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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 11-C-11460
)	
TODD ROWLAND PHILLIPPI,)	RECOMMENDATION OF SUMMARY
)	DISBARMENT
A Member of the State Bar, No. 134391.)	
_____)	

On August 16, 2011, the State Bar filed a request for recommendation of summary disbarment based on Todd Rowland Phillippi's felony conviction. Phillippi did not file a response. Based on the criminal record in this case, we grant the State Bar's request and recommend that Phillippi be summarily disbarred based on his conviction of tampering with a governmental record.

On May 9, 2011, Phillippi pled guilty to two counts of tampering with a governmental record in violation of Texas Penal Code section 37.10.¹ On August 16, 2011, the State Bar transmitted evidence that Phillippi's conviction is final. After the judgment of conviction becomes final, "the Supreme Court shall summarily disbar the attorney if the offense is a felony . . . and an element of the offense is the specific intent to deceive, defraud, steal, or make

¹ The judgment indicates that Phillippi was convicted of two counts of tampering with a governmental record pursuant to Texas Penal Code section 37.10. The judgment does not specify which subdivision Phillippi was convicted of, however, a review of the indictment reveals that he was charged with violating Texas Penal Code section 37.10(a)(1) and 37.10(a)(5). Our summary disbarment recommendation is based on Phillippi's violation of section 37.10(a)(5).



or suborn a false statement, or involved moral turpitude.” (Bus. & Prof. Code, § 6102, subd. (c).) The record of conviction establishes that Phillippi’s offenses meet the criteria for summary disbarment under Business and Professions Code section 6102, subdivision (c).

First, the offense is a felony. Phillippi was convicted of violating one felony count of Texas Penal Code section 37.10(a)(5), which prohibits making, presenting or using a governmental record with knowledge of its falsity with the intent to defraud or harm another. (Tex. Penal Code § 37.10(a)(5); *State v. Vasilas* (Tex. 2007) 198 S.W.3d 480, 484.) “Section 37.10 (a)(5) protects the authenticity, veracity, and integrity of governmental records by imposing criminal penalties on anyone making, presenting, or using a governmental record the actor knows to be false.” (*Id.* at p. 485.) This crime is equivalent to Penal Code section 115 in California, which prohibits procuring or offering a false or forged instrument to be filed, registered or recorded in a California public office. (Pen. Code, § 115, subd. (a).) The intent of this statute is to protect the integrity of the recordation of instruments system. (*People v. Standly* (1932) 126 Cal. App. 739, 745.) The California offense also is a felony, accordingly, Phillippi’s conviction for violating Texas Penal Code section 37.10(a)(5) constitutes a felony for the purposes of attorney discipline. (Bus. & Prof. Code, § 6102, subd. (d) [out-of-state conviction is felony for discipline if entered as felony and elements would constitute a felony in California].)

Second, the offense inherently involves moral turpitude. A felony conviction under Texas Penal Code section 37.10(a)(5) for presenting or using a false governmental record requires the intent to defraud or harm another. (*State v. Vasilas, supra*, 198 S.W.3d at p. 484-485.) “Intent to defraud” in Texas means the “intent to cause another to rely upon the falsity of a representation, such that the other person is induced to act or to refrain from acting.” (*Martinez v. State* (Tex. 1999) 6 S.W.3d 674, 678.) “Intent to defraud” in California has been defined as

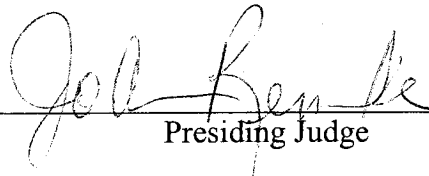
“an intent to deceive another person for the purpose of gaining a material advantage over that person or to induce that person to part with property or alter that person's position by some false statement or false representation of fact, wrongful concealment or suppression of the truth or by any artifice or act designed to deceive.” (*People v. Pugh* (2002) 104 Cal.App.4th 66, 72.) In both states, intent to defraud involves deceiving another person to induce that person to act or refrain from acting. (*Ibid.*; *McElroy v. State* (Tex. 1984) 667 S.W.2d 856, 866 [Texas court using Black’s Law Dictionary definition of intent to defraud].)

Additionally, a defendant violates the Texas statute if he or she acts with the intent to harm. (*Long v. State* (Tex. 2007) 245 S.W.3d 563, 568.) In Texas “harm” means “anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested. (Tex. Penal Code, § 1.07, subd. (a)(25).) Texas’s definition of intent to harm is encompassed by California’s intent to defraud because California’s definition of intent defraud also includes the intent to injure. (See CALJIC No. 15.26 (7th Ed. 2003) [intent to defraud means to deceive another for purpose of gaining advantage or inducing another to part with property or alter his position to his injury].) The Texas and California definitions of intent to defraud are virtually the same. An offense in which an intent to defraud is an essential element is a crime involving moral turpitude. (*In re Hallinan* (1954) 43 Cal.2d 243, 247.) Accordingly, Texas Penal Code section 37.10(a)(5) involves moral turpitude per se.

When an attorney's conviction meets the requirements of Business and Professions Code section 6102, subdivision (c), "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan, supra*, 25 Cal.4th at p. 7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that Todd Rowland Phillippi, State Bar number 134391, be disbarred from the practice of law in this state. We also recommend that he be ordered to

comply with rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order. Finally, we recommend that the costs be awarded to the State Bar in accordance with section 6086.10 of the Business and Professions Code and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.



Presiding Judge

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 14, 2011, I deposited a true copy of the following document(s):

RECOMMENDATION OF SUMMARY DISBARMENT FILED NOVEMBER 14, 2011

in a sealed envelope for collection and mailing on that date as follows:

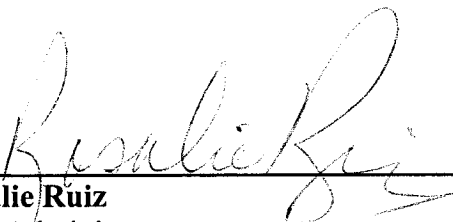
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**TODD R. PHILLIPPI
LAW OFFICES OF TODD PHILLIPPI
200 E MAIN ST
MIDLOTHIAN, TX 76065**

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MURRAY B. GREENBERG, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 14, 2011.



Rosalie Ruiz
Case Administrator
State Bar Court