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

IN THE MATTER OF	**§**	
SIDNEY POWELL	**§**	**CAUSE NO. 69537**
STATE BAR CARD NO. 16209700	**§**	

JUDGMENT DENYING COMPULSORY DISCIPLINE

On the 31st day of January, 2025, the Board of Disciplinary Appeals called for hearing Respondent Sidney Powell's motion to dismiss the petition for compulsory discipline in the above-captioned action. Petitioner, the Commission for Lawyer Discipline, appeared by attorney and announced ready. Respondent, by and through her attorney of record, appeared and announced ready. The Board heard the parties' arguments as to whether, as a matter of law, the Board could conclude that Respondent was placed on probation for an "Intentional Crime" as defined by Texas Rule of Disciplinary Procedure 1.06(V). The parties each offered into evidence, and the Board admitted, exhibits relevant to the merits of the case.

Having considered the pleadings on file, having received evidence, and having heard the argument of counsel, the Board of Disciplinary Appeals enters the following findings and orders.

Findings of Fact. The Board of Disciplinary Appeals finds that:

(1) Respondent, Sidney Powell, State Bar Card Number 16209700, is licensed and authorized to practice law in the State of Texas by the Supreme Court of Texas.

(2) On or about October 20, 2023, the Superior Court of Fulton County, State of Georgia, entered an order in Criminal Action 23SC190370, styled *State of Georgia v. Sidney Elizabeth Powell*, reflecting a negotiated plea under which Respondent was sentenced as a first offender for six counts of "Conspiracy to Commit Intentional Interference with Performance of Election Duties." Respondent was sentenced to seventy-two (72) months of

probation, subject to various terms and conditions. The order specified that no judgment of guilt was imposed at that time, and further proceedings were deferred. Upon successful fulfillment of the terms of the sentence, Respondent "shall stand discharged of said offense without court adjudication of guilt and shall be completely exonerated of guilt of said offense charged." If Respondent violates the terms of probation, "the Court may enter an adjudication of guilt and proceed to sentence [Respondent] to the maximum sentence as provided by law."

(3) On or about October 24, 2023, the Superior Court of Fulton County entered an amended order in the same criminal action, adding a statement to the order that "State and Defense agree that the six (6) misdemeanor counts pled to by Ms. Powell are not crimes of moral turpitude." Respondent's sentence and the other terms of the court's order otherwise did not change.

(4) Under the order and amended order described under paragraphs (2) and (3), above, Respondent was sentenced for each charge under the following two sections of the Official Code of Georgia Annotated:

§ 16-4-8, Conspiracy to Commit a Crime: "A person commits the offense of conspiracy to commit a crime when 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. . . . A person convicted of the offense of criminal conspiracy to commit a misdemeanor shall be punished as for a misdemeanor. . . ."

§ 21-2-597, Intentional Interference with Performance of Election Duties: "Any 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."

(5) Respondent, Sidney Powell, is the same person as the Sidney Elizabeth Powell who is the subject of the orders described above.

Conclusions of Law. Based upon the foregoing findings of fact, the Board of Disciplinary Appeals makes the following conclusions of law:

(1) This Board has jurisdiction to hear and determine this compulsory discipline matter. TEX. RULES DISCIPLINARY P. R. 7.08(G), 8.04.

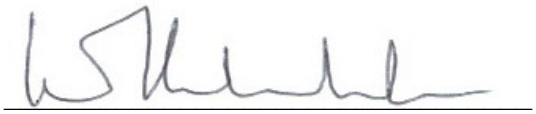
(2) As announced during the hearing on January 31, 2025, the standard for compulsory discipline under the Texas Rules of Disciplinary Procedure has not been met.

(3) During the hearing on January 31, 2025, the Chair of the Board ruled on Respondent's two requests for BODA to take judicial notice, filed January 23 and 30, 2025, and on Respondent's objection to Petitioner's Exhibits 1 and 2, filed January 30, 2025. Any relief requested in those filings that was not specifically granted during the hearing is DENIED.

(4) Petitioner's motion to dismiss, based on Texas Rule of Civil Procedure 91a, is DISMISSED AS MOOT.

It is, accordingly, **ORDERED, ADJUDGED,** and **DECREED** that the Petition for Compulsory Discipline is **DENIED.**

Signed this 21st day of February 2025.



CHAIR PRESIDING

Board members Scott Fredricks, David Iglesias, and Courtney Schmitz did not participate in this decision.

Board Chair W.C. Kirkendall filed a concurring opinion in which Board member Woodrow Halstead joined.

Board Vice Chair Jason Boatright filed a concurring opinion in which Board members Fernando Bustos, Arthur D'Andrea, and Andrew Graham joined.

Chair W.C. Kirkendall, joined by Board member Woodrow Halstead, concurring:

I agree completely with the unanimous decision of BODA to deny the CDC's petition for compulsory discipline. It is clear that the misdemeanors for which Respondent Sidney Powell was placed on probation are not "serious crimes" as defined in TRDP 1.06(GG). As described further below, of the six charging allegations filed by District Attorney Fani Willis against Respondent and to which she pleaded guilty, none clearly describe the type of "theft, embezzlement, or . . . misappropriation of money or other property" as contemplated in TRDP 1.06(GG). Instead, the allegations describe an effort to access information Respondent is not otherwise entitled to receive.

An attempt by Petitioner to establish otherwise would require the kind of detailed factual analysis that is not compatible with the summary nature of compulsory discipline.

The purpose of this concurrence is to note my disagreement with the position that we may not look at charging instruments or plea papers in determining whether a particular crime is appropriate for compulsory discipline. Board members with this opinion are people whose legal opinions I respect greatly, especially Jason Boatright who has also written a concurrence. Prior Texas Supreme Court opinions have, I believe, left us with an incorrect and unnecessarily difficult interpretation of the rules that apply in compulsory discipline cases.

While I agree that precedent excludes a detailed factual review of the underlying conduct, I do not view the rules so strict as to preclude us from reviewing the criminal record to understand precisely what offense the respondent attorney was found to have committed or the *mens rea* involved as reflected in court records. The text of the rules in TRDP Part VIII along with common sense support the notion that the record of conviction can encompass the indictment, plea papers, and filings referenced directly and indirectly in a criminal judgment or order of deferred adjudication. When a case has not been tried to conviction but has instead been resolved by a plea agreement leading to deferred adjudication, it defies reason to ignore certified court documents that can help us discern the offense at issue and whether it satisfies the definition of intentional crime.

TRDP 1.03 provides that the TRDP "are to be broadly construed to ensure the operation, effectiveness, integrity, and continuation of the professional disciplinary . . . system." This is to say, the rules should not be interpreted to yield an absurd result. Interpreting the rules to say that we may not consider charging instruments and plea papers in compulsory discipline cases could lead to very disproportionate results. Currently, the standards that are being espoused would, in

some cases, require us to compulsorily discipline a lawyer on deferred adjudication for a $500 theft, TRDP 1.06(GG), but to not compulsorily discipline a person convicted of a felony that statutorily could be committed recklessly or negligently, regardless of what they have been charged with and judicially admitted to. TRDP 1.06 requires us to compulsorily discipline only for intentional crimes; an intentional crime is any "Serious Crime that requires proof of knowledge or intent as an essential element." We have had aggravated assault convictions of lawyers before us for compulsory discipline where respondents have argued, and some of our members agreed, that it was not an intentional crime because aggravated assault can be committed recklessly, even though neither the charging instrument nor the plea papers mentioned recklessness.

Of course, the inclusion of "knowingly, intentionally, or recklessly" or a criminally negligent *mens rea* option in a statute is not the result of any enlightened legislative intent. The legislature could just as easily have passed statutes with each *mens rea* in a separate provision. The current statutory construction is probably more the result of the legislative counsel trying to make the Penal Code look efficient than anything else. In a criminal law case, the only time a crime requires proof of knowledge or intent is when the charging instrument contains that allegation. Therefore, to determine whether a crime requires proof of knowledge or intent, we should look at what the respondent was charged with and then convicted of or placed on probation for. The indictment and plea papers nearly always easily resolve this simple procedural question.

This approach is also supported by TRDP 8.02, which states that we are permitted to admit the "record of conviction" into evidence. Under TRDP 8.04, "a certified copy of the judgment of conviction or order of deferred adjudication" is admissible and "nothing in the TRDP prohibits proof of the necessary elements in such Disciplinary Action by competent evidence in any other manner permitted by law."

The use of different language ("record of conviction" vs. "judgment of conviction or order of deferred adjudication") denotes different meanings in these terms. Obviously, the record of conviction includes the final judgment but may also include the charging instrument and plea papers, which can tell us whether the crime was intentional. This is especially critical in deferred adjudication cases where there are no findings based on evidence, but merely court documents that lead to a sentence on which compulsory discipline may be based.[1] What better evidence could there be in any ethics proceeding than a judicial admission by the respondent? This would be particularly important if the respondent pleaded to a lesser-included offense of the charged offense.

Compulsory discipline is indeed intended to be a summary proceeding; the position I have would not change that. We are looking at a few more pieces of paper (certified court records) rather than anything substantial. Certainly, there is no risk of a lengthy "trial" or hearing on compulsory discipline before BODA. Currently, we spend time with the arguments by respondents that their conviction is not intentional or serious under the TRDP because of the espoused limitations on the "record of conviction." Further, the Court has made clear that if compulsory discipline is not appropriate, the CDC can file a grievance in the standard way and have it go through either a grievance committee or district court, depending on the choice of the respondent. Requiring a full grievance proceeding to resolve a simple question that is easily and definitively answered by certified court documents is unnecessary, inefficient, and flies in the face of the command contained in Rule 1.03 to "broadly" interpret the rules in favor of the efficient function of the disciplinary system.

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1 My colleague posits that due to the precise sentence structure of Rule 8.02, we would possibly end up with a system that allows for the record of conviction to be considered in cases that resulted in a criminal judgment, but not in cases that were resolved with an order of deferred adjudication. I do not believe the text of TRDP 8.02, nor Part VIII as a whole, justifies this interpretation. Throughout Part VIII, the rules list orders of deferred adjudication alongside criminal judgments to simply ensure that both are treated the same for the purposes of compulsory discipline. Thus, I interpret the phrase "record of" in Rule 8.02 to apply to both convictions and deferred adjudications. *See* TRDP 1.03.

On the contrary, requiring full-blown grievance proceedings to address criminal conduct presents other possible logistical challenges. Unfortunately, the criminal case would probably have to be proven *ab initio* under TRPC 8.04. As a former prosecutor, I can tell you that this avenue will often not be open. Trying a case a second time may be impossible for many reasons: availability of the victim, willingness of witnesses, inconvenience, or whatever. Also, the statute of limitations in the TRDP may have run while the original conviction was obtained. The effect may be that a lawyer convicted of a crime may not get any ethics system consequences.

The Court has previously addressed this issue, but in a different context. In each of these cases, the Court was determining whether a felony was a "crime of moral turpitude" under TRDP 1.06(GG) rather than identifying the specifics of an offense, as I advocate here.

In *In re Humphreys*, 880 S.W.2d 402 (Tex. 1994), the Court held that the federal felony of willful attempt to evade or defeat a tax is a crime of moral turpitude. There is no discussion in the opinion of what constitutes the "record of conviction" or when court documents may support compulsory discipline in a deferred adjudication case.

In *Duncan v. Board of Disciplinary Appeals*, 898 S.W.2d 759 (Tex. 1995), the issue was whether misprision of felony was a felony involving moral turpitude, nothing else. The Court did discuss determining whether the crime was intentional, but it is purely dicta. The Court decided that since misprision of felony, like conspiracy, requires an underlying offense, no crime of moral turpitude is evident. The Court also noted the possibility that a lawyer could be convicted for misprision of felony by mere silence, and that could, at least theoretically, occur because of an assertion of a privilege he or she is bound to honor. Thus, to determine whether compulsory discipline was appropriate, one would need to review "part or all of the underlying criminal proceeding" to determine the precise nature of the attorney's conduct. I believe foreclosing

consideration of the charging instrument and plea documents to ascertain the nature of the offense is grounded in a misunderstanding of criminal law and ethics procedure. No trial by BODA would be necessary; just a look at the charging instrument. One could then immediately determine the underlying offense and its nature, including whether the attorney actively concealed the crime or just remained silent after learning of it. Perhaps "misprision" of some crimes would be moral turpitude (for instance, child pornography) and others not, but that would in no way violate the summary nature of compulsory discipline.

Finally, in *In re Lock*, 54 S.W.3d 305 (Tex. 2001), the Court again only determined whether the conviction was for a felony of moral turpitude. In this case, the respondent had been placed on deferred adjudication for a third-degree felony, possession of a controlled substance. That would mean, under the statute she was charged, she had 1 to 4 grams of an unnamed controlled substance. One wonders what the Court would have done if she had had a hundred kilos.

In any event, the Court determined that possession of a controlled substance is not a felony of moral turpitude and did not address any other issue. They certainly have statements that under Texas's "unique compulsory discipline process," the Court may not consider underlying facts. I think they call it "unique" because they cite no other state with a similar interpretation of compulsory discipline procedure. Also, as noted above, this is in the face of TRDP 8.02 allowing admission of the record of conviction, which certainly must be more than just the judgment itself, as we shall not treat TRDP language as mere surplusage. Further, TRDP 8.04 provides that "nothing" in the rules "prohibits proof of the necessary elements in such Disciplinary Action by competent evidence in any other manner permitted by law."

Taken together, these cases only stand for the proposition that if detailed proof regarding the specific circumstances of the underlying conduct is necessary to determine if the crime was

one of moral turpitude, then the summary procedures in compulsory discipline are not appropriate for this kind of factual development. But looking to the charging instrument and record of conviction can help clarify, without having to delve deep into the underlying conduct, certain questions such as whether the respondent attorney pleaded guilty to knowing or intentional conduct (as opposed to reckless). This would not violate the spirit of the Court's holdings in *Humphreys*, *Duncan*, and *Lock*. Indeed, having a completely separate grievance hearing before an evidentiary panel or district court to prove up the contents of an indictment would be wildly inefficient and violate Rule 1.03's instruction to interpret the rules to ensure the operation, effectiveness, and integrity of the disciplinary system.

Here, due to the nature of the allegations against Respondent Powell, far more would be needed than a simple review of the charging instrument as Petitioner suggests. It's undisputed that Respondent pleaded guilty to Conspiracy to Commit Intentional Interference with Election Duties, a misdemeanor. The only theory espoused by Petitioner to fit this conviction within the definition of serious crime is that it "involved theft or . . . misappropriation of other property." But plainly none of the elements of Conspiracy to Commit Intentional Interference with Election Duties involve these acts. Instead, the CDC sought to prove that *the means* by which Respondent sought to interfere with the election involved some sort of theft or misappropriation, and they sought to prove this by mere reference to a few sentences in the charging instrument referencing taking possession of or accessing ballots and other electronic data. To determine whether this offense meets the definition of serious crime thus would require a much more detailed inquiry into the surrounding circumstances, the intent of the co-conspirators once they had obtained the material they sought, and how Respondent was specifically involved in all of this. Such would likely be a multi-day affair, and would likely need to involve multiple out-of-state witnesses, many of whom

are unlikely to be willing participants—not the sort of process that is well suited for a compulsory discipline case.

Rule 1.03 provides ample latitude to interpret the rules related to compulsory discipline in a manner that comports with efficiency and common sense. This language in the rules was approved by the Supreme Court when adopted. What could more ensure the effectiveness and integrity of the system than to consider charging instruments, charges pleaded to, and judicial admissions as reflected in certified court documents? Thus, any compulsory discipline case would reflect the truth of what actually happened in the case and avoid needless grievance procedures to resolve issues that can be definitely and easily resolved by examining the contents of undisputed and authenticated court records.

To the extent, if at all, that this approach conflicts with the Court's prior holdings, I trust that if our current Court is given the opportunity to write on this, it will provide the necessary clarity.

Vice Chair Jason Boatright, joined by Board members Fernando Bustos, Arthur D'Andrea, and Andrew Graham, concurring:

I write separately to offer more background and analysis.

A. This is not the kind of case that most people probably think it is

Almost every attorney discipline case involves a lawyer who is accused of violating a disciplinary rule, but this case is different. It is a compulsory discipline case, and it is about whether Powell was put on probation for a particular kind of criminal offense.

1. This is a compulsory discipline case about allegations of theft

A compulsory discipline case begins when the bar files a disciplinary petition alleging that a Texas lawyer was either convicted of, or placed on probation for, an intentional crime. TEX.

RULES DISCIPLINARY P. R. 8.01. Texas procedural rules provide detailed definitions of intentional crimes—they are not just crimes that are committed on purpose, they are specific kinds of intentional offenses, like barratry, a felony involving moral turpitude, or a misdemeanor involving theft. *Id.* R. 1.06(V), (GG). In this case, the bar alleged that the crime at issue was an intentional crime because it was a misdemeanor involving theft.

However, Powell was put on probation in Georgia for conspiracy to commit intentional interference with performance of election duties, an offense that has nothing to do with theft. GA. CODE ANN. §§ 16-4-8, 21-2-597. The bar claimed that the offense was a theft anyway.

The bar based that claim on the charging instrument, which had accused Powell of hiring an IT contractor who appropriated voter data. The bar said the charging instrument was incorporated into the judgment by reference, so Powell had been put on probation for conspiracy to commit theft, which was an intentional crime for purposes of compulsory discipline in Texas.

Thus, the bar's theory of the case was that Powell had committed an offense involving theft, not that she had filed frivolous claims or cited faulty evidence in a 2020 election lawsuit. That is because the bar had already brought a case about those issues against Powell—and lost.

2. Just before this case, the bar lost a case against Powell about the 2020 election

Prior to this compulsory discipline case, the bar filed a disciplinary action in state district court alleging that Powell had "doctored" two exhibits in a 2020 election lawsuit. *Comm'n for Lawyer Discipline v. Powell*, 689 S.W.3d 620, 623 (Tex. App.—Dallas 2024, no pet.). However, the bar provided no evidence that Powell had intentionally altered the exhibits. *Id*. at 631-32. In fact, the record showed that someone on her team had photocopied a document in landscape rather than portrait mode, inadvertently cutting off part of the document when it was filed as an exhibit. *Id*. at 624. The record also showed that the document was a publicly available government record,

and that omitting part of it could not have affected the case. *See id*. Thus, the evidence indicated that the alteration to the exhibit was accidental, immaterial, and not Powell's fault.

In contrast, the bar's suit against Powell included exhibits that were full of material errors. *See id*. The trial court noted that the bar's mistakes were so egregious that there was no evidence to support any element of the bar's case. *Id.* at 625. Accordingly, the bar lost at summary judgment.

The bar appealed, but it lost again. The court of appeals held that the bar did not have any evidence to support its case. *Id.* at 633. The court also noted that it was "troubled" by the bar's implicit suggestion that lawyers can be sanctioned for carelessly filed exhibits. *Id*. at 631-33.

The court's opinion invites four related inferences. First, the bar prosecuted Powell for conduct that did not violate a rule. Second, the bar engaged in a lot more of that conduct than Powell did. Third, the bar's theory of the case could expose every litigator in Texas to discipline. And fourth, the case should have never been brought in the first place.

Naturally, then, the bar did not appeal to the Supreme Court. But the bar did not leave Powell alone, either—it went after her again, this time on a new theory at a different tribunal. Just two days after the deadline to file its appeal, the bar brought this compulsory discipline proceeding against Powell at BODA.

B. Texas Supreme Court precedents and rules prohibited compulsory discipline here

The bar's pleadings were inadequate, and its legal arguments were wrong.

1. The bar did not satisfy its threshold obligation in this case

The bar filed two petitions for compulsory discipline against Powell. The first one did not allege that there was an adjudication of guilt or an order of probation for an intentional crime, even though the rules expressly require such petitions to do so. TEX. RULES DISCIPLINARY P. R. 8.03.

The amended petition alleged that Powell had pleaded guilty to an intentional crime, but it did not identify a particular intentional crime, nor did it describe conduct that could amount to one. Thus, the amended petition did not plead the necessary elements of a compulsory discipline case. It was like a suit for breach of contract that failed to allege the elements of a breach of contract claim. That kind of pleading failure could have ended the matter. *See* TEX. R. CIV. PROC. 91a.

2. The bar's case relied on bare accusations that we cannot consider

Six months after the bar filed its amended petition, it submitted a brief that finally identified conduct and an offense that could involve theft. But Powell was not convicted of a crime involving theft, nor was she placed on probation for one. The only thing linking her to a crime involving theft was a prosecutor's accusation in a charging instrument—something we are not allowed to use when we determine whether to impose compulsory discipline.

In compulsory discipline cases, we must determine whether an attorney has been convicted of, or granted probation for, an intentional crime "immediately" upon the introduction of a certified copy of the judgment of conviction or order of deferred adjudication. TEX. RULES DISCIPLINARY P. R. 8.04. Indeed, the Texas Supreme Court has called compulsory discipline a "summary" proceeding that "turns solely on the validity of the record of conviction, the nature of the sentence, and the factual determination that the Respondent is the same person as the party adjudicated guilty." *Duncan v. Bd. of Disciplinary Appeals*, 898 S.W.2d 759, 762 (1995). The Supreme Court has been clear that we cannot review evidence in the record to determine whether an offense involves the constituent parts of an intentional crime. *See In re Humphreys*, 880 S.W.2d 402, 408 (Tex. 1994). We can find evidence of the necessary elements by competent methods of evidence, TEX. RULES DISCIPLINARY P. R. 8.04, but we cannot look to any collateral matters, like the

underlying facts, *In re Lock*, 54 S.W.3d 305, 307 (2001). Instead, the offense identified in the record of conviction must involve those elements *per se*. *Humphreys*, 880 S.W.2d at 408.

We cannot conduct the kind of proceeding the Texas Supreme Court requires—an immediate and summary process that turns on the statutory elements of the offense *per se*—if we go digging through the underlying record. *See id*. Thus, judicial precedents and rules prohibit us from using accusations in a charging instrument to determine compulsory discipline.

3. The arguments for considering allegations are inconsistent with the law

The arguments for considering accusations, charging instruments, and other items in the record to determine compulsory discipline are not supported by governing law.

a. The term "record of conviction" does not refer to the entire case record

Procedural rules provide that "the record of conviction or order of deferred adjudication is conclusive evidence of the attorney's guilt." TEX. RULES DISCIPLINARY P. R. 8.02. The bar has argued that we can consider charging instruments in compulsory discipline cases because the term "record of conviction" could have an expansive meaning that includes the entire case record.

However, the record of conviction is one of two items that are conclusive evidence of guilt; the other is the order of deferred adjudication. *Id*. If the term "record of conviction" is what opens the door to the entire record, we would not be able to use the entire record in cases that involve an order of deferred adjudication. This would create two different kinds of compulsory discipline proceedings: one in which we can use the entire record, and another that begins and ends with a single order. But that arrangement is not supported by the text of any rule, and it does not seem consistent with a natural, logical reading of the Supreme Court's precedents in compulsory discipline cases. Rather, the term "record of conviction" should be interpreted the same way the

term "order of deferred adjudication" is interpreted: as a term describing a single document proving the fact of conviction or the fact of deferred adjudication, not the entire record.

And then there is the purpose for which the record of conviction or order of deferred adjudication is used—as conclusive evidence of guilt. *Id*. If the record of conviction in compulsory discipline cases included an indictment, then a prosecutor's bare allegations would be conclusive evidence of guilt. That proposition, however, is incompatible with basic American legal principles.

Accordingly, the Supreme Court has demonstrated that it does not use accusations in charging instruments to determine compulsory discipline. In the majority opinion in *Duncan*, for instance, the Court relied solely on the statutory elements of the offense identified in the judgment, not the accusations in the indictment. 898 S.W.2d at 761-62. In her concurrence, now-Judge Richman did rely on the indictment, but a fair reading of her opinion suggests she thought the majority disapproved of her decision to do so. *See id*. 898 S.W.2d at 762-63. And former-Chief Justice Hecht's partial concurrence and dissent relied entirely on the elements of the offense, not on the indictment. *See id*. 898 S.W.2d at 764. In addition, the outcome of the case would have been different if the majority and concurrence had considered the indictment. *See id*. at 761-62. Thus, *Duncan* shows that we cannot consider charging instruments in compulsory discipline cases.

b. BODA must follow Texas Supreme Court precedents and rules

BODA has relied on indictments and evidence of underlying facts in compulsory discipline cases in the past. Some people have suggested that we should follow those decisions regardless of whether they are inconsistent with *Lock*, *Duncan*, *Humphreys*, and various procedural rules. However, we are obliged to obey the Court and its rules, TEX. CONST. art. V, §§ 1, 31, so we cannot use charging instruments or underlying evidence to determine compulsory discipline.

c. Some offenses are not subject to compulsory discipline

It has been argued that we should consider accusations because bad people may escape compulsory discipline if we do not. However, the Supreme Court has held that attorneys who commit certain crimes are not subject to compulsory discipline. *Lock*, 54 S.W.3d at 312. The Court has suggested that this is acceptable because attorneys are subject to the regular grievance process, where underlying facts and collateral circumstances can yield appropriate sanctions. *See id*.

d. The charging instrument was not incorporated into the judgment

The bar's theory of the case relied on the idea that the judgment incorporated the charging instrument, but the bar never made a legal argument for that idea, and I do not think there is one.

The judgment refers to the "Charge (as indicted or accused)." Then it identifies the offense at issue as "Conspiracy to Commit Intentional Interference with Performance of Election Duties." That is the same language the charging instrument uses to describe the offense Powell was accused of committing. In turn, that language combines the titles of the two statutes Powell was accused of violating: "Conspiracy to commit a crime" and "Intentional interference with performance of election duties." GA. CODE ANN. §§ 16-8-4, 21-2-597. Thus, the term "Charge (as indicted or accused)" simply points to the title of the statutory offense in the charging instrument.

These observations naturally lead to a straightforward conclusion: the judgment mentioned the charge to demonstrate that Powell was put on probation for the same statutory offense she had been charged with—*not* that the judgment somehow included a prosecutor's bald accusations.

e. We have to rely on the essential elements of the crime

The Texas Supreme Court requires us to focus on the statutory elements of the crime *per se*. *See Humphreys*, 880 S.W.2d at 408. Similarly, the rules say an offense involving theft is an intentional crime only if it requires proof of knowledge or intent as an "essential element." *See*

TEX. RULES DISCIPLINARY P. R. 1.06(V), (GG). Thus, the question of whether an offense is an intentional crime depends entirely on the essential or *per se* elements of the crime. Because a charging instrument cannot affect those elements, we would not have been able to rely on the accusations in the charging instrument even if the judgment had incorporated them.

C. Powell is not subject to compulsory discipline

Powell was put on probation for an offense that is not an intentional crime under the rules that govern compulsory discipline cases in Texas. Perhaps she was accused of conduct that would amount to an intentional crime, but binding judicial precedents prevented us from relying on those bald accusations, and rightly so. I agree with the board's decision to deny compulsory discipline.