020125273	Susan Collins	800.00
H0030125395	Fidel DeLeon	750.00
H0040125559	Theodore A. Denzler	500.00
H0060126062	John M. Fitzpatrick	18,418.75
H0040125567	Travis D. Gibb	1,500.00
H0030125530	Cole S. Hawkins	500.00
H0100024551	Dennelle Lyon	5,000.00
H0070023815	Helen Miller	1,400.00
H0119921955	Randy Schattel	2,100.00
H0070023820	Catherine Stevens	500.00
H0020125133	Fred Stewart	<u>25,750.00</u>
<b>Total Restitution</b>		<b>\$59,168.75</b>

(These restitution amounts should be an absolute condition precedent to any reinstatement.)

Payment of the restitution to the Complainants and Court Costs must be satisfied as an absolute condition precedent to any reinstatement.

**Restitution and Court Costs Not Dischargeable in Bankruptcy**

It is further ORDERED that any restitution and court costs ordered herein are part of the sanction for professional misconduct and result from the regulation of Respondent's law license by the State Bar of Texas and the Supreme Court of Texas, through the Texas Disciplinary Rules of Professional Conduct, and are intended by the parties to be non-dischargeable in bankruptcy.

**Federal Proceedings**

Any cause of action currently pending or brought by the United States Bankruptcy Trustee, the United State District Court for the Southern District of Texas, the United States Attorney's Office related to all Complainant's complaints should be considered for purposes of reinstatement. Further, compliance with all terms and conditions as set forth in any final judgment or settlement agreement entered as a result of any such cause of action should be an absolute condition precedent to any reinstatement.

**State Proceedings**

Any cause of action currently pending or brought by the District Attorney's Office related to all Complainants' complaints should be considered for purposes of reinstatement. Further, compliance with all terms and conditions as set forth in any final judgment or settlement agreement entered as a result of any such cause of action should be an absolute condition precedent to any reinstatement.

V.

**WHEREFORE**, the Chief Disciplinary Counsel for the STATE BAR OF TEXAS moves the Court to accept the resignation in lieu of discipline and grant the *Motion for Acceptance of Resignation as Attorney and Counselor at Law* filed by David Harper Falk.

Respectfully submitted,

**DAWN MILLER**  
Chief Disciplinary Counsel

**STATE BAR OF TEXAS**  
Office of the Chief Disciplinary Counsel  
1111 Fannin, Suite 1370  
Houston, Texas 77002  
Phone: (713) 759-6931  
Fax No.: (713) 752-2158

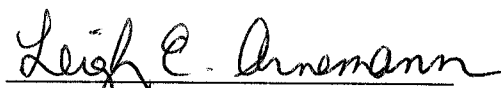


**LEIGH E. ARNEMANN**  
Assistant Disciplinary Counsel  
State Bar No. 24025229

**ATTORNEYS FOR PETITIONER,  
COMMISSION FOR LAWYER DISCIPLINE**

**CERTIFICATE OF SERVICE**

I certify that on the 1 day of March, 2002, a true and correct copy of the RESPONSE OF THE CHIEF DISCIPLINARY COUNSEL OF THE STATE BAR OF TEXAS TO MOTION FOR RESIGNATION IN LIEU OF DISCIPLINE OF DAVID HARPER FALK was served to David Harper Falk by personal service and by and through his attorney of record, Mr. Martin A. Shellist by certified mail, return receipt requested, postage prepaid.

  
Leigh E. Arnemann  
Leigh E. Arnemann

# STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

March 6, 2002

**Via Certified Mail No.**

**7001 2510 0001 6231 2397**

**Return Receipt Requested**

Mr. John Adams, Clerk

The Supreme Court of Texas

Supreme Court Building

201 West 14<sup>th</sup> Street, Room 104

Austin, Texas 78701

**Re: Resignation of David Harper Falk, Bar Card No. 00784034**

Dear Mr. Adams:

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

Original and one (1) copy of the proposed order for review and entry by the Court accepting the resignation of David Harper Falk as Attorney and Counselor at Law.

Upon entry of the Order by the Court, please transmit a true and correct copy of the same to the parties listed on the next page of this correspondence. Thank you for assistance in this matter. If you have any questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Leigh E. Arnemann".

Leigh E. Arnemann

Assistant Disciplinary Counsel

LEA/rr

Enclosure

Mr. John Adams, Clerk  
The Supreme Court of Texas  
March 6, 2002  
PAGE 2

**Certified Mail No.**  
**7001 2510 0001 6231 2380**  
**Return Receipt Requested**  
David H. Falk  
c/o Martin Shellist  
Attorney-at-Law  
1900 West Loop South, Suite 1910  
Houston, Texas 77027

**Via Regular Mail**  
David H. Falk  
711 W. Bay Area Blvd.  
Suite 408  
Webster, Texas 77598



# STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

March 1, 2002

**Overnight Delivery**  
**Via Airborne Express**  
**Air Bill No.1354092563**

John Adams, Clerk  
The Supreme Court of Texas  
Supreme Court Building  
201 West 14<sup>th</sup> Street, Room 104  
Austin, Texas 78701

**Re: Resignation of David Harper Falk, Bar Card No. 00784034**

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 David Harper Falk, dated February 1, 2002;
- (2) Response of Chief Disciplinary Counsel of Motion for Acceptance of Resignation as Attorney and Counselor at Law of David Harper Falk; and
- (3) Original and one (1) copy of proposed Order for review and entry by the Court accepting the resignation of David Harper Falk as Attorney and Counselor at Law.

Upon entry of the Order by the Court, please transmit a true and correct copy of the same to the parties listed below.

Sincerely,

A handwritten signature in cursive script that reads "Leigh E. Arnemann".

Leigh E. Arnemann  
Assistant Disciplinary Counsel

LEA/rr  
Enclosure

1111 FANNIN, SUITE 1370, HOUSTON, TEXAS 77002, (713) 759-6931

John Adams, Clerk  
The Supreme Court of Texas  
March 1, 2002  
PAGE 2

**Certified Mail No.**  
**7001 2510 0001 6231 2311**  
**Return Receipt Requested**  
The Honorable Brady G. Elliott  
Judge, 268<sup>th</sup> Judicial District Court  
309 So. Fourth St., Suite 427  
Richmond, Texas 77469

**Certified Mail No.**  
**7001 2510 0001 6231 2335**  
**Return Receipt Requested**  
David H. Falk  
c/o Martin Shellist  
Attorney-at-Law  
1900 West Loop South, Suite 1910  
Houston, Texas 77027

**Certified Mail No.**  
**7001 2510 0001 6230 2626**  
**Return Receipt Requested**  
David H. Falk  
711 W. Bay Area Blvd.  
Suite 408  
Webster, Texas 77598