



FILED

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THE BOARD OF DISCIPLINARY APPEALS
SUPREME COURT OF TEXAS

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

IN THE MATTER OF SIDNEY
KATHERINE POWELL
STATE BAR NO. 16209700

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CASE NO. 69537

SIDNEY POWELL’S SUPPLEMENTAL ANSWER AND BRIEF IN SUPPORT

TO: THE BOARD OF DISCIPLINARY APPEALS:

PREFACE

This is an illegitimate proceeding based on two letter complaints, one dated November 6, 2023, authored by Charles Herring, Jr., on behalf of 17 disgruntled Texas Democrats¹; and a second letter, dated November 8, 2023, signed by Norm Eisen – lead Democratic operative for lawfare – and 16 other disgruntled Democrats from all over the United States for the entity called States United Democracy Center/Lawyers Defending American Democracy (“LDAD”)² (“Complainants”) who are associated with or akin to Project 65³, arising from Ms. Powell’s plea in the case styled: *State of Georgia v. Kenneth John Chesebro and Sidney Kathrine Powell*, Indictment No. 23SC188947, Superior Court, Fulton County, Georgia (“Georgia Case”).

The illegitimacy of this proceeding is plain from the language the Honorable Scott McAfee,

¹See Exhibit “A” attached hereto.

²The partisan group “Lawyers Defending American Democracy” distorted and misrepresented the law in their demand that the Chief Disciplinary Counsel for the State Bar of Texas disbar Powell and even promoted that effort with a press release: <https://ldad.org/letter-briefs/ldad-calls-for-the-disbarment-of-sidney-powell>. LDAD was begun in 2018 in direct opposition to President Trump: <https://ldad.org/about>.

³See The 65 Project, “Ethics Complaints,” available at <https://the65project.com/ethics-complaints/>; see also The 65 Project (@The65Project), Twitter (Mar. 7, 2022, 6:51 AM) <https://twitter.com/The65Project/status/1500801311306133512>; see also The 65 Project (@The65Project), Twitter (Aug. 31, 2022, 4:52 PM) <https://twitter.com/The65Project/status/1565080230947160065>. See AXIOS, Lachlan Markey and Jonathan Swan, Scoop: High-powered group targets Trump lawyers’ livelihoods, March 7, 2022, available at <https://tinyurl.com/5aw9kcfa>.

Judge of the Superior Court of Fulton County, Georgia placed in the *nunc pro tunc* Order he entered on October 23, 2023, which states: “STATE AND DEFENSE AGREE THAT THE SIX (6) MISDEMEANOR COUNTS PLED TO BY MS. POWELL ARE NOT CRIMES OF MORAL TURPITUDE.”⁴

Simply put, the agreed disposition of Ms. Powell’s case in Georgia on which the Petition is based did not involve an “Intentional Crime” or a “Serious Crime” as those terms are defined in Rule 1.06(V) and 1.06(GG) of the Texas Rules of Disciplinary Procedure. There is no conviction, and even on the six misdeameanors – the State of Georgia agreed the misdeameanors do not implicate moral turpitude. The Complainants and the Bar knew that, but purposefully elided it.

Moreover, the Georgia case was tainted from the start because it was encumbered by “the appearance of impropriety that existed at times when DA Willis was exercising her broad pretrial discretion about who to prosecute and what charges to bring.”⁵ On December 19, 2024, the Court of Appeals in Georgia removed Fani Willis and the District Attorney’s Office of Fulton County Georgia from continuing to prosecute the Georgia Case.⁶ While the Georgia Court of Appeals did not dismiss the indictment, it clearly left open that avenue, stating “we cannot conclude that the record also supports the imposition of the extreme sanction of dismissal of the indictment under the appropriate standard.”⁶

BACKGROUND

Ms. Powell had an unblemished record until the illegitimate grievances were filed against her. She has practiced law for 45 years. After being admitted to the Texas Bar in 1978, she became

⁴See first sentence on page 002, Exhibit 4 of the First Amended Petition.

⁵Roman v. State, No. A24A1595, 2024 WL 5164724, at *6 (Ga. Ct. App. Dec. 19, 2024)

the youngest Assistant United States Attorney in the country at the time. After her career as an Assistant United States Attorney in three Federal Districts, she practiced law, primarily in the Fifth Federal Circuit for decades, serving as lead counsel in more than 500 federal appeals – 350 of them as an Assistant United States Attorney and Appellate Section Chief in the Western and Northern Districts of Texas. Her cases resulted in more than 180 published federal decisions.

She is a past president of the American Academy of Appellate Lawyers and the Bar Association of the Fifth Federal Circuit, and a member of the American Law Institute. Ms. Powell edited the Fifth Circuit Reporter for twenty years and chaired or served on the faculty of the Fifth Circuit's annual Appellate Advocacy and Practice course for over two decades. She taught multiple courses for the Texas Bar including Criminal Trial and Advocacy and Appellate Practice, and she taught multiple courses for the United States Department of Justice Attorney General's Advocacy Institute for years—including Criminal Trial Practice and Appellate Advocacy.

After some ten years in the DOJ, Ms. Powell went into private practice, was a partner in a large law firm, then struck out on her own as a federal appellate lawyer. She has taken cases that others fear because she seeks the truth. Some of those cases compelled her to write what became a national best-selling non-fiction book: *LICENSED TO LIE: Exposing Corruption in the Department of Justice*, after seeing a core group of federal prosecutors break all the rules, make up crimes, hide evidence, and send innocent people to prison.

In 2019 Ms. Powell became lead counsel for Michael Flynn. During that representation, she was often labeled a “conspiracy theorist” as she is now, but she fought until evidence came to light that forced the reversal of two guilty pleas General Flynn had entered and required the DOJ to move to dismiss the prosecution.

Until the lawfare assault following her filing four federal case in the two weeks after the 2020 presidential election, Ms. Powell had an unblemished record.

HISTORY OF BAR'S LAWFARE

This is the Bar's second attempt to frivolously seek disbarment of Ms. Powell after she filed four federal lawsuits raising federal constitutional and other issues arising from the 2020 presidential election.⁶ The Bar has no basis to proceed here, and it knows it. It could only have deliberately elided the Georgia Court's disposition order nunc pro tunc which the Bar attached it to its First Amended Petition. That document states that the State of Georgia and Ms. Powell agreed the six misdemeanors on which the Georgia case was resolved "are not crimes of moral turpitude."⁷

The Bar continues the crusade against Ms. Powell who has dealt with unprecedented, politically-driven law-fare against her since early December 2020.⁸

The Bar's first attempt was a miserable failure after almost a year of litigation and production of thousands of pages of documents – the trial granted two motions for summary judgement in her

⁶*King v. Whitmer*, 556 F. Supp. 3d 680 (E.D. Mich. 2021), aff'd in part, rev'd in part, 71 F.4th 511 (6th Cir. 2023), and aff'd in part, rev'd in part, 71 F.4th 511 (6th Cir. 2023); *Pearson v. Kemp*, 831 F.App'x 467 (11th Cir. 2020); *Bowyer v. Ducey*, 406 F.Supp.3d 699 (D. Ariz. 2020); *Feehan v. Wisconsin Elections Comm'n*, 506 F.Supp.3d 596, 600 (E.D. Wis. 2020).

⁷*Nunc pro tunc* Order entered on October 23, 2023, by the Honorable Scott McAfee, Judge of the Superior Court of Fulton County, Georgia that states: "STATE AND DEFENSE AGREE THAT THE SIX (6) MISDEMEANOR COUNTS PLED TO BY MS. POWELL ARE NOT CRIMES OF MORAL TURPITUDE." See first sentence on page 002, Exhibit 4, First Amended Petition. ("Nunc Pro Tunc Order")

⁸See The 65 Project, "Ethics Complaints," available at <https://the65project.com/ethics-complaints/>; see also The 65 Project (@The65Project), Twitter (Mar. 7, 2022, 6:51 AM) <https://twitter.com/The65Project/status/1500801311306133512>; see also The 65 Project (@The65Project), Twitter (Aug. 31, 2022, 4:52 PM) <https://twitter.com/The65Project/status/1565080230947160065>. See AXIOS, Lachlan Markey and Jonathan Swan, Scoop: High-powered group targets Trump lawyers' livelihoods, March 7, 2022, available at <https://tinyurl.com/5aw9kcfa>. The equally partisan group "Lawyers Defending American Democracy" distorted and misrepresented the law in their demand that the Chief Disciplinary Counsel for the State Bar of Texas disbar Powell, they even promoted that effort with a press release: <https://ldad.org/letter-briefs/ldad-calls-for-the-disbarment-of-sidney-powell>.

favor and the Bar appealed. The Fifth Court of Appeals in Dallas wrote a significant affirmance of the trial court's judgment, stating:

“Here, the summary judgment evidence does not evince or raise a fact question about a lack of honesty or integrity. . . . the absence of competent summary judgment compels our conclusion that the Bar failed to meet its summary judgment burden.⁹

On October 19, 2023, Ms. Powell entered a negotiated settlement of the charges in the Georgia Case by pleading to six minor misdemeanor offenses in Georgia, O.C.G.A. §§ 16-4-8 & 21-2-597 and pursuant to Georgia's First Offender Act. These charges are so minor that there are no reported cases on them, and no fingerprints are required. Under the Georgia statute, there is no conviction and no judgment was entered.

On July 31, 2024, after holding the Complaints some eight months – and until after the bar lost its three-year, ill-fated, first effort to dis-bar Ms. Powell, it filed this suit, despite plain language and law to the contrary, the Bar filed the Petition alleging those charges are “Intentional” and “Serious” as provided in Part VIII, Texas Rules of Disciplinary Procedure (“Claims”). They are not and that Petition is as fatal as the one in the. Moreover they are not crimes of moral turpitude.¹ The Petition is flawed on its face and BODA should follow the opinion of the Fifth Court of Appeals in Dallas and enter judgment denying the Bar's claims in the Petition, with prejudice, award her costs, attorney's fees, and such other and further relief as she may be entitled to in law or in equity.

A. SUPPLEMENTAL ANSWER

Sidney Katherine Powell, files her Supplemental Answer to the First Amended Petition¹⁰ (“Petition”) filed by the Commission for Compulsory Discipline (“Bar”) as follows:

⁹*Comm'n for Law. Discipline v. Powell*, 689 S.W.3d 620, 633 (Tex. App.—Dallas 2024, no pet.).

¹⁰Ms. Powell was never served a copy of the original petition and has no idea of what it alleges, how long it was drafted, or for what reason the Bar never served her with the original petition.

Ms. Powell re-alleges the preceding paragraphs and those in the brief that follows as if fully set forth herein and responds to the Bar's allegations as follows:

1. Ms. Powell denies each and every allegation of the Petition and demands strict proof thereof as required by the Texas Rules of Civil Procedure.

2. Ms. Powell denies that she is subject to any compulsory disciplinary action, because she was neither convicted nor pled guilty to an Intentional Crime – “. . . (1) any Serious Crime that requires proof of knowledge or intent as an essential element or (2) any crime involving misapplication of money or other property held as a fiduciary.”¹¹

3. Ms. Powell further denies that she is subject to any compulsory disciplinary action, because she was neither convicted nor pled guilty to a Serious Crime – “. . . barratry; a 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.”¹²

4. Ms. Powell denies that she committed or pled guilty to any crime that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence, or that reflects adversely on her honesty, trustworthiness, or fitness as an attorney. Therefore, she is not subject to compulsory discipline.¹³

5. Ms. Powell denies that Bar is entitled to attorneys' fees or costs associated with this disciplinary proceeding.

B. BRIEF

¹¹Rule 1.06(V), Texas Rules of Disciplinary Procedure.

¹²Rule 1.06(GG), Texas Rules of Disciplinary Procedure.

¹³ See *In re Birdwell*, 20 S.W.3d 685, 688 (Tex.2000); *Duncan v. Board of Disciplinary Appeals*, 898 S.W.2d 759, 761 (Tex.1995); *In re Humphreys*, 880 S.W.2d 402, 408 (Tex.1994).

Sidney Katherine Powell, files her Brief in Support of her Answer to the Petition filed by the Bar as follows:

ARGUMENT & AUTHORITIES

1. While the rules for Compulsory Discipline use the defined terms “Intentional Crime” and “Serious Crime,” the Texas Supreme Court looks at whether the crime was one involving moral turpitude.¹⁴ Whether a crime is one involving moral turpitude is a question of law.¹⁵ This legal question is to be resolved “by a consideration of the nature of the offense as it bears on the attorney’s moral fitness to continue in the practice of law.”¹⁶

2. “When deciding whether a crime is a “felony involving moral turpitude,” [the courts] limit [their] consideration to the nature or essence of the offense – the essential elements of the charges. The inquiry relates to the classification of the crime – not the tribunal’s subjective judgment of character of the particular lawyer. In short, [the] crime is classified not the lawyer. To try to determine whether a crime is one involving moral turpitude by attempting to distinguish between lawyers of “good” character who happen to have been convicted of a particular criminal offense, and lawyers of “bad” character whose conviction of a crime is indicative of their lack of fitness to practice law, would be a hopelessly confusing and an entirely subjective task. That process would also entail looking behind a conviction in a way not sanctioned by the Texas Rules of Disciplinary Procedure [or the courts].”¹⁷

¹⁴*In re Humphreys*, 880 S.W.2d 402 (Tex.1994).

¹⁵*State Bar of Texas v. Heard*, 603 S.W.2d 829, 835 (Tex.1980).

¹⁶*In re Humphreys*, 880 S.W.2d at 407 (quoting *Heard*, 603 S.W.2d at 835)

¹⁷*Matter of Thacker*, 881 S.W.2d 307, 309 (Tex. 1994).

3. The Bar’s Procrustean approach to the rule requiring compulsory discipline of Ms. Powell fails. The Bar concedes that the provision requiring discipline for a crime of a felony of moral turpitude does not apply: “Petitioner acknowledges that Respondent did not plead guilty to a felony, and the determination of whether her crimes constitute moral turpitude, in this instance, is a moot issue.”¹⁸ But it misses the point. Only felonies of moral turpitude trigger compulsory discipline—the same is required for misdemeanors. That is why even a remarkably serious offense such as possession of cocaine does not trigger disbarment, but a misdemeanor theft from a client could.¹⁹ Possession of cocaine is not a crime of moral turpitude *per se*.¹⁹ Yet, even misdemeanor fraud or embezzlement does implicate moral turpitude.

4. The Bar speciously claims Ms. Powell must be disbarred because the misdemeanors alleged against her involve theft, but the Bar’s argument defies the text of the Georgia statutes and tortures their meaning. Ms. Powell was charged only with misdemeanor charges of “election interference” under GA. CODE ANN. §16-4-8.²⁰ No element of theft, fraud or embezzlement exists in those statutes. No statute alleged against Ms. Powell contains any element of “theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any . . .

¹⁸Bar’s Response to Motion to Dismiss at 6.

¹⁹ See *In re Lock*, 54 S.W.3d 305, 311 (Tex. 2001).

²⁰“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.” Ga. Code Ann. § 16-4-8 (West).

“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.” Ga. Code Ann. § 21-2-597 (West).

conspiracy . . . to commit any of the foregoing.” Fraud and its variations are crimes of moral turpitude, but Ms. Powell did not plead to those offenses.

5. To “commit intentional election interference,” “to hinder or delay” an election clerk”—the actual offenses to which Ms. Powell plead—have no element that implicates moral turpitude. Likewise, the statute does not have an element of knowledge or willfulness. It should be beyond dispute that it is not a serious offense when the Georgia Attorney General has declared the statute so insignificant as to not require a defendant to provide fingerprints, and there are no reported cases of its application.²¹

6. The only way a misdemeanor can become a “serious crime” to mandate compulsory discipline is if the offense is “theft, embezzlement or fraudulent misappropriation”—by definition crimes of moral turpitude.²² The Bar cites the Texas theft statute, but Ms. Powell was not charged with theft—in Georgia or Texas. Importantly, Georgia’s criminal code addresses crimes of stealing election materials but Ms. Powell was not charged with, and did not plead guilty to, those offenses.²³

7. The Bar spends pages in its Response to Ms. Powell’s Motion to Dismiss quoting allegations from the various charges faced by Ms. Powell. In doing so, the Bar elides the fundamental principle that the test for compulsory discipline is not the defendant’s alleged “actions,” but rather, the elements of the offense with which she was charged. It is the elements of the offense which invoke compulsory discipline—not other language thrown in from an indictment that was

²¹ See 1998-99 Ga. Op. Att’y Gen. 53 (1998).

²² TEX. R. DISCIPLINARY P. 1.06(GG).

²³ For example, Ms. Powell was not charged under Georgia’s theft statute, Ga. Code Ann. § 16-8-2 (West) or under similar statutes applicable to elections, such as unlawful possession of ballots, Ga. Code Ann. § 21-2-574.

dismissed.²⁴

8. Moreover, the Georgia judge, the Fulton County District Attorney, Ms. Powell and now the Bar, agree that a crime of moral turpitude is not implicated here.²⁵ Accordingly, the Bar's allegations are baseless harassment and lawfare unbecoming the Bar. The Bar has moved to nonsuit its demands for compulsory discipline in other less prominent cases.²⁶ The Bar should have done the same here.

9. The Claims have no basis in law.²⁷ A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle a plaintiff to the relief sought.²⁸ Legal conclusions alleged by the pleader should not be taken as true.²⁹

10. As a matter of law – Ms. Powell did not commit an “Intentional Crime” or a “Serious Crime”:

An “Intentional Crime” is “. . . (1) any Serious Crime that requires proof of knowledge or intent as an essential element or (2) any crime involving misapplication of

²⁴ *In re Lock*, 54 S.W.3d at 307 (stating in determining whether compulsory discipline is appropriate, the Texas Supreme Court looks “solely to the elements of the crime, and not to any collateral matters, such as the attorney’s record of service and achievement, or to the underlying facts of the criminal case”)

²⁵ A *nunc pro tunc* Order was entered on October 23, 2023 by the Honorable Scott McAfee, Judge of the Superior Court of Fulton County, Georgia, stating: “STATE AND DEFENSE AGREE THAT THE SIX (6) MISDEMEANOR COUNTS PLED TO BY MS. POWELL ARE NOT CRIMES OF MORAL TURPITUDE.” This Order was included as Exhibit 4 in Ms. Powell’s Motion to Dismiss.

²⁶ See *In the Matter of Phillip Wayne Hayes*, State Bar Card No. 24012803, 2022 WL 17331026, at *1 (where the Bar filed a notice of nonsuit of a compulsory discipline matter after counsel for Hayes argued compulsory discipline was improper).

²⁷ Tex. R. Civ. P. 91a.1, 91a.2.

²⁸ Tex. R. Civ. P. 91a.1; *Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 654–55 (Tex. 2020); *In re Hous. Specialty Ins. Co.*, 569 S.W.3d 138, 139 n.1 (Tex. 2019); see *In re Essex Ins. Co.*, 450 S.W.3d 524, 527–28 (Tex. 2014).

²⁹ *City of Austin v. Liberty Mut. Ins. Co.*, 431 S.W.3d 817, 826 (Tex. App.–Austin 2014, no pet.).

money or other property held as a fiduciary.³⁰

A “Serious Crime is “. . . 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.”³¹

11. There was no charge of any offense involving the essential elements of misapplication of money or other property held as a fiduciary. There was no charge of barratry. There was no charge of any felony. There was no accusation or charge of a crime involving moral turpitude. There was no accusation of misdemeanors of theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit theft, embezzlement, or fraudulent or reckless misappropriation of money or other property.³²

12. Moreover, Ms. Powell neither agreed nor would have agreed to a crime that requires proof of knowledge or intent as an essential element. Ms. Powell pled to minor misdemeanors, charges of conspiracy to commit “interference in the performance of election duties.”³³ Those are not a crime of “theft, embezzlement, or misappropriation of money or other property.” Moreover, Ms. Powell did not pled to a crime “that requires proof of knowledge or intent as an essential element.”³⁴

13. There is no conviction or judgment. There is an agreed settlement with the State of Georgia by entering a guilty plea to six misdemeanors—each of which charged a violation of the

³⁰Tex. R. Disciplinary P. 1.06(V).

³¹Tex. R. Disciplinary P. 1.06(GG).

³²Page 001, Exhibit 1, First Amended Petition.

³³*Matter of Thacker*, 881 S.W.2d at 309.

³⁴*Id.*

following two Georgia statutes:

Ga. Code Ann. § 16-4-8: “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.” and

Ga. Code Ann. § 21-2-597: “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.”

14. “[T]o determine whether a crime is an intentional crime, [the Texas Supreme Court] look[s] solely to the elements of the crime, and not to any collateral matters, such as an attorney’s record of service and achievement, or to the underlying facts of the criminal case.”³⁵ “Intentional” is a “result of conduct” offense.³⁶ For a “result of conduct” offense, the courts look to “[w]hat matters is that the conduct (whatever it may be) is done with the required culpability to effect the result the Legislature has specified.”³⁷ The “compulsory discipline rules prohibit consideration of the circumstances.”³⁸

15. It is plain from the face of each of the two statutes underlying the accusations in the Georgia Case, there is no essential element of “knowingly or willfully” that would render either offense a “Serious Crime.” While the statute refers to “intentionally interferes,” that means nothing more than it is not accidental. Merely agreeing or attempting to delay an election worker from

³⁵*In re Lock*, 54 S.W.3d 305, 307 (Tex. 2001).

³⁶*Martinez v. State*, 763 S.W.2d 413, 419 (Tex.Cr.App.1988); *Lugo-Lugo v. State*, 650 S.W.2d 72 (Tex. Crim. App. 1983, en banc).

³⁷*Cook v. State*, 884 S.W.2d 485, 490 (Tex. Crim. App. 1994) (citing *Alvarado v. State*, 704 S.W.2d 36, 39 (Tex.Cr.App.1985).

³⁸*In re Lock*, 54 S.W.3d at 311.

entering her office by having a polite conversation rightfully could not be prosecuted under the Georgia statutes.

16. There is no essential element of fraud, deceit, theft, misappropriation, or of knowing and willful conduct in the misdemeanors to which Ms. Powell pled, as there is for the element of intent in Georgia's serious crime of election interference—its felony statutes.³⁹ In comparison, a crime like conspiracy to defraud the United States (section 371) is an intentional crime “because knowledge or intent is an essential element of the offense and the crime is a felony involving moral turpitude.”⁴⁰ The same would be true for Georgia's statute prohibiting “election fraud.”⁴¹

17. These offenses are so minor there are no decisions in Georgia applying the misdemeanor provisions at issue here. However, there is an official opinion from Georgia's Office of the Attorney General which states that Ga. Code Ann. § 21-2-597 is one of the misdemeanor “offenses which do

³⁹For example, Ga. Code Ann. § 21-2-566: Interference with primaries and elections plainly requires criminal intent. Any person who:

- (1) Willfully prevents or attempts to prevent any poll officer from holding any primary or election under this chapter;
- (2) Uses or threatens violence in a manner that would prevent a reasonable poll officer or actually prevents a poll officer from the execution of his or her duties or materially interrupts or improperly and materially interferes with the execution of a poll officer's duties;
- (3) Willfully blocks or attempts to block the avenue to the door of any polling place;
- (4) Uses or threatens violence in a manner that would prevent a reasonable elector from voting or actually prevents any elector from voting;
- (5) Willfully prepares or presents to any poll officer a fraudulent voter's certificate not signed by the elector whose certificate it purports to be;
- (6) Knowingly deposits fraudulent ballots in the ballot box;
- (7) Knowingly registers fraudulent votes upon any voting machine; or
- (8) Willfully tampers with any electors list, voter's certificate, numbered list of voters, ballot box, voting machine, direct recording electronic (DRE) equipment, electronic ballot marker, or tabulating machine

shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00, or both.

⁴⁰ *In re Birdwell*, 20 S.W.3d 685, 686 (Tex. 2000).

⁴¹ *See* Conspiracy to Commit Election Fraud (Ga. Code Ann. § 21-2-603).

not require fingerprinting.”⁴² The offense, in essence, is like a speeding ticket.⁴³

18. Ms. Powell and the State of Georgia settled the matter by Ms. Powell’s pleas to six misdemeanors that did not require an essential element of knowing or willful criminal intent, and the text of the statutes reveals there is no essential element of fraud or deceit that would implicate moral turpitude.⁴⁴

19. Whether a particular crime involves moral turpitude is a question of law.⁴⁵ Again, BODA can consider only the elements of the offense—not the underlying facts.⁴⁶

20. Notably, even the federal charge of misprision of a felony—itself a felony requiring knowledge of the actual commission of a felony—does not involve moral turpitude *per se* and is not a “Serious Crime” under the Texas rules. The Texas Supreme Court has said: “Since misprision of felony does not involve moral turpitude *per se*, BODA is precluded from further reviewing the facts in the record to determine whether the attorney engaged in a crime involving moral turpitude.”⁴⁷

21. Similarly, the Texas Supreme Court held in *In re Lock*, that felony possession of cocaine was neither an “Intentional Crime” nor one involving moral turpitude “[b]ecause the elements of this

⁴²1998-99 Ga. Op. Att’y Gen. 53 (1998).

⁴³*Cf.* “Official Code of Georgia Annotated § 21-2-567 makes it a misdemeanor for any person to use or threaten to use force or violence, or in any other manner to intimidate any other person to vote or refrain from voting in any election, or to vote or refrain from voting for or against a particular candidate or question, or to place or refrain from placing his or her name upon a register of electors. I hereby designate the violation of O.C.G.A. § 21-2-567 as an offense for which those charged are to be fingerprinted.” 1998-99 Ga. Op. Att’y Gen. 53 (1998).

⁴⁴Ga. Code Ann. § 21-2-597

⁴⁵*See In re Thacker*, 881 S.W.2d 307, 309 (Tex.1994); *State Bar of Tex. v. Heard*, 603 S.W.2d 829, 835 (Tex. 1980).

⁴⁶*In re Lock*, 54 S.W.3d at 307.

⁴⁷*See Duncan v. Bd. of Disciplinary Appeals*, 898 S.W.2d 759, 762 (Tex. 1995).

crime do not involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or reflect adversely on an attorney's honesty or trustworthiness. . . ."⁴⁸

22. In a stunning failure of candor with BODA, the Bar fails to advise BODA, that Judge McAfee *sua sponte* filed a *nunc pro tunc* order specifically stating in capital letters there was no issue of moral turpitude.⁴⁹ The State of Georgia agreed that the offenses to which Ms. Powell pled guilty to do not reflect crimes of moral turpitude.⁵⁰ The Bar's omission of this material fact, alone, should require dismissal of this action *instanter* and the Bar should be punished.

23. The Bar should have non-suited this case as it did the 2022 case *In the Matter of Phillip Wayne Hayes*. In *Hayes* the Commission sought compulsory discipline against Hayes for pleading guilty to a misdemeanor count of soliciting prostitution in violation of Tex. Penal Code Ann. § 43.021, alleging that it was both a "Serious Crime" and an "Intentional Crime."⁵¹ The Bar non-suited that case mere days after Hayes filed his answer and motion to dismiss.⁵² BODA immediately entered an order dismissing the case with prejudice.⁵³ The Bar has refused to dismiss this case because it wants revenge for losing its first attempt.

24. Accordingly, compulsory discipline is improper in this case. The offenses pled to by Ms.

⁴⁸54 S.W.3d at 308.

⁴⁹*Nunc pro tunc* Order entered on October 23, 2023, by the Honorable Scott McAfee, Judge of the Superior Court of Fulton County, Georgia that states: "STATE AND DEFENSE AGREE THAT THE SIX (6) MISDEMEANOR COUNTS PLED TO BY MS. POWELL ARE NOT CRIMES OF MORAL TURPITUDE." See first sentence on page 002, Exhibit 4, First Amended Petition. ("Nunc Pro Tunc Order")

⁵⁰Nunc Pro Tunc Order

⁵¹2022 WL 17331027, at *1-2.

⁵²2022 WL 17331026, at *1

⁵³2022 WL 17331025 at *1

Powell are neither “serious” nor “intentional” crimes, and they do not involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or reflect adversely on her honesty or trustworthiness. The suit must be dismissed with prejudice by the Bar or BODA should dismiss the suit with prejudice and award Ms. Powell attorney’s fees.

C. PRAYER

25. For these reasons, Ms. Powell respectfully requests the Board of Disciplinary Appeals to enter judgment denying the Bar’s claims in the Petition, with prejudice, award her costs, attorney’s fees, and such other and further relief as she may be entitled to in law or in equity.

Respectfully submitted,
HOLMES LAWYER, PLLC

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COUNSEL FOR MS. POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by email to BODA and the Bar on January 3, 2025.

 /s/ Robert H. Holmes
Robert H. Holmes