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Supreme Court of Texas.
In The Matter of Rolando Caballero, on Appeal from the Board of
Disciplinary
Appeals of the Supreme Court of Texas.
No. 07-0484.

April 2, 2008

Appearances:
Royal K. Griffin, San Antonio, Texas, Attorney for appellant.
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Bar of Texas, Austin, Texas, for appellee.

Before:

Chief Justice Wallace B. Jefferson, Nathan L. Hecht, Harriet
O'Neill, Dale Wainwright, Scott A. Brister, David Medina, Paul W.
Green, Phil Johnson, and Don R. Willett, Supreme Court Justices.

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CHIEF JUSTICE JEFFERSON: Be seated please. The Court is ready to
hear argument in 07-0484 In the Matter of Rolando Caballero [In the
Matter of Rolando CABALLERO, 2007 WL 3092623, Supreme Court of Texas].

MARSHAL: May it please the Court. Mr. Griffin will present
argument for the appellant. Appellant has reserved ten minutes for
rebuttal.

ORAL ARGUMENT OF ROYAL K. GRIFFIN ON BEHALF OF THE PETITIONER

MR. GRIFFIN: May it please the Court. Rolando Caballero was
convicted of fraud in the Western District of Texas in San Antonio. He
was a licensed attorney came to the attention of the Board of
Disciplinary Appeals and mandated to file a compulsory discipline case
as opposed to an ordinary -- I shouldn't use that term -- but a local
disciplinary case. Compulsory discipline was required in this case
because Rolando was a licensed attorney. He was convicted of a serious,
intentional crime involving moral turpitude.

JUSTICE BRISTER: Help me understand. I mean, How many -- how many
crimes can you think of that would be though serious but not
intentional or the other way around?

MR. GRIFFIN: There aren't any. It's a --

JUSTICE BRISTER: There aren't any.

MR. GRIFFIN: It's a silly rule.

JUSTICE BRISTER: That's what it looked like to me.

MR. GRIFFIN: Yeah. It's a silly rule. I agree. The term stands by itself. And its defined by another term. Intentional means a serious crime. So-- but we're not arguing that. The crime definitely involved--

JUSTICE BRISTER: And this would be -- the crime would be either one in this case.

MR. GRIFFIN: Yes. And so he came into the purview of BODA. BODA decided in this case that he was a licensed attorney. He was convicted of a crime of moral turpitude the -- and that the defense was fully probated. Now having found those as facts, I believe and I think the Court believes, that BODA has no discretion to do anything other than to suspend his license. BODA instead decided to disbar him. He had a hearing where they heard a lot of other extraneous explanation that I don't believe was relevant to those facts. But having decided as a fact that his sentence in the federal court was probated, they had no discretion to go further.

JUSTICE BRISTER: What part of 805 excludes fully probated sentences?

MR. GRIFFIN: 806 does.

JUSTICE BRISTER: I see that 806 applies to if the sentence is fully probated. 805 applies if the attorneys accepted probation with or without adjudication of guilt. And of course, we don't actually have probation in Texas anymore. It's all --

MR. GRIFFIN: -- [inaudible] community supervision--

JUSTICE BRISTER: -- community supervision. But wouldn't -- if you accept probation without an adjudication of guilt, wouldn't that include cases where you are fully probated?

MR. GRIFFIN: Well, I don't think so because 805 just puts you out into 806. It chunks you off in there. For example it says, unless under 806, your license should be suspended. 806 is very, very clear. It doesn't --

JUSTICE BRISTER: Well, it doesn't actually say unless your license should be suspended. It says unless the Board suspends --

MR. GRIFFIN: --yes, unless the Board suspends--

JUSTICE BRISTER: -- and their argument is that that gives them discretion to use either one.

MR. GRIFFIN: Well, they just don't have any discretion. Once those facts are adduced because the -- all of the cases from the Court since 1992 or 1995 beginning with Humphreys [In the Matter of Humphreys, 880 S.W.2d 402 (Tex.1994)], Ament [In the Matter of Ament, 890 S.W.2d 39 (Tex.1994)], Lock [In the Matter of Lock, 54 S.W.3d 305 (Tex.2001)], ending with Lock including Birdwell [In re Birdwell, 224 S.W.3d 864, Tex.App.-Waco, 2007], they all say that the Board doesn't have any discretion. Disciplinary council says they have little discretion. I say they don't have any. If the Court wants to do something about that, I think we have to change those rules. If 805 is -- is unclear and ambiguous -- I don't think it is if you read it closely. 806 is not. 806 is very clear. It says that if you are suspended, you'll be suspended. You shall be suspended if your sentence is probated. Actually it says fully probated.

JUSTICE HECHT: But what does fully probated mean?

MR. GRIFFIN: I don't know. You know Judge, I've read some of the cases. And in fact, the act that underlies the rule doesn't say fully probated. It just says probated. It didn't give us a definition of probated either. Reading the Court's cases though, it's clear that if you go to jail, that's not probated. If you get a fine and the fine

isn't probated, that is not probated. But what about all the rest? I mean, are supervisory fees if you get probation, does that make it not fully probated? You have to wear an ankle bracelet. If you have to buy an interlock system for your car, are those fees that you have to pay, do they take you back from or away from the fact that you are fully probated? There's no definition for the Court to rely on or for the lawyers who have to be put on notice by the act and by the rules. And so, this is even a federal case. The -- the question though of whether or not his sentence was fully probated kind of is sort of begged by the decision of BODA itself. BODA says in its judgment that he was fully probated. They say that. I think that's a factual determination. And I think having made that factual determination, they're locked in to Rule 806.

JUSTICE HECHT: If you have an intentional crime that's not a serious crime, an intentional crime that is not a serious crime.

MR. GRIFFIN: Yes sir. I guess so.

JUSTICE HECHT: Could you only have disbarment? Or could you also have suspension in that situation?

MR. GRIFFIN: Well, I don't know. I hadn't considered that. I suppose if you had been convicted in the justice court of shoplifting for \$50 dollars and you paid the fine, you would be disbarred. It certainly would be an intentional crime. You didn't get probation. I don't think you get probation in the justice court, which brings up a whole bunch of other questions.

JUSTICE HECHT: Which is another reason why maybe under 805, their ought to be some discretion.

MR. GRIFFIN: Well, if that's what -- if that's what the legislature desires, of course. But I don't think they did that. It had to be some mitigation for a lawyer who is in that situation. And that discretion I think the legislature has devolved into the trial court. It's always been in the trial court. The judge in the criminal court knows whether or not this lawyer before him is going to be disbarred unless he gets probation. I don't think there are very many trial judges who know that if they don't probate the fine, you're in danger of being disbarred as well. But what about all the other instances of fees or in this case, the federal court assessed a special assessment?

JUSTICE HECHT: What was that for, \$100 dollars?

MR. GRIFFIN: It's \$100 dollars. It's not waivable. It's mandatory. He also under the heading of fine, the -- the -- the judge put zero fine. So there was no denominatable term such as fine. And in this case was zero. That fee being mandatory goes to the general operation of the courts. I don't think it goes to the general operating fund of the United States. At any rate, I would hesitate to call it a fine. I suppose you could. Well, I don't know how it affects whether or not your case is fully probated or not. I would say that this Court has only determined that imprisonment is not fully probated and a fine is not fully probated. And so, I guess I can -- I lost my place in sentence -- Mr. Caballero should not have been disbarred. He should have been suspended. Are there are any other questions?

JUSTICE BRISTER: You concede that they could have done a regular proceeding --

MR. GRIFFIN: Oh yes, down below? In a sense, at the local area. The fact that they did not, I don't know to -- whether to ascribe that to negligence on the disciplinary council's part or -- or the fact that the complainant took another route. Complaining this case instead of complaining to the local bar went to the United States District Attorney. How he ever got this case indicted. I don't know. Maybe they

don't have anything to do there.

CHIEF JUSTICE JEFFERSON: Thank you, Counsel.

MR. GRIFFIN: Thank you, Sir.

CHIEF JUSTICE JEFFERSON: The Court is ready to hear argument from the appellee.

MARSHAL: May it please the Court. Ms. Acevedo will present argument for the appellee.

ORAL ARGUMENT OF LINDA A. ACEVEDO ON BEHALF OF THE RESPONDENT

MS. ACEVEDO: May it please the Court. Since 1992, the Board of Disciplinary Appeals has exercised exclusive jurisdiction in compulsory discipline proceedings. And for those 15-plus years, BODA has consistently interpreted and applied 805 and 806 as authorizing disbarment against an attorney who's received probation for the conviction of an intentional crime.

JUSTICE BRISTER: Even though we apparently have said a couple times, we shouldn't?

MS. ACEVEDO: On four different occasions --

JUSTICE BRISTER: On four different occasions we said it was okay but on the published occasions when we did take the cases, we seemed to say that leaves you with no discretion between 805 and 806.

MS. ACEVEDO: And I would say that that is not an accurate depiction of those cases.

JUSTICE BRISTER: Sanchez [In the Matter of Sanchez 877 S.W.2d 751 (Tex. 1994)], was wrong for instance.

MS. ACEVEDO: In Sanchez, what the Court held was that disbarment was appropriate because he had not received -- he was not eligible to be considered for probation. So, I believe that that's consistent then.

JUSTICE BRISTER: But we did --

MS. ACEVEDO: That's what the Court had said.

JUSTICE BRISTER: I mean, we did say in Sanchez that 806 applies if it's fully probated. 805 applies if it isn't.

MS. ACEVEDO: Yes. And that's correct. So he was not eligible for suspension because he did not receive probation.

JUSTICE BRISTER: Mr. Caballero was fully probated.

MS. ACEVEDO: Yes, for purposes of the argument, we'll concede that his sentence was fully probated.

JUSTICE BRISTER: So, we either Sanchez appears to me, Sanchez v. BODA appears to say then 806 has to apply. We could of course change our minds and say Sanchez was wrong.

MS. ACEVEDO: Well, let me say this that, I think it is important that since 1995, the issue has been squarely presented before the Court on four different occasions. And in each of those occasions, the Court has affirmed BODA's decision to impose disbarment including the most recent the Filippov [Filippov v. Gonzales, 177 Fed.Appx. 147, C.A.2,2006] case in 2004. And this is important where BODA issued an opinion fully articulating the basis for its actions. And so, those decisions support what BODA has done. Other provisions in the disciplinary rule support the ability to impose disbarment--

CHIEF JUSTICE JEFFERSON: Are those affirmances precedent? I mean, does that mean that we adopted the argument that was made?

MS. ACEVEDO: BODA appeals as you know, they come directly to this Court. They are not discretionary. The judicial review rule

specifically says that you can affirm a decision without an opinion.

CHIEF JUSTICE JEFFERSON: Right. But does that --does that mean -- I mean this is a different process where we are hearing an argument. And we are going to write an opinion. Does, when we affirm, does that mean we are adopting every word, and paragraph, and sentiment, and legal position that the Board presented?

MS. ACEVEDO: To the extent that it is a decision on the merits, yes. And particularly in those instances where it was the sole issue before the Court, I mean BODA has --

CHIEF JUSTICE JEFFERSON: Are those published --are those published like opinions of this Court?

MS. ACEVEDO: They're not published because they come out from the orders of the Court, which say that they've affirmed the determination of the Board of Disciplinary Appeals but certainly BODA has justifiably relied on --

CHIEF JUSTICE JEFFERSON: and I am not going to question that.

MS. ACEVEDO: -- those cases to go forward --

CHIEF JUSTICE JEFFERSON: There is an anomaly. I mean, we've got Sanchez and Lock and other cases Birdwell, that you know that kinda suggest that there is a tension between those cases and what we did in the appeals.

MS. ACEVEDO: Well and I would say this with respect to Birdwell, and Lock, and those decisions that have this language in it about how there's no discretion in the compulsory discipline process, I can explain that in this way. And that is first of all, as you know, the issue before the Court in those cases is different from what you're facing today. Second, if you look at the origin of that language, the no-discretion language was developed in those cases to address what the parameters were going to be as to whether a particular crime was even going to subject the lawyer to compulsory discipline. Because --

JUSTICE HECHT: Could I ask -- could I ask you in that regard? If you're convicted of a serious crime that's not an intentional crime and you don't get probation, are you subject to compulsory discipline?

MS. ACEVEDO: Yes. I think you will still be subject --

JUSTICE HECHT: Where -- where is that?

MS. ACEVEDO: But let me explain in this -- I think this will help to explain a little bit about this discrepancy between the intentional crime and the serious crime. Before 1992, only the term 'serious crime' was used. And under the former suspension rule while the trial court had to suspend the lawyer during the period of probation, they always had this ability to impose more discipline including disbarment. With the 1992 provisions, what you see is the introduction of this new term, 'intentional crime' which is basically any serious crime that is going to be committed with intent or with knowledge.

JUSTICE BRISTER: And can you think of any serious crime that wouldn't also be intentional?

MS. ACEVEDO: That's been our problem. I mean, it's clear that the drafters in their mind had these two distinct classes of crimes.

JUSTICE WAINWRIGHT: What about negligent homicide?

MS. ACEVEDO: Well --

JUSTICE WAINWRIGHT: There can be serious crimes that are not intentional.

MS. ACEVEDO: And I would say that they may have had in mind crimes against individuals that would require a lower or a lesser culpable mental state. But I believe that this Court's opinions in defining moral turpitude, which required deliberate violence would then take those class of crimes out of the compulsory discipline scheme.

JUSTICE HECHT: Unless they were -- unless you got probation.

MS. ACEVEDO: No, they just would take them out of the compulsory discipline scheme because they wouldn't end up involving moral turpitude because moral turpitude would require there to be a deliberate violence.

JUSTICE BRISTER: Like the drug possession cases, that's not moral turpitude so that's --

MS. ACEVEDO: No, unless it's with intent to distribute. Unless you're out there, delivering the controlled substances. And so in their minds, I believe that they did have these different classes of crimes, the serious crimes that were going to be committed with intent or knowledge which would then bump you up into this mandatory disbarment category or at least giving that priority consideration and the others. But as you've mentioned, it just has never materialized. There has never been a crime presented before BODA that was just a serious crime and not also an intentional crime.

JUSTICE HECHT: My question though, 805 says if you're either convicted or you get probation for an intentional crime, then this. And 806 says if you get probation for a serious crime, then this. But there's nothing that says if you're convicted of a serious crime and there is no probation, what happens? It doesn't --

MS. ACEVEDO: That's right. And that's another problem with -- with the way the provisions are set about is that if you look at what -- what -- what they were looking at, you can make that argument, that if it were just a serious crime, you wouldn't end up in compulsory -- the compulsory discipline process. And so the point that I was trying to make is that what BODA did is rather than disbar every lawyer who got probation because they were never gonna come before them with a crime that was just a serious crime but was also going to be an intentional crime, what they did was to take the more reasonable approach and harmonize those provisions so that disbarment is continued to be given this priority consideration but still allowed them the discretion to impose suspension if they believed that to be warranted.

JUSTICE HECHT: And is that basically the same practice that existed before the '91 changes?

MS. ACEVEDO: Yes, in effect, I think -- I think that's probably would be accurate. I do wanna point out that this ability to disbar a lawyer who's received probation is supported by other provisions in the disciplinary rules. Probably the best example is in BODA's Filippov opinion. They referred of reinstatement provisions. And for reinstatement, the general rule is that a lawyer has to wait five years from the date of disbarment before they can apply to be reinstated for practice of law. But the rule also says that if your disbarment is by reason of a conviction or having been placed on probation without an adjudication of guilt, then that lawyer has to wait five years from the completion of their sentence, which includes any period of probation and/or parole. So, the fact that the reinstatement provisions specifically cite to lawyers and their probated sentences supports BODA's ability to disbar a lawyer regardless of whether they've given -- been given probation.

JUSTICE HECHT: Help me with another sentence in Rule 805 says that if you're suspended while appeal is pending, once the appeal is final the Board -- the chief disciplinary council must move for disbarment. You can't move for suspension? Just to continue the suspension?

MS. ACEVEDO: Typically, what the chief disciplinary council does is to simply move for entry of judgment and in that particular pleading would plead for the disbarment.

JUSTICE HECHT: It says, shall file a motion for final judgment of disbarment. But I'm just wondering that seems to penalize the appeal. If -- if -- if you've just taken your suspension and -- and not had an appeal then you could get suspension under Rule 806.

MS. ACEVEDO: I don't believe that that was the intention of that rule. I believe that what that was meant to address was that once the appeal was over that we would move for a final judgment in that case. And we do move for disbarment but it's still within BODA's discretion if the lawyer's eligible to impose a suspension at the end of the day.

JUSTICE HECHT: And how do you decide which is which?

MS. ACEVEDO: What BODA has developed over -- over the years is either the chief disciplinary council or the respondent lawyer can come in and put on the evidence. And the factors that BODA has articulated mainly in its Filippov opinion is they look to see whether the crime was directly related to the lawyers' practice, the conduct of the lawyer during the compulsory process, if the lawyers complying with their terms and conditions of probation, whether there'd been any efforts at rehabilitation if it's -- if it's applicable. They look at the lawyers' credibility under oath before them, whether they've accepted responsibility for the crime committed, and finally whether they have any prior discipline. So that's what they look at when they're making that distinction.

JUSTICE WAINWRIGHT: Let's go back to a question raised by the Chief. Now, I know you don't work for BODA. You're first assistant at the Office of the Chief Disciplinary Council. But you seem to be familiar with and I know you've been before them a number of times, their view of the precedent or the precedential value of our affirming decisions that come from BODA. And as you and the Chief Justice have discussed a number of those opinions, BODA explained its interpretation of the rules, which is in part at issue here. Does it necessarily mean that we affirm a BODA judgment that we agree with all the reasoning? What -- what about the distinction between writ refused and writ refused NRE? What about that type of approach where we affirm the outcome, the merit's decision, but we may not necessarily be intending to say we agree with every word in the BODA opinion and reasoning?

MS. ACEVEDO: I understand what it is that you're saying. But my response would be that, aside from the fact that, they're not discretionary then you're gonna have to make a decision on it, one way or the other.

JUSTICE WAINWRIGHT: Which doesn't say anything about accepting the reasoning, that says we need to address the merits.

MS. ACEVEDO: However, again when the -- it's been the only issue before the Court, it would seem to me at least that you can rely upon the fact if the only -- if the issue actually is I don't have the ability to disbar this lawyer who's been given probation, and that lawyer has been disbarred, and the Court has affirmed that decision, and that's the only issue before them, then the weight of that, I do think that it does provide some precedent for the Board to continue in the manner that it has.

JUSTICE WAINWRIGHT: And -- and I disagree with what you're saying about the Board and its reliance. I'm talking about precedential value --

MS. ACEVEDO: Uh-huh.

JUSTICE WAINWRIGHT: -- for the public and for the -- for the bar. Okay.

JUSTICE HECHT: What's -- what's fully probated mean?

MS. ACEVEDO: Like I started out for purposes of the argument,

we'll concede that the sentence was fully probated. And I think that what they were trying to get after, it is true that a sentence includes fines. Sometimes, fines are probated. Sometimes, they're not. I think part of what they were getting at as well is that sometimes you get a term of -- of incarceration that is then followed by some type of supervised period. And what they were talking about was somebody who's sentence had been fully probated in that sense. I do wanna point out that --

JUSTICE HECHT: But not to include restitution or costs or fees or --

MS. ACEVEDO: No. I do believe also that if you look at the initial section of the compulsory discipline statutes, it specifically says that the completion or termination of any term of probation does not bar a compulsory action. So again, that further supports that BODA can do something other than just suspend the lawyer. Because if that were true then you couldn't bring that compulsory discipline action before --

JUSTICE BRISTER: But if -- if other side is correct, assume for a moment that if it's fully probated, all you can do is 806 suspension, what would -- or anything prevent in doing a regular standard effort of disbarment?

MS. ACEVEDO: That idea that if you're not happy with what you get in the compulsory discipline process that you can just go back to the grievance committee and make up for it there, is an -- is an unsatisfactory response for a couple of reasons. Invariably, the underlying conduct that's led to the conviction is outside the statute of limitations, the four-year statute of limitations, for a regular grievance case. And so it's rare that that's ever going to be a viable option for us. So it doesn't -- it's not a safety net. It doesn't really reflect the realities of what we're able to do to further protect the public. In addition, it seems to me that the idea of going back to the grievance committee or the regular process is counterintuitive to why we have the compulsory process to begin with. I mean, we decided a long time ago that we needed a separate expedited process to reach lawyers who had been convicted of certain kinds of crimes because they pose a special threat to the public, and to the courts, and to the profession. Because the idea of having convicted lawyers continuing to practice law undermines the public's confidence and erodes the integrity of the -- of the profession. And so we have this special process that is now delegated to this one court and where resolution can occur on an average between 90 and 100 days. And so, the idea that you could not get a disbarment in that type of a compulsory arena which is specifically targeted to convicted lawyers does not seem -- there's nothing out there to support that the ability to disbar was ever meant to be taken away from that trial court that has this exclusive jurisdiction over these types of proceedings.

Whereas in a regular grievance process, it's gonna take a lot longer. You're gonna have to prove the commission of the crime. And as I have mentioned and more often than not, the statute of limitations has run or even trying to pursue something like that. So, in terms of what -- what the objectives are of the discipline process, everything that I've looked at certainly support that ability to disbar the lawyer. I mean lawyers get probation for some really serious crimes. And if I can just point to the cases in which of course we contend that the Court has affirmed the decisions. The crimes there were bribery, misapplication of fiduciary property, aggregate theft, delivery of controlled substances. I mean over the years, we've seen lawyers who

have received probation for money laundering, for sexual assault of a child, and for a host of other money crimes or money-related crimes where fraud and deception is involved and that are directly related to their practice.

I mean Mr. Caballero is a good example. I mean that federal conviction for mail fraud was directly related to his personal injury practice and involved third-party monies that were kept and spent. And while the federal court in its discretion suspended that sentence, BODA appropriately disbarred him. And I think part of what you have to keep in mind is that there are -- the requirements of the criminal justice system are not always co-extensive with the legitimate goals of the disciplinary process. I think you've just got different considerations going on there. And when you look at the development of -- of compulsory discipline over the years, what you see is a steady progression of adding more crimes that are gonna subject you to compulsory discipline and -- and increasing the amount of discipline. So, everything out there supports this ability. I think it was always meant to be there. It was never meant to be taken away even with the -- the newest revisions that we have under the current rules. And so we would ask the Court to affirm BODA's disbarment in this case. It is supported by the expressed language in the rules. It's supported by other provisions. It's supported by at least this Court's actions in the past. And it's certainly consistent with the objectives and the goals of what it is that the compulsory discipline process is supposed to do. Thank you.

CHIEF JUSTICE JEFFERSON: Any questions? Thank you, Counsel.

REBUTTAL ARGUMENT OF ROYAL K. GRIFFIN ON BEHALF OF THE PETITIONER

JUSTICE BRISTER: What about that last argument that when a trial judge in a criminal case is thinking, 'well, should I throw this guy in the slammer'. Number one it's -- it's not a violent crime. He just stole. He didn't hurt anybody so we are gonna put him in with all these drug folks may not be a great idea. And number two, if we throw him in the slammer, he'll never be able to pay back all the clients he stole from. And so probation is great idea cause we can condition restitution on it but you can't do if we imprison him. But all of those reasons are good reasons not -- a good reason to fully probate but maybe a very bad reason not to disbar.

MR. GRIFFIN: But that's the very thing that the legislature has put in the hands of the trial judge. He's right on the ground there with the lawyer, and the victims, the prosecutor representing the State. He is very familiar with each detail in the case and reads a presentence report but has --

JUSTICE BRISTER: Everybody is there except the future victims. He can adjust things between this whether your case or not. But they're concerned about the future victims. And those people aren't there to say, don't let him back out. Don't let him keep his law license. They are not there 'cause they're yet to be defrauded.

MR. GRIFFIN: I don't think that -- that's not raised. I have to admit I --

JUSTICE BRISTER: Prosecutors do think of that.

MR. GRIFFIN: They do think of those things. They're brilliant. They're very confident, brilliant people. But to -- to say that the

statute 81.078 really circumscribes that underlies these loopholes and you might -- you might think that the rules overstated their legislative brief because 81.078 A and B are quite dispositive, that is to say an attorney who has been given probation after the conviction. Here, we have the -- Rolando got probation whether adjudicated or unadjudicated, it happens that it was adjudicated in the federal court, shall be suspended. They say shall. Shall imposes a duty. That's the code construction act that was passed and should be given great deference here. 801, which gives disciplinary council the duty to file such a disciplinary action also says shall. He shall file the compulsory discipline petition with BODA. 801 says you shall. There's no difficulty figuring out what shall means in that case. And 806 says you shall get suspended. The same 'word' shall is in 806, is in 801. It means the same thing. The Act further --

JUSTICE BRISTER: How long in your case, I forget, how long was the term of probation?

MR. GRIFFIN: Five years.

JUSTICE BRISTER: And do you disagree that Ms. Acevedo says there's various problems with trying to go back and do a regular grievance by the time the criminal systems through with their stuff, they're gonna be barred by limitations.

MR. GRIFFIN: You know, this case involved failure to pay medical providers. The doctors and the medical providers-- and I'm off the record here entirely -- but they're very you know, sophisticated about collecting their debts. They will go to the grievance committee at the local level and complain immediately particularly if you've given them a protection letter for their fee. In this case, I think -- I think it was a doctor in this case managed to get the ear of the United States Attorney in this case. I hadn't heard of that before but he managed to do that. I've representing many lawyers in the opposite where they are represented or complained of at the local level but not -- not this. So yes, I don't know if it's the duty of the -- of the attorney to inform the local committee that he hasn't paid his bills. Maybe that should be a duty to look into. But the duty of the disciplinary council is to find out. And it's the duty of the complainants to make their complaint. So if they failed to do so within the period of time that too is encompassed in the law. So, if you don't make your complaint in time, its too late. Go home.

Back to -- I have one more. The rules do define what an intentional crime is. And it tells us nothing more than an intentional crime is a serious crime. It doesn't have any other definition. But when you go to serious crime, it tells you exactly what the serious crime should be. But it doesn't help us to know, if you run a red light is that a intentional crime? In fact, the word 'crime' has got a very little relevance to do with the penal code, which speaks in terms of felonies and misdemeanors. That's why serious crime seems to me is much more informative than an intentional crime. These rules I think require if they're gonna be revisited, the assistance of a good criminal lawyer or -- and not just the prosecutor but the defendant as well. But these rules were complied with by the respondent, Rolando Caballero. He was entitled under the rules and was mandatory that he be suspended.

All of your written cases that I have access to tell us that the BODA has no discretion at all when those facts are adduced. He got probation. He was licensed, blah, blah, blah. He has to be suspended. He had no other course. And so, BODA decided instead -- and this hadn't been raised in my brief -- that they would consider collateral matters. These matters were specifically prohibited by Court's decisions, I

think in Birdwell you're not allowed to look at anything else. That's for the lower committee. Just to look at what prior disciplinary actions were done. What else were done -- that's for the inferior committee. But the compulsory committee went so far as to look into other extraneous matters. Where are the rules that tell me where BODA gets the right to do that? What rule do they imply? Who says they have a right to look into your bad acts that don't result in convictions? Who says that they can hear from your wife or your children that you didn't pay child support? What rules guide them in the exercise of their discretion to say, you get suspended and you don't. I don't know what they are. And they won't tell us. When -- when you see the -- the judgments of BODA that are reported on their line, on their web line, you get their truncated version of what the facts in that case were. And that's the -- I suppose because when I see that you affirm that decision I can't tell why. Under what facts? What's this? Does this guy get a fine? Does this guy get probation? They're very tenuous. And it leaves BODA to -- to give them any discretion in this matter whether discretion is completely curtailed by 806 would be a gross violation of due process. They are not following their own rules.

CHIEF JUSTICE JEFFERSON: Are there any questions? Thank you, Counsel. The cause is submitted. That concludes the arguments for this morning. And the Marshall will now adjourn the Court.

SPEAKER 1: All rise. Oyez, oyez, oyez. The honorable, the Supreme Court of Texas is now being adjourned.

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