

**HERRING & PANZER, L.L.P.**  
1411 WEST AVENUE, SUITE 100  
AUSTIN, TEXAS 78701

TEL: 512-320-0665

FAX: 512-519-7580

November 6, 2023

Ms. Seana Willing  
Chief Disciplinary Counsel  
State Bar of Texas  
1414 Colorado, Ste. 200  
Austin, TX 78701  
[seana.willing@texasbar.com](mailto:seana.willing@texasbar.com)

Subject: Request for Disciplinary Action  
Against Attorney Sidney Powell  
State Bar No. 16209700

Dear Ms. Willing:

We urge you to immediately pursue compulsory discipline against Texas lawyer Sidney Powell. On October 19, 2023, in Fulton County Superior Court in Georgia, Ms. Powell pleaded guilty to a crime that the Texas Rules of Disciplinary Procedure (“the Rules”) classify as both a “Serious Crime” and an “Intentional Crime.” In this situation, the Rules require the imposition of compulsory discipline.<sup>1</sup> We submit that prompt compulsory discipline of Ms. Powell is necessary to uphold the integrity and reputation of the legal profession in Texas.

As you know, Rule 8.01 requires that “[w]hen an attorney licensed to practice law in Texas has been convicted of an Intentional Crime or has been placed on probation for an Intentional Crime with or without an adjudication of guilt, the Chief Disciplinary Counsel *shall initiate a Disciplinary Action seeking compulsory discipline . . .*”<sup>2</sup>

<sup>1</sup> See Rules 8.01-.08.

<sup>2</sup> See, e.g., *In re Birdwell*, 20 S.W.3d 685, 687 (Tex. 2000) (“Rule 8.01 requires the Chief Disciplinary Counsel to initiate a compulsory-discipline action when a licensed attorney has been convicted of an intentional crime or has been placed on probation, with or without an adjudication of guilt, for an intentional crime.”) (emphasis added).

Rule 1.06V defines “Intentional Crime” to include “any Serious Crime that requires proof of knowledge or intent as an essential element,” and Rule 1.06GG defines “Serious Crime” to include “*any misdemeanor involving theft.*”<sup>3</sup>

Count 3 of the six-count indictment<sup>4</sup> that Ms. Powell pleaded guilty to reads in pertinent part:

The undersigned, as prosecuting attorney, does further charge and accuse SIDNEY KATHERINE POWELL with the offense of conspiracy TO COMMIT INTENTIONAL INTERFERENCE WITH PERFORMANCE OF ELECTION DUTIES . . . ; [a]nd SIDNEY KATHERINE POWELL entered into a contract with Sullivan Strickler LLC in Fulton County, Georgia, delivered a payment to Sullivan Strickler LLC in Fulton County, Georgia, and caused employees of Sullivan Strickler LLC to travel from Fulton County, Georgia, to Coffee County, Georgia, for the purpose of using a computer with knowledge that such use was without authority and *with the intention of taking and appropriating information, data, and software, the property of Dominion Voting Systems Corporation . . . .*

(Emphasis added.) Thus, Ms. Powell pleaded guilty to a “misdemeanor involving theft,”<sup>5</sup> which Rule 1.06GG specifically lists as a type of “Serious Crime.” Count 3 also expressly

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<sup>3</sup> While Fulton County Superior Court Judge Scott McAfee, who presided over her case, agreed to include language in the sentencing form to indicate that Ms. Powell was pleading to crimes that did not involve “moral turpitude,” that fact is irrelevant for present purposes. Under Rule 1.06GG, a felony involving moral turpitude is only one type of “Serious Crime.” The Rule states: “‘Serious Crime’ means 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.*” See also *Sanchez v. Board of Disciplinary Appeals*, 877 S.W.2d 751 (Tex. 1994) (affirming disbarment of a lawyer who pleaded guilty to misdemeanor theft).

<sup>4</sup> See text of the six-count indictment. Available at: <https://www.documentcloud.org/documents/24041664-documents-in-sidney-powell-georgia-election-subversion-case>.

<sup>5</sup> The criminal statutes in both Texas and Georgia define theft as occurring when a person unlawfully “appropriates” another’s property. Tex. Penal Code § 31.03(a); OCGA § 16-8-2. Again, Count 3 specifically alleged that Ms. Powell took the actions described “*with the intention of taking and appropriating . . . the property of Dominion Voting Systems Corporation . . . .*” Note that the Rule 1.06GG definition of “Serious Crime” does not require a crime of actual theft; instead, it requires only a “misdemeanor *involving theft.*” Count 3 fits that

alleged and required proof of “the intention of taking and appropriating,” thus meeting the “Intentional Crime” definition in Rule 1.06V.

Compulsory discipline is a summary procedure.<sup>6</sup> When the Chief Disciplinary Counsel fulfills her mandatory duty under Rule 8.01 by initiating a disciplinary proceeding and then presents the minimal facts required to show Ms. Powell’s guilty plea and sentence, the Board of Disciplinary Appeals will have a corresponding mandatory duty either to disbar Ms. Powell or to suspend her for the term of the six-year probation that she accepted through her guilty plea.

Specifically, Rule 8.05 provides that “[w]hen an attorney . . . has accepted probation with or without an adjudication of guilt for an Intentional Crime, *the attorney shall be disbarred unless the Board of Disciplinary Appeals, under Rule 8.06, suspends his or her license to practice law.*” Rule 8.05, in turn, provides that “if an attorney receives probation through deferred adjudication in connection with a Serious Crime, the attorney’s license to practice law shall be suspended during the term of probation.”<sup>7</sup>

In her guilty plea, Ms. Powell admitted her factual guilt to each of the six counts in the indictment.<sup>8</sup> Those crimes are grave offenses. Even if this matter did not qualify for compulsory discipline—which we strongly believe it does—the underlying facts that Ms.

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definition.

<sup>6</sup> See *In re Birdwell*, 20 S.W.3d 685, 687 (Tex. 2000) (“Compulsory discipline turns solely on the validity of the record of conviction, the criminal sentence imposed, and the factual determinations that the attorney is licensed to practice law in Texas and is the same person as the party adjudged guilty. . . . Collateral matters are not considered; the convicted attorney faces mandatory discipline—suspension or disbarment—depending only on whether the attorney’s criminal sentence was probated.”).

<sup>7</sup> See also Rule 8.04 (setting out the summary procedure).

<sup>8</sup> Reportedly, after Ms. Powell pleaded guilty, she claimed that her plea was extorted. Her extortion claim would contradict her sworn testimony at the plea hearing; that would mean that she perjured herself, thus violating multiple disciplinary rules. See, e.g., Guilty Plea Hearing video, at <https://www.youtube.com/watch?v=EbbfOM5Eock>; Jacob Shamsian, *Sidney Powell pushes claims that 2020 election was rigged and prosecutors ‘extorted’ her after she pleaded guilty to election interference*, Business Insider (Oct. 24, 2023), available at <https://www.businessinsider.com/sidney-powell-doubt-election-results-attack-prosecutors-after-guilty-plea-2023-10>; Tex. Disciplinary Rules Prof’l Conduct, R. 8.04(a)(3) (prohibiting a lawyer from engaging in dishonesty, deceit, fraud, or misrepresentation).

Powell admitted show that she is subject to discipline under the standard disciplinary procedure applicable to non-compulsory cases.<sup>9</sup>

The six-count indictment of Ms. Powell describes her participation in a wide-ranging “conspiracy to commit intentional interference with performance of election duties.” As the indictment states, she and her coconspirators sought to illegally:

- “tamper[] with electronic ballot markers and tabulating machines”;
- “possess official ballots outside of the polling place”;
- take and appropriate the property, data, and software of Dominion Voting Systems Corporation;
- “remove voter data” from Dominion Voting Systems’s computer”;
- examine “personal voter data.”

In short, Ms. Powell and her coconspirators worked to undermine the results of the Georgia elections, illegally manipulate voting machines, illegally access and steal property and data, and violate voter confidentiality. By her egregious misconduct, Ms. Powell violated the Texas Disciplinary Rules of Professional Conduct (“Disciplinary Rules”)—specifically, Disciplinary Rules 8.04(a)(2) and 8.04(a)(3). Disciplinary Rule 8.04(a)(2) prohibits a lawyer from committing any “criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” Disciplinary Rule 8.04(a)(3) prohibits a lawyer from engaging in any conduct “involving dishonesty, fraud, deceit or misrepresentation.”

Ms. Powell attempted to thwart the will of Georgia voters and to deny those voters the effective use of the franchise. In a democracy, few crimes are more consequential.


We ask that you pursue discipline against Ms. Powell promptly to uphold the fundamental values and standards of our Texas legal profession, which is crucially important for the preservation of our democracy.

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<sup>9</sup> See, e.g., *Duncan v. Board of Disciplinary Appeals*, 898 S.W.2d 759, 760, 762 (Tex. 1995) (holding that when the type of crime in issue was not subject to compulsory discipline, the Chief Disciplinary Counsel could “pursue discipline based on the underlying facts of the attorney’s conduct”).

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Sincerely,



Charles Herring, Jr.

On Behalf Of:

/s/ Jim Boyle  
Former Counsel, Office of Public Utility Counsel  
State Bar Number: 02795000

/s/ Randall Chapman  
Past Chair, Supreme Court of Texas Grievance Oversight Committee  
Past Chair, Texas Bar College  
State Bar Number: 04129800

/s/ Beryl P. Crowley  
Former Executive Director, Texas Center for Legal Ethics  
Former Member, State Bar of Texas Board of Directors  
Founding Member and Chair - Professionalism Committee  
State Bar Number: 16998500

/s/ John Delaney  
Senior District Judge  
Former Chairman, State Bar Grievance Committee 8A  
Former Member Texas Committee on Model Rules of Professional  
Responsibility  
State Bar Number: 05724500

/s/ Judy Doran  
Former Texas Assistant Attorney General  
Former Staff Attorney, Texas Parks and Wildlife Commission  
State Bar Number: 05997700

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/s/ James C. Harrington  
Retired Founder, Texas Civil Rights Project  
Former Adjunct Professor, University of Texas School of Law  
Former Adjunct Professor, St. Mary's University Law School  
State Bar Number: 09048500

/s/ Charles Herring, Jr.  
Former Member, Texas Supreme Court's Grievance Oversight Committee  
Former Member, Texas Supreme Court's Advisory Committee  
Author, *Texas Legal Malpractice & Lawyer Discipline* (22<sup>nd</sup> ed. 2023)  
State Bar Number: 09534100

/s/ John R. Jones  
Founding Chair, Texas Access to Justice Commission  
Past Director, Texas Young Lawyers Association  
Past Director, El Paso Bar Association  
State Bar Number: 10919500

/s/ Mario Lewis  
Former General Counsel, International Boundary and Water Commission  
Former General Counsel, Legal Services Corporation  
Senior Attorney, Army Audit Agency  
State Bar Number: 12300200

/s/ Milam Markovic  
Professor of Law and Co-Convener of the Program in Law and Social Sciences,  
Texas A&M University School of Law  
State Bar Number: 24109418

/s/ Manuel H. Newburger  
Past Chair, Consumer Law Section, State Bar of Texas  
State Bar Number: 14946500

/s/ W. Frank Newton  
Past President, State Bar of Texas  
Former Dean, Texas Tech School of Law  
Former Professor, Baylor University School of Law  
State Bar Number: 00000072

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/s/ Richard Pena

Past President and Director, State Bar of Texas  
American Bar Association, Board of Governors  
Past President, Austin Bar Association  
State Bar Number: 00000073

/s/ Robert Sohns

American Bar Association, Section on Litigation Leadership  
Board of Directors, Houston Volunteer Lawyers  
Former Adjunct Faculty, University of Houston Law School and  
Texas Southern University School of Law  
State Bar Number: 18824500

/s/ Jordan Steiker

University of Texas School of Law – Judge Robert M. Parker Chair in Law  
University of Texas School of Law – Co-Director, Capital Punishment Center  
State Bar Number: 19126495

/s/ G. Allan Van Fleet

Former Member, Standing Committee on Texas Disciplinary Rules of  
Professional Conduct  
Former Commissioner, Texas Permanent Judicial Commission on Children,  
Youth, and Families  
Former Director, State Bar of Texas  
State Bar Number: 20494700

/s/ William O. Whitehurst

Past President, State Bar of Texas  
Past President, Texas Trial Lawyers Association  
State Bar Number: 00000061

*The organizations referenced here have not endorsed this letter. They are listed for purposes of signer identity only.*