

JUDGMENT OF DISBARMENT

Opinion and Judgment Signed and Delivered May 8, 2017.



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

No. 57699

**IN THE MATTER OF
ALFRED L. ISASSI
STATE BAR OF TEXAS CARD NO. 24010124**

Opinion and Judgment

COUNSEL:

Gaines West, West, Webb, Allbritton & Gentry, P.C., College Station, Texas, for Respondent Alfred I. Isassi.

Linda A. Acevedo, Chief Disciplinary Counsel, Rebecca (Beth) Stevens, Assistant Disciplinary Counsel, Dean Schaffer, Assistant Disciplinary Counsel, Office of the Chief Disciplinary Counsel of the State Bar of Texas, Austin, Texas, for Petitioner Commission for Lawyer Discipline of the State Bar of Texas.

OPINION

This compulsory discipline case presents whether the Board should impose sanctions under Tex. Rules Disciplinary P. R. 8.05 or under Rule 8.06. Respondent Isassi has asked the Board to impose no additional discipline beyond the date of this judgment based on the time he has already been suspended pending the hearing. Based on the evidentiary record, the Board has determined that sanctions should be imposed under Rule 8.05 and that Respondent Isassi should be disbarred.

The felony conviction

On October 13, 2015, following a jury trial, Isassi was convicted of Tampering with Governmental Record in violation of Texas Penal Code § 37.10. Tampering with Governmental Record is a felony offense involving moral turpitude, thus a “Serious Crime” under Tex. Rules Disciplinary P. R. 1.06.AA., *reprinted in* Tex. Gov’t Code Ann., tit. 2, subtit. G, app. A-1. The crime required proof of knowledge or intent—thus, an “Intentional Crime” under Rule 1.06.T. Isassi was sentenced to two years confinement, probated for four years.¹ On April 7, 2016, by an amended judgment, Isassi’s sentence was modified to one year in jail probated for two years.² By order dated September 30, 2016, Isassi’s probation was terminated.

¹ The felony was committed while Isassi was a county court at law judge. The judgment included an order that Isassi be removed from his position as judge.

² The amendment was pursuant to Texas Penal Code § 12.44(a). The conviction remained a felony conviction but the punishment was reduced to a level permissible for a Class A misdemeanor. Isassi admits that the conviction was a felony under the original judgment and under the amended judgment. Answer, ¶¶ 4, 5. As a condition for issuance of the amended judgment, Isassi agreed to dismiss his pending appeal from the original judgment.

Disbarment or Suspension

Because Isassi did not file a verified denial contesting finality of the judgment, Tex. Rules Disciplinary P. R. 8.05 requires disbarment “unless the Board of Disciplinary Appeals, under Rule 8.06, suspends his ... license to practice law.” Rule 8.06 is available for consideration where, as here, the attorney’s sentence was fully probated. Isassi urges that any suspension of his license should be through September 30, 2016, when his probation was terminated—that is, that any suspension should conclude at a date earlier than both the four-year probationary period set forth in the judgment of conviction and earlier than the two-year probationary period set forth in the amended judgment. Answer, ¶ 11. Thus, Isassi’s position is that the “ceiling on the compulsory discipline that can be imposed by BODA” (*id.*) is suspension of his license to practice law for a period that ends on a date before it is imposed.³ We do not agree.

The Supreme Court has made clear that in circumstances such as this case, “BODA has discretion to disbar or suspend.” *In re Caballero*, 272 S.W.3d 595, 601 (Tex. 2008). The Supreme Court has affirmed BODA decisions to disbar an attorney who received a

³ Procedurally, Isassi agreed to a suspension of his license on July 26, 2016, in exchange for his request to continue BODA’s hearing from an originally scheduled hearing on July 29, 2016. Based on the record at that date, any suspension under Rule 8.06 would have been imposed until September 30, 2017, if measured by the two-year probation in the amended judgment, or until September 23, 2019, if measured by the four-year probation in the original judgment. But after the continuance of the BODA hearing, Isassi obtained an order from the criminal court on September 30, 2016, terminating his probation effective that date. Isassi urges that BODA should look to the September 30, 2016 order (issued pursuant to Texas Code of Criminal Procedure § 42.12, § 20) as guidance for mitigation factors in this disciplinary proceeding. However, Isassi did not introduce any evidentiary record from that hearing into the BODA proceeding to allow evaluation of what the criminal court considered at the termination hearing. The transcript of the September 30, 2016 hearing (admitted by agreement at the BODA hearing) makes it appear that no evidence was introduced. The Judge’s comments in the transcript do not indicate consideration of many of the factors that BODA considers in evaluating which compulsory discipline should be imposed. Thus, the September 30, 2016 order is not dispositive.

fully-probated criminal sentence. *See, e.g., In re Mercier*, BODA Case No. 38020, aff'd, 14-0367 (Tex. Jan. 30, 2015); *In re Filippov*, BODA Case No. 30611, aff'd, 04-0151 (Tex. June 18, 2004); *In re Goldberg*, BODA Case No. 25757, aff'd, 02-0853 (Tex. Mar. 3, 2003); *In re Raynor*, BODA Case No. 25458, aff'd, 02-0435 (Tex. Sept. 26, 2002); *In re Hartley*, BODA Case No. 06052, aff'd, 95-0511 (Tex. Oct. 27, 1995).

In exercising its discretion, BODA has considered such factors as whether the crime was directly related to the attorney's practice of law, the conduct of the attorney during the compulsory proceeding, whether the attorney has complied with the terms and conditions of his probation, the attorney's efforts at rehabilitation, if applicable, the attorney's credibility under oath, whether the attorney accepts responsibility for his past actions, and any prior discipline imposed on the attorney. *In re Filippov, supra*, 2004 WL 5698154, at p. 6, *approved, In re Caballero, supra*, 272 S.W.3d at 601. Additional relevant factors are listed in Tex. Rules Disciplinary P. R. 3.10,⁴ including the seriousness of and circumstances surrounding the attorney's conduct, damage to the profession, avoidance of repetition, the deterrent effect on others, and the maintenance of respect for the legal profession.

Evaluation of factors

We analyze the evidence presented by Isassi at the compulsory disciplinary hearing addressing the *Filippov* and other instructive factors.

⁴ Rule 3.10 governs standard grievance proceedings in district court and not compulsory discipline. Nevertheless, we find the factors instructive on the issue of whether to exercise discretion under Rule 8.06. *See In re Humphreys*, 880 S.W.2d 402, 404 (Tex. 1994) (discussing the Administrative Procedure Act).

1. *Whether the crime was directly related to the attorney's practice of law*

The jury in Isassi's criminal case found that, on February 17, 2015, while serving as an elected judge, Isassi forged the signature of the county attorney on a motion to dismiss to achieve dismissal of criminal charges against one of Isassi's former clients. Isassi's actions while in a judicial capacity require a license to practice law. We give substantial aggravating weight to this factor.

2. *The conduct of the attorney during the compulsory proceeding*

Isassi conducted himself professionally throughout the compulsory proceedings. We give some mitigating weight to this factor.

3. *Whether the attorney has complied with the terms and conditions of his probation*

Isassi complied with the terms and conditions of his probation. We give mitigating weight to this factor.

4. *The attorney's efforts at rehabilitation*

Isassi testified that he is a stay-at-home father for his 7-year-old son. Isassi provided no evidence of counseling, therapy, or any attempts to engage a licensed professional so that he may explore the reasons he finds himself convicted a second time⁵ for conduct directly related to the practice of law. His testimony displayed a lack of self-awareness and insight. We find this lack of effort at rehabilitation an aggravating factor.

⁵ Isassi's conviction by a jury of a separate crime in 2005 that also required intent and involved his practice of law is described under items 6 and 13 below.

5. *The attorney's credibility under oath*

In reviewing the credibility of the witness, the Board finds that Isassi was the least credible in the areas that mattered most. Isassi was credible under oath when he lamented the consequences and embarrassment that resulted from his conviction. Isassi was credible when he discussed his appreciation and love for his family. Isassi was far less credible when he attempted to convince the Board that he accepted the jury's verdict, yet maintained his innocence. Isassi's body language and long pauses when questioned about what he did wrong did not come across as reflective or remorseful. Isassi admits to doing things wrong, but simultaneously believes he was wrongfully prosecuted. Isassi still maintains that he did not forge a prosecutor's signature, but respects the jury's verdict. While Isassi said the words, "I accept responsibility for my actions," the totality of factors observed during his testimony including his demeanor, his tone, and his guardedness severely undermined his credibility. We give substantial aggravating weight to this factor.

6. *Whether the attorney accepts responsibility for his past actions*

At the hearing before the Board of Disciplinary Appeals, Isassi did not accept responsibility for his crime, and his expressions of remorse did not appear sincere. Although stating that he accepted the jury's verdict, Isassi continues to deny that he engaged in the forgery for which he was convicted. He said that he had only been helping a former client and that he now recognizes that "no good deed goes unpunished." His testimony appeared to reflect respect for the power of the criminal justice system when one is caught, but it failed to express any sincerity in understanding that what he had done was criminal. Indeed, Isassi's explanation of his conduct, if true, stated a prima facie violation of a different statute under

which Isassi had been convicted of two crimes in 2005—namely, improper influence with intent to influence the outcome of adjudicatory proceedings on the basis of considerations other than those authorized by law.

During his testimony Isassi referred to his 2015 conviction as being reduced to a misdemeanor, which is not correct. While his characterization of the felony as a misdemeanor may seem like a technical mistake, his minimization of his role in the forgery, his minimization of the seriousness of the felony conviction, and his comment that he was punished for simply doing “a good deed” severely undercut any testimony he provided that he accepts responsibility for his past actions. We give substantial aggravating weight to this factor.

7. *Any prior discipline imposed on the attorney*

Isassi was disciplined in 2016 for communicating with a party whom he knew was represented by counsel. Isassi was subject to a four-month probated suspension from February 1, 2016 to May 31, 2016. We give only slight aggravating weight to this factor.

8. *Seriousness of and circumstances surrounding the attorney’s conduct*

First, it was not Isassi’s role to obtain a dismissal from the prosecutor. Even asking the prosecutor to dismiss the case would subject Isassi to the offense of Improper Influence. Second, the forged dismissal was not to rectify a clerical error. There was no agreement by the prosecutor to dismiss these cases. This makes the conduct corrupt. Third, the forged dismissal could have led to the criminal investigation and wrongful accusation of the former client or court appointed lawyer. The forged dismissal directly benefits Isassi’s former client. As such, Isassi’s conduct put others at risk. Fourth, Isassi was not doing a

“good deed.” He abused his position as a judge in a case from which he admitted he should have recused himself⁶ to facilitate a dismissal for a former client, to which the prosecutor did not agree. The integrity of the legal profession relies upon respect for the legal process. Unlike many other Intentional Crimes or Serious Crimes, Isassi’s felony offense directly relates to the integrity of the legal system. We give substantial aggravating weight to this factor.

9. *The loss or damage to clients.*

Isassi’s criminal misconduct related to an improper effort to dismiss charges against his former client by forging the signature of an unwilling prosecutor. Isassi’s former client suffered no loss; but if the prosecutor had not learned of Isassi’s fraudulent conduct, the victims of the Theft by Check offenses might have lost their ability to seek restitution through the criminal proceeding. We give slight weight to this aggravating factor.

10. *Damage to the profession*

The Preamble of the Texas Disciplinary Rules of Professional Conduct gives guidance on measuring the seriousness of Isassi’s conduct:

1. A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. *Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system.* A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

4. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it

⁶ Isassi testified at the hearing, when asked what he accepted responsibility for, that “I should have done it a little bit differently—recused myself from that case, as a former client.”

is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

9. Each lawyer's own conscience is the touchstone against which to test the extent to which his actions may rise above the disciplinary standards prescribed by these rules. The desire for the respect and confidence of the members of the profession and of the society which it serves provides the lawyer the incentive to attain the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. *So long as its practitioners are guided by these principles, the law will continue to be a noble profession.* This is its greatness and its strength, which permit of no compromise.

(Tex. Disciplinary Rules Prof'l Conduct, Preamble: A Lawyer's Responsibilities, *reprinted in* Tex. Gov't Code, tit.2, subtit. G, app. A; emphasis added.)

Isassi perceives his action as helping a former client. We view the situation far more gravely. The evidence presented at the hearing demonstrates a pattern where Isassi knows the lawyer's role and function in our legal system yet intentionally disregards these distinctions. This demonstrates a disrespect for the legal system and for those who serve it. The damage inflicted is not against a client or a victim, but against the entire profession. We give substantial aggravating weight to this factor.

11. *Assurance that those seeking legal services in the future will be insulated from this type of misconduct*

The only evidence Isassi provides is his personal assurance that the embarrassment and disgrace from his conviction will deter him from future misconduct. But it is unclear whether Isassi views his past conduct as criminal or unethical. His mischaracterization of the conviction as a misdemeanor, and his reference to his conduct as a "good deed" for which he was punished, make it appear that Isassi views his own behavior as less serious than the Board sees it. The Board therefore has concern that those seeking legal services in

the future will be subject to this type of misconduct. We give little weight to this potentially mitigating factor.

12. *Profit to the attorney*

The record does not show any profit to Isassi from his criminal misconduct. We do not give any weight to this aggravating factor.

13. *Avoidance of repetition*

Isassi's prior criminal conviction on August 8, 2005 and September 1, 2005 resulted from Class A misdemeanor violations of Texas Penal Code §§ 39.02 and 36.04 (improper influence with intent to influence the outcome of adjudicatory proceedings on the basis of considerations other than those authorized by law).⁷ On those two occasions, while Isassi served as the elected County Attorney, Isassi attempted to prevent felony prosecution of his aunt by another prosecutor. When testifying before the Board of Disciplinary Appeals that he had *not* forged the county attorney's signature in 2015 (despite the jury's contrary finding), Isassi claimed that he had simply gone across the hall to persuade the county attorney to file a motion to dismiss charges against Isassi's former client. If that version were true (rather than the forgery found by the jury), then Isassi would have been exercising improper influence with intent to influence the outcome of adjudicatory proceedings on the basis of considerations other than those authorized by law—*i.e.*, violating the same statute he had violated on two occasions 10 years earlier. Neither Isassi's denial of responsibility for the forgery nor his own version of his conduct relating to the 2015 convictions indicated

⁷ In 2005, Isassi was sentenced to a one-year jail term (suspended with 6 months of community supervision).

an attitude that gives confidence that Isassi has learned his lesson and will not repeat prior misconduct—both prior criminal misconduct and misconduct proscribed by the Disciplinary Rules of Professional Conduct. Indeed, even after conviction of the criminal act at issue, Isassi was disciplined with a probated suspension in 2016 for an unrelated incident involving his intentionally violating Tex. Disciplinary Rules Prof'l Conduct R. 4.02(a). We give substantial aggravating weight to this factor.

14. *The deterrent effect on others*

Because we focused exclusively on Isassi's conduct, we do not give any weight to this aggravating factor.

15. *The maintenance of respect for the legal profession*

Even if the 2005 conviction of intentional criminal conduct is ignored, Isassi's dishonest conduct as a judge in 2015, his refusal to admit to the criminality of that conduct, and his additional unethical conduct as an attorney leading to the 2016 discipline persuade BODA that its discretion is best exercised by disbaring Isassi. The decision to disbar is all the more compelling when the earlier 2005 conviction is considered along with the 2015 conviction that substantially mirrored the conduct for which a jury convicted him in 2005. The public cannot have confidence in a profession that does not remove recidivists when (i) they have intentionally and repeatedly engaged in criminal and unethical misconduct and (ii) they fail to take rehabilitative steps to give objective viewers a confidence that their criminal and unethical misconduct will not recur. We give substantial aggravating weight to this factor.

Conclusion

The Board concludes that disbarment is necessary to protect the administration of justice, to afford respect for the legal profession, and to prevent recurrence of Isassi's misconduct. This attorney has been convicted by two separate juries of crimes involving abuse of his position as a public official and intentional misconduct. This attorney then also engaged in other misconduct which, though not criminal, was an intentional violation of the Texas Disciplinary Rules of Professional Conduct. The totality of the facts leaves the members of the Board of Disciplinary Appeals convinced that considerations under *In re Filippov* and the other factors discussed herein require disbarment.

Respondent is disbarred.

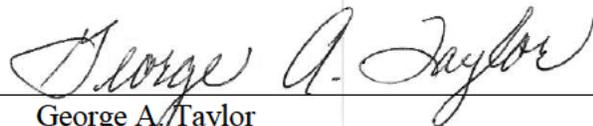
IT IS SO ORDERED.



David N. Kitner, Chair



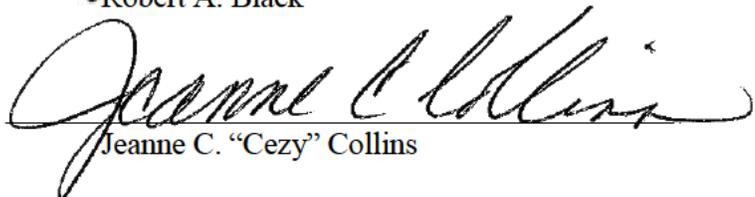
Ramon Luis Echevarria II, Vice Chair



George A. Taylor



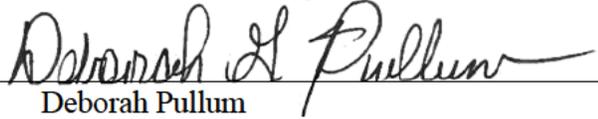
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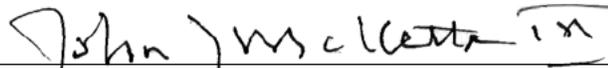
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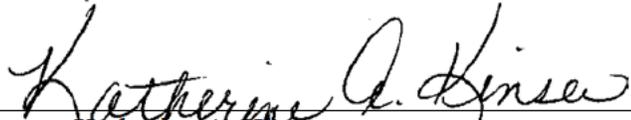
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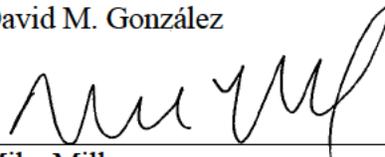
John J. McKetta III



Katherine A. Kinser



David M. González



Mike Mills

Wendy Adele Humphrey not sitting.