

BEFORE THE BOARD OF DISCIPLINARY APPEALS

APPOINTED BY

THE SUPREME COURT OF TEXAS



FILED

Jul 03 2024

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

In the Matter of

William Topp Maxwell

State Bar Card No.: 24028775

§

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§

CAUSE NO.: 56591

VERIFIED DENIAL OF FINALITY AND BRIEF

To the Honorable Board:

Comes Now, William Topp Maxwell ("Maxwell"), and files his verified Denial of Finality of his conviction and for just cause would show unto the Board as follows:

1) Maxwell previously filed a [verified] Motion for Continuance of the July 26, 2024 hearing and in his verified Motion for Continuance noted that the case was not final. See "Motion for Continuance and Motion to File Paper Motions (Rule 1.05(a)(4)(iii))." ("This matter is still pending on the Supreme Court's Docket.") at Page 1. (See attached)

2) In Maxwell's prior filing he explained that his case was not final because:

a) The Third Circuit denied Maxwell's Sur Petition for Rehearing on September 15, 2023 (see attached), not July, 2023.

b) Maxwell's timely request for extension to file his Petition to the Supreme Court (for certiorari) was granted by Justice Alito, extending his due date until February 12, 2024. (See attached)

c) On May 7, 2024, the Supreme Court docketed Maxwell's February 9, 2024 petition as Cause No.: 23-7404. (See attached)

d) On May 14, 2024 the United States Solicitor General waived it's right to respond. (See attached)

e) On May 28, 2024, the Supreme Court requested the Solicitor General to respond. (See attached) Response is due June 27, 2024.

f) The United States, in highly irregular conduct (it has never previously occurred in U.S. history), confesses that it tendered to the jury, trial court, and appellate court, at least 276 material and prejudicial exhibits that it never offered for admission into evidence and that were never admitted into evidence by the trial court. The United States further admits that these exhibits were prejudicial to Maxwell (Maxwell filed a Supplemental Brief to Petition for Certiorari: dated May 23, 2024.)(See attached)

3) Maxwell's Supreme Court docket reveals (although Maxwell has not been served yet with the motion) that the Solicitor General filed a motion to extend time to file a response until July 29, 2024. That motion has been granted and the United State's response to Maxwell's petition is now due on or before July 29, 2024.

4) Because Maxwell's case is still pending on the United States Supreme Court's docket it is not final as a matter of law (appellate Court's Mandate has tolled).

There is a body of law establishing when a federal conviction becomes final. In Clay v. United States, 537 U.S. 552, 123 S.Ct. 1072, 155 L.Ed.2d 88 (2003) the Supreme Court determined when a federal criminal conviction becomes final. In addressing the finality question in the context of post-conviction the court teaches that: "we hold a judgment of conviction [federal conviction] becomes final when the time expires for filing a petition for certiorari contesting the appellate court's affirmation of the conviction." Id., 537 U.S. at 525. This is expressly contrary to finality occurring when the appellate court's mandate is issued ("We reject the issuance of the appellate court mandate as the triggering date.")

5) The Supreme court explains:

"Finality is variously defined like many legal terms, its precise meaning depends on context ... For purposes of seeking review by [the Supreme Court]" the Court teaches, "[t]he time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice)." Supreme Court Rule 13(3). Clay, 537 U.S. at 527. <sup>EN1</sup>

"Finality attaches when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires."(Emphasis added)

6) The BODA Rule 6.02 provides that "for purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate."

7) The order of the Board, dated June 18, 2024, was not posted to the U.S. Mails until June 20, 2023 (see attached).

8) The Third Circuit Court of Appeals Mandate is tolled while Maxwell's timely petition for certiorari is pending or until the Supreme Court rules on the merits. See Griffith v. Kentucky, 479 U.S. 314, 321 n. 6, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987)("By 'final' we mean a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.")

9) In Griffith the Supreme Court was discussing the retroactivity of Supreme Court decisions to cases on direct appeal. Here, Maxwell's certiorari petition specifically address three Supreme Court decisions that were issued after briefing and before Maxwell's case was final -- or to be issued this term. The Supreme Court in Ciminelli and Bruen and Rahimi have

already (Maxwell argues) ruled in Maxwell's favor (e.g., even if the conduct alleged by the government is true it is not a crime as charged by the government -- Maxwell expressly denies the government's allegations and argues in the alternative). The Supreme Court will issue Fischer this week. Fischer it is believed will fully and finally reverse the remainder of all of Maxwell's counts of conviction.

10) These cases, on which the Supreme Court has ruled in Maxwell's favor, in addition to the unheard of tender to the jury of 276 material and prejudicial exhibits which were not offered into evidence by the government, nor admitted into evidence by the trial court, and relied upon by the appellate court (facts admitted by the United States) make up the questions the Supreme Court has ordered the Solicitor General to respond.

11) Under these facts, and Maxwell's verified denial of finality -- both previously filed in Maxwell's extension motion -- and by verification and attached affidavit, preclude any determination regarding the Motion for Disbarment until such time as Maxwell's conviction becomes final.

12) In addition to Maxwell's prior verified Motion for Extension, this verified denial, Maxwell appends his affidavit of denial.

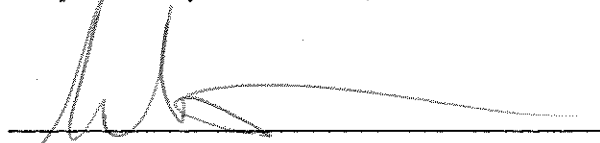
13) Maxwell will notify the Board immediately of any Supreme Court decision.

14) Maxwell incorporates his arguments and factual allegations from his attached Affidavit hereto. Maxwell incorporates his arguments and factual allegations from his verified Denial of Service filed concurrently herewith.

#### PRAYER

For these Reasons, Maxwell prays that the Motion for Disbarment be deemed unripe as Maxwell's conviction is not final as a matter of law. Maxwell denies proper service. Maxwell denies that his conviction is final. Maxwell prays for such other and additional relief to which he may be entitled.

Respectfully Submitted,



WILLIAM TOPP MAXWELL (SB 24028775)

Fed. Reg. No.: 71944-279

FCI-Beaumont-Low

Post Office Box 26020

Beaumont, Texas 77720

Pro Se'

**VERIFICATION**

I hereby verify that all material facts contained in the Verified Denial of Finality and Brief are true and correct to the best of my knowledge and belief. I make this verification under penalties of perjury and pursuant to 28 U.S.C. §1746.

June 27, 2024



WILLIAM TOPP MAXWELL

CERTIFICATE OF SERVICE

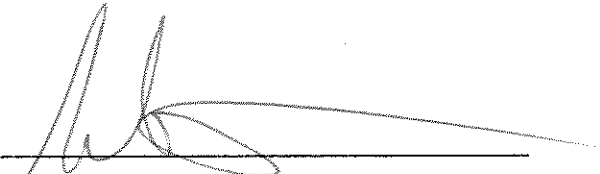
I hereby certify that a true and correct copy of the foregoing Verified Denial of Finality and Brief was placed in the BOP Legal Mail System, first class postage prepaid to:

Ms. Amanda M. Kates  
Assistant Disciplinary Counsel  
State Bar of Texas  
Capital Station  
Austin, Texas 78711-2487

Board of Disciplinary Appeals  
Post Office Box 12426  
Capital Junction  
Austin, Texas 78711-2426

on the 27 day of June, 2024. I make this certification under penalties of perjury and pursuant to 28 U.S.C. §1746.

June 27, 2024

  
\_\_\_\_\_  
WILLIAM TOPP MAXWELL

ENDNOTES

EN1 See Jimenez v. Quarterman, 555 U.S. 113, 119, 129 S.Ct. 681, 172 L.Ed.2d 475 (2009). "With respect to post-conviction relief for federal prisoners on direct review occurs when 'this court affirms a conviction on the merits or denies a petition for a writ of certiorari.'" Clay, at 527.

ATTACHMENTS

- 1) Denial of Sur Petition for Rehearing. Sept. 15, 2023
- 2) Supreme Court GRANTING extension until February 12, 2024.
- 3) Supreme Court Docketing on May 7, 2024, Maxwell's February 9, 2024  
Filing of Certiorari Petition
- 4) Solicitor General's Waiver of Response. May 14, 2024
- 5) Supreme Court's Request of Response from Solicitor General  
Dated May 28, 2024, Response Due June 27, 2024
- 6) Maxwell's Supplemental Brief to Supreme noting the United States  
acknowledgment of facts supporting structural error.
- 7) U.S. Postmark noting June 20, 2024 postage of order.
- 8) Affidavit of William Maxwell



UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 15-2925

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UNITED STATES OF AMERICA

v.

WILLIAM MAXWELL, a/k/a BILL,

William Maxwell,  
Appellant

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On Appeal from the United States District Court  
for the District of New Jersey  
(D.C. Nos. 1-11-cr-0740-003)  
District Judge: Honorable Robert B. Kugler

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SUR PETITION FOR REHEARING

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Present: JORDAN, HARDIMAN, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS,  
FREEMAN, MONTGOMERY-REEVES, CHUNG and AMBRO\*, *Circuit Judges*

The petition for rehearing filed by appellant William Maxwell in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is DENIED.

BY THE COURT

s/ Kent A. Jordan  
\_\_\_\_\_  
Circuit Judge

DATE: September 15, 2023

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\* Judge Ambro's vote is limited to panel rehearing only.

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

November 3, 2023

Mr. William Maxwell  
Prisoner ID 71944-279  
FCI Beaumont  
P.O. Box 26020  
Beaumont, TX 77720

Re: William Maxwell  
v. United States  
Application No. 23A399

Dear Mr. Maxwell:

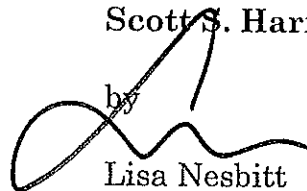
The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Alito, who on November 3, 2023, extended the time to and including February 12, 2024.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by



Lisa Nesbitt  
Case Analyst

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

May 7, 2024

Mr. William Maxwell  
Prisoner ID 71944-279  
FCI Beaumont  
P.O. Box 26020  
Beaumont, TX 77720

Re: William Maxwell  
v. United States  
No. 23-7404

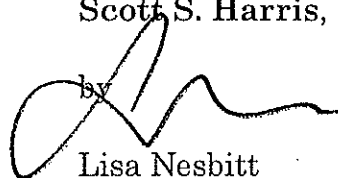
Dear Mr. Maxwell:

The petition for a writ of certiorari in the above entitled case was filed on February 9, 2024 and placed on the docket May 7, 2024 as No. 23-7404.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

Scott S. Harris, Clerk

by 

Lisa Nesbitt  
Case Analyst

Enclosures

IN THE SUPREME COURT OF THE UNITED STATES

MAXWELL, WILLIAM  
Petitioner

vs.

No: 23-7404

USA

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

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ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record

May 14, 2024

cc:

WILLIAM MAXWELL  
PRISONER ID: 71944-279  
FCI BEAUMONT  
P.O BOX 26020  
BEAUMONT, TX 77720

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

May 28, 2024

Mrs. Elizabeth B. Prelogar  
Solicitor General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

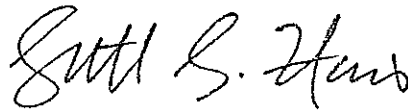
Re: William Maxwell  
v. United States  
No. 23-7404

Dear Mrs. Prelogar:

Although your office has waived the right to file a response to the petition for a writ of certiorari in the above case, the Court nevertheless has directed this office to request that a response be filed.

Ten typewritten or otherwise reproduced copies of your response, together with proof of service thereof, should be filed on or before June 27, 2024.

Sincerely,



Scott S. Harris  
Clerk

cc: William Maxwell

BEFORE THE UNITED STATES SUPREME COURT

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WILLIAM MAXWELL

Petitioner/Appellant/Defendant,

VS.

UNITED STATES OF AMERICA

Respondent/Appellee/Plaintiff.

---

On Petition for Certiorari to the United States  
Court of Appeals for the Third Circuit

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On Appeal from the United States District Court for the District of  
New Jersey, Camden Vicinage, Honorable Robert Kugler, presiding.

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**SUPPLEMENTAL BRIEF TO**  
**PETITION FOR CERTIORARI**

---

Respectfully submitted,

William Maxwell  
Reg. No. 71944-279  
FCI Beaumont Low  
Post Office Box 26020  
Beaumont, Texas 77720  
Pro se'

TO THE HONORABLE SUPREME COURT:

COMES NOW, William Maxwell ("Maxwell"), petitioner herein, and files this Supplemental Brief, noting the United States' admission of the factual underpinnings of Maxwell's structural error argument, and for just cause would show unto the Court as follows:

1) Maxwell; his brother, John Maxwell; Nick Scarfo; and Salvatore Pelullo were convicted after trial in this matter. The trial was eight (8) months long.

2) Maxwell asserted in his Opening Brief that, as a result of this "Monster Trial," which was objected to by the defendants (multiple times) throughout, structural error occurred. The Federal Rules of Evidence were abrogated. In this case, two hundred seventy-six (276) material exhibits that were never offered for admission into evidence, never admitted into evidence, were nevertheless given to the jury by the United States, considered by the Trial Court in its denials of Rule 29 and Rule 33 motions, and were considered by the Appellate Court in its affirmance of the case. Maxwell argued that giving two hundred seventy-six (276) material exhibits to the jury that were never offered for admission by the Government (thereby triggering the defense duty to object), nor admitted by the Trial Court into evidence, was a break down of the adversarial process and constituted the type of error this Court has called structural.

3) Scarfo, who is now proceeding in the Trial Court on a \$2255 case, raised the inadmitted exhibit issue. In its Response, found at Cause No. 1:23-cv-22432-RBK, Doc. No. 7, Page 101 the United States confesses:

"...To be sure, the cases discussed above did not involve anywhere near the number of unadmitted exhibits at issue here. Nor does the Government dispute that, had the unadmitted exhibits been excluded from evidence, the overall strength of the Government's case against [the defendants] would have been eroded."

4) The Government has confessed that the two hundred seventy-six (276) exhibits were material; that they were not offered for admission into evidence; that they were not admitted into evidence, ever, and that they affected the outcome of the case.

5) The Government took other positions in the Brief in regards to Scarfo that are not material to Maxwell's assertions in his Opening Brief.

6) The Government confesses that it has known about this structural (Maxwell alleges that it is structural) error since at least 2019. The exhibits (276) that were highlighted for the Court in Maxwell's Appendix show a District Court filing in 2019. Despite this knowledge of structural error, the Government did not alert the Appellate Court that two hundred seventy-six (276) exhibits that it included in the joint appendix were not properly before the Appellate Court.

7) The Government makes other arguments that are perhaps better raised by the Government.

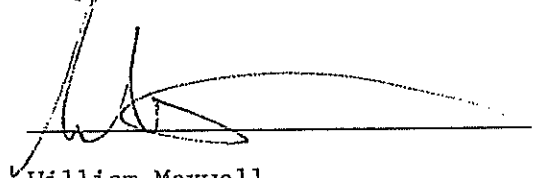
8) The filing did not become available to Maxwell until today, May 23, 2024. Maxwell files this Supplement to clarify that there is no dispute that:



- (1) two hundred seventy-six (276) material exhibits were never offered into evidence by the United States;
- (2) two hundred seventy-six (276) material exhibits were never admitted into evidence by the Court;
- (3) two hundred seventy-six (276) material exhibits that were never offered into evidence or admitted into evidence were prejudicial to Maxwell (defendants);
- (4) two hundred seventy-six (276) material exhibits that were not offered into evidence nor admitted into evidence were nevertheless given to the jury and considered by the Trial Court and Appellate Court (and reasonable inferences therefrom) in reaching its decisions (Rule 29, Rule 33, Direct Appeal, Jury Deliberations) in this case.

9) Maxwell urges that, under these undisputed facts, structural error occurred. Alternatively, full briefing may be appropriate under GVR to the Court below.

Respectfully submitted,



William Maxwell

Reg. No. 71944-279

FCI-Beaumont-Low

P.O. Box 26020

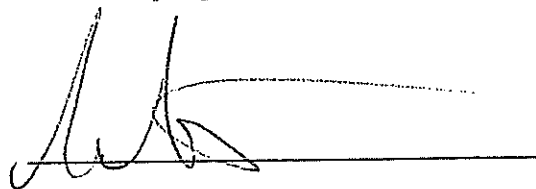
Beaumont, TX 77720

VERIFICATION

I hereby verify that the material factual statements contained herein are true and correct to the best of my knowledge and belief. I make this verification under 28 U.S.C. §1746 and penalties of perjury.

5/23/2024

Date

A handwritten signature in black ink, appearing to read 'William Maxwell', written over a horizontal line.

William Maxwell

THE BOARD OF DISCIPLINARY APPEALS  
APPOINTED BY THE SUPREME COURT OF TEXAS  
PO BOX 12426  
AUSTIN TX 78711-2426



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WILLIAM TOPP MAXWELL  
# 71944-279 FCI BEAUMONT LOW  
POB 26020  
BEAUMONT TX 77720

7772036020 B099

AFFIDAVIT OF WILLIAM MAXWELL

STATE OF TEXAS

COUNTY OF JEFFERSON

Pursuant to 28 U.S.C §1746 and under penalties of perjury William Topp Maxwell, SBN 24028775, herewith makes the following declarations:

1) Maxwell's conviction in Cause No. 1:11-CR-00740(3), styled United States of America v. William Maxwell, in the United States district Court for the District of New Jersey is not a final conviction. The matter is currently pending on the Docket of the United States Supreme Court, Docket No. 23-7404.

2) Maxwell timely filed a petition for certiorari with the Supreme Court, noting that the Supreme Court's opinions in Ciminelli, Bruen, Rahimi and Fischer -- all issued post the Third Circuit's Judgment (initial judgment on September 29, 2022) and before Maxwell's filing his petition for certiorari (February 9, 2024, docketed May 7, 2024).

3) Maxwell also pointed out that the prosecution had tendered 276 exhibits to the jury that were neither offered into evidence, nor admitted into evidence by the trial court. The prosecution also did not disclose this fact to the Appellate Court. Maxwell urged that because the exhibits were material to the prosecution's case and prejudicial to Maxwell, that the actions of the prosecution' constituted structural error. The United States has admitted the facts alleged supporting Maxwell's structural argument.

4) The Solicitor General has been ordered to file a response brief, addressing the retroactive Supreme Court cases (Ciminelli, Bruen, Rahimi, Fischer) and other cases therein. The Solicitor General has been ordered to file a response brief, addressing Maxwell's structural error argument.

5) Under Griffith, Maxwell's case is not final as a matter of law, the petition for certiorari being timely filed and remaining under consideration by the United States Supreme Court.

6) Maxwell previously filed a Verified Motion for Continuance, in which he denied the finality of the case out of New Jersey, Doc. No. 1:11-CR-00740(3).

7) Maxwell also has filed concurrent herewith a Verified Denial and Objection to Service. Specifically, all relevant documents are facially inconsistent and the affidavit of service is inadmissible as a matter of law. The inconsistencies include:

a) The Board's Order date June 18, 2024, but not posted to the U.S. Mail until June 20, 2024, states that Maxwell was served on March 23, 2024. Maxwell expressly denies service on March 23, 2024.

b) The Constable, John Ochoa's, Return of Service was prepared on May 23, 2024, attesting to service on May 23, 2024. Maxwell expressly denies service on May 23, 2024.

c) The Constable, John Ochoa, executed an affidavit in support of his return of service on May 23, 2024. The affidavit attests that service took place on May 25, 2024. Maxwell expressly denies that an affidavit can be executed two days prior to an event, attesting to a future event. As such Maxwell properly objected and moved to strike.

d) The Motion for Entry of Judgment of Disbarment is file stamped on May 16, 2024. The Certificate of Service is dated May 15, 2024. Maxwell expressly denies that proper service can occur on May 15, 2024 for a document dated May 16, 2024. Maxwell properly objected and requested a ruling and moved to strike.

e) The cover letter to the Motion for Entry of Judgment of Disbarment, file stamped May 16, 2024, but dated May 15, 2024 was improperly served on Maxwell as you cannot serve on May 15, 2024 a document that is dated (file stamped) May 16, 2024. Maxwell properly objected and moved to strike.

f) The Constable's Return of Service and Affidavit in Support are mutually exclusive having the May 23, 2024 date on one and May 25, 2024 on another. Maxwell objected, denied proper service and moved to strike.

8) Maxwell previously filed the following documents verifying the accuracy and authenticity of the document served on Maxwell by the United States:

a) United States Court of Appeals for the Third Circuit, Cause No.: 15-2925, denial of Sur Petition for Rehearing, dated September 15, 2023.

b) The United States Supreme Court's November 3, 2023 grant of an extension to Maxwell to file his petition for certiorari.

c) The United States Supreme Court's May 7, 2024 docketing of Maxwell's petition for certiorari filed timely on February 9, 2024.

d) The Solicitor General waiver of response dated, May 14, 2024.

e) The Supreme Court's notice to the Solicitor General requesting a responsive brief due on or before June 27, 2024.

f) Maxwell's Supplemental Brief to petition for certiorari, noting the United States confession of facts in Case No. 1:23-CV-22432-RBK, Doc. No. 7, Page 101.

9) Given these facts Maxwell denies that his case is final. Maxwell denies that proper service was effected.

10) Maxwell has affirmatively filed a prior verified statement that his case was not final.

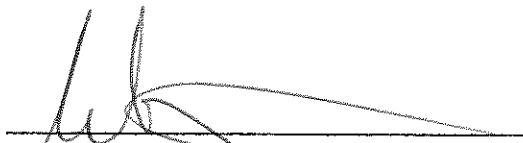
11) Maxwell appends this affidavit to his Second Verified Denial of Finality.

12) Maxwell denies that the Third Circuit Mandate is effective, having been tolled, as a matter of law, during the time his petition for certiorari is pending before the Supreme Court.

Further affiant sayeth not.

I declare under penalties of perjury that the foregoing is true and correct.

Executed on June 27, 2024



WILLIAM MAXWELL

\* See 28 U.S.C. §1746 attached hereto.

## § 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

### (1)

If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

### (2)

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".



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

IN THE MATTER OF :  
WILLIAM TOPP MAXWELL : CAUSE NO. 56591  
STATE BAR CARD NO. 24028775 :

DENIAL OF PROPER SERVICE

To the Honorable Board:

COMES NOW, William Maxwell, and files his Denial of Proper Service, and for just cause would show unto the Board as follows:

1) The Order as a factual basis asserts (in part):

"Respondent William Topp Maxwell, was hand-served the Motion by a deputy constable of Jefferson County, Texas, on March 23, 2024."

See Order page 2. (emphasis added)

Maxwell expressly denies that he was served by a deputy constable of Jefferson County, Texas, on March 23, 2024. In fact, the constable's return, filed with the Board disproves the purported service date of March 23, 2024.

2) The Deputy's return of service on the officer's return (copy of return of service attached) evidences:

a) "On the 17th day of May 2024 at 11:46 am, the following document(s) came to hand to be served on William Topp Maxwell at the location of 5560 Knauth Road, FCI-Beaumont-Low, Beaumont, TX 77705."

"I, John Ochoa, a Licensed Peace Officer, authorized to serve civil process in the State of Texas, and in my capacity as, employed by Gene Winston, Constable Precinct 8, Jefferson

County, Texas, caused a true copy of the Notice of Hearing (issued: 7/17/2023) in the above captioned matter to be served the 23rd day of May 2024 at 8:35 am. By delivering to: William Topp Maxwell at 5560 Knauth Road FCI-Beaumont-Low, Beaumont, Tx 77705." (See attached) (emphasis added)

3) Maxwell expressly denies that he was served any document "issued 7/17/2023," purporting to be a Notice of Hearing. In fact, the copy, tendered to William Topp Maxwell, contains a post-it which reads, "This copy to be served on Mr. Maxwell." The correspondence attached thereto of Ms. Amanda M. Kates is dated May 15, 2024. (See attached.)

The Notice of Hearing is attached to that "Motion for Entry of Judgment of Disbarment." The Motion for Entry of Judgment of Disbarment is certified to be served on May 15, 2024.

The "Motion for Entry of Judgment of Disbarment" is file stamped May 16, 2024. (See attached.)

4) Next, the Affidavit of John Ochoa, inconsistent with the Officer's return (which asserted service on May 23, 2024), swears that service was on May 25, 2024 (see attached).

5) As such, Maxwell objects because service is not proper.

6) Maxwell was not served on March 23, 2024. Maxwell expressly denies service. The Constable's return and affidavit both are not consistent with each other nor are they consistent with the date in the June 18, 2024, Order of the Board. Administrative Notice requested.

7) Maxwell expressly denies that the "Motion for Entry of Judgment of Disbarment" for which the Certificate of Service is dated May 15, 2024, but for which the Motion itself is file stamped May 16, 2024, was properly served as sworn. Administrative Notice requested.

8) Maxwell expressly denies that both the Constable's Return of Service, purporting service of May 23, 2024, and the Constable's Affidavit, purporting service on May 25, 2024 are collectively correct. In fact, they are mutually exclusive. Administrative Notice requested.

9) The Constable's affidavit is non-admissible as evidence and false on its face. Specifically, Ochoa was sworn and subscribed before the Notary Public on May 23, 2024 that he had effected service on May 25, 2024, two days in the future. It is impossible and improper to swear to the outcome of a future event. As such, Maxwell objects to the admissibility of Ochoa's affidavit in support of service and moves to strike. Maxwell requests a specific ruling on the admissibility and his motion to strike the affidavit.

10) The inconsistencies between the Constable's return, his false affidavit, the inconsistent dates in the purported affidavit, the inconsistent dates on the Service of Process for the Motion for Entry and Judgment of Disbarment (certifying service on May 15, 2024 of a document that is file stamped May 16, 2024), all inconsistent with the Board's order of June 18, 2024 (which asserted service on March 23, 2024), constitutes such irregularities that Maxwell objects to service and moves to strike. Maxwell requests a ruling on his objection and Motion to Strike.

11) Additionally, in the interim, Maxwell filed a Verified Motion for Extension. The Verified Motion for Extension also contained a verified explanation that Maxwell's criminal conviction was not final. (See Verified Motion for Extension, Page 1)

12) Pursuant to Rule 6.02 Interlocutory Suspension, Subsection (b) Criminal Conviction Affirmed, provides: "If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a Motion for Final Judgment that complies with TRDP 8.05."

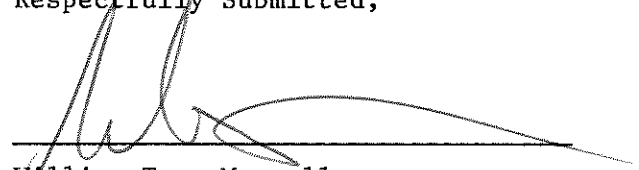
Maxwell denies that service of the Motion for Final Judgment complies with due process requirements and therefore objects. Maxwell requests a ruling on his objection.

13) Service is not proper. Maxwell objects.

PRAYER

For these reasons, Maxwell would object that service in the matter is not proper, is inconsistent, and that Maxwell must be re-served. Maxwell verifies his denial of proper service. Maxwell requests such other and additional relief to which he may be entitled.

Respectfully Submitted,



William Topp Maxwell

Fed. Reg. No.: 71944-279

FCI-Beaumont-Low

P.O. Box 26202

Beaumont, Texas 77720

Pro Se'

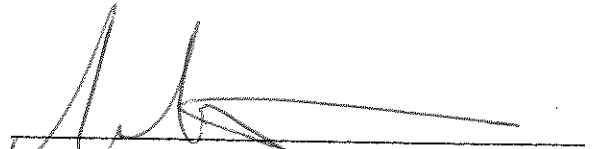
CERTIFICATE OF SERVICE

I hereby certify that I served Ms. Amanda M. Kates, Assistant Disciplinary Counsel, State Bar of Texas, and the Board of Disciplinary Appeals, as noted below. I make this certification pursuant to 28 U.S.C. §1746 and under penalties of perjury. Service on June 27, 2024.

Ms. Amanda M. Kates  
Assistant Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Capital Station  
Austin, TX 78711-2487

Board of Disciplinary Appeals  
P.O. Box 12426  
Capital Station  
Austin, TX 78711-2426

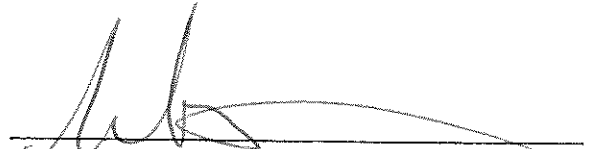
6/27/24  
Date

  
William T. Maxwell

VERIFICATION

I hereby verify that the material factual statements contained herein are true and correct to the best of my knowledge and belief. I further verify that service was not proper. I make this verification under penalties of perjury and pursuant to 28 U.S.C. §1746.


6/27/24  
Date

  
William T. Maxwell

**ATTACHMENTS**

I hereby certify that each attachment is a true and correct copy of an exhibit or document served upon me by the State Bar of Texas, or copies of items contained on Docket No.: 23-7404, now pending before the United States Supreme Court. I make this certification under penalties of perjury and pursuant to 28 U.S.C. §1746.

June 27, 2024

  
WILLIAM TOPP MAXWELL

**ATTACHMENT LIST**

- 1) Copy of Constable John Ochoa's Return of Service
- 2) May 15, 2024 correspondence of Ms. Amanda M. Kates
- 3) "Motion for Entry of Judgment of disbarment" file stamped May 16, 2024, although purported to be served on May 15, 2024.
- 4) Affidavit of Constable John Ochoa, swearing that service was on May 25, 2024. NOTE: The affidavit was SWORN AND SUBSCRIBED on the 23rd of May 2024, Two Days Before the purported service.
- 5) Affidavit of William Maxwell

# Gene Winston

525 Lakeshore Drive  
Beaumont, TX 77640  
409-983-8311

## OFFICER'S RETURN

**THE SUPREME COURT OF TEXAS**

Plaintiff

Vs.

**WILLIAM TOPP MAXWELL**

Defendant

Case Number: 56591

Court: THE SUPREME COURT OF TEXAS-

Civil #: C8 24000264

On the 17th day of May 2024 at 11:46 AM, the following document(s) came to hand to be served on WILLIAM TOPP MAXWELL at the location of 5560 KNAUTH Road FCI BEAUMONT LOW Beaumont TX 77705.

I, John Ochoa, a Licensed Peace Officer, authorized to serve civil process in the State of Texas, and in my capacity as , employed by Gene Winston, Constable Precinct 8, Jefferson County, Texas, caused a true copy of the NOTICE OF HEARING (Issued: 07/17/2023) in the above captioned matter to be served the 23rd day of May, 2024, at 8:35 AM. By delivering to: WILLIAM TOPP MAXWELL at 5560 KNAUTH Road FCI BEAUMONT LOW Beaumont TX 77705.

THEREFORE, I AM EXECUTING THIS DECLARATION AS PART OF MY ASSIGNED DUTIES AND RESPONSIBILITIES: I DECLARE THAT UNDER PENALTY OF PERJURY, AND PURSUANT TO SECTION 132.001 OF THE TEXAS CIVIL PRACTICES & REMEDIES CODE, THAT THE INFORMATION PROVIDED BY ME IN THIS SWORN STATEMENT IS TRUE AND CORRECT.

Service Fee: \$75.00

Signature: \_\_\_\_\_



*John Ochoa*  
John Ochoa

**G.A. WINSTON, JR  
CONSTABLE PCT #8  
JEFFERSON COUNTY**

# STATE BAR OF TEXAS



FILED  
May 16 2024

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

Office of the Chief Disciplinary Counsel

May 15, 2024

Ms. Jenny Hodgkins  
Board of Disciplinary Appeals  
Supreme Court of Texas  
P. O. Box 12426  
Austin, Texas 78711

Via e-filing [filing@txboda.org](mailto:filing@txboda.org)

This copy to be  
served on  
Mr. Maxwell

Re: 56591; *In the Matter of William Topp Maxwell, State Bar Card No. 24028775;*  
Before the Supreme Court of Texas Board of Disciplinary Appeals

Dear Ms. Hodgkins:

Attached please find a Motion for Entry of Judgment of Disbarment which includes a Notice of Hearing for filing in this matter. Please file the original Motion with the Board and return a copy to me.

By copy of this letter, a true and correct copy of said Motion will be sent for service on Mr. Maxwell.

Thank you for your assistance in this matter. Please do not hesitate to call if you have any questions.

Sincerely,

Amanda M. Kates  
Assistant Disciplinary Counsel  
State Bar of Texas

AMK/tbg

cc: William Topp Maxwell  
Inmate Register No. 71944-279  
Beaumont Low FCI  
5560 Knauth Road  
Beaumont, TX 77705  
Via Personal Service





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

IN THE MATTER OF §  
WILLIAM TOPP MAXWELL § CAUSE NO. 56591  
STATE BAR CARD NO. 24028775 §

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 November 24, 2015, Petitioner filed its First Amended Petition for Compulsory Discipline against Respondent, William Topp Maxwell (hereinafter called "Respondent") seeking compulsory discipline based upon Respondent's following conviction:

On or about August 11, 2015, an Amended Judgment (as to forfeiture) in a Criminal Case was entered in Case No. 1:11-CR-00740 (03), styled *United States of America v. William Maxwell, Defendant*, in the United States District Court for the District of New Jersey, wherein Respondent was found guilty of Count One - Racketeering Conspiracy, Count Two - Conspiracy to Commit Securities Fraud, Count Three - Conspiracy to Commit Wire Fraud, Counts Four through Nineteen - Wire Fraud, Count Twenty - Conspiracy to Commit Money Laundering, Count Twenty-Three - Conspiracy to Obstruct Justice, Count Twenty-Four - Conspiracy to Sell or Transfer Firearms and Ammunition to a Prohibited Person and was committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 240 months on each of Counts 1, 3 through 20, and 23; and 60 months on each of Counts 2 and 24; all such terms to run concurrent, to produce a total term of imprisonment of 240 months. Respondent was ordered upon release from imprisonment to be on supervised release for 3 years on each of Counts 1 through 20, 23, and Count 24, all such terms to run concurrently, ordered to pay an assessment of \$2,200.00 and ordered to pay restitution in the amount of \$14,180,798.00.

2. On February 2, 2016, 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. *See In the Matter of Mercier*, 242 SW 3d 46 (Tex. 2007).

3. Following the appeal by Respondent of his criminal conviction in Cause No. 1:11-CR-00740 (03), a Judgment (Exhibit 1) was issued by the United States Court of Appeals for the Third Circuit, on or about July 17, 2023, in Cause No. No. 15-2925, *United States of America, Plaintiff-Appellee v. William Topp Maxwell, Defendant-Appellant*, which affirmed the conviction and sentence.

4. A true and correct copy of the Judgment issued as Mandate by the United States District Court for the Third Circuit, is attached hereto as Exhibit 1 and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce a certified copy of Exhibit 1 at the time of hearing of this cause.

5. Petitioner represents to the Board that the Judgment entered against Respondent, William Topp Maxwell, has now become final. Petitioner seeks the entry of a judgment of disbarment. Attached hereto is a true and correct copy of the form of the proposed judgment of which Petitioner seeks the entry herein.

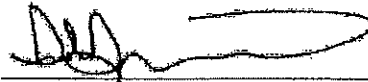
#### PRAYER

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,

**Seana Willing**  
Chief Disciplinary Counsel

**Amanda M. Kates**  
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: 512.427.4253  
Email: amanda.kates@texasbar.com



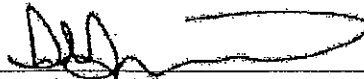
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Amanda M. Kates  
Bar Card No. 24075987

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 26<sup>th</sup> day of July, 2024. The hearing location and format (in-person vs virtual) are subject to change based on conditions related to the COVID-19 pandemic. The Board of Disciplinary Appeals will notify the parties of any changes to the hearing location or format.



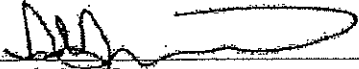
---

Amanda M. Kates

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been sent for personal service on this the 15th, day of May, 2024, as follows:

William Topp Maxwell  
#71944-279  
FCI Beaumont Low  
5560 Knauth Road  
Beaumont, Texas 77705

  
\_\_\_\_\_  
Amanda M. Kates

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

RECEIVED  
GENERAL INVESTIGATIVE  
DIVISION  
2024 MAY 17 11:47  
CONSTABLE DEPARTMENT  
JEFFERSON COUNTY, TEXAS

IN THE MATTER OF §  
WILLIAM TOPP MAXWELL § CAUSE NO. 56591  
STATE BAR CARD NO. 24028775 §

AFFIDAVIT

THE STATE OF TEXAS :  
:  
COUNTY OF JEFFERSON :

BEFORE ME, the undersigned authority, on this day personally appeared JOHN OCHKA, who, being by me duly sworn, deposed as follows:

"My name is JOHN OCHKA. I am employed by JEFFERSON COUNTY as a DEPUTY CONSTABLE Pct 8. I am over the age of 18 years, of sound mind, capable of making this affidavit, and state the following:

I have no interest pecuniary or otherwise in Cause No. 56591; *In the Matter of William Topp Maxwell, State Bar Card No. 24028775*; Before the Board of Disciplinary Appeals, Appointed by the Supreme Court of Texas.

11:47 The following documents came to hand for service on 5-23<sup>rd</sup>, 2024, at 8:35 o'clock A.m.: A letter dated May 15, 2024, addressed to Jenny Hodgkins and the Commission for Lawyer Discipline's Motion for Entry of Judgment of Disbarment which includes exhibits and a Hearing Notice.

On 5-23, 2024, at 835 o'clock A.m., I delivered in hand to a person known to me to be William Topp Maxwell, at WILLIAM TOPP MAXWELL

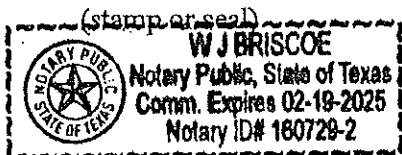
full address, city, state and zip code), a letter dated May 15, 2024, addressed to Jenny Hodgkins and the Commission for Lawyer Discipline's Motion for Entry of Judgment of Disbarment which includes exhibits and a Hearing Notice, true and correct copies of which are attached hereto."

FURTHER Affiant saith not.

John Ochka  
(Signature)  
JOHN OCHKA  
(Printed Name)

SWORN AND SUBSCRIBED before me on the 23rd day of May 2024.

W. J. Briscoe  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



**AFFIDAVIT OF WILLIAM MAXWELL**

**STATE OF TEXAS**

**COUNTY OF JEFFERSON**

Pursuant to 28 U.S.C §1746 and under penalties of perjury William Topp Maxwell, SBN 24028775, herewith makes the following declarations:

1) Maxwell's conviction in Cause No. 1:11-CR-00740(3), styled United States of America v. William Maxwell, in the United States district Court for the District of New Jersey is not a final conviction. The matter is currently pending on the Docket of the United States Supreme Court, Docket No. 23-7404.

2) Maxwell timely filed a petition for certiorari with the Supreme Court, noting that the Supreme Court's opinions in Ciminelli, Bruen, Rahimi and Fischer -- all issued post the Third Circuit's Judgment (initial judgment on September 29, 2022) and before Maxwell's filing his petition for certiorari (February 9, 2024, docketed May 7, 2024).

3) Maxwell also pointed out that the prosecution had tendered 276 exhibits to the jury that were neither offered into evidence, nor admitted into evidence by the trial court. The prosecution also did not disclose this fact to the Appellate Court. Maxwell urged that because the exhibits were material to the prosecution's case and prejudicial to Maxwell, that the actions of the prosecution' constituted structural error. The United States has admitted the facts alleged supporting Maxwell's structural argument.

4) The Solicitor General has been ordered to file a response brief, addressing the retroactive Supreme Court cases (Ciminelli, Bruen, Rahimi, Fischer) and other cases therein. The Solicitor General has been ordered to file a response brief, addressing Maxwell's structural error argument.

5) Under Griffith, Maxwell's case is not final as a matter of law, the petition for certiorari being timely filed and remaining under consideration by the United States Supreme Court.

6) Maxwell previously filed a Verified Motion for Continuance, in which he denied the finality of the case out of New Jersey, Doc. No. 1:11-CR-00740(3).

7) Maxwell also has filed concurrent herewith a Verified Denial and Objection to Service. Specifically, all relevant documents are facially inconsistent and the affidavit of service is inadmissible as a matter of law. The inconsistencies include:

a) The Board's Order date June 18, 2024, but not posted to the U.S. Mail until June 20, 2024, states that Maxwell was served on March 23, 2024. Maxwell expressly denies service on March 23, 2024.

b) The Constable, John Ochoa's, Return of Service was prepared on May 23, 2024, attesting to service on May 23, 2024. Maxwell expressly denies service on May 23, 2024.

c) The Constable, John Ochoa, executed an affidavit in support of his return of service on May 23, 2024. The affidavit attests that service took place on May 25, 2024. Maxwell expressly denies that an affidavit can be executed two days prior to an event, attesting to a future event. As such Maxwell properly objected and moved to strike.

d) The Motion for Entry of Judgment of Disbarment is file stamped on May 16, 2024. The Certificate of Service is dated May 15, 2024. Maxwell expressly denies that proper service can occur on May 15, 2024 for a document dated May 16, 2024. Maxwell properly objected and requested a ruling and moved to strike.

e) The cover letter to the Motion for Entry of Judgment of Disbarment, file stamped May 16, 2024, but dated May 15, 2024 was improperly served on Maxwell as you cannot serve on May 15, 2024 a document that is dated (file stamped) May 16, 2024. Maxwell properly objected and moved to strike.

f) The Constable's Return of Service and Affidavit in Support are mutually exclusive having the May 23, 2024 date on one and May 25, 2024 on another. Maxwell objected, denied proper service and moved to strike.

8) Maxwell previously filed the following documents verifying the accuracy and authenticity of the document served on Maxwell by the United States:

a) United States Court of Appeals for the Third Circuit, Cause No.: 15-2925, denial of Sur Petition for Rehearing, dated September 15, 2023.

b) The United States Supreme Court's November 3, 2023 grant of an extension to Maxwell to file his petition for certiorari.

c) The United States Supreme Court's May 7, 2024 docketing of Maxwell's petition for certiorari filed timely on February 9, 2024.

d) The Solicitor General waiver of response dated, May 14, 2024.

e) The Supreme Court's notice to the Solicitor General requesting a responsive brief due on or before June 27, 2024.

f) Maxwell's Supplemental Brief to petition for certiorari, noting the United States confession of facts in Case No. 1:23-CV-22432-RBK, Doc. No. 7, Page 101.

9) Given these facts Maxwell denies that his case is final. Maxwell denies that proper service was effected.

10) Maxwell has affirmatively filed a prior verified statement that his case was not final.

11) Maxwell appends this affidavit to his Second Verified Denial of Finality.




12) Maxwell denies that the Third Circuit Mandate is effective, having been tolled, as a matter of law, during the time his petition for certiorari is pending before the Supreme Court.

Further affiant sayeth not.

I declare under penalties of perjury that the foregoing is true and correct.

Executed on June 27, 2024



WILLIAM MAXWELL

\* See 28 U.S.C. §1746 attached hereto.

## § 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

### (1)

If executed without the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)”.

### (2)

If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)”.

William Maxwell  
Reg. # 71944-279  
FCI-Beaumont-100  
P.O. Box 26020  
Beaumont, Tx 77720

RECEIVED

JUL 02 2024

CHIEF Disciplinary Counsel  
State Bar of Texas

By: \_\_\_\_\_

Ms. Amanda M Ke  
Assistant Disciplinary  
State Bar of Texas  
P.O. Box 12487  
Capital Station  
Austin, Tx 78711-2

LEGAL  
Mail

RECEIVED  
JUL 01 2024  
CAAP DEPT.