



THE BOARD OF DISCIPLINARY APPEALS
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 ORIGINAL ANSWER

TO: THE BOARD OF DISCIPLINARY APPEALS:

Sidney Katherine Powell, files her answer to the First Amended Petition¹ (“Petition”) filed by the Commission for Compulsory Discipline (“CFLD” or “Bar”) as follows:

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 Democrats²; and a second letter, dated November 8, 2023, signed by Norm Eisen – lead Democratic operative for law fare – and 16 other disgruntled Democrats from all over the United States for the entity called States United Democracy Center/Lawyers Defending American Democracy (“LDAD”)³ (“Complainants”) who are associated with or akin to Project 65⁴.

¹Ms. 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.

²See Exhibit “A” attached hereto.

³The 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>.

⁴See 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 illegitimacy of this proceeding is plain from the language the Honorable Scott McAfee, 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.”⁵

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 misdemeanors – the State of Georgia agreed the misdemeanors do not implicate moral turpitude. The Complainants and the Bar knew that, but purposefully elided it.

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 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

⁵See first sentence on page 002, Exhibit 4 of the First Amended Petition.

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.

INTRODUCTION

1. The Complainants filed their letters two days apart in November 2023, while the Bar was in the third year of its first attempt to disbar Ms. Powell based on complaints filed by thirteen disgruntled Democrats. Except for the Michigan officials who were defendants in the *King Case*⁶,

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).

those complainants also had no privity or relationship with Ms. Powell but attacked her for filing four federal lawsuits raising federal constitutional and other issues arising from the 2020 presidential election.⁶ The 5th District Court of Appeals in Dallas affirmed the trial court’s two summary judgments – one based on a no–evidence motion and one based on a traditional motion – denying all the Bar’s claims on April 17, 2004. The Bar did not file a petition for review of the court of appeals decision with the Texas Supreme Court before June 3, 2024 – apparently recognizing their first ill–fated attempt was a colossal mistake.⁷ The Bar filed this proceeding on July 31, 2024, by serving the First Amended Petition three months after the Bar’s first attempt to disbar her failed.

2. Surprisingly the Bar appears to have done nothing about the Complaints being widely publicized by the Complainants who issued Press Releases, simultaneously with filing their letter complaints with the Bar. Never Mind such publicity violates the spirit of the Texas Rules of Disciplinary Procedure of confidentiality. Their primary if not sole purpose is to harass Ms. Powell, deprive her of her livelihood, and attempt to render her “toxic” in her community – as Project “65” has proclaimed.⁸ The Petition should be dismissed on principles of unclean hands alone, as it is another baseless, politically–driven act of lawfare to harass and smear an outstanding lawyer for political purposes. It is driven, incited, encouraged, and demanded by politically-motivated lawyers who misrepresented the law and made their grievances public. They even sought to have it published in the mainstream media – all actions which are contrary to the fundamental principles of professionalism of this Bar.

⁷*Comm’n for Law. Discipline v. Powell*, 689 S.W.3d 620 (Tex. App.—Dallas 2024, no pet.).

⁸<https://www.law.com/texaslawyer/2023/11/07/17-lawyers-want-sidney-powell-punished-letter-sent-to-bar-about-trump-attorney/?slreturn=20240817132949>; n.3 *supra*.

3. Immediately following the 2020 election, if not planned prior to it, Democratic operatives David Brock, David Fink, and others formed a 501(c)(3) non-profit— “The 65 Project”—with the express goal of trying to disbar and destroy the lives of more than 100 lawyers who represented Republican Party candidates and officials in litigation related to the 2020 election.² In an interview with Axios, The 65 Project founder and advisor David Brock described the initiative as a way to “not only bring the grievances in the bar complaints, but shame them [the lawyers] and make them toxic in their communities and in their firms.”³ LDAD serves the same purpose.

3. The Texas Rules of Professional Conduct include an important provision—completely ignored by the Texas Bar and those behind this action.

[T]he purpose of these rules can be abused when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer’s self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule.

Tex. Disciplinary R. Prof’l Conduct Preamble ¶ 15. Certainly, this creed should override the claims of the politically motivated antagonists.

ANSWER

Ms. Powell re-alleges the preceding paragraphs as if fully set forth herein and responds to the Bar’s allegations as follows:

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

5. 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.⁹

6. 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.”¹⁰

7. 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. 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).

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

C. PRAYER

9. 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

By: /s/ Robert H. Holmes

⁹Rule 1.06(V), Texas Rules of Disciplinary Procedure.

¹⁰Rule 1.06(GG), Texas Rules of Disciplinary Procedure.

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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 October 10, 2024.

/s/ Robert H. Holmes
Robert H. Holmes