



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

**IN THE MATTER OF
CAROLYN BARNES
STATE BAR CARD NO. 01761550**

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§
§

CAUSE NO. 52457

JUDGMENT OF DISBARMENT

Board member George Taylor took no part in consideration of this case.

Pretrial Matters

Respondent's Motion to Recuse and Supplemental Motion to Recuse are denied. David N. Kitner, John J. "Mike" McKetta, and David M. González did not participate in consideration of these motions.

Respondent's Motion to Dismiss and/or Transfer and challenge to jurisdiction are denied. The Legislature's 1991 amendments to the State Bar Act, including Tex. Gov't Code § 82.078(d) (requiring all attorneys to be subject to the Texas Rules of Disciplinary Procedure), make clear the Legislature's intent that Tex. Rules Disciplinary P. R. 8.05 ("TRDP") governs compulsory discipline proceedings rather than the earlier 1987 statute relied upon by Respondent.

Respondent's Motion to Dismiss pursuant to Tex. Civ. Prac. & Rem. Code Chap. 27 is denied. First, any such motion was required to be filed within 60 days after service of the petition on June 24, 2013. Respondent failed to timely file the motion. Second, compulsory discipline is not within the scope of Chapter 27. Third, even if compulsory discipline were within the scope of

Chapter 27, the Commission has shown prima facie evidence of every element of the compulsory discipline proceeding.

The counterclaim for declaratory judgment and injunctive relief is dismissed for lack of jurisdiction.

Motion for entry of final judgment

On the 28th day of April, 2017, the Board of Disciplinary Appeals considered the Motion for Entry of Judgment of Disbarment filed in the above case by Petitioner, Commission for Lawyer Discipline of the State Bar of Texas, against Respondent, Carolyn Barnes. Petitioner and Respondent appeared at the hearing. The Board finds that:

- (1) It has continuing jurisdiction of this matter pursuant to TRDP 8.05;
- (2) The Court of Appeals for the Third District of Texas affirmed Respondent's criminal conviction in cause number 03-13-00434-CR and issued its Mandate indicating that the decision was final on or about February 9, 2017;
- (3) Petitioner filed its Motion for Entry of Judgment of Disbarment on or about February 27, 2017, and served same on Respondent in accordance with TRDP 8.05;
- (4) Respondent's conviction for the commission of an Intentional Crime as defined by TRDP 1.06(T), for which she was sentenced in the 368th Judicial District Court of Williamson County, Texas, has become final and is not subject to appeal;
- (5) Respondent's criminal sentence was not fully probated.

Because a final conviction occurred which included prison time, and because Respondent has not filed any timely verified denial contesting finality of the judgment, TRDP 8.05 requires disbarment. Therefore, the Motion for Entry of Judgment of Disbarment should, and hereby is, granted.

Prior Interlocutory Suspension

On the 28th day of August 2013, the Board of Disciplinary Appeals entered an Interlocutory Order of Suspension against Respondent, which included the following findings of fact and conclusions of law:

- (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.
- (11) This Board has jurisdiction to hear and determine this matter. TRDP 7.08(G).
- (12) 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.
- (13) 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.
- (14) 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).
- (15) 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).

- (16) 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.
- (17) 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.
- (18) 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).

Respondent appealed the BODA Interlocutory Order of Suspension to the Supreme Court of Texas, which affirmed the decision on June 20, 2014 (Tex. Sup. Ct. No. 13-0753). The Supreme Court denied Respondent's motion for rehearing on August 15, 2014.

Disbarment

The Board has determined that disbarment of the Respondent is required. It is, therefore, accordingly, **ORDERED, ADJUDGED, and DECREED** that Respondent, Carolyn Barnes, State Bar No. 01761550, be and she is hereby **DISBARRED** from the practice of law in the State of Texas, and her license to practice law in this state be and is hereby revoked.

It is further **ORDERED, ADJUDGED and DECREED** that Respondent, Carolyn Barnes, is hereafter permanently 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, appearing as counsel or in any representative capacity 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** Respondent, Carolyn Barnes, shall immediately notify each of her current clients, if any, in writing of this disbarment. In addition to such notification, Respondent is **ORDERED** to return any files, papers, unearned monies and other property belonging to any and all clients and former clients in the Respondent's possession to the respective clients or former clients or to another attorney at the client's or former client's request. Respondent is further **ORDERED** to file with the State Bar of Texas Chief Disciplinary Counsel's Office, Statewide Compliance Monitor, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Board, an affidavit stating that all current clients, if any, have been notified of Respondent's disbarment and that all files, papers, monies and other property belonging to all clients and former clients have been returned as ordered herein.

It is further **ORDERED** Respondent, Carolyn Barnes, shall, on or before thirty (30) days from the signing of this judgment by the Board, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing. Respondent is further **ORDERED** to file with the State Bar of Texas Chief Disciplinary Counsel's Office, Statewide Compliance Monitor, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Board, an affidavit stating that each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice has received written notice of the terms of this judgment.

It is further **ORDERED** that Respondent, Carolyn Barnes, if she has not already done so, immediately surrender her Texas law license and permanent State Bar Card to the Office of the Chief Disciplinary Counsel, Statewide Compliance Monitor, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

It is further **ORDERED** that a certified copy of the First Amended Petition for Compulsory Discipline on file herein along with a copy of this Final Judgment of Disbarment be sent to the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

Signed this 2 day of May 2017.



CHAIR PRESIDING