



FILED

Jun 25 2024

THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

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

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

RESPONSE TO RESPONDENT’S UNVERIFIED MOTION FOR CONTINUANCE

NOW COMES the Commission for Lawyer Discipline and files this Response to Respondent’s motion for continuance. Petitioner asks the Board of Disciplinary Appeals (“Board”) to deny Respondent’s motion for continuance as Respondent has failed to meet this Board’s procedural requirements and has not shown sufficient cause for a continuance.

I. BACKGROUND

The Commission for Lawyer Discipline (“The Commission”) filed a Petition for Compulsory Discipline against Respondent Mason William Herring on March 4, 2024. The Commission filed a First Amended Petition for Compulsory Discipline on April 24, 2024. Respondent was served with a copy of the First Amended Petition on May 15, 2024. Respondent filed his answer on June 10, 2024. A hearing on Petitioner’s Petition for Compulsory Discipline is set for July 26, 2024. Respondent filed the instant motion for continuance on June 20, 2024.

II. ARGUMENT AND AUTHORITIES

A. Motion for Continuance

“The trial court has broad discretion to deny or grant a motion for continuance...” *Villegas v. Carter*, 711 S.W.2d 624, 626 (Tex.1986); *see also Roob v. Von Bereghasy*, 866 S.W.2d 765, 767 (Tex.App.-Houston [1st Dist.] 1993, writ denied), *McAleer v. McAleer*, 394 S.W.3d 613, 617

(Tex. App.—Houston [1st Dist.] 2012, no pet.). The Board may grant a continuance if the motion is supported by an affidavit and states sufficient cause. Tex. R. Civ. P. 247, 251, 252.

Additionally, Internal Procedural Rule 1.09(a)(1) of the Board of Disciplinary Appeals requires all pretrial motions to be “supported by sufficient cause” and to “state with particularity the grounds on which [they are] based . . . All supporting briefs, affidavits, or other documents must be served and filed with the motion.” *Board of Disciplinary Appeals Procedural Rule 1.09(a)(1)*. The Board should deny a motion for continuance when the motion is not verified or supported by an affidavit or when the affidavit is defective. *See* Tex. R. Civ. P. 251. Texas permits individuals to substitute an unsworn declaration for an affidavit required by statute. Tex. Civ. Prac. & Rem. Code Ann. § 132.001.

Respondent’s motion for continuance is not supported by an affidavit. For this reason alone, the Board should deny the motion. However, Respondent has also failed to provide sufficient cause. In his Motion, Respondent states, “Respondent respectfully requests this continuance so that Respondent may adequately assist undersigned counsel in his defense and be present at his Compulsory Discipline hearing, which is set before his release date.”

The underlying matter is brought pursuant to part VIII of the Texas Rules of Disciplinary Procedure, which states in pertinent part the following:

Upon introduction into evidence of a certified copy of the judgment of conviction or order of deferred adjudication and a certificate of the Clerk of the Supreme Court that the attorney is licensed to practice law in Texas, the Board of Disciplinary Appeals shall ***immediately*** determine whether the attorney has been convicted of an Intentional Crime or granted probation without an adjudication of guilt for an Intentional Crime. Uncontroverted affidavits that the attorney is the same person as the person convicted or granted probation without an adjudication of guilt are competent and sufficient evidence of those facts. Nothing in these rules prohibits proof of the necessary elements in such Disciplinary Action by competent evidence in any other manner permitted by law. ***The Board of Disciplinary Appeals shall sit, hear and determine whether the attorney should be disciplined***

and enter judgment accordingly within forty-five days of the answer day; however, any failure to do so within the time limit will not affect its jurisdiction to act. ... When an attorney has been convicted of an Intentional Crime, and that conviction has become final, or the attorney has accepted probation with or without an adjudication of guilt for an Intentional Crime, **the attorney shall be disbarred unless the Board of Disciplinary Appeals, under Rule 8.06,** suspends his or her license to practice law. ...

Tex. R. Disciplinary Pr. 8.04-5.

The statute makes it abundantly clear that time is of the essence in Compulsory matters. This matter has already had to be postponed due to the inability to get Respondent served upon the filing of the Original Petition for Compulsory Discipline in March of 2024. Neither Respondent's Answer nor his Motion for Continuance state any defense or legal reason as to why Respondent's two convictions to do amount to a serious and intentional crime subject to disbarment. Furthermore, Respondent's presence at the hearing will not change the finality of his conviction. Continuing this matter will only succeed in allowing Respondent the ability to continue practicing law for another three months. Respondent has secured competent counsel to defend him and will not be without defense and counsel at his hearing scheduled for July. Therefore, Respondent's motion should be denied.

PRAYER

For the forgoing reasons, Petitioner prays that this Board DENY Respondent's motion for continuance.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 2024, a true and correct copy of the above document was served on Respondent through his counsel of record, Harry G. Potter III, The Potter Law Firm, PLLC, 8441 Gulf Freeway, Suite 600, Houston, Texas 77017-5066 at hpotter@thepotterlawfirm.com.



Amanda M. Kates

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**IN THE MATTER OF
MASON WILLIAM HERRING
STATE BAR CARD NO. 24071746**

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CAUSE NO. 69030

ORDER ON RESPONDENT’S UNVERIFIED MOTION FOR CONTINUANCE

The Board of Disciplinary Appeals, having considered Respondent’s Motion for Continuance, and Petitioner’s Response finds that:

_____ Respondent’s Motion for Continuance is DENIED.

_____ Respondent’s Motion for Continuance is GRANTED.

Signed, this the _____ day of June, 2024.

CHAIR PRESIDING