

**ORDER OF THE SUPREME COURT OF TEXAS**

Misc. Docket No. 01-----**9169**

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

The Supreme Court of Texas hereby appoints the Honorable Jerry Calhoon, Judge of the 349th District Court of Anderson County, Texas, to preside in the Disciplinary Action styled


**The Commission for Lawyer Discipline v. H. Paul Smith**

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Bexar County, Texas, a copy of the Disciplinary petition and this Order 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  
Of Austin, this 10<sup>th</sup> day of October, 2001.

  
JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9169, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 9 day of October, 2001.

  
Thomas R. Phillips  
Chief Justice

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

COMMISSION FOR LAWYER  
DISCIPLINE

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IN THE DISTRICT COURT OF

V.

BEXAR COUNTY, TEXAS

H. PAUL SMITH

\_\_\_\_\_ JUDICIAL DISTRICT

**ORIGINAL DISCIPLINARY PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Petitioner, COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas, complaining of Respondent, H. PAUL SMITH, and in support thereof would respectfully show the Court the following:

**Parties**

Petitioner is the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas. Respondent, H. PAUL SMITH, Texas State Bar Number 18603200, is an attorney licensed to practice law in the State of Texas and is a member of the State Bar of Texas.

Respondent is a resident of Bexar County, Texas. Respondent may be served with citation and a copy of this petition at his principal place of business located at 825 S. St. Mary's Street, San Antonio, Texas 78205.

**Venue**

Respondent's principal place of law practice is in Bexar County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Bexar County, Texas.

## **Discovery Level Designation**

### **I.**

Pursuant to Tex.R.Civ.P. 190.1, Petitioner designates that discovery in this action should proceed pursuant to Level 2 (Tex.R.Civ.P. 190.3).

## **Professional Misconduct**

### **2.**

Petitioner brings this disciplinary action pursuant to State Bar Act, Tex. Gov't. Code Ann., Sec. 81.001, *et seq.* (Vernon 1988), the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. The complaints which form the basis of this action were filed with the State Bar of Texas as follows:

Dallas & Beverly Darling  
Robert Joseph Guinee

September 12, 2000  
November 9, 2000

The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

### **Count I -- Dallas & Beverly Darling**

### **3.**

On or about March 16, 2000, Complainants hired Respondent to represent them in a non-contested step-parent adoption. Complainants paid Respondent \$700.00, as agreed, to complete the uncontested adoption. Respondent was to file an adoption petition in the matter of the step-parent adoption of Aaron and Brock Darling. The adopting step-parent was to be Dallas Darling.

### **4.**

Respondent, after agreeing to represent the Complainants and after receiving the agreed fee of \$700.00, failed to file the adoption petition or proceed forward with any action with respect to the adoption he was hired to complete. Respondent failed to arrange for the social worker

interview as required. Respondent failed to set the matter for a hearing.

**5.**

Respondent failed to keep Complainants reasonably informed about the status of the adoption and failed to comply with their reasonable requests for information. From on or about March 30, 2000 to September 12, 2000, Respondent failed to return several telephone calls from the Complainants requesting the status of their case.

**6.**

Respondent failed to promptly refund the unearned fee as requested and failed to promptly provide an accounting for any portion of the fee Respondent alleges he has earned.

**7.**

Respondent misrepresented the status of the case to his clients on several occasions by telling them he had arranged for a social worker to interview them when in fact he had not made the arrangements. Respondent further misled the Complainants by telling them the adoption would be complete when in fact he had not filed the adoption petition.

**8.**

The conduct of Respondent described above constitutes a violation of the following Texas Disciplinary Rules of Professional Conduct:

**Rule 1.01(b)(1):** In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

**Rule 1.01(b)(2):** In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

**Rule 1.03(a):** A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

**Count II - Robert Joseph Guinee**

**9.**

Beginning in December 1999, Respondent agreed to represent, pro bono, various San Juan Court tenants who are parishioners in the Potters Home Ministries mission in which Mr. Guinee serves as pastor. Complainant agreed to provide the Respondent with the money needed to post cash bonds for the tenants Respondent represented. Respondent requested money for bonds from Complainant on eight (8) occasions beginning on December 8, 1999 and ending on July 9, 2000. Respondent was to return the bond money at the conclusion of the cases. Respondent received a total of \$16,890.00 from Complainant to be used for the cash bonds.

**10.**

After the conclusion of the cases for which Respondent received money to post bonds, Respondent failed to refund or provide an accounting for the monies received from Complainant though requested to do so.

**11.**

Respondent misrepresented the basis for securing the monies from the Complainant. Respondent did not use all the money secured to post bonds.

**12.**

On December 9, 2000, Respondent misrepresented to Complainant that he would return all the money by December 13, 2000.

**13.**

Respondent misrepresented to Complainant that he needed \$6,000.00 for a cash bond for Rose Ann Martinez. On January 5, 2000, Complainant withdrew \$6,000.00 from his account and gave it to Respondent for the posting of the bond. On January 6, 2000, Respondent used \$500.00 of the \$6,000.00 to post bond. Upon discovering only \$500.00 was used, Complainant asked Respondent to return the remaining \$5,500.00. Despite numerous requests, Respondent has failed to return the money or provide an accounting of how it was used. Further, Respondent failed to appear for Rose Ann Martinez at her hearing on November 1, 2000.

**14.**

Respondent knowingly made false statements of material fact to the investigatory panel on April 19, 2001 when he agreed to return the money to the Complainant. Respondent to date has not returned the money to the Complainant.

**15.**

On November 29, 2000, Respondent received notice by certified mail, return receipt requested of the complaint filed against him by Complainant and was required to respond in writing to the State Bar of Texas within thirty (30) days after receipt of the notice. Respondent knowingly failed to timely respond to this request from the Office of the Chief Disciplinary Counsel.

**16.**

The conduct of Respondent described above constitutes a violation of the following Texas Disciplinary Rules of Professional Conduct:

**Rule 1.01(b)(1)** -- In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

**Rule 1.03(a)** -- A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

**Rule 1.14(b)** -- Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

**Rule 8.04(a)(3)** -- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

**Rule 8.04(a)(8)** -- A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's Office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other and further relief to which it is entitled, including costs of court, restitution, and reasonable attorney fees.




Respectfully submitted,

Dawn Miller  
Chief Disciplinary Counsel

Robert E. Kaszczuk  
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel  
State Bar of Texas  
425 Soledad, Suite 300  
San Antonio, Texas 78205  
Telephone: (210) 271-7881  
Telecopier: (210) 271-9642

  
ROBERT E. KASZCZUK  
State Bar No. 11106300

ATTORNEYS FOR PETITIONER

# STATE BAR OF TEXAS



Regional Office  
Soledad Plaza West  
425 Soledad, Suite 300  
San Antonio, Texas 78205  
(210) 271-7881  
FAX: (210) 271-9642

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
#7000 1670 0005 9695 8746

August 13, 2001

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

RE: Commission for Lawyer Discipline v. H. Paul Smith

Dear Mr. Adams:

Enclosed please find an original and three (3) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against H. Paul Smith. Mr. Smith has designated **Bexar County** 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:

H. Paul Smith  
825 S. St. Mary's Street  
San Antonio, Texas 78205

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 as 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 three (3) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Bexar County, Texas, with the request that the suit be filed, service be obtained, and a filemarked copy of the petition returned to the undersigned.

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

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Kaszczuk".

Robert E. Kaszczuk  
Assistant Disciplinary Counsel

Enclosures

REK/apr



# 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  
DEBORAH G. HANKINSON  
HARRIET O'NEILL  
WALLACE B. JEFFERSON  
XAVIER RODRIGUEZ

EXECUTIVE ASSISTANT  
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST  
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT  
NADINE SCHNEIDER

OCT 12 2001

Honorable Jerry Calhoon  
Judge, 349<sup>th</sup> District Court  
500 N. Church Street  
Palestine, Texas 75801

Dear Judge Calhoon:

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. Smith and Mr. Kaszczuk, and a copy of the letter to the District Clerk of Bexar County.

It is recommended that, six to eight weeks after receipt of this letter, you or your coordinator contact the Bexar County Administrative Office (210-335-2300) to find out the district court to which this disciplinary case has been assigned, names and addresses of counsel, etc. We then recommend that, either before or immediately after you set the case for trial, you contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (210-769-3519) to reserve a courtroom, obtain a court reporter, obtain 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

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JIM HUTCHESON

ADMINISTRATIVE ASSISTANT  
NADINE SCHNEIDER

OCT 12 2001

The Honorable Reagan Greer  
District Clerk of Bexar County  
100 Dolorosa Street  
San Antonio, Texas 78205-1205

Dear Mr. Greer:

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. H. Paul Smith*, and a copy of the Supreme Court's order appointing the Honorable Jerry Calhoon, Judge of the 349<sup>th</sup> District Court, Palestine, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Honorable Jerry Calhoon  
Mr. Robert E. Kaszczuk  
Mr. H. Paul Smith



# The Supreme Court of Texas

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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NADINE SCHNEIDER

OCT 12 2001

Mr. Robert E. Kaszczuk  
Assistant General Counsel, State Bar of Texas  
425 Soledad, Suite 300  
San Antonio, Texas 78205

Mr. H. Paul Smith  
825 s. St. Mary's Street  
San Antonio, Texas 78205

Dear Mr. Kaszczuk and Mr. Smith:

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 Jerry Calhoon, Judge of the 349<sup>th</sup> District Court, Palestine, Texas to preside in

*Commission for Lawyer Discipline v. H. Paul Smith*

Sincerely,

**SIGNED**

John T. Adams  
Clerk