



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

**IN THE MATTER OF
ROBERT RAY SMITH
STATE BAR CARD NO. 18678070**

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CAUSE NO. 66183

JUDGMENT OF SUSPENSION

On the 29th day of April 2022, the above-styled and numbered disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner, the Commission for Lawyer Discipline, appeared by attorney and announced ready. Respondent, Robert Ray Smith, appeared by and through his attorney of record. All questions of fact and all issues of law were submitted to the Board of Disciplinary Appeals for determination. Having considered the pleadings on file, having received evidence, and having heard the argument of counsel, the Board of Disciplinary Appeals is of the opinion that Petitioner is entitled to entry of the following findings, conclusions, and orders:

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

- (1) Respondent, Robert Ray Smith, State Bar Card Number 18678070, is licensed but not currently authorized by the Supreme Court of Texas to practice law in the State of Texas.
- (2) On or about October 11, 2019, a Plea of Guilty, Admonishments, Voluntary Statements, Waivers, Stipulation & Judicial Confession was entered in Cause Number D-1-DC-18-904235, styled *The State of Texas v. Robert Smith*, in the 403rd Judicial District Court of Travis County, Texas, wherein Respondent pleaded guilty to Forgery, a third-degree felony.
- (3) On or about November 12, 2019, Conditions of Community Supervision was filed in Cause Number D-1-DC-18-904235-I, styled *The State of Texas v. Robert Smith*, in the 403rd Judicial District Court of Travis County,

Texas, wherein Respondent was placed on community supervision for a period of three (3) years and ordered to receive counseling/treatment designated by the Supervision Officer, submit letters of apology to victims within six months of sentencing, give six Texas Lawyers' Assistance Program (TLAP) presentations and provide proof to Probation Officer, continue Mental Health Services with private provider and provide proof to Probation Officer, and not practice law for three years.

- (4) On or about November 14, 2019, an Order of Deferred Adjudication was filed in Cause Number D-1-DC-18-904235, styled *The State of Texas v. Robert Smith*, in the 403rd Judicial District Court of Travis County, Texas, wherein Respondent was placed on deferred adjudication community supervision for three (3) years for the offense of third-degree felony forgery in violation of Texas Penal Code § 32.21(e). Terms of the community supervision include treatment and counseling, three years suspension from law practice, apology letter to victims, six TLAP presentations, continuation of mental health services with private provider, and payment of court costs in the amount of \$320.50.
- (5) On or about September 24, 2019, Evidentiary Panel 9-1 for the State Bar District No. 9 Grievance Committee issued an Agreed Judgment of Active Suspension in Case No. 201803273, styled *Commission for Lawyer Discipline v. Robert Ray Smith*, arising out of the same incident that led to the Order of Deferred Adjudication, above. The Evidentiary Panel found that Respondent violated Texas Disciplinary Rules of Professional Conduct 1.01(b)(1), 1.03(a), 8.04(a)(2), and 8.04(a)(3). By agreement, Respondent was ordered actively suspended from the practice of law for a period of five (5) years, beginning October 11, 2019, and ending October 10, 2024.
- (6) Respondent has no other disciplinary history with the State Bar, except for a 1998 private reprimand arising out of unrelated representation.
- (7) Respondent, Robert Ray Smith, is the same person as the Robert Ray Smith who is the subject of the Order of Deferred Adjudication and Agreed Judgment of Active Suspension, above.
- (8) Respondent has, to date, complied with the terms of community supervision and with the terms of the agreed disciplinary judgment.

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 matter. TEX. RULES DISCIPLINARY P. R. 7.08(G).

- (2) Respondent, Robert Ray Smith, was placed on probation through deferred adjudication for conduct that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer for purposes of TEX. RULES DISCIPLINARY P. R. 8.04 and for conduct that constitutes an Intentional Crime as defined by TEX. RULES DISCIPLINARY P. R. 1.06(V). Such conduct also constitutes a Serious Crime as defined by TEX. RULES DISCIPLINARY P. R. 1.06(GG).
- (3) Compulsory discipline is warranted in this case. TEX. RULES DISCIPLINARY P. R. 8.05.
- (4) Respondent's sentence was deferred pursuant to the trial court's decision to grant deferred adjudication probation. Thus, the Board had discretion pursuant to TEX. RULES DISCIPLINARY P. R. 8.05 and 8.06 to enter an order of disbarment or suspend Respondent's license for the duration of the term of deferred adjudication probation. *In re Caballero*, 272 S.W.3d 595, 601 (Tex. 2008).
- (5) The inquiry as to whether to disbar or suspend is governed by the factors expressed by the Board in *In re Isassi*, BODA Case No. 57699, 2017 WL 2293005 (May 8, 2017).
- (6) Based on the relevant factors and the evidence and argument submitted by the parties, the Board determines that suspension is the appropriate sanction.

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** that Respondent, Robert Ray Smith, State Bar Card No. 18678070, be and hereby is actively **SUSPENDED** from the practice of law in the State of Texas effective immediately upon entry of this judgment and extending through November 11, 2022.

It is further **ORDERED, ADJUDGED, and DECREED** that during said suspension, Respondent, Robert Ray Smith, is prohibited from practicing law in Texas, holding himself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor," or "lawyer."

It is further **ORDERED** that Respondent, Robert Ray Smith, shall remain subject to all terms and conditions of the Agreed Judgment of Active Suspension, which ends October 10, 2024, and nothing in this Judgment shall relieve Respondent of any outstanding requirements under that Agreed Judgment. Any failure to comply on the part of Respondent may be independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure.

It is further **ORDERED** that a certified copy of the Petition for Compulsory Discipline on file herein, along with a copy of this Judgment, be sent to the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

It is further **ORDERED** that this Judgment Revoking Probation and Actively Suspending Respondent from the Practice of Law shall be made a matter of public record and be published in the *Texas Bar Journal*.

Signed this 13th day of May 2022.

A handwritten signature in blue ink, appearing to read "Kevin H.", with a long horizontal line extending to the right.

CHAIR PRESIDING

Board member Jason Boatright and former Board member Cindy Tisdale did not participate in this decision.

David Iglesias, joined by Rudy Metayer, dissenting:

Texas Rule of Disciplinary Procedure 8.05 requires that an attorney be disbarred when convicted of an intentional crime, except that when the sentence is fully probated or the attorney receives probation through deferred adjudication, the Board of Disciplinary Appeals has discretion to instead suspend the attorney's license to practice law during the term of probation. *In re Caballero*, 272 S.W.3d 595, 599-601 (Tex. 2008); TEX. RULES DISCIPLINARY P. R. 8.05. After carefully weighing the Texas Rules of Disciplinary Procedure and the factors enunciated by the Board in *In re Isassi*, BODA Case No. 57699, 2017 WL 2293005 (May 8, 2017), against the undisputed facts in this case, I believe that Mr. Smith should be disbarred. Therefore, I respectfully dissent.

I.
FACTUAL AND PROCEDURAL BACKGROUND

The facts giving rise to this proceeding are entirely uncontested. The evidence shows that in the years leading up to the conduct for which he was disciplined, Mr. Smith experienced significant financial reversals. As a result, Mr. Smith believed that he had no choice but to accept any work which was offered to him, and he soon found himself struggling to keep up with a heavy workload.

While laboring under this heavy workload in August of 2017, a client engaged Mr. Smith to secure four orders of non-disclosure and an expunction of five criminal cases in Travis County. Mr. Smith told the client when he was hired that he would complete the work within two months.

Because there were no court-designated deadlines associated with the expunction, Mr. Smith continuously delayed working on the matter. Mr. Smith repeatedly lied to the client when she asked him for updates on the status of the expunction. Over the course of the representation,

Mr. Smith fabricated numerous excuses in an attempt to explain why the expunction had not been finalized within the timeframe he had promised.

When the client could not be put off any longer, Mr. Smith forged two orders by cutting the district clerk's file stamp and the signatures of two judges from documents which had been filed in other cases. He then pasted the signatures and the file stamp onto documents he had created. Mr. Smith also fabricated a cause number because he had never filed the expunction action for which he was hired. He then provided these forged documents to his client, representing to her that he had completed the work for which she had hired and paid him, and presumably expecting her to rely on the forged documents.

Mr. Smith's forgery was discovered when the client presented the forged orders to the district clerk's office and asked for certified copies. When the district clerk's office could not locate a file based on the cause number or the case name, an investigation was commenced.

Mr. Smith was indicted for the crime of forgery and pleaded guilty soon thereafter. On November 12, 2019, Mr. Smith was sentenced to deferred adjudication for forging the orders. In addition to other conditions of community supervision, the court ordered Mr. Smith to send letters of apology to the district clerk and the two judges whose signatures and timestamp he forged, to continue receiving mental health services, to give six presentations to attorney groups through the Texas Lawyers' Assistance Program, and to abstain from practicing law for three years. In a separate disciplinary proceeding, Mr. Smith entered into an agreed judgment of suspension on September 24, 2019, which actively suspended him from the practice of law from October 11, 2019, to October 10, 2024.

On December 14, 2021, the Office of the Chief Disciplinary Counsel of the State Bar of Texas (hereinafter "CDC") filed a Petition for Compulsory Discipline arguing that the offenses of

which Mr. Smith was convicted are both “intentional” and “serious” crimes as defined by Texas Rules of Disciplinary Procedure 1.06(V) and 1.06(GG). Therefore, the CDC argued that Mr. Smith should be disbarred pursuant to Rule 8.05.

Appearing through counsel, Mr. Smith responded to the CDC’s Petition on April 11, 2022.¹ Mr. Smith asked the Board to exercise its discretion under Rule 8.06 to impose no additional discipline beyond his active suspension. *See, e.g., Caballero*, 272 S.W.3d at 595 (“BODA has discretion to disbar or suspend in the case of a fully-probated sentence.”). A hearing was conducted on April 29, 2022.

II. **STANDARD**

BODA’s decision in the present case is governed by its decision in *Isassi, supra*. According to *Isassi*, fifteen factors should be weighed when determining whether BODA should exercise its discretion to abstain from disbaring an attorney who was convicted of an “intentional” and “serious” crime. *Isassi*, 2017 WL 2293005, at *2-*6. Those factors include: (1) whether the crime was directly related to the practice of law; (2) the conduct of the attorney during the compulsory proceeding; (3) whether the attorney has complied with the terms and conditions of his probation; (4) the attorney’s efforts at rehabilitation; (5) the attorney’s credibility under oath; (6) whether the attorney accepts responsibility for his past actions; (7) any prior discipline imposed on the attorney; (8) the seriousness and circumstances surrounding the attorney’s conduct; (9) the loss or damage to clients; (10) the damage to the profession; (11) the assurance that those seeking legal services in the future will be insulated from this type of misconduct; (12) profit to the

¹ Mr. Smith filed an amended response on April 26, 2022, in which he corrected misstatements made in his original response.

attorney; (13) avoidance of repetition; (14) the deterrent effect on others; and (15) the maintenance of respect for the legal profession. *Id.* Each of these factors will be addressed below.

III. ANALYSIS

a. The crime of which Mr. Smith was convicted was directly related to the practice of law.

As mentioned above, Mr. Smith was placed on deferred adjudication for forging the signatures of two judges on documents he drafted. He then falsified the documents so that they would appear to have been filed in a court of record. It is undisputed that Mr. Smith undertook this labor-intensive exercise in an effort to deceive his client, making her believe that he had completed work for which she had paid him and which he never even started.² It is indisputable that the crime of which Mr. Smith was convicted was directly related to the practice of law.

b. Mr. Smith's conduct during the compulsory proceedings weighs in his favor.

Mr. Smith and his counsel behaved professionally during the compulsory proceedings. Therefore, this factor weighs in his favor.

c. Mr. Smith has apparently complied with the terms and conditions of his probation.

Based on the evidence presented at the hearing, we assume that Mr. Smith has complied with the terms and conditions of his probation. Therefore, this factor weighs in his favor.

d. Mr. Smith's efforts at rehabilitation weigh in his favor.

Mr. Smith testified that he has engaged in numerous—and admirable—efforts to rehabilitate himself after the forgery was discovered. For example, Mr. Smith has availed himself

² Indeed, it appears that lying to his client and forging the order of expunction was the only work that Mr. Smith ever actually performed with respect to this matter.

of the services of the Stephen Ministry at his church,³ he is being treated by a psychologist and a psychiatrist, and he is employing various strategies to cope with depressive disorder. Therefore, this factor weighs in his favor.

e. Mr. Smith was not entirely candid during the hearing.

Mr. Smith appeared to testify candidly during the hearing. However, Mr. Smith argued in his initial Response that he had never been disciplined by the State Bar of Texas. Sometime after Mr. Smith filed his initial Response, however, a copy of a private reprimand was entered into the record. Mr. Smith then amended his Response to acknowledge the prior discipline. When confronted with this inconsistency, Mr. Smith told the Board that he simply forgot about the previous discipline. This explanation rings hollow and indicates that Mr. Smith is attempting to avoid responsibility for his behaviors. Therefore, this factor weighs against Mr. Smith.

f. Mr. Smith's testimony belies his argument that he has taken responsibility for his actions.

During the hearing and in his pleadings, Mr. Smith repeatedly argued that he has taken “full and complete” responsibility for his actions. The totality of his testimony, however, contradicts his acceptance of responsibility.

Although his testimony was couched as an effort to give context to the forgery, Mr. Smith's testimony appeared to be a thinly-veiled effort to excuse his actions. Mr. Smith testified regarding the health problems of his parents, wife, and son, his inherited depressive disorder, property disputes with family members, black mold in his home, the dissolution of a lucrative business relationship, and financial hardships resulting in threatened foreclosure on his family home. Taken as a whole, it is clear that the intended effect of this testimony was not to give context, but rather to convince the Board that the forgery was the result of Mr. Smith's circumstances rather than his

³ See www.stephenministries.com (last visited May 3, 2022).

free will. To the extent that Mr. Smith has accepted responsibility, such acceptance occurred only after his crimes were detected and he was under threat of imprisonment and disbarment.

The evidence in the record shows that Mr. Smith has not fully accepted responsibility for his actions. Therefore, this factor weighs heavily against him.

g. Mr. Smith has been previously disciplined by the State Bar of Texas.

As mentioned above, Mr. Smith admitted at the hearing that he was previously issued a private reprimand resulting from his failures in handling a divorce case. Mr. Smith did not admit to this discipline in his initial Response. This factor therefore weighs against Mr. Smith.

h. The circumstances surrounding Mr. Smith's failures are tremendously serious.

The events giving rise to these proceedings began when Mr. Smith agreed to perform work for a client that he was not capable of successfully completing. He took the client's money and then repeatedly lied to her when she asked about the progress of the matter.

When the client could no longer be pacified by Mr. Smith's lies, he forged documents in an elaborate effort to deceive her, gave her the documents, and expected her to rely on the forged documents.⁴ Mr. Smith refunded the prepaid fee only after the client discovered his audacious deception.

Short of physically harming a client, it is difficult to imagine a more serious violation of a lawyer's duties to those who he undertakes to represent. Not only are these actions the gravest betrayal of the lawyer-client relationship and the trust that the judiciary has for members of the

⁴ It should also be noted that this forgery required a great deal of time and preparation. To complete the forgery, Mr. Smith was required to gather documents, alter them, and create two documents which ultimately looked convincing enough to cause the client to take it to the district clerk's office and request certified copies. Each forged order contained a separate judge's signature, its own file stamp, and a unique cause number (one fabricated and one that was linked to an entirely different case). The forgery required significant preparation and therefore presented multiple opportunities for Mr. Smith to change course. The fact that he did not do so is most unfortunate—and shows that he is unfit to practice law.

Bar, but Mr. Smith's actions also undermine the trustworthiness of the legal process as a whole. This factor weighs heavily against Mr. Smith.

i. Mr. Smith's actions resulted in loss to the client.

Mr. Smith testified that he returned the fee to the client after the forgery was discovered. Presumably, this refund occurred long after Mr. Smith collected the fee. Although it is the domain of an economist to determine the pecuniary loss to the client based upon the time value of money, it can be safely said that Mr. Smith's deprivation of the fee from the client—even for a limited period of time—caused her economic harm.

Aside from financial damage, it can also be said that the client was damaged by the significant delay resulting from Mr. Smith's neglect, lies, and forgery. The client engaged Mr. Smith to secure an expunction of criminal matters and multiple orders of non-disclosure. He then lied to the client for approximately nine months while he neglected the matter for which she had already paid him. After the forgery was discovered, the client was no closer to her expunction. She presumably was required to begin the process anew. Mr. Smith's actions damaged the client by creating a significant delay. This factor therefore weighs heavily against Mr. Smith.

j. Mr. Smith's actions caused significant damage to the legal profession, and his disbarment would go far to maintain the public's respect for the profession.

For generations, the legal profession has been the subject of derision, jokes, and contempt from those who misapprehend its true purpose. At its heart, the purpose of the legal profession is to stand in the gap for people who need help navigating a difficult system controlled by procedural rules and precedents of which laymen are almost entirely unaware. For this system to function properly, it requires honesty between lawyers and clients and a relationship of trust between lawyers, courts, and clerks' offices. Without honesty and trust, the legal process would be paralyzed by constant second-guessing.

Additionally, the written word is the stock in trade of lawyers and the judiciary. Lawyers draft contracts and briefs, they submit orders to courts, and they write letters explaining their clients' positions. Further, the judiciary resolves legal matters by entering written orders. These documents carry tremendous weight in our form of government, as they reflect the actions of the judicial branch as it resolves disputes between citizens and entities. Court orders can carry the gravest of consequences on individuals and society as a whole. If the papers generated by a lawyer or a court cannot be trusted as authentic, then laymen will lose faith in the legal system.

This is especially true considering the limited contact the average citizen has with lawyers. Most people encounter lawyers only a few times in their lives. Their opinions of the legal profession are therefore entirely based on fleeting contact with the attorney who handles a relative's estate, provides representation in an isolated criminal matter, or assists in the formation of a business. Every lawyer should therefore understand that his or her actions will likely have an outsized impact on their client's view of the entire legal profession.

Here, Mr. Smith's unconscionable behavior tarnished the legal profession in a significant manner. His behavior not only affirms negative feelings about lawyers, but it also causes laymen to mistrust judicial orders and doubt the veracity of the documents maintained by governmental entities. Mr. Smith's disbarment would assure the public that lawyers who engage in criminal activity are held to account.

Mr. Smith's behavior was egregious. It is difficult to imagine an act for which a lawyer would be more justly disbarred. Therefore, this factor weighs heavily against Mr. Smith.

k. Only disbarment would assure that those seeking legal services would be insulated from this type of misconduct and avoid repetition.

As discussed above, Mr. Smith testified that his actions were precipitated by outside factors including family health crises, financial setbacks, and depression. Unfortunately, every lawyer

will encounter personal problems throughout their career. Mr. Smith's testimony shows that his response to stressors such as these is negative in the extreme. His own Response characterizes his conduct as "an aberration" for a 30-year lawyer who, until that time, had been "a credit to the legal profession." If Mr. Smith is representing clients the next time he is faced with personal trials, he may once again engage in behavior that damages his clients. In order to protect the public and avoid repetition, Mr. Smith should be disbarred. Therefore, this factor weighs against Mr. Smith.

l. Mr. Smith did not profit as a result of his criminal conduct.

Mr. Smith ultimately did not profit as a result of his criminal conduct. It bears repeating, however, that Mr. Smith did not attempt to return the fee until his forgery was discovered. Strictly speaking, however, this factor weighs in Mr. Smith's favor.

m. Disbarring Mr. Smith would likely result in deterrence of other such crimes.

The briefing and subsequent hearing focused entirely on Mr. Smith's conduct. However, it logically follows that disbarring Mr. Smith for his egregious conduct would deter other similarly-situated lawyers from taking similar actions when faced with difficult scenarios. As noted above, Mr. Smith agreed to a five-year suspension of his law license in a separate disciplinary matter regarding this same conduct. Because Texas Rule of Disciplinary Procedure 8.06 only allows for suspension concurrent with the respondent's criminal probation, and because Mr. Smith's probation will expire in November of 2022, the action by the Board in this matter only results in a six-month suspension. Further, this suspension will have no practical effect because Mr. Smith's license is already suspended during this period due to the agreed judgment. This amounts to no sanction at all and does not create sufficient deterrent effect for the broader legal community. This factor weighs heavily against Mr. Smith.

IV.
CONCLUSION

In sum, I believe that the *Isassi* factors weigh in favor of disbarment. The conduct in which Mr. Smith engaged shows that he is unfit to resume the practice of law. Therefore, I respectfully dissent.