



**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

IN THE MATTER OF	§	
CAROLYN BARNES	§	CAUSE NO. 52457
STATE BAR CARD NO. 01761550	§	

INTERLOCUTORY ORDER OF SUSPENSION

On the 26th day of July 2013, the above-styled and numbered compulsory disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner Commission for Lawyer Discipline of the State Bar of Texas appeared by attorney and announced ready. Respondent, Carolyn Barnes, although duly cited to appear and having notice of the hearing, failed to answer or appear. The issues before the Board were whether Respondent Barnes had been convicted of an Intentional Crime, whether she was the same person as the defendant in the criminal case, and whether she had appealed the criminal conviction. Tex. R. of Disciplinary P. ("TRDP") 8.02-8.04.

Following the hearing, the Board asked the parties to brief whether the crime of Aggravated Assault with a Deadly Weapon under Tex. Penal Code § 22.02(a)(2) and § 22.01(a)(2) is an Intentional and Serious Crime for purposes of compulsory discipline pursuant to TRDP Part VIII. The Commission filed its brief on August 19, 2013. Respondent filed her Response to Petition for Compulsory Discipline, Motion to Extend Time or Motion for New Trial, and her Brief on August 21, 2013.

Respondent's Motion to Extend Time or Motion for New Trial

Respondent Barnes requests additional time to file a verified response to the Petition for Compulsory Discipline, offer additional evidence, and to fully brief the issues. She provisionally asked for a New Trial in the event that the Board decided against her on the issues before receiving her response and brief. Respondent admits in her pleadings that she is the same person as the defendant in the criminal case, that she has been adjudicated guilty of the crime of Aggravated Assault with a Deadly Weapon (while retaining all rights to challenge that judgment in all respects on appeal), and that she was served with the Petition and hearing notice in this cause.

Therefore, the Board finds that the only question remaining to be decided is whether the crime for which Respondent was convicted is an Intentional Crime, which is a question of law. *In re Lock*, 54 S.W.3d 305, 307 (Tex. 2001); *In re Humphreys*, 880 S.W.2d 402, 407 (Tex. 1994); *State Bar of Texas v. Heard*, 603 S.W.2d 307, 309 (Tex. 1980). After considering the briefs submitted by both parties, the Board has resolved that question by finding that Respondent has been convicted of an Intentional Crime, as set out below. Therefore, no evidentiary issues remain warranting additional time or hearing.

Respondent's Motion to Extend Time or Motion for New Trial is DENIED.

Findings and Conclusions

All issues of fact as well as all questions of law were submitted to the Board of Disciplinary Appeals for determination. After considering the pleadings of both parties on file, the evidence and briefs, and having heard the argument of counsel, the Board of Disciplinary Appeals makes the following findings and conclusions.

Findings of Fact. The Board of Disciplinary Appeals finds that:

- (1) Respondent, Carolyn Barnes, whose State Bar Card number is 01761550, is licensed by the Supreme Court of Texas to practice law and is currently authorized to practice law in the State of Texas.
- (2) On or about September 2, 2010, Respondent was charged by Indictment with

intentionally or knowingly threatened Kathleen Gittel with imminent bodily injury and used or exhibited a deadly weapon, namely, a firearm, during the commission of the assault

in Case No. 10-663-K368, styled *The State of Texas v. Carolyn Barnes*, in the 368th Judicial District Court of Williamson County, Texas.
- (3) On or about June 11, 2013, a Judgment of Conviction by Jury; Sentence by Jury to Prison in TDCJ was entered in Case No. 10-663-K368, styled *The State of Texas v. Carolyn Barnes*, in the 368th Judicial District Court of Williamson County, Texas, wherein Respondent was found guilty of Aggravated Assault with a Deadly Weapon while using or exhibiting a firearm, a Second Degree Felony, in violation of Texas Penal Code § 22.02(a)(2) as alleged in the indictment.
- (4) Respondent was sentenced to confinement for three (3) years in the Institutional Division of the Texas Department of Criminal Justice with six hundred ninety (690) days credited to her sentence and was further ordered to pay court costs in the amount of \$389.00.
- (5) Respondent, Carolyn Barnes, admits in her pleadings that she is the same person as the Carolyn Barnes who is the subject of the Barnes criminal case described above.
- (6) Respondent admits in her pleadings that she was personally served with the Petition for Compulsory Discipline.
- (7) A sworn affidavit of service filed with the Board on July 3, 2013 states that Respondent was personally served with the petition and hearing notice in this cause by a duly authorized process server on June 24, 2013.
- (8) The jury in the Barnes criminal case found that
 - (a) Respondent committed the assault intentionally or knowingly,
 - (b) Respondent threatened another with imminent bodily injury, and

- (c) Respondent used or exhibited a deadly weapon, namely, a firearm, during the commission of the assault as alleged in the indictment.
- (9) Respondent, in her pleadings, admits that she has been convicted of Aggravated Assault with a Deadly Weapon while maintaining her rights to challenge the judgment on appeal.
- (10) Respondent admits that she has appealed the criminal conviction.

Conclusions of Law. Based upon the foregoing findings of facts the Board of Disciplinary Appeals makes the following conclusions of law:

- (1) This Board has jurisdiction to hear and determine this matter. TRDP 7.08(G).
- (2) The crime of felony Aggravated Assault with a Deadly Weapon pursuant to Tex. Penal Code § 22.02(a)(2) and § 22.01(a)(2), that is, intentionally or knowingly threatening another with imminent bodily injury and using or exhibiting a firearm during the commission of the assault, is an Intentional Crime because it is a Serious Crime requiring proof of knowledge or intent as an essential element. TRDP 1.06T.
- (3) The crime of felony Aggravated Assault with a Deadly Weapon pursuant to Tex. Penal Code § 22.02(a)(2) and § 22.01(a)(2) is a Serious Crime because it is a felony involving moral turpitude. TRDP 1.06Z.
- (4) Whether a particular crime involves moral turpitude is a question of law. *In re Lock*, 54 S.W.3d 305, 307 (Tex. 2001); *In re Humphreys*, 880 S.W.2d 402, 407 (Tex. 1994); *State Bar of Texas v. Heard*, 603 S.W.2d 307, 309 (Tex. 1980).
- (5) Crimes involving “moral turpitude for purposes of attorney discipline include crimes of deliberate violence. *In re Lock* 54 S.W.3d at 308; *In re Humphreys*, 880 S.W.2d 402, 408 (Tex. 1994).
- (6) Intentionally or knowingly threatening another with imminent bodily injury while using or exhibiting a firearm during the commission of the assault is a crime of deliberate violence.
- (7) Having been found guilty and convicted of an Intentional and Serious Crime and having appealed such conviction, Respondent, Carolyn Barnes, should

have her license to practice law in Texas suspended during the appeal of her criminal conviction. TRDP 8.04.

- (8) The Board retains jurisdiction to enter a final judgment in this matter when the criminal appeal is final. TRDP 8.05; *In re Mercier*, 242 S.W.3d 46 (Tex. 2007) (per curiam).

Interlocutory Suspension

Having found that Respondent has been convicted of an Intentional Crime and that the conviction is being appealed, it is, accordingly, ORDERED, ADJUDGED, and DECREED that Respondent, Carolyn Barnes, State Bar Card No. 01761550, is hereby SUSPENDED from the practice of law in the State of Texas effective immediately upon entry of this order and continuing hereafter until further order of this Board. TRDP 8.04.

It is further ORDERED, ADJUDGED and DECREED that Respondent, Carolyn Barnes, during said suspension is hereby prohibited, effective immediately, from practicing law in Texas, holding herself out as an attorney at law, performing any legal service for others, accepting any fee directly or indirectly for legal services not completed before the date of this order, appearing as counsel in any proceeding in any Texas court or before any Texas administrative body, or holding herself out to others or using her name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further ORDERED that Respondent, Carolyn Barnes, shall notify in writing, no later than thirty (30) days from the date of this Order, each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent, Carolyn Barnes, has any legal matter pending, if any, of her suspension, of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing

in that court. Respondent is also ORDERED to mail copies of all such notifications to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further ORDERED that Respondent, Carolyn Barnes, shall immediately notify each of her current clients and opposing counsel, if any, in writing, of her suspension. In addition to such notification, Respondent is ORDERED to return all files, papers, unearned fees paid in advance, and all other monies and properties which are in her possession but which belong to current or former clients with active cases pending, if any, to those respective clients or former clients with active cases pending within thirty (30) days after the date of this Order. Respondent is further ORDERED to file with the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, within the same thirty (30) days, an affidavit stating either (a) that all current clients and opposing counsel have been notified of her suspension and that all files, papers, unearned fees paid in advance, and all other monies and properties belonging to clients and former clients with active cases pending have been returned as ordered herein or (b) that Respondent has no current clients, files, or papers, and that any unearned fees paid in advance or other monies or properties belonging to clients have previously been returned to the appropriate client. If Respondent is unable to return any file, papers, money or other property to any client or former client with active cases pending, Respondent's affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of her inability to return to said client any file, paper, money or other property. Respondent is also ORDERED to mail a copy of all notification letters to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas

78711.


It is further ORDERED that Respondent, Carolyn Barnes, immediately surrender her Texas law license and permanent State Bar Card to the Statewide Compliance Monitor, Office of the Chief Disciplinary, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

It is further ORDERED that this Order is interlocutory and that the Board retains jurisdiction to enter a final judgment when the appeal of the criminal conviction is final.

It is further ORDERED that Respondent shall promptly notify the Board and the State Bar of Texas Chief Disciplinary Counsel when the appeal of the criminal conviction is final.

It is further ORDERED that the Chief Disciplinary Counsel of the State Bar of Texas shall monitor the status of the appeal of the criminal conviction at least quarterly and promptly file an appropriate motion for entry of final judgment with the Board or notify the Board that the criminal conviction was overturned when the appeal of the criminal conviction is final.

Signed this 23rd day of August 2013.



CHAIR PRESIDING