

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



F I L E D
Nov 22 2024

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

**IN THE MATTER OF
SIDNEY POWELL
STATE BAR CARD NO. 16209700**

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CAUSE NO. 69537

**PETITIONER’S RESPONSE TO SIDNEY POWELL’S MOTION TO DISMISS, AND
BRIEF IN SUPPORT OF COMPULSORY DISCIPLINE**

Petitioner, the Commission for Lawyer Discipline (“CFLD”), by and through the Office of the Chief Disciplinary Counsel of the State Bar of Texas, files the instant Response to Respondent’s Motion to Dismiss, and Brief in Support, of Compulsory Discipline.

I. INTRODUCTION

The CFLD filed its Petition for Compulsory Discipline in the instant matter on June 5, 2024. EX 1 at 5. On June 10, 2024, Petitioner sent the Original Petition out for personal service to be served at the address Respondent listed with the State Bar of Texas (2911 Turtle Creek Blvd. Suite 300, Dallas, Texas 75219). See EX 1 at 1. When the process server was unable to effectuate personal service, Petitioner attempted service via electronic communication on June 20, 2024, to “sidneypowell@federalappeals.com” and “sidney@federalappeals.com.” *Id.* at 2-52 & 54-104. Both emails were returned undeliverable. *Id.* at 53 & 105-06. Ultimately, Petitioner asked that the hearing be passed and reset.

The CFLD filed its First Amended Petition on July 31, 2024. EX 2 at 5. That same day Petitioner sent the First Amended Petition out for service with the Dallas County Constable of Precinct 5. *Id.* at 1. Thereafter, Officer J. Garcia, Badge #525, made three separate attempts to

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serve Respondent at her residence, but was denied access on all three occasions. *See* EX 2 at 1. After receiving Officer Garcia’s affidavit, Petitioner attempted service via certified mail on August 26, 2024, but that attempt also proved unsuccessful. *Id.* at 103-152.

On September 9, 2024, Bridget Kateri, legal assistant to Sidney Powell, called Bar Counsel Kates and inquired as to the status of the pending Compulsory matter. Ms. Kateri indicated that Respondent would be amenable to service via electronic communication. To that end, after confirming the appropriate email address, Bar Counsel Kates sent the First Amended Petition and supporting exhibits to Respondent via electronic mail on September 9, 2024. *Id.* at 53-102. Respondent ultimately accepted service via electronic correspondence on September 9, 2024. *See* EX 3 . Respondent filed her Original Answer through her counsel of record, Robert H. Holmes, on October 10, 2024. *See generally Respondent’s Original Answer.*

This matter was originally set for hearing to occur in front of this Board on October 25, 2024. Respondent submitted the instant Motion to Dismiss on October 10, 2024. Thereafter Petitioner reached out to Respondent and filed an agreed motion for continuance resetting this matter to be heard January 31, 2025. Petitioner and Respondent also agreed that Petitioner’s Response to the Motion for Dismissal would be due on or by November 22, 2024; Respondent’s Reply would be due on or by December 6, 2024; the final deadline for filing briefing, responses, and replies by Petitioner would be December 20, 2024; and the final deadline for filing briefing, responses, and replies by Respondent would be January 3, 2025. Accordingly, Petitioner files this Response to Respondent’s Motion to Dismiss, and Brief in Support of Compulsory Discipline. *See generally Petitioner’s Agreed Motion for Continuance and Proposed Briefing Schedule.*

II. BACKGROUND

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This proceeding is solely predicated on the Amended Judgment entered against Sidney Powell in Criminal Action # 23SC190370, styled *State of Georgia vs. Sidney Elizabeth Powell*, in the Superior Court of Fulton County, State of Georgia. The Amended Judgment sets out six separate counts/charges of Conspiracy to Commit Intentional Interference with Performance of Election Duties. Respondent ultimately entered a negotiated plea for 12 months of probation as to each count/charge, to be served consecutively.

III. Arguments and Authorities

Under Texas Rules of Disciplinary Procedure Section 7.08(G), the Board of Disciplinary Appeals has the power and duty to hear and determine actions for compulsory discipline for attorneys licensed in Texas under Part VIII. TEX. RULES DISCIPLINARY P. R. 7.08(G), *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A-1 (West 2013) Part VIII, Section 8.03 of the procedural rules states the following,

A Disciplinary Action under this part must be initiated by the filing of a petition with the Board of Disciplinary Appeals. The petition must allege the adjudication of guilt (*or probation without an adjudication of guilt*) of an Intentional Crime; allege that the Respondent is the same person as the party adjudicated guilty or who received probation with or without an adjudication of guilt for such Intentional Crime; and seek the appropriate discipline.

TEX. RULES DISCIPLINARY P. R. 8.03. (*emphasis added*)

Section 8.04 further states that during a Compulsory Disciplinary Proceeding,

The Board of Disciplinary Appeals shall hear and determine all questions of law and fact. When an attorney has been convicted of an Intentional Crime *or has been placed on probation for an Intentional Crime without an adjudication of guilt*, he or she shall be suspended as an attorney licensed to practice law in Texas during the appeal of the conviction or the order of deferred adjudication. Upon introduction into evidence of a certified copy of the judgment of conviction or order of deferred adjudication and a certificate of

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the Clerk of the Supreme Court that the attorney is licensed to practice law in Texas, the Board of Disciplinary Appeals 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. Uncontroverted affidavits that the attorney is the same person as the person convicted or granted probation without an adjudication of guilt are competent and sufficient evidence of those facts. Nothing in these rules prohibits proof of the necessary elements in such Disciplinary Action by competent evidence in any other manner permitted by law. The Board of Disciplinary Appeals shall sit, hear and determine whether the attorney should be disciplined and enter judgment accordingly within forty-five days of the answer day; however, any failure to do so within the time limit will not affect its jurisdiction to act. Any suspension ordered during the appeal of a criminal conviction or probation without an adjudication of guilt is interlocutory and immediately terminates if the conviction or probation is set aside or reversed.

TEX. RULES DISCIPLINARY P. R. 8.04. (*emphasis added*)

This Board retains sole jurisdiction of Compulsory Discipline matters throughout the entirety of the analysis. The question of whether a crime is an Intentional Crime is a question of law. *Duncan v. Bd. of Disciplinary Appeals*, 898 S.W.2d 759, 761 (Tex. 1995); *See also United States v. Tuttle*, 46 F.2d 342, 345 (E.D.La.1930); *In re McAllister*, 14 Cal.2d 602, 95 P.2d 932, 933 (1939). It is a question of law that must be determined by the Board of Disciplinary Appeals.

TEX. RULES DISCIPLINARY P. R. 8.04.

A. Respondent’s crimes constitute “Intentional” and “Serious” crimes and she is subject to Compulsory Discipline.

This Board is now tasked with determining whether Respondent’s crimes of Conspiracy to Commit Intentional Interference with Performance of Election duties are “Serious” and “Intentional” crimes, and therefore subject to Compulsory Discipline. *See* TEX. RULES DISCIPLINARY P.R. 1.06(V), (GG) and 8.01.

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- a. *Respondent's crimes of Conspiracy to Commit Intentional Interference with Performance of Election Duties are Serious Crimes as defined by Rule 1.06(GG)*

As stated above, in order for this Board to find that Respondent's crimes are "Intentional" for the purpose of compulsory discipline, the Board must first determine if the crimes of Conspiracy to Commit Intentional Interference with Performance of Election duties are "Serious" crimes as defined by Texas Rule of Disciplinary Procedure 1.06(GG). TEX. RULES DISCIPLINARY P.R. 1.06(V). Texas Rule of Disciplinary Procedure 1.06(GG) defines a "Serious Crime" as barratry; any felony involving moral turpitude; **any misdemeanor involving theft**, embezzlement, or fraudulent or reckless misappropriation of money or other property; **or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes**. TEX. RULES DISCIPLINARY P. R. 1.06(GG)(*emphasis added*).

The Official Code of Georgia Annotated or O.C.G.A ("O.C.G.A.") is the compendium of all laws in the State of Georgia. The O.C.G.A. is the index of state governing laws enacted by the General Assembly which consists of two chambers, the House of Representatives and the Senate. <https://www.fultoncountyga.gov/commissioners/clerk-to-the-commission/code-of-georgia>. Title 16 of the O.G.C.A. covers rules governing crimes and offenses, and Title 21 of the O.G.C.A. covers rules governing elections. GA. CODE ANN. § 16, Ga. Code Ann. §21.

Respondent pleaded guilty to violating two separate Georgia statutes in each of the six counts/charges set forth in the Georgia Judgment of probation: GA. CODE ANN. § 16-4-8 and Ga. Code Ann. §21-2-597.¹ *See* Respondent's Motion to Dismiss at 5, *See also* EX 4 at 1 and 8. O.G.C.A. Statute §16-4-8 states that "[a] person commits the offense of conspiracy to commit a

¹ Despite Respondent's argument that "[t]here is no conviction or judgment" (Respondent's Motion to Dismiss at 5), the face of what Respondent calls the "agreed settlement with the State of Georgia" very clearly states that the agreement is a final judgment. *See* EX 4 at 5.

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crime when [s]he together with one or more persons conspires to commit any crime and any one or more of such persons does any overt act to effect the object of the conspiracy. GA. CODE ANN. § 16-4-8 (West). Chapter 21 of O.G.C.A § 21-2-597 states that “[a]ny person who intentionally interferes with, hinders, or delays or attempts to interfere with, hinder, or delay any other person in the performance of any act or duty authorized or imposed by this chapter shall be guilty of a misdemeanor.” GA. CODE ANN. § 21-2-597 (West).

Respondent spends the majority of her motion arguing that her convictions do not constitute a crime of moral turpitude. However, Petitioner acknowledges that Respondent did not plead guilty to a felony, and the determination of whether or not her crimes constitute moral turpitude, in this instance, is a moot issue. That being said, Respondent’s crimes do meet the definition of misdemeanors involving theft, and therefore she is subject to Compulsory Discipline under the Rules of Disciplinary Procedure.

- i. Respondent’s Crimes are Serious Crimes for the purposes of Texas’ Compulsory Discipline rules because they “[involve] theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any...conspiracy...to commit any of the foregoing crimes”*

Rule 8.04 provides that the Board “shall hear and determine all questions of law and fact.” TEX. RULES DISCIPLINARY P.R. 8.04. To that end, the Board must take the “record of conviction or order of deferred adjudication” as conclusive evidence of an attorney’s guilt of the crime charged. TEX. RULES DISCIPLINARY P.R. 8.02. Texas courts have long considered that the record of conviction includes the indictment, the judgment of the court and the sentence. *See e.g., Tex. Emp. Ins. Ass’n v. Curry*, 290 S.W.2d 767, 769 (Tex. App.—El Paso 1956, writ ref’d n.r.e.). Further, the Georgia Judgment specifically incorporates the Accusation and it’s language by stating that the “Charge[s]” are “as indicted or accused.” EX 4 at 1. Rather than duplicating

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language, the Judgment directs the reader to look to the Accusation for further information concerning Respondent's crimes as charged.

As noted above, any misdemeanor involving theft or fraudulent or reckless misappropriation of money or other property is designated as a "Serious Crime" under Texas Rule of Disciplinary Procedure 1.06(GG). TEX. RULES DISCIPLINARY P.R. 1.06(GG). The rule and definition require only that the Georgia misdemeanors "involve theft...or fraudulent or reckless misappropriation of money or other property," in some way.

The crime of theft is defined in the Texas Penal Code as follows:

(a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if: (1) it is without the owner's effective consent; (2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or (3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

TEX. PEN. CODE ANN. § 31.03.

A review of the record of conviction/order of deferred adjudication in this case, and specifically the Judgment of probation as it incorporates the Accusation in Respondent's underlying criminal case, reveals that Respondent's actions resulting in the Georgia Crimes involve theft and/or fraudulent or reckless misappropriation of money or other property; or conspiracy to commit such crimes. More specifically:

- Count/Charge 2 of 6:

"[d]oes further charge and accuse Sidney Katherine Powell with the offense of Conspiracy to Commit Intentional Interference with Performance of Election Duties O.C.G.A. §§ 16-4-8 & 21-2-597, for the said accused...unlawfully conspired to intentionally interfere with, hinder, and delay Misty Hampton AKA Emily Misty Hayes, another person, in the

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performance of a duty imposed by Chapter 2 of Title 21 of the Official Code of Georgia; And Sidney Katherine Powell entered into a contract with Sullivan Strickler LLC in Fulton County, Georgia, delivered a payment to Sullivan Strickler LLC in Fulton County, Georgia, and caused employees of Sullivan Strickler LLC to travel from Fulton County, Georgia to Coffee County, Georgia, ***for the purpose of causing certain members of the conspiracy, who were not officers charged by law with the care of ballots and who were not persons entrusted by any such officer with the care of ballots for a purpose required by law, to possess official ballots outside of the polling place***, which were overt acts to effect the object of the conspiracy...”

- Count/Charge 3 of 6:

...And Sidney Katherine Powell entered into a contract with Sullivan Strickler LLC in Fulton County, Georgia, delivered a payment to Sullivan Strickler LLC in Fulton County, Georgia, and caused employees of Sullivan Strickler LLC to travel from Fulton County, Georgia, to Coffee County, Georgia, for the purpose of using a computer with knowledge that such use was without authority **and with the intention of taking and appropriating information, data, and software, the property of Dominion Voting Systems Corporation**, which were overt acts to effect the object of the conspiracy; -contrary to the laws of said State, the good order, peace and dignity thereof.

- Count/Charge 4 of 6:

...And co-conspirator Sidney Katherine Powell entered into a contract with Sullivan Strickler LLC in Fulton County, Georgia, delivered a payment to Sullivan Strickler LLC in Fulton County, Georgia, and caused employees of Sullivan Strickler LLC to Travel from Fulton County, Georgia, to Coffee County, Georgia, for the purpose of using a computer with knowledge that such use **was without authority and with the intention of removing voter data from said computer**, which were overt acts to effect the object of the conspiracy; -contrary to the laws of said State, the good order, peace and dignity thereof.

- Count/Charge 6 of 6:

...And co-conspirator Sidney Katherine Powell entered into a contract with Sullivan Strickler LLC in Fulton County, Georgia, delivered a payment to Sullivan Strickler LLC in Fulton County, Georgia, and caused employees of Sullivan Strickler LLC to travel from Fulton County, Georgia, to Coffee County, Georgia, for the purpose of using a computer with knowledge that

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such use was *without authority and with the intention of removing Dominion Voting Systems Corporation data from said computer*, which were overt acts to effect the object of conspiracy; -contrary to the laws of said State, the good order, peace and dignity thereof.

EX 4 at 9-10. (emphasis added).

The foregoing counts/charges involve a taking, removing, or misappropriating of electronic ballot markers, tabulating machines, official ballots, computer data and/or software, and/or personal voter data without authority, or an attempt or conspiracy to commit such crimes. By the plain definition of theft, as well as the criminal statute, Respondent's actions constitute conspiracy to unlawfully appropriate property with intent to deprive the owner of property. Accordingly, and for these reasons, Respondent's crimes constitute theft and therefore are "Serious" crimes as defined by Texas Rules of Disciplinary Procedure 1.06(GG). TEX. RULES DISCIPLINARY P. R. 1.06(GG).

b. Respondent's crimes constitute "Intentional" Crimes

As argued, Respondent's crimes are "Serious" crimes, and this Board must now determine if Respondent's crimes also constitute "Intentional" crimes, as defined under the rules.

In determining whether Respondent's actions and crimes constitute "Intentional" crimes, one need look no further than the bare words of the charge: Conspiracy to Commit *Intentional* Interference with Performance of Election Duties. Respondent argues that "[w]hile the statute refers to 'intentionally interferes,' that means nothing more than it is not accidental." If that were true, and Respondent's actions were not intentional or nothing more than not accidental, one cannot imagine that Georgia would charge Respondent under this particular statute. Respondent has plainly failed to prove that her actions were not intentional. Respondent pleaded to one or more charges that spell out their intentionality.

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Texas Rule of Disciplinary Procedure 1.06(V) defines an “Intentional Crime” as any “Serious Crime” that requires proof of knowledge or intent as an essential element or any crime involving misapplication of money or other property held as a fiduciary. TEX. RULES DISCIPLINARY P. R. 1.06(V). If the actual text of the charge were not enough, we look to the Intentional Interference with Performance of Election Duties statute. Rule §21-4-597 states, “[a]ny person who intentionally interferes with, hinders, or delays or attempts to interfere with, hinder, or delay any other person in the performance of any act or duty authorized or imposed by this chapter shall be guilty of a misdemeanor.” GA. CODE ANN. § 21-2-597 (West). Referring back to the title of Chapter 21, the “performance of any act or duty authorized or imposed by this chapter” relates to elections. GA. CODE ANN. §21. Therefore, §21-23-597 means any person who ***intentionally*** interferes (*etc.*) in elections. The only two elements of the crime are intentionality and an interference with an election. Ergo, Respondent’s actions and crimes required intent and are therefore “Intentional” crimes as defined by 106(V).

As is shown in all of the corresponding documentation, Respondent intentionally and knowingly committed her actions. Therefore, Respondent’s actions and crimes meet the requirements of both “Serious” and “Intentional” crimes as defined by the Texas Rules of Disciplinary Procedure and she is subject to Compulsory Discipline.

B. Respondent is subject to disbarment.

Rule 8.05 of the Texas Rules of Procedural Discipline states that “[w]hen an attorney has been convicted of an Intentional Crime, and that conviction has become final, or the attorney has accepted probation with or without an adjudication of guilt for an Intentional Crime, the attorney ***shall be disbarred*** unless the Board of Disciplinary Appeals, under Rule 8.06, suspends his or her

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license to practice law. TEX. RULES DISCIPLINARY P. R. 8.05 (*emphasis added*). Rule 8.06 further states that “[i]f an attorney's sentence upon conviction of a Serious Crime is fully probated, or if an attorney receives probation through deferred adjudication in connection with a Serious Crime, the attorney's license to practice law shall be suspended during the term of probation. If an attorney is suspended during the term of probation, the suspension shall be conditioned upon the attorney's satisfactorily completing the terms of probation. If probation is revoked, the attorney shall be disbarred. An early termination of probation does not result in reinstatement until the entire probationary period, as originally assessed, has expired. TEX. RULES DISCIPLINARY P. R. 8.05.

Respondent accepted a fully probated sanction. Petitioner acknowledges that it is within this Board’s discretion to suspend, rather than disbar, Respondent. However, Respondent was not just convicted of one charge, but six separate charges. The magnitude and severity of Respondent’s actions are such that Respondent should not be considered for probation as opposed to disbarment. For these reasons, Petitioner asks that Respondent be disbarred.

IV. Conclusion

Respondent’s sanction and judgment are final. The crimes are both Serious and Intentional Crimes subject to Compulsory Discipline. Accordingly, and subject to all of Petitioner’s arguments, Petitioner asks that the Board enter an order imposing compulsory discipline on Respondent, and for such other and further relief to which the Commission may be entitled to receive, including costs of court and attorney’s fees.

Respectfully submitted,

SEANA WILLING

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of November, 2024, a true and correct copy of the above document was served on Respondent through her counsel of record, Robert “Bob” Holmes, Holmes Lawyer, PLLC, 19 St. Laurent Pl., Dallas, Texas 75225, at rholmes@swbell.net.



Amanda M. Kates

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