

BEFORE THE BOARD OF DISCIPLINARY APPEALS

APPOINTED BY
THE SUPREME COURT OF TEXAS



FILED
July 3, 2024

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."

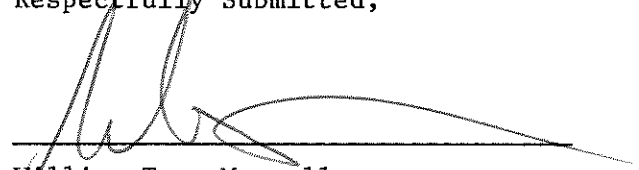
Maxwell denies that service of the Motion for Final Judgment complies with due process requirements and therefore objects. Maxwell requests a ruling on his objection.

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'

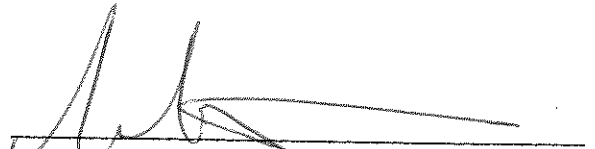
CERTIFICATE OF SERVICE

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

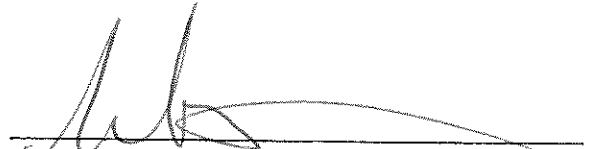
6/27/24
Date


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

Jefferson County Constable Precinct 8

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

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.

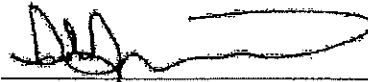
PRAYER

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



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 26th 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.

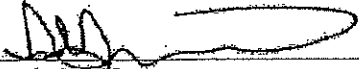


Amanda M. Kates

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 5-23rd, 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 8:35 o'clock A.m., I delivered in hand to a person known to me to be William Topp Maxwell, at WILLIAM TOPP MAXWELL

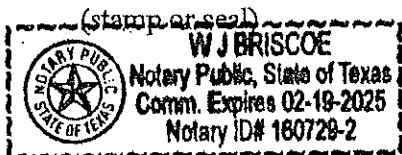
full address, city, state and zip code), a letter dated May 15, 2024, addressed to Jenny Hodgkins and the Commission for Lawyer Discipline's Motion for Entry of Judgment of Disbarment which includes exhibits and a Hearing Notice, true and correct copies of which are attached hereto."

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 K
Assistant Disciplinary
State Bar of Texas
P.O. Box 12487
Capital Station
Austin, Tx 78711-2

LEGAL
Mail

RECEIVED
JUL 01 2024
CAAP DEPT.