



BEFORE THE BOARD OF DISCIPLINARY APPEALS
Appointed By
THE SUPREME COURT OF TEXAS

IN THE MATTER OF
EUGENE X. MERCIER
State Bar of Texas Card No. 13946700

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CAUSE NO. 38020

JUDGMENT OF DISBARMENT
NUNC PRO TUNC

On May 2, 2014, the Board of Disciplinary Appeals heard the Motion for Entry of Final Judgment of Disbarment filed by the Commission for Lawyer Discipline of the State Bar of Texas and the Reply and Objections filed by Respondent Mercier. Respondent Mercier appeared in person and by counsel. The Commission appeared by counsel. Both parties announced ready. All issues of fact and questions of law were submitted to the Board for determination. After reviewing the pleadings and evidence and hearing argument, the Board finds that the Motion for Entry of Final Judgment of Disbarment should be **GRANTED** and Respondent should be **DISBARRED**.

The Board's judgment signed May 8, 2014 contained an incorrect State Bar Card number for Respondent Mercier. This nunc pro tunc judgment corrects his State Bar Card number to 13946700.

Interlocutory Suspension

The Board originally heard the Petition for Compulsory Discipline in this case on September 29, 2006. Respondent Mercier appeared in person and through counsel. Mercier did not contest that he had been convicted of an Intentional Crime and a Serious Crime under TRDP 1.06T and Z. On November 3, 2006, the Board of Disciplinary Appeals issued its opinion and order suspending Mercier while his criminal conviction for conspiracy to commit barratry was on appeal pursuant to

Tex. R. Disciplinary Pro. 8.04. *In re Mercier*, 2006 WL 6242392 (Tex. Bd. Disp. App. No. 38020, Nov. 3, 2006), *aff'd in part and rev'd in part*, 242 S.W.3d 46 (Tex. 2007). The Supreme Court of Texas affirmed the finding that Mercier had been convicted of an Intentional Crime and the interlocutory suspension. *In re Mercier*, 242 S.W.3d 46, 48 (Tex. 2007) (per curiam). The Supreme Court reversed the Board's conclusion that, in the event that Mercier's criminal conviction was affirmed and became final, he should be disbarred as premature. *Id.*

The BODA Interlocutory Order of Suspension signed November 3, 2006 contained the following findings of fact:

- (1) Respondent, Eugene X. Mercier, whose State Bar Card number is 13946700, is not as of this date subject to any administrative or disciplinary action by the State Bar of Texas and is therefore authorized to practice as an attorney and counselor at law in the State of Texas.
- (2) On or about May 26, 2006, an Order Granting Resentencing Motion After Court of Appeals Mandate Issued, Judgment on Verdict of Guilty Punishment Fixed by Court Modified: Community Supervision was entered in Case Number CR-3680-01-F, styled *The State of Texas v. Eugene X. Mercier*, in the 332nd District Court of Hidalgo County, Texas, finding the Respondent guilty of Conspiracy to Commit Barratry, a State Jail Felony, in violation of § 38.12 of the Penal Code.
- (3) Respondent was sentenced to six (6) months in the State Jail Division of the Texas Department of Criminal Justice which the Court suspended and ordered that Respondent be placed on Community Supervision for two (2) years. Respondent was also ordered to pay a fine in the amount of \$7,500, attend and complete a 15-hour drug education program, work 240 hours at a community service project, and surrender his law license.
- (4) Respondent, Eugene X. Mercier., is the same person as the Eugene X. Mercier who is the subject of the Judgment described above; and
- (5) Respondent has appealed the criminal conviction.

Motion for Entry of Final Judgment

The Board now makes the additional findings as follows:

- (1) On May 3, 2013, the Court of Appeals for the Thirteenth District of Texas issued its Mandate in Cause No. 13-06-00296-CR affirming Respondent's criminal felony conviction for conspiracy to commit barratry.

- (2) Respondent was sentenced to six months incarceration probated for two years, said probation ending June 6, 2015.
- (3) The Commission for Lawyer Discipline filed its Motion for Entry of Judgment of Disbarment on June 7, 2013.
- (4) The Board set the motion for hearing on July 26, 2013.
- (5) The hearing was continued three times, twice at Respondent's request and once by agreement of the parties initiated by the Commission.
- (6) On April 17, 2014, the 332nd Judicial District Court of Hidalgo County, Texas found that Respondent had completed in excess of one-third of the original period of community supervision and signed an Order pursuant to Tex. Code Crim. Pro. Art. 42.12 § 20 granting Respondent's Motion to Reduce and Early Terminate Period of Community Supervision in the criminal case.
- (7) The Order of the district court further stated that Defendant was "released from all penalties, disqualifications and disabilities resulting from the crime or offense of which Defendant had been convicted" with certain exceptions.
- (8) Respondent completed approximately half of his community service hours as originally assessed before his probation was terminated April 17, 2014.
- (9) Respondent received his first disciplinary sanction in 1988 within eight months of being licensed.
- (10) Respondent served a partially probated suspension from 1991 until 1998 based in part on his criminal conviction for felony theft and in part on complaints filed against him by 15 separate complainants with the State Bar of Texas.
- (11) In addition to the disciplinary judgments described in (9) and (10) above and this case, Respondent has had an additional five disciplinary judgments.
- (12) Respondent has been administratively suspended five times for failure to pay State Bar dues.
- (13) Respondent has been administratively suspended five times for failure to pay the Texas Attorney Occupation Tax.
- (14) Respondent has additionally been administratively suspended for failure to comply with Minimum Continuing Legal Education Requirements and for failure to repay Texas Guaranteed Student Loans.

The Board concludes as follows:

- (1) Respondent's criminal conviction became final when the court of appeals issued its mandate on May 3, 2013, and Respondent was required to start serving his criminal sentence.
- (2) The Board of Disciplinary Appeals has continuing jurisdiction over this case to render final judgment. TRDP 8.05.
- (3) Respondent, having been convicted of conspiracy to commit barratry, has been convicted of an Intentional Crime for purposes of compulsory discipline. TRDP 1.06T, 1.06Z, 8.01, and 8.05.
- (4) The Board of Disciplinary Appeals has discretion to disbar any attorney convicted of an Intentional Crime under TRDP Part VIII, even if the criminal sentence is fully probated. *In re Caballero*, 272 S.W.3d 595, 601 (Tex. 2008).
- (5) Respondent's early termination of his criminal probation does not affect the Board's jurisdiction to render final discipline because "[t]he completion or termination of any term of incarceration, probation, parole, or any similar court ordered supervised period does not bar an action" for compulsory discipline. TRDP 8.01. *In re Caballero*, 272, S.W.3d 595, 600 (Tex. 2008) (compulsory disciplinary can be initiated even after probation has ended).
- (6) The discharge pursuant to Tex. Code Crim. Proc. Art. 42.12 § 20 is not an exoneration of guilt. *See, Smiley v. State*, 129 S.W.3d 690, 695 (Tex. App.—Houston [14th Dist.] 2004, no pet.).
- (7) The discharge pursuant to Tex. Code Crim. Proc. Art. 42.12 § 20 does not, under its own terms, render the conviction a legal nullity for all purposes.
- (8) A compulsory discipline judgment under TRDP Part VIII is not a "penalty" or "disability" under Art. 42.12 § 20 because regulation of the practice of law is promulgated under the inherent authority of the Supreme Court of Texas to protect the public and is nonpenal.
- (9) A discharge under Tex. Code Crim. Proc. Art. 42.12 § 20 merely restores the civil rights of a convicted defendant, but does not remove all evidence of the conviction or mean that he no longer has a "final conviction." Tex. Att'y Gen. Op. MW-148.
- (10) A "set aside" conviction under Art. 42.12 § 20 may still support civil restrictions imposed for the public's protection. *Texas Dep't of Public Safety v. Tune*, 977 S.W.2d 650, 653 (Tex. App.—Ft. Worth 1998) *aff'd* 23 S.W.3d 358, 364 (Tex. 2000).
- (11) Allowing a discharge under art. 42.12 § 20 to deprive the Board of jurisdiction to decide compulsory discipline directly conflicts with the TRDP promulgated by the Supreme Court of Texas as part of its inherent power and would be an invasion of the Court's exclusive power to regulate the practice of law.

- (12) Having been convicted of conspiracy to commit barratry, an Intentional Crime, having a prior felony theft conviction, and having an extensive history of disciplinary sanctions and administrative suspensions, Respondent should be disbarred.

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** that Respondent, Eugene X. Mercier, State Bar Card No. 13946700, be and he is hereby **DISBARRED** from the practice of law in the State of Texas and his license to practice law in this state be, and is hereby, revoked.

It is further **ORDERED, ADJUDGED and DECREED** that Respondent, Eugene X. Mercier, is hereafter permanently prohibited, effective immediately, from practicing law in Texas, holding himself out as an attorney at law, performing any legal service for others, accepting any fee directly or indirectly for legal services not completed before the date of this judgment, appearing as counsel in any proceeding in any Texas court or before any Texas administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further **ORDERED** that Respondent, Eugene X. Mercier, shall notify in writing, no later than thirty (30) days from the date of this judgment, each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any legal matter pending, if any, of his disbarment, of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing in that court. Respondent is also **ORDERED** to mail copies of all such notifications to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further **ORDERED** that Respondent, Eugene X. Mercier, shall immediately notify each of his current clients and opposing counsel, if any, in writing, of his disbarment. In addition

to such notification, Respondent is **ORDERED** to return all files, papers, unearned fees paid in advance, and all other monies and properties which are in his possession but which belong to current or former clients, if any, to those respective clients or former clients within thirty (30) days after the date on which this Judgment is signed by the Board. Respondent is further **ORDERED** to file with the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, within the same thirty (30) days, an affidavit stating that all current clients and opposing counsel have been notified of his disbarment and that all files, papers, unearned fees paid in advance, and all other monies and properties belonging to clients and former clients have been returned as ordered herein. If Respondent should be unable to return any file, papers, money or other property to any client or former client, 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 to said client any file, paper, money or other property. Respondent is also **ORDERED** to mail a copy of said affidavit and copies of all notification letters to clients to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further **ORDERED** that Respondent, Eugene X. Mercier, immediately surrender his Texas law license and permanent State Bar Card to the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

It is further **ORDERED** that a certified copy of the Petition for Compulsory Discipline on file herein, along with a copy of this Judgment, be sent to the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

SIGNED this 12th day of May 2014.



CHAIR PRESIDING