

SUPREME COURT OF TEXAS

In the Matter of Eugene X. Mercier

242 S.W.3d 46 (Tex. 2007) · No. No. 06-1008 · Decided December 21, 2007

SUMMARY

The Supreme Court of Texas held that an order disbarring attorney Eugene X. Mercier was premature because his criminal conviction had not yet become final and the procedural prerequisites for compulsory disbarment had not occurred. The court reversed the disbarment portion of the order without prejudice and affirmed the suspension of Mercier's license pending appeal.

CASE DETAILS

COURT	Supreme Court of Texas
JURISDICTION	Texas
DECIDED	December 21, 2007
DOCKET	No. 06-1008
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Mercier appealed from an order of the Board of Disciplinary Appeals suspending his law license during the pendency of his criminal appeal and conditionally ordering that he be disbarred if his conviction was affirmed.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Texas; binding Texas precedent.
PARTIES	Eugene X. Mercier v. Board of Disciplinary Appeals

TOPICS

- sanctions
- appellate procedure
- criminal procedure
- interlocutory appeal

PRACTICE AREAS

- attorney discipline
- professional responsibility
- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Board of Disciplinary Appeals could order Mercier's disbarment conditionally while his criminal conviction was still on appeal.

2. Whether the Board's suspension of Mercier's law license during the criminal appeal was proper under Texas Rule of Disciplinary Procedure 8.04.

HOLDINGS

1. A conditional order of compulsory disbarment is premature when the attorney's criminal conviction has not yet become final. Disbarment may proceed only after the conviction becomes final and the procedural requirements of Rule 8.05 are satisfied.
2. The Board properly suspended Mercier's law license during the pendency of his criminal appeal under Rule 8.04.

KEY QUOTATIONS

“As both this Rule and the Board's order provide, disbarment cannot take place until (1) a conviction is final, (2) the Chief Disciplinary Counsel files a motion, (3) the attorney is given an opportunity to contest finality.”
(48)

“As all these events have yet to occur, we agree the portion of the Board's order regarding disbarment, even though conditional, was premature.” (48)

FACTUAL BACKGROUND

A jury convicted attorney Eugene X. Mercier of conspiracy to commit barratry. The trial court sentenced him to six months' confinement, suspended for two years of community supervision, and Mercier's criminal appeal remained pending. The Board of Disciplinary Appeals suspended his law license during the appeal and also ordered that he would be disbarred if the conviction were affirmed.

PROCEDURAL HISTORY

A jury convicted Mercier of conspiracy to commit barratry, and the trial court imposed six months' confinement suspended for two years' community supervision. While Mercier's criminal appeal remained pending, the Board suspended his license under Texas Rule of Disciplinary Procedure 8.04 and ordered that he would be disbarred if the conviction were affirmed. The Supreme Court of Texas reversed the disbarment portion without prejudice to refiling and affirmed the suspension.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The disbarment portion of the Board's order was reversed without prejudice to refiling after the conviction becomes final and the requirements of Rule 8.05 are satisfied. The remainder of the order was affirmed.

OPINION

PER CURIAM.

242 S.W.3d 46 (2007) In the Matter of Eugene X. MERCIER. No. 06-1008. Supreme Court of Texas. December 21, 2007. *47 James R. Harris and Andrew M. Greenwell, Harris & Greenwell, L.L.P., Corpus Christi, TX, for Appellant. Stephen A. Moyik, Asst. Disciplinary Counsel, Linda A. Acevedo, Asst. Disciplinary Counsel, and Gayle Riley Vickers, Board of Disciplinary Appeals, Austin, TX, for Appellee.

PER CURIAM. Upon conviction of certain crimes, an attorney's license must be suspended pending appeal. The Board of Disciplinary Appeals did so here, but also provided in the order that the attorney "shall be disbarred" if the conviction was affirmed.

The petitioner appeals on various grounds from the latter part of the order. Because we agree the Board's order of disbarment is premature, we reverse that portion of the order and affirm the rest. The Texas Rules of Disciplinary Procedure provide two means for disciplining attorneys: (1) standard procedures in which grievance panels or district courts determine violations and sanctions, and (2) compulsory procedures upon conviction of "Serious" or "Intentional" crimes.

TEX.R. DISCIPLINARY P. Parts II, III, & VIII, reprinted in TEX. GOV'T CODE, tit. 2, subtit. G app. A-1. In compulsory cases, the conviction alone constitutes a violation of the professional rules, and the mandatory sanction is either suspension or disbarment. See TEX.R. DISCIPLINARY P. 8.01-.08. A jury convicted attorney Eugene X. Mercier of conspiracy to commit barratry and the trial court sentenced him to six months' confinement suspended for two years' community supervision.

Mercier's appeal of the conviction is still pending. Because a barratry conviction is both a "Serious" and "Intentional" crime, it is undisputed here that the compulsory discipline rules apply. Pending his criminal appeal, the Board of Disciplinary Appeals suspended Mercier's license to practice law as required by Rule 8.04, which states in pertinent part: When an attorney has been convicted of an Intentional Crime... he or she shall be suspended as an attorney licensed to practice law in Texas during the appeal of the conviction or the order of deferred adjudication...

Any suspension ordered during the appeal of a criminal conviction or probation without an adjudication of guilt is interlocutory and immediately terminates if the conviction or probation is set aside or reversed. TEX.R. DISCIPLINARY P. 8.04. Mercier does not challenge this part of the Board's order. But he does challenge a part of the order providing for disbarment if his conviction is affirmed.

While his principal complaint is that the Board may suspend but not disbar him because his sentence was fully probated, we do not reach that question because we agree with his alternate argument that consideration of this issue is premature. When an attorney's license has been suspended pending a criminal appeal, Rule 8.05 provides for disbarment only after the conviction becomes final: When an attorney has been convicted of an Intentional Crime, and that conviction

has become final, or the 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.

If the attorney's license to practice law has been *48 suspended during the appeal of the criminal conviction, the Chief Disciplinary Counsel shall file a motion for final judgment of disbarment with the Board of Disciplinary Appeals. If the motion is supported by affidavits or certified copies of court documents showing that the conviction has become final, the motion shall be granted without hearing, unless within ten days following the service of the motion pursuant to Rule 21a of the Texas Rules of Civil Procedure, upon the attorney so convicted or his or her attorney of record, the attorney so convicted files a verified denial contesting the finality of the judgment, in which event the Board of Disciplinary Appeals will immediately conduct a hearing to determine the issue.

If no Disciplinary Action is pending at the time the conviction becomes final, disbarment shall be initiated by filing a Disciplinary Action. Id. 8.05 (emphasis added). As both this Rule and the Board's order provide, disbarment cannot take place until (1) a conviction is final, (2) the Chief Disciplinary Counsel files a motion, (3) the attorney is given an opportunity to contest finality.

And as Rule 8.04 and the Board's order further provide, compulsory disbarment is not an option if the conviction is reversed. As all these events have yet to occur, we agree the portion of the Board's order regarding disbarment, even though conditional, was premature.

Accordingly, without hearing oral argument, see TEX.R. DISCIPLINARY P. 7.11, we reverse the part of the Board's order regarding disbarment without prejudice to refiling, and affirm the remainder.