



FILED

2/23/24

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

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

**IN THE MATTER OF
LONDON STEPHON KEATING
STATE BAR CARD NO. 24086647**

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CAUSE NO. 68536

**RESPONDENT'S REPLY TO PETITIONER'S REPOSE TO
RESPONDENT'S PLEA TO THE JURISDICTION**

TO THE BOARD OF DISCIPLINARY APPEALS:

COMES NOW Respondent, Landon Stephon Keating (“Respondent”) and files this Reply to the Commission for Lawyer Discipline’s (“Petitioner” or “CFLD”) Response to Respondent’s Plea to the Jurisdiction, and in the alternative, Original Answer to the Commission for Lawyer Discipline’s Petition for Compulsory Discipline (the “Response”), and would respectfully show the Board of Disciplinary Appeals (“BODA”) the following:

I. SUMMARY

1. As stated in Respondent’s Plea to the Jurisdiction (“Plea”), BODA lacks jurisdiction over this matter pursuant to Rule 6.01 of the BODA Internal Procedural Rules. Petitioner has failed to show that Respondent was convicted of an “Intentional Crime” or a “Serious Crime” as those terms are defined in Rule 1.06(V) and 1.06(GG) of the Texas Rules of Disciplinary Procedure (TRDP). Accordingly, because BODA lacks jurisdiction to issue compulsory discipline, the CFLD’s Petition for Compulsory Discipline must be dismissed.

II. ARGUMENTS

A. COMPULSORY DISCIPLINE IS NOT APPROPRIATE BECAUSE RESPONDENT DID NOT COMMIT AN INTENTIONAL CRIME.

Texas has a bifurcated attorney disciplinary process: compulsory discipline and the standard grievance procedure. *In re Lock*, 54 S.W.3d 305, 306 (Tex. 2001). When an attorney is

alleged to have committed an Intentional Crime, that attorney is subjected to compulsory discipline. In a compulsory discipline proceeding, the reviewing body (BODA) has a limited scope of review, and it is asked only to determine whether it is alleged that the attorney was convicted of or received deferred adjudication for an Intentional Crime. *In re Caballero*, 2727 S.W.3d 595, 598 (Tex. 2008); TEX. R. DISCIPLINARY P. 7.08(G). If BODA finds that an allegation of an intentional crime exists, then BODA may either suspend or disbar the attorney. *Id.*

Respondent does not dispute that BODA has original jurisdiction over compulsory discipline matters. However, contrary to Petitioner's arguments in its Response, BODA does not have unfettered authority to determine what crimes constitute Intentional Crimes. *See* TEX. R. DISCIPLINARY P. 8.01. Whether an attorney was convicted of or received deferred adjudication for an Intentional Crime such that they should be subject to compulsory discipline is a threshold jurisdictional issue in compulsory discipline. *See Id.* at 8.04 (“[BODA] 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.” (emphasis added)). As detailed in the Plea, compulsory discipline is not appropriate in the present case because Respondent has not been convicted of an Intentional Crime, and he has not received deferred adjudication for an Intentional Crime.

In Respondent's underlying criminal matter, Respondent pleaded guilty to Invasive Visual Recording. Accordingly, in order for Respondent to be subject to compulsory discipline, Invasive Visual Recording must be an Intentional Crime, which requires that the attorney commit “(1) any Serious Crime that requires proof of knowledge or intent as an essential element or (2) any crime involving misapplication of money or other property held as a fiduciary.” *Id.* at 1.06(V). Further, as detailed in the Plea, in order for Invasive Visual Recording to constitute a “Serious Crime,” it

must either be either (1) a felony involving moral turpitude or (2) that Respondent conspired or solicited another to commit a felony involving moral turpitude. *Id.* at 1.06(GG); *see also* Plea at pg. 2-4.

i. *In re Lock* controls BODA's exercise of jurisdiction.

It is undisputed that the question of whether a particular crime involves moral turpitude is a question of law. *See* Plea at pg. 2; *see also* Response at pg. 9. However, in its Response, Petitioner appears to ignore the controlling analysis for determining whether a crime involves moral turpitude, articulated by the Supreme Court of Texas in *In re Lock*. 54 S.W.3d 305 (Tex. 2001). The Court in *In re Lock* held that “to determine whether a crime is an Intentional Crime, thus permitting the Bar to pursue the compulsory discipline process, [the Supreme Court] look[s] ***solely to the elements of the crime***, and not to any collateral matters, such as an attorney’s record of service and achievement, or to the underlying facts of the criminal case.” *Id.* at 305 (citing *Duncan v. Board of Disciplinary Appeals*, 898 S.W.2d 759, 762 (Tex. 1995) (emphasis added)). Further, within the context of attorney discipline, the Supreme Court has consistently held that “crimes of moral turpitude must involve dishonesty, fraud, deceit, or deliberate violence, or must reflect adversely on an attorney’s honesty, trustworthiness, or fitness as an attorney. *Id.* at 308 (citing *In re Birdwell*, 20 S.W.3d 685, 688 (Tex. 2000); *Duncan*, 898 S.W.2d at 761; *In re Humphreys*, 880 S.W.2d 402, 408 (Tex. 1994).

In his Plea, Respondent thoroughly discussed *In re Lock* and its application to the present matter, as it is the ***controlling*** Supreme Court precedent on BODA’s determination of whether a crime constitutes a crime of moral turpitude. Plea at pg. 3-6. However, in its Response, Petitioner fails to explain why the principles articulated by the Supreme Court in *In re Lock* do not apply to Respondent’s matter, nor does Petitioner cite to any other controlling precedent that contradicts

the Supreme Court's instructions in *In re Lock*. Petitioner's Response did reference *In re Lock* in one footnote because Petitioner apparently felt it necessary to clarify that Petitioner had not alleged that Respondent was charged with the same crime at issue in *In re Lock*. Response at pg. 9, n. 1. For the sake of clarity, Respondent's Plea cited *In re Lock* because it is binding precedent on BODA's exercise of jurisdiction in compulsory discipline matters—not because Petitioner alleged that Respondent had been convicted of possession of cocaine. *See* Plea at pg. 3-6.

ii. Invasive visual recording is not a crime of moral turpitude.

As stated in the Plea, the elements of invasive visual recording do not involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or reflect adversely on an attorney's honesty or trustworthiness. *See* Resp.'s Plea at pg. 5-6. In its Response, Petitioner argues that invasive visual recording is a crime of moral turpitude based on Petitioner's conclusory statement that "if you are committing a crime without a person's consent, you are guilty of a deceitful action." Response at pg. 9. However, Petitioner's wholly unsupported argument fails for the simple reason that a lack of consent is not the same as deceit. "Courts interpret statutes by looking to their plain language and construing text in light of [the] statute as a whole." *City of Austin v. Quinlan*, 669 S.W.3d 813, 821 (Tex. 2023). Here, the statutory text providing the elements for invasive visual recording are clear and unambiguous, and it does not involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or reflect adversely on an attorney's honesty or trustworthiness. TEX. PENAL CODE § 21.15; *see also* Plea at pg. 5-6. As such, contrary to Petitioner's arguments, BODA cannot conclude that invasive visual recording constitutes a crime of moral turpitude based solely on its elements.

Further, Petitioner cites *In re Lock* to support its argument that because Respondent was convicted of five separate felonies, compulsory discipline is appropriate. Response at pg. 10.

However, Petitioner's argument fails because BODA can *only* look to the elements of the crime in compulsory discipline; the quantity of charges is outside BODA's purview. *See generally, In re Lock*, 54 S.W.3d 305. In *In re Lock*, the Court noted that while "one could conclude that an attorney should be professionally answerable for a particular offense or pattern of offenses," the Texas Rules of Disciplinary Procedure do not permit BODA to engage in that type of fact analysis in compulsory discipline. *Id.* at 309. Moreover, the Court determined that "[w]hile we could change the disciplinary rules to likewise say that an attorney should be professionally answerable by compulsory discipline for any crime or any felony, we are not permitted to judicially read the current express limitation, "involving moral turpitude," out of the disciplinary rules." *Id.*

Based on the above, Respondent has not been convicted of an Intentional Crime or granted probation without an adjudication of guilt for an Intentional Crime. Accordingly, compulsory discipline is improper, and BODA does not have jurisdiction to address the CFLD's Petition for Compulsory Discipline.

B. BODA LACKS THE AUTHORITY TO IMPOSE ANY SANCTION ON RESPONDENT.

In addition, Petitioner devotes a significant portion of its Response towards arguing that disbarment is the appropriate sanction for Respondent. However, Petitioner's arguments are irrelevant to BODA's determination of whether Respondent committed an Intentional Crime. Moreover, Petitioner's arguments appear to be an inappropriate attempt to introduce the underlying facts of Respondent's crime to BODA, which Petitioner knows BODA cannot consider. *See In re Lock*, 54 S.W.3d at 309. Accordingly, as detailed in the Plea and outlined in the arguments above, BODA lacks jurisdiction to hear Petitioner's Petition for Compulsory Discipline against Respondent. Therefore, BODA also lacks the jurisdiction to impose any sanction against Respondent.

PRAYER

Respondent Landon Keating asks that the Board of Disciplinary Appeals dismiss Petitioner's Petition for Compulsory Discipline in its entirety because it lacks jurisdiction to hear a compulsory discipline proceeding based on the underlying allegations or, in the alternative, to deny the relief sought in Petitioner's Petition for Compulsory Discipline; award Respondent all reasonable and necessary attorneys' fees and litigation expenses associated with this proceeding; and award Respondent all such other and further relief as the Board of Disciplinary Appeals deems just and equitable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the above and foregoing document was delivered as indicated below to counsel of record on this 23rd day of February 2024.

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