

**ORDER OF THE SUPREME COURT OF TEXAS**

Misc. Docket No. 00- 9100

Appointment of a District Judge to Preside  
in a State Bar Disciplinary Action

The Supreme Court of Texas hereby appoints the Honorable Joe Bob Golden, Judge of the 1st District Court, Smith County, Texas, to preside in the Disciplinary Action styled:


**The Commission for Lawyer Discipline v. Richard A. Fielder**

to be filed in a District Court of Caldwell County, Texas.

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Caldwell County, Texas, a copy of this Order and of the Disciplinary Petition for filing and service pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

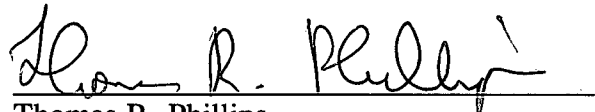
As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City  
Austin, this 20<sup>th</sup> day of June, 2000.

  
JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 00-9100, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 21 day of June, 2000.

A handwritten signature in cursive script, reading "Thomas R. Phillips", written over a horizontal line.

Thomas R. Phillips  
Chief Justice

COPY

CAUSE NO. \_\_\_\_\_

COMMISSION FOR LAWYER  
DISCIPLINE

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF  
  
CALDWELL COUNTY, TEXAS  
  
\_\_\_\_\_ JUDICIAL DISTRICT

V.

RICHARD A. FIELDER

**DISCIPLINARY PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas (hereinafter called "Petitioner"), complaining of Respondent, RICHARD A. FIELDER, State Bar Card No. 06971000 (hereinafter called "Respondent"), showing the Court:

**I.**

Pursuant to Rule 190.1, Texas Rules of Civil Procedure, discovery in this case is governed by Discovery Control Plan -- Level 2, as provided in Rule 190.3, T.R.C.P.

**II.**

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex. Gov't. Code Ann. §81.001, et seq. (Vernon 1988), the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. The complaint which forms the basis of the Disciplinary Petition was filed on or after March 26, 1999.

**III.**

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent is a resident of and has his principal place of practice in Lockhart, Caldwell County, Texas. An officer may serve citation on Respondent at his office address located at 102 East

Market Street, Lockhart, Caldwell County, Texas 78644.

#### IV.

#### The Simms Complaint

In March, 1998, the Respondent undertook representation of Quenton Simms and Charles Simms in defense of a criminal charge of aggravated assault. Respondent received approximately \$15,000.00 as a retainer fee for Charles Simms' representation and approximately \$5,000.00 as a retainer fee for Quenton Simms' representation. These amounts were to be applied toward Respondents' costs and fees of \$225.00 per hour, as billed on a monthly basis, if the monthly statements were not timely paid. Any unused portion of the retainer fee was to be returned to the Simms at the completion of the matter.

Respondent deposited the fees received into a general account of his law firm, rather than into an account separate from his own property designated as a "trust" or "escrow" account.

Quenton and Charles Simms were both no-billed by the grand jury in October of 1998. Respondent failed to meet with the two Simms or to explain the status of their case until confronted by the two at his office on December 29, 1998. At that time Respondent provided a letter stating that he would report on the status of the criminal charges, as well as to provide a refund of the unused portion of their retainers, within two weeks. Respondent failed to provide either a status report or a refund.

A letter demanding the refund of unearned fees was sent to Respondent on April 15, 1999. Respondent failed to respond to the letter or to provide the refund.

The Simms filed their grievance against Respondent with the State Bar of Texas in March of 1999. Respondent was served with notice of the grievance on April 28, 1999. Respondent finally

provided a partial refund of the Simms' retainers in letters dated July 8, 1999 (one of which letters was misaddressed and not ever received by the client), barely one (1) week before the Grievance Committee hearing on this matter on July 15, 1999, and more than eight (8) months after the Simms had been no-billed.

## V.

By his conduct as alleged above, Respondent has violated the following Disciplinary Rules of Professional Conduct in violation of Rule 8.04(a)(1): Rule 1.01(b)(1) [neglecting a legal matter entrusted to the lawyer]; Rule 1.01(b)(2) [frequently failed to carry out completely the obligations that the lawyer owes to a client]; Rule 1.03(a) [keep a client reasonably informed about the status of a matter]; Rule 1.14(a) [holding funds belonging in whole or in part to clients separate from the lawyer's own property/kept in a separate account designated as a "trust" or "escrow" account]; Rule 1.14(b) [promptly delivering to the client any funds or other property that the client is entitled to receive]; and Rule 1.15 (d) [upon termination of representation a lawyer shall take steps reasonably practicable to protect a clients interests, such as refunding any advance payments of fee that have not been earned].

## VI.

### Prior Discipline

By Agreed Grievance Committee Judgment dated July 15, 1991, Respondent was publicly reprimanded for communicating with a party he knew or should have known was represented by a lawyer without the prior consent of the lawyer representing the party, in violation of Disciplinary Rule 7-104 (A)(1) in effect at the time of Respondent's conduct.

By Agreed Judgment dated January 11, 1999, in the 22nd Judicial District Court of Caldwell County, Texas, Respondent was placed on 48-month probated suspension for failing to keep a client reasonably informed about the status of a matter, in violation of Disciplinary Rule 1.03(a); failing to refund unearned advance payment of fees, in violation of Disciplinary Rule 1.15(d); and failing to hold funds belonging in whole or in part to clients or third persons separate from the lawyer's own property, in violation of Disciplinary Rule 1.14(a).

**P R A Y E R**

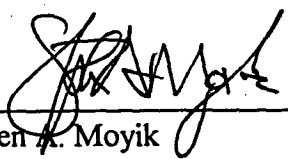
WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined as the facts shall warrant; and that Petitioner have such other and further relief to which entitled, including costs of court and attorneys fees.

Respectfully submitted,

**Dawn Miller**  
Chief Disciplinary Counsel

**Stephen A. Moyik**  
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel  
STATE BAR OF TEXAS  
P.O. Box 12487, Capitol Station  
Austin, Texas 78711-2487  
Telephone: (512) 463-1463  
Facsimile: (512) 477-4607

  
\_\_\_\_\_  
Stephen A. Moyik  
State Bar Card No. 14614300  
Attorneys for Petitioner

# STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

April 10, 2000

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

Re: Commission for Lawyer Discipline v. Richard A. Fielder

Dear Mr. Adams:

Enclosed please find an original and two (2) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Richard A. Fielder. Mr. Fielder has designated Caldwell County, Texas, as his principal place of practice. Request is hereby made that the Court appoint an active District Judge who does not reside in the Administrative Judicial Region in which Respondent resides to preside in this case. Upon appointment, request is made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Richard A. Fielder  
Market Street Office Building  
102 East Market Street  
Lockhart, Caldwell County, Texas

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure. If not, I would respectfully request that an alternate appointment be made.

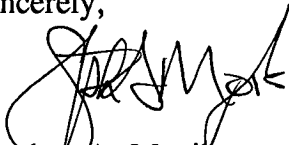
Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Caldwell County, Texas, with the request that the suit be filed, service be obtained, and a file-marked copy of the petition be returned to the undersigned.

Mr. John Adams  
April 10, 2000  
Page Two

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Caldwell County, Texas, and a return envelope to be sent to the District Clerk of Caldwell County, Texas, for the Clerk's use in returning a file-marked copy of the Petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen A. Moyik', written over a printed name.

Stephen A. Moyik  
Assistant Disciplinary Counsel

SAM:aa\general\dist\fielder\corr\adams4.3

Enclosures





# The Supreme Court of Texas

CHIEF JUSTICE  
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711  
Telephone: 512/463-1312 Facsimile: 512/463-1365

CLERK  
JOHN T. ADAMS

JUSTICES  
NATHAN L. HECHT  
CRAIG T. ENOCH  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON  
HARRIET O'NEILL  
ALBERTO R. GONZALES

EXECUTIVE ASSISTANT  
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST  
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT  
NADINE SCHNEIDER

JUN 27 2000

Mr. Stephen A. Moyik  
Assistant General Counsel, State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711-2487

Mr. Richard A. Fielder  
Market Street Office Building  
102 East Market Street  
Lockhart, Texas 78644

Dear Mr. Moyik and Mr. Fielder:

Pursuant to Rule 3.02 of the Texas Rules of Disciplinary Procedure, I hereby notify you that the Supreme Court of Texas has appointed the Honorable Joe Bob Golden, Judge of the 1<sup>st</sup> District Court, Jasper, Texas to preside in

*Commission for Lawyer Discipline v. Richard A. Fielder*

Sincerely,

SIGNED

John T. Adams  
Clerk



## The Supreme Court of Texas

CHIEF JUSTICE  
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711  
Telephone: 512/463-1312 Facsimile: 512/463-1365

CLERK  
JOHN T. ADAMS

JUSTICES  
NATHAN L. HECHT  
CRAIG T. ENOCH  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON  
HARRIET O'NEILL  
ALBERTO R. GONZALES

EXECUTIVE ASSISTANT  
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST  
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT  
NADINE SCHNEIDER

JUN 27 2000

Honorable Joe Bob Golden  
Judge, 1<sup>st</sup> District Court  
P.O. Box 1290  
Jasper, Texas 75951

Dear Judge Golden:

We enclose for your information a copy of the order of assignment, a copy of the Disciplinary Action, a copy of the notification letter to Mr. Fielder and Mr. Moyik, and a copy of the letter to the District Clerk of Caldwell County.

We then recommend that, four or five weeks after receipt of this letter, you or your coordinator contact the presiding judge or the District Clerk of Caldwell County to find out the district court to which this disciplinary case has been assigned. We then recommend that, either before or immediately after you set the date for trial, the judge or coordinator of that court be contacted to reserve a courtroom, provide for a court reporter, etc. Finally, you should contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (210-379-8556) to obtain information on lodging, allowable expenses, and claims forms for your expenses incident to presiding over this disciplinary case.

Sincerely,

**SIGNED**

John T. Adams  
Clerk



# The Supreme Court of Texas

CHIEF JUSTICE  
THOMAS R. PHILLIPS

JUSTICES  
NATHAN L. HECHT  
CRAIG T. ENOCH  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON  
HARRIET O'NEILL  
ALBERTO R. GONZALES

201 West 14th Street Post Office Box 12248 Austin TX 78711  
Telephone: 512/463-1312 Facsimile: 512/463-1365

JUN 27 2000

CLERK  
JOHN T. ADAMS

EXECUTIVE ASSISTANT  
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST  
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT  
NADINE SCHNEIDER

The Honorable Emma Jean Schulle  
District Clerk of Caldwell County  
P.O. Box 739  
Lockhart, Texas 78644

Dear Ms. Schulle:

Pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure, I am sending for filing State Bar of Texas Disciplinary Action styled: *The Commission for Lawyer Discipline v. Richard A. Fielder*, and a copy of the Supreme Court's order appointing the Honorable Joe Bob Golden, Judge of the 1<sup>st</sup> District Court, Jasper, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Honorable Joe Bob Golden  
Mr. Richard A. Fielder  
Mr. Stephen A. Moyik