



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

<b>IN THE MATTER OF</b>	§	
<b>MASON WILLIAM HERRING</b>	§	<b>CAUSE NO. 69030</b>
<b>STATE BAR CARD NO. 24071746</b>	§	

**JUDGMENT OF DISBARMENT**

On the 25th day of October, 2024, the above-styled and numbered compulsory discipline action was called for hearing before the Board of Disciplinary Appeals. Petitioner, the Commission for Lawyer Discipline, appeared by attorney and announced ready. Respondent, Mason William Herring, appeared by and through his attorney of record, who announced Herring’s intent to rest on the argument and authorities in his written pleadings and that his appearance at the hearing was to preserve objections and respond to argument asserted by Petitioner at the hearing. All questions of fact and all issues of law were submitted to the Board of Disciplinary Appeals for determination. Having considered the pleadings on file, having received evidence, and having heard the argument of counsel, the Board of Disciplinary Appeals is of the opinion that Petitioner is entitled to entry of the following findings and orders:

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

- (1) Respondent, Mason William Herring, State Bar Card Number 24071746, is licensed and authorized to practice law in the State of Texas by the Supreme Court of Texas.
- (2) On or about November 4, 2022, Respondent was charged by Indictment with Assault of Pregnant Person, in Cause No. 1772106, styled *The State of Texas vs. Mason William Herring*, in the 185<sup>th</sup> Judicial District Court of Harris County, Texas.

(a) The Indictment states in pertinent part:

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, MASON WILLIAM HERRING, hereafter styled the Defendant, heretofore on or about March 17, 2022, did then and there unlawfully, intentionally and knowingly cause bodily injury to Catherine Herring, hereinafter called the Complainant, by placing a substance containing the drug Misoprostol into a liquid and giving it to the Complainant to ingest, and at the time of the assault the defendant knew the complainant was pregnant.

(b) In Respondent's Original Answer to Petition for Compulsory Discipline, Respondent admitted to the paragraph of the petition referencing the Indictment, which contained the above quote.

(3) On or about December 14, 2022, Respondent was charged by Indictment with Attempted Injury to a Child SBI, in Cause No. 1798932, styled *The State of Texas vs. Mason William Herring*, in the 185th Judicial District Court of Harris County, Texas.

(a) The Indictment states in pertinent part:

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, MASON WILLIAM HERRING, hereafter styled the Defendant, heretofore on or about March 17, 2022, did then and there unlawfully and intentionally, with the specific intent to commit the offense of Injury to a Child Serious Bodily Injury of J. G. H., hereafter styled the Complainant, do an act, to-wit: intentionally and knowingly attempt to cause serious bodily injury to the Complainant, a child younger than fifteen years of age, by placing a substance containing the drug Misoprostol into a liquid and giving that liquid to Catherine Herring, hereinafter referred to as the mother of the Complainant, to ingest, knowing that the Mother of the Complainant was pregnant with the Complainant, which amounted to more than mere preparation that tended to but failed to effect the commission of the offense intended.

(b) In Respondent's Original Answer to Petition for Compulsory Discipline, Respondent admitted to the paragraph of the petition referencing the Indictment, which contained the above quote.

- (4) Respondent and the State reached a plea bargain, which was presented to the court. In Cause No. 1772106, Respondent pled guilty to the offense of Assault of Pregnant Person. In Cause No. 1798932, Respondent pled guilty to the offense of Injury to Child Under 15 with Bodily Injury, and not Attempted Injury to Child with Serious Bodily Injury, the charge reflected in the indictment.
- (5) On or about February 7, 2024, the court issued judgments of conviction in each case.
- (6) In Cause No. 177210601010, styled *The State of Texas v. Herring, Mason William*, the 185<sup>th</sup> District Court in Harris County issued a Judgment of Conviction by Court – Waiver of Jury Trial reflecting Respondent’s guilty plea to the “3RD DEGREE FELONY” offense of “ASSAULT OF PREGNANT PERSON.”
  - (a) The court sentenced Respondent to ten years confinement in the Texas Department of Criminal Justice Correctional Institutions Division, with the sentence of confinement suspended and Respondent placed on community supervision for ten years.
  - (b) The court ordered Respondent to serve 180 days in the County Jail as a condition of community supervision.
  - (c) The Judgment of Conviction contains a special finding stating: “THE COURT FINDS THAT DEFENDANT WAS PROSECUTED FOR AN OFFENSE UNDER TITLE 5 OF THE PENAL CODE THAT INVOLVED FAMILY VIOLENCE.”
  - (d) The Conditions of Community Supervision incorporated by reference into the Judgment of Conviction also reflects that Respondent was sentenced to ten years confinement for the “Felony – Level 3” offense of “ASSAULT OF PREGNANT PERSON.”
- (8) In Cause No. 17893201010, styled *The State of Texas v. Herring, Mason William*, the 185<sup>th</sup> District Court in Harris County issued a Judgment of Conviction by Court – Waiver of Jury Trial reflecting Respondent’s guilty plea to the “3RD DEGREE FELONY” offense of “INJURY CHILD UNDER 15 B/INJURY.”
  - (a) Following the offense, “INJURY TO CHILD UNDER 15 B/INJURY,” the Judgment shows a code: “(3802 49).”
  - (b) A section of the Judgment of Conviction for “Terms of Plea Bargain” states “Reduced from: 2ND DEGREE.”

- (c) The court sentenced Respondent to ten years confinement in the Texas Department of Criminal Justice Correctional Institutions Division, with the sentence of confinement suspended and Respondent placed on community supervision for ten years.
- (d) The court ordered Respondent to serve 180 days in the county jail as a condition of community supervision.
- (e) The Judgment of Conviction contains a special finding stating: “THE COURT ENTERS AN AFFIRMATIVE FINDING THAT DEFENDANT’S OFFENSE INVOLVED FAMILY VIOLENCE, AS DEFINED BY SECTION 71.008 [sic], FAMILY CODE.”
- (f) The Conditions of Community Supervision incorporated by reference into the Judgment of Conviction reflects that Respondent was sentenced to ten years confinement for the “Felony – Level 3” offense of “ATT INJ CHILD/ELD/DIS W/INT SBI,” matching the offense shown on the indictment but not the offense shown on the Judgment of Conviction.
- (9) Respondent, Mason William Herring, is the same person as the Mason William Herring, who is the subject of the two Judgments of Conviction – Waiver of Jury Trial described above.
- (10) In his Brief on Compulsory Discipline, Respondent “concede[d] his convictions for Injury to a Child and Assault on a Pregnant Person are Serious Crimes under Texas Rule of Disciplinary Procedure 1.06(G)(G).”

**Conclusions of Law.** Based on the foregoing findings of fact the Board of Disciplinary Appeals makes the following conclusions of law:

- (1) This Board has jurisdiction to hear and determine this compulsory discipline matter. TEX. RULES DISCIPLINARY P. R. 7.08(G).
- (2) The Board takes judicial notice of the Harris County District Clerk’s list of offense codes, found at <https://www.hcdistrictclerk.com/common/e-services/pdf/literal.pdf>, indicating that 380249 means “INJURY TO A CHILD UNDER 15 YEARS OLD, BODILY INJURY,” a third-degree felony.
- (3) A conviction for the third-degree felony offense of Assault of Pregnant Person under the Texas Penal Code requires proof that that the offense was committed against “a person the actor knows is pregnant at the time of the offense.” TEX. PENAL CODE § 22.01(a)(1), (b)(8).

- (4) A conviction for a third-degree felony offense of Injury to a Child Under 15 with Bodily Injury under the Texas Penal Code requires proof that “the conduct [was] committed intentionally or knowingly,” as reckless conduct results in the offense being a state jail felony. TEX. PENAL CODE § 22.04(a)(3), (f).
- (5) Attempted Injury to a Child Under 15 with Serious Bodily Injury, the offense listed in the Cause No. 1798932 Indictment, would be a second-degree felony “when the conduct [was] committed intentionally or knowingly” and when criminal attempt lowered by one level the degree of the offense. TEX. PENAL CODE §§ 15.01(d), 22.01(a)(1), 22.04(a), (e).
- (6) A plea bargain to reduce a second-degree felony offense of Attempted Injury to a Child Under 15 with Serious Bodily Injury to a third-degree offense of Injury to a Child Under 15 with Bodily Injury would reduce the level of offense without changing the essential element of proof that the conduct was committed intentionally or knowingly.
- (7) Respondent put on no evidence that his guilty plea as to either offense was only as to reckless conduct. *See* TEX. RULES DISCIPLINARY P. R. 8.04 (“Nothing in these rules prohibits proof of the necessary elements in such Disciplinary Action by competent evidence in any other manner permitted by law.”).
- (8) The record of Respondent’s convictions is conclusive evidence of Respondent’s guilt of the offenses reflected in the two Judgments of Conviction: the third-degree felony assault of a person Respondent knew to be pregnant and the third-degree felony injury to a child under 15 with bodily injury, committed intentionally or knowingly.
- (9) It is not necessary to inquire into the facts of Respondent’s conduct or to look beyond the two Judgments of Conviction in combination with the elements of the relevant Penal Code statutes to determine whether Respondent was convicted of an Intentional Crime and a Serious Crime, as defined in Texas Rule of Disciplinary Procedure 1.06. *See, e.g., In the Matter of Lock*, 54 S.W.3d 305, 308-09 (Tex. 2001); *Duncan v. Board of Disciplinary Appeals*, 898 S.W.2d 759, 762 (Tex. 1995).
- (10) Without looking to the underlying facts, Respondent, Mason William Herring, has been convicted for purposes of Texas Rule of Disciplinary Procedure 8.04 of Intentional Crimes as defined by Texas Rule of Disciplinary Procedure 1.06(V). Respondent has also been convicted of Serious Crimes as defined by Texas Rule of Disciplinary Procedure 1.06(GG).
- (11) The convictions are final.

- (12) Compulsory discipline is warranted in this case. TEX. R. DISCIPLINARY P. 8.04.
- (13) Respondent's sentence of ten years in a Texas Department of Criminal Justice facility is, on the face of each Judgment of Conviction, conditioned upon Respondent abiding by numerous listed conditions, including that he serve 180 days of confinement in the county jail. Respondent's sentence is fully probated. *See In the Matter of Murr*, BODA Case No. 31958 (Oct. 4, 2004) (concluding that a criminal sentence requiring six months incarceration as a condition of probation was fully probated).
- (14) The Board has discretion to enter an order of disbarment or suspend Respondent's license for the duration of the term of his criminal probation. *In re Caballero*, 272 S.W.3d 595, 601 (Tex. 2008); *see* TEX. RULES DISCIPLINARY P. R. 8.05, 8.06.
- (15) In considering whether to disbar or suspend, the Board has applied the factors expressed in *In re Isassi*, BODA Case No. 57699 (May 8, 2017).
- (16) The Board may consider evidence of the underlying facts and circumstances in determining the compulsory discipline sanction to be imposed. *E.g.*, *In the Matter of Filippov*, BODA Case No. 30611 (Jan. 22, 2004), *aff'd*, 04-0151 (Tex. 2004).
- (17) Based on the relevant factors, the Board determines that disbarment is the appropriate sanction.
- (18) Respondent, Mason William Herring, shall be disbarred pursuant to Rule of Disciplinary Procedure 8.05.

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** that Respondent, Mason William Herring, State Bar Card No. 24071746, be and hereby is **DISBARRED** from the practice of law in the State of Texas, and his license to practice law in this state be and hereby is revoked.

It is further **ORDERED, ADJUDGED, and DECREED** that Respondent, Mason William Herring, is prohibited from practicing law in Texas, holding himself out as an attorney at law, performing any legal services 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 administrative body, or holding himself out to others or using his name, in any manner,

in conjunction with the words “attorney at law,” “attorney,” “counselor at law,” “esquire,” “Esq.,” or “lawyer.”

It is further **ORDERED** that Respondent, Mason William Herring, shall immediately notify each of his 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, if any, which belongs to clients and former clients and is in Respondent's possession or control, to the respective clients or former clients or to another attorney at the client's or former client's request, within thirty (30) days of the date of this judgment.

It is further **ORDERED** that Respondent, Mason William Herring, shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days of the date of this judgment, an affidavit stating that all current clients 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. If Respondent should be unable to return any such files, papers, monies, or other property, Respondent's affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of his inability to return said client any file, paper, money, or other property.

It is further **ORDERED** that Respondent, Mason William Herring, shall, on or before thirty (30) days from the date of this judgment, 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, if any, 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 has represented.

It is further **ORDERED** that Respondent, Mason William Herring, shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days of the date of this judgment, an affidavit stating that Respondent has sent written notice to each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice in accordance with the terms of this judgment.

It is further **ORDERED** that Respondent, Mason William Herring, shall immediately surrender his Texas law license and permanent State Bar Card to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711(1414 Colorado St., Austin, TX 78701), for transmittal to the Clerk of the Supreme Court of Texas.

It is further **ORDERED** that this Judgment of Disbarment shall be made a matter of public record and that notice of this disciplinary action shall be published in the *Texas Bar Journal*.

Signed this 13<sup>th</sup> day of November 2024.



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**CHAIR PRESIDING**

Board members Jennifer Caughey, Arthur D'Andrea, and Andrew Graham did not participate in this decision.

**Jason Boatright, concurring:**

I agree with the decision to disbar Mr. Herring, but I disagree with our reasoning because we rely on evidence the Supreme Court does not allow us to use in determining whether an attorney



has committed an Intentional Crime.

### **1. Our determination relies on documents outside the record of conviction.**

In our Judgment, we rely on the indictments, the plea bargain, a website listing offense codes, and the record of conviction to determine whether Herring committed an Intentional Crime. Of those pieces of evidence, the rules say only the record of conviction is conclusive evidence of the attorney's guilt. TEX. RULES DISCIPLINARY P. R. 8.02. The rules also provide that we have to determine whether the attorney has been convicted of an Intentional Crime "immediately" after a certified copy of the judgment of conviction has been introduced into evidence. *Id.* R. 8.04.

The terms "record of conviction" and "judgment of conviction" mean the same thing. *See id.* R. 8.02, 8.04; TEX. CODE CRIM. PROC. art. 42.016, .032; *Garrett v. State*, 91 S.W.2d 727 (Tex. Crim. App. 1936). The record of conviction is conclusive evidence of guilt, and we must determine whether the offense is an Intentional Crime when the record of conviction is admitted. Thus, the process the rules describe is immediate and automatic once the record of conviction is admitted; we have no time or discretion to review other evidence when we make our determination. Consequently, the rules prohibited us from reviewing the indictments, plea bargain, and website.

It is true, however, that the rules say they do not prohibit proof of the necessary elements of a compulsory discipline action "by competent evidence in any other manner permitted by law." TEX. RULES DISCIPLINARY P. R. 8.04. As the Judgment implies, that provision seems to allow us to consider documents other than the record of conviction. Judgment at 5, ¶7. Nevertheless, several Supreme Court opinions appear to restrict our review solely to the record of conviction when we determine whether an attorney was convicted of an Intentional Crime.

### **2. The Supreme Court prohibits reliance on evidence outside the record of conviction.**

In the *In re Lock* case, the Supreme Court held that, "to determine whether a crime is an

intentional crime, thus permitting the Bar to pursue the compulsory discipline process, we look solely to the elements of the crime, and not to any collateral matters” like the underlying facts. 54 S.W.3d 305, 307 (Tex. 2001) (citing *Duncan v. Bd. of Disciplinary Appeals*, 898 S.W.2d 759, 762 (Tex. 1995), and *In re Humphreys*, 880 S.W.2d 402, 406-07 (Tex. 1994)).

Accordingly, the Court has called compulsory discipline a “summary” proceeding that “turns solely on the validity of the record of conviction, the nature of the sentence, and the factual determination that the Respondent is the same person as the party adjudicated guilty.” *Duncan*, 898 S.W.2d at 762 (citing *Humphreys*, 880 S.W.2d at 406). The Court has been clear that we cannot review evidence in the record to determine whether an offense involves the constituent parts of an Intentional Crime; rather, the statutory elements of the crime identified in the record of conviction must involve those elements *per se*. See *Humphreys*, 880 S.W.2d at 408. Thus, we are not allowed to look outside the record of conviction to determine whether a respondent committed an Intentional Crime.

Nevertheless, the term “record of conviction” is not defined in the rules, and it is reasonable to assume that it might refer to more than just the document that adjudges the conviction. Indeed, there are a lot of cases that support the idea that the record of conviction includes the entire record. See, e.g., *Nels v. State*, 2 Tex. 280, 283 (1847); *Flournoy v. State*, 16 Tex. 30, 31 (1856); *Bumpus v. Fisher et al.*, 21 Tex. 561, 569 (1858); *Gulf, C. & S. F. Ry. Co. v. Johnson*, 81 S.W.4, 5 (Tex. 1904). None of those cases, however, involved compulsory discipline.

In compulsory discipline cases, the Supreme Court has used the term “record of conviction” in a way that appears to refer only to the document that adjudges the conviction. For example, the majority opinion in *Duncan* relied solely on the statutory elements of the offense identified in the document that adjudged conviction; the majority did not rely on the indictment or

any other evidence to determine whether the offense at issue was an Intentional Crime. 898 S.W.2d at 761-62. In her concurrence, now-Judge Richman did rely on the indictment, but a fair reading of her opinion suggests she thought the majority disapproved of her decision to do so. *See id.* at 762-63 (Owen, J., concurring). And just like the majority opinion, now-Chief Justice Hecht's partial concurrence and dissent relied entirely on the legal elements of the offense in the document that adjudged conviction, not on the indictment. *See id.* at 764 (Hecht, J., concurring in part and dissenting in part). Together, the *Duncan* opinions support the conclusion that the record of conviction does not include the indictment or any other item outside the document that adjudges the conviction. Thus, we were not allowed to rely on the indictment, plea agreement, or the website to determine whether the offense was an Intentional Crime.

### **3. We should make our determination based only on the record of conviction.**

*Lock, Duncan, and Humphreys* required us to rely on the record of conviction alone. If we had done that, we would have all the information we needed to conduct the immediate and summary process the Supreme Court requires in a compulsory discipline case.

Herring conceded that his crimes were Serious Crimes for purposes of the compulsory discipline proceeding. And the record of conviction shows that Herring was convicted of assault of a pregnant individual, an offense that, by law, requires knowledge as an essential element. TEX. PENAL CODE § 22.01(b)(8). Because an Intentional Crime is a Serious Crime that requires proof of knowledge as an essential element, the record of conviction proves that Herring committed an Intentional Crime. *See* TEX. RULES DISCIPLINARY P. R. 1.06(V). And because an attorney who is guilty of an Intentional Crime is subject to compulsory discipline, we must impose compulsory discipline and disbar Herring. *See id.* R. 8.04, 8.05.