



March 4, 2016

Board of Disciplinary Appeals

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

IN THE MATTER OF	§	
GWENDOLYN F. CLIMMONS	§	CAUSE NO. 55907
STATE BAR CARD NO. 04390000	§	

MOTION FOR ENTRY OF JUDGMENT OF DISBARMENT

TO THE HONORABLE BOARD:

COMES NOW, Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), and files this its Motion for Entry of Judgment of Disbarment, showing as follows:

1. On or about March 12, 2015, Petitioner filed its Petition for Compulsory Discipline against Respondent, Gwendolyn F. Climmons, (hereinafter called "Respondent") seeking compulsory discipline based upon Respondent's conviction in Case No. 4:12CR00245-001, styled *United States of America v. Gwendolyn Climmons-Johnson*, in the United States District Court for the Southern District of Texas, Holding Session in Houston, wherein Respondent was found guilty of Count 1 – Conspiracy to commit healthcare fraud, in violation of 18 U.S.C. §§ 1347 and 1349; Counts 2, 4 – Health care fraud, aiding and abetting, in violation of 18 U.S.C. §§ 1347 and 2; and Counts 3,5 – Health care fraud, aiding and abetting, in violation of 18 U.S.C. §§ 1347 and 2, and was committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 97 months as to each of Counts 1 through 5, to run concurrently, for a total term of 97 months. Respondent was ordered upon release from imprisonment to be on supervised release for 3 years, ordered to pay an assessment of \$500.00 and restitution in the amount of \$972,132.22.

2. On May 4, 2015, an Interlocutory Order of Suspension was entered by the Board of Disciplinary Appeals which provides in pertinent part, as follows:

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. *In the Matter of Mercier*, 242 SW 3d 46 (Tex. 2007).

3. Following the appeal by Respondent of her criminal conviction in Case No. 4:12CR00245-001, styled *United States of America v. Gwendolyn Climmons-Johnson*, in the United States District Court for the Southern District of Texas, Holding Session in Houston, wherein Respondent was found guilty of Count 1 – Conspiracy to commit healthcare fraud, Counts 2, 4 – Health care fraud, aiding and abetting, and Counts 3,5 – Health care fraud, aiding and abetting, an Opinion (Exhibit A) was issued by the United States Court of Appeals for the Fifth Circuit on or about October 21, 2015, in Cause No. No. 14-20392, *United States of America, Plaintiff – Appellee v. Gwendolyn Climmons-Johnson, Defendant – Appellant*, which affirmed the judgment issued by the District Court.

4. On or about January 14, 2016, a Judgment was issued as Mandate (Exhibit B) by the United States Court of Appeals for the Fifth Circuit, in Cause No. No. 14-20392, *United States of America, Plaintiff – Appellee v. Gwendolyn Climmons-Johnson, Defendant – Appellant*, which affirmed the judgment issued by the District Court. True and correct copies of the Opinion and Judgment Issued as Mandate issued by the United States Court of Appeals for the Fifth Circuit, are attached hereto as Exhibits A and B, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits A and B at the time of hearing of this cause.

5. Petitioner represents to the Board that the Judgment entered against Respondent, Gwendolyn F. Climmons, has now become final. Petitioner seeks the entry of a judgment of disbarment. Attached hereto as Exhibit C is a true and correct copy of the form of judgment of which Petitioner seeks the entry herein.

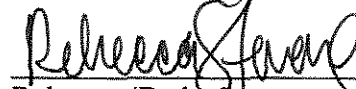
PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays, upon notice to Respondent, that the Board enter its order disbarring Respondent and for such other and further relief to which Petitioner may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel


Rebecca (Beth) Stevens
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 427.4167
Email: bstevens@texasbar.com



Rebecca (Beth) Stevens
Bar Card No. 24065381
ATTORNEYS FOR PETITIONER

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a trial on the merits of the Motion for Entry of Judgment of Disbarment heretofore sent to be filed with the Board of Disciplinary Appeals on this day, will be held in the courtroom of the Supreme Court of Texas, Tom C. Clark Building, 14th and Colorado Streets, Austin, Texas, at **9:00 a.m. on the 29th day of April 2016.**



Rebecca (Beth) Stevens

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent for personal service on Gwendolyn F. Climmons, SPN# 01229675, Harris County Jail, 1200 Baker Street, Houston, Texas 77002, on this 4th day of March 2016.



Rebecca (Beth) Stevens

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 14-20392
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GWENDOLYN CLIMMONS-JOHNSON,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:12-CR-245-1

Before HIGGINBOTHAM, ELROD, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Gwendolyn Climmons-Johnson was convicted by a jury of one count of conspiring to commit health care fraud and four counts of committing health care fraud, in violation of 18 U.S.C. §§ 1347, 1349 and 2, and she was sentenced to 97 months of imprisonment on each count, to run concurrently, and to concurrent, three-year terms of supervised release. The charges related to the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Exhibit

A

activities of Urgent Response Emergency Medical Services, LLC (Urgent Response), an ambulance company owned and operated by Climmons-Johnson.

On appeal, Climmons-Johnson argues that the district court reversibly erred in admitting into evidence Government exhibit 2, which contained electronic claims data submitted by Urgent Response to Medicare, and Government exhibit 4, which consisted of signature cards for her personal bank accounts, as well as Government summary exhibits 90, 91, 92, 93, and 95, which were based upon exhibits 2 and 4. She also argues that the district court erred in refusing to provide a timely instruction to the jury that the failure to comply with civil rules and regulations does not establish criminal liability.

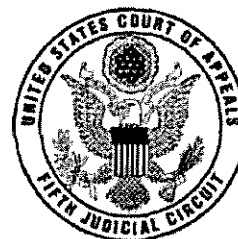
With respect to Government exhibits 2 and 4, Climmons-Johnson argues that the Government failed to lay a foundation or to demonstrate that the evidence qualified as business records or that any other hearsay exception applied. Because she did not object in the district court to the admission of these exhibits on the same grounds that she raises on appeal, our review is for plain error only. *See United States v. Burton*, 126 F.3d 666, 671 (5th Cir. 1997). To prevail, she must show a forfeited error that is clear or obvious and that affects her substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If she makes such a showing, we have the discretion to correct the error, but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See id.*

The district court committed no clear or obvious error in admitting Government exhibits 2 and 4. *See Puckett*, 556 U.S. at 135. Given that Climmons-Johnson's challenge to the five summary exhibits is based on the premise that exhibits 2 and 4 were inadmissible, the district court likewise committed no clear or obvious error in admitting the five summary exhibits. *See id.*

Finally, although she argues that the district court reversibly erred by failing to give a requested jury instruction at the time it was initially requested, the district court did not abuse its discretion. After a Government witness testified that “[a]ll providers who report services for Medicare payment must fully understand and follow all existing laws, regulations and rules for Medicare payment for nonemergency ground ambulance services and must properly submit only valid claims for them,” Climmons-Johnson requested that the district court give an instruction to the effect that any violation of Medicare civil rules and regulations was not proof of fraud but could be considered to determine the intent of the party.

Although the district court denied the request when Climmons-Johnson initially requested it, the district court gave the requested instruction on the next day of trial and again at the conclusion of trial. The district court also specifically admonished the jury that the instruction applied not only to future evidence but to evidence that it had already heard. Jurors are presumed to follow their instructions. *See Richardson v. Marsh*, 481 U.S. 200, 206 (1987). The timing of the instruction did not constitute an abuse of the district court’s discretion. *See United States v. Livingston*, 816 F.2d 184, 192 (5th Cir. 1987).

AFFIRMED.



A True Copy
Certified Feb 23, 2016

Styfe W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

January 14, 2016

Mr. David J. Bradley
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 14-20392 USA v. Gwendolyn Climmons-Johnson
USDC No. 4:12-CR-245-1

Dear Mr. Bradley,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Gardner

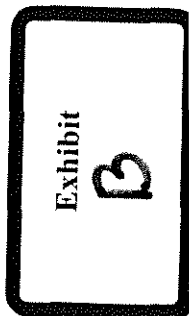
By: _____
Christina A. Gardner, Deputy Clerk
504-310-7684

cc: Ms. Gwendolyn Climmons-Johnson
Ms. Renata Ann Gowie
Ms. Ellen R. Meltzer
Mr. Vijay Shanker



A True Copy
Certified Feb 24, 2016

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit



IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 14-20392
Summary Calendar

D.C. Docket No. 4:12-CR-245-1

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

GWENDOLYN CLIMMONS-JOHNSON,

Defendant - Appellant

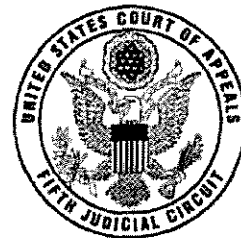
Appeal from the United States District Court for the
Southern District of Texas, Houston

Before HIGGINBOTHAM, ELROD, and SOUTHWICK, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.



A True Copy
Certified Feb 23, 2016

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

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

IN THE MATTER OF	§	
GWENDOLYN F. CLIMMONS	§	CAUSE NO. 55907
STATE BAR CARD NO. 04390000	§	

JUDGMENT OF DISBARMENT

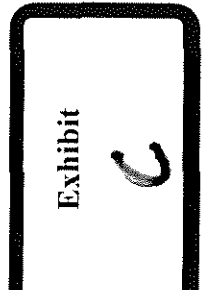
On the ____ day of _____, 2016, the Board of Disciplinary Appeals considered the Motion for Entry of Judgment of Disbarment filed in the above case by Petitioner, Commission for Lawyer Discipline of the State Bar of Texas, against Respondent, Gwendolyn F. Climmons.

The Board finds that:

- (1) It has continuing jurisdiction of this matter pursuant to Texas Rules of Disciplinary Procedure 8.05 (“TRDP”);
- (2) The United States Court of Appeals for the Fifth Circuit affirmed Respondent, Gwendolyn F. Climmons’s, criminal conviction and entered a Judgment Issued as Mandate indicating that the decision was final on or about January 4, 2016;
- (3) Petitioner filed its Motion for Entry of Judgment of Disbarment on or about March 4, 2016, and served same on Respondent in accordance with TRDP 8.05;
- (4) Respondent’s conviction for the commission of Intentional Crimes as defined by TRDP 1.06(T), for which she was sentenced in the United States District Court for the Southern District of Texas, Houston Division, has become final and is not subject to appeal;
- (5) Petitioner’s Motion for Entry of Judgment of Disbarment should be granted.

Interlocutory Suspension

On the 4th day of May 2015, the Board of Disciplinary Appeals entered an Interlocutory Order of Suspension, which included the following findings of fact and conclusions of law:



- (1) Respondent, Gwendolyn F. Climmons, whose State Bar Card number is 04390000, is licensed by the Supreme Court of Texas to practice law and is authorized to practice law in the State of Texas.
- (2) On or about April 26, 2012, Respondent was charged by Indictment with Count 1 – Conspiracy to Commit Health Care Fraud, in violation of 18 U.S.C. § 1349, and Counts 2-5 – Health Care Fraud, in violation of 18 U.S.C. §§ 1347 and 2, in Cause No. H-12-245, styled *United States of America, Plaintiff, v. Gwendolyn Climmons-Johnson, Defendant*, in the United States District Court for the Southern District of Texas, Houston Division.
- (3) On or about June 13, 2014, a Judgment in a Criminal Case was signed in Case No. 4:12CR00245-001, styled *United States of America v. Gwendolyn Climmons-Johnson*, in the United States District Court for the Southern District of Texas, Holding Session in Houston, wherein Respondent was found guilty of Count 1 – Conspiracy to commit healthcare fraud, in violation of 18 U.S.C. §§ 1347 and 1349; Counts 2, 4 – Health care fraud, aiding and abetting, in violation of 18 U.S.C. §§ 1347 and 2; and Counts 3,5 – Health care fraud, aiding and abetting, in violation of 18 U.S.C. §§ 1347 and 2, and was committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 97 months as to each of Counts 1 through 5, to run concurrently, for a total term of 97 months. Respondent was ordered upon release from imprisonment to be on supervised release for 3 years, ordered to pay an assessment of \$500.00 and restitution in the amount of \$972,132.22.
- (4) Respondent, Gwendolyn F. Climmons is the same person as the Gwendolyn Climmons-Johnson who is the subject of the criminal case described above.
- (5) Respondent has appealed the criminal conviction.
- (6) Respondent's criminal conviction is not fully probated.
- (7) This Board has jurisdiction to hear and determine this matter. Tex. R. Disciplinary P. 7.08(G) ("TRPD").
- (8) Respondent, Gwendolyn F. Climmons, having been convicted of Count 1 – Conspiracy to commit healthcare fraud; Counts 2, 4 – Health care fraud, aiding and abetting, and Counts 3, 5 – Health care fraud, aiding and abetting, has been convicted of Intentional Crimes as defined by TRDP 1.06(T).
- (9) Respondent has also been convicted of Serious Crimes as defined by TRDP 1.06(Z).

- (10) Having been found guilty and convicted of Intentional and Serious Crimes and having appealed such conviction, Respondent, Gwendolyn F. Climmons, should have her license to practice law in Texas suspended during the appeal of her criminal convictions. TRDP 8.04.
- (11) The Board retains jurisdiction to enter a final judgment in this matter when the criminal appeal is final.

Disbarment

The Board has determined that disbarment of the Respondent is appropriate. It is, therefore, accordingly, ORDERED, ADJUDGED, AND DECREED that Respondent, Gwendolyn F. Climmons, State Bar No. 04390000, 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, Gwendolyn F. Climmons, 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 that Respondent, Gwendolyn F. Climmons, not later than thirty (30) days from the date of the entry of this judgment, shall notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court, if any, in which Respondent has any legal matter pending, if any, of her disbarment, 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 Office of the Chief Disciplinary Counsel, Statewide Compliance Monitor, State

Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

It is further ORDERED that Respondent, Gwendolyn F. Climmons, shall immediately notify each of her current clients and opposing counsel, if any, in writing, of her disbarment. 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, if any, to those respective clients or former clients within thirty (30) days after the date on which this Judgment is signed by the Board. Respondent is further ORDERED to file with this Board, within the same thirty (30) days, an affidavit stating that all current clients and opposing counsel have been notified of her disbarment and that all files, papers, unearned fees paid in advance, and all other monies and properties belonging to clients and former clients have been returned as ordered herein. If Respondent should be unable to return any file, papers, money or other property to any client or former client, 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 said affidavit and copies of all notification letters to clients, to the Office of the Chief Disciplinary Counsel, Statewide Compliance Monitor, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

It is further ORDERED that Respondent, Gwendolyn F. Climmons, 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 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 ____ day of _____ 2016.

Chair Presiding
BOARD OF DISCIPLINARY APPEALS