

BEFORE THE BOARD OF DISCIPLINARY APPEALS
OF THE SUPREME COURT OF TEXAS

FILED



Jun. 28, 2018

Board of Disciplinary Appeals

IN THE MATTER OF
SCOTT DOUGLAS FLETCHER
STATE BAR NO. 24029191

§
§
§

CAUSE NO. 60490

RESPONDENT'S NO EVIDENCE MOTION FOR SUMMARY JUDGMENT
AND TRADITIONAL MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

COMES NOW, Scott Douglas Fletcher, Respondent in the above styled and numbered cause, and files this, his Respondent's No Evidence Motion for Summary Judgment and Traditional Motion for Summary Judgment, and would show this honorable Tribunal that Respondent is entitled to judgment as a matter of law as follows:

I.

FACTUAL BACKGROUND

This case is a Reciprocal Discipline suit governed by Texas Rules of Disciplinary Procedure (hereinafter TRDP) Part VIII.

By Order of the Arkansas Supreme Court Committee on Professional Conduct, dated September 29, 2011, Respondent Scott D. Fletcher was found to have engaged in professional misconduct in the state of Arkansas and assessed a sanction of a sixty (60) month active suspension of his privilege to practice law in the state of Arkansas. No appeal was taken from the Order imposing the suspension. Mr. Fletcher served the entirety of his Arkansas suspension and, on or about March 7, 2017, after presenting a Petition for Reinstatement in accordance with Arkansas procedures, he was reinstated to practice law in Arkansas. The conduct that formed the basis for the Arkansas professional misconduct findings and sanction occurred no later than November 3, 2002, latest date of any actionable conduct being stated in the Order of the Arkansas Supreme Court Committee on Professional Conduct.

On June 11, 2018, Mr. Fletcher was served with suit and a Show Cause Order in the instant case. Respondent asserts a Traditional Motion for Summary Judgment setting forth the affirmative defense of the Statute of Limitations as set forth in Rule 15.06.A., TRDP. Respondent also asserts a No-Evidence Motion for Summary Judgment, also predicated on the Statute of Limitations defense, setting forth that Petitioner cannot provide any evidence that an attorney grievance was filed with the Office of the Chief Disciplinary Counsel prior to the expiration of the Statute of Limitations and, therefore, there is no evidence that the statute was tolled in order to permit the instant suit to go forward against the assertion of a Statute of Limitations defense.

II.

AUTHORITY FOR MOTIONS

The Texas Rules of Civil Procedure allow a Party to bring a Motion for Summary Judgment. Any party may bring a “No Evidence” (or Rule 166a(i)) Motion for Summary Judgment as follows:

No-Evidence Motion. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

This case is currently set for trial on July 26, 2018, and discovery is not a relevant consideration for this matter.

A Respondent may bring a Traditional (or Rule 166a(b)) Motion for Summary Judgment as follows:

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

III.

NO EVIDENCE MOTION FOR SUMMARY JUDGMENT

A. The Elements of Petitioner's "Causes of Action."

Petitioner has correctly stated that Respondent was assessed a disciplinary sanction by a sister state. However, by its pleading (Petition for Reciprocal Discipline) and the sole exhibit to the Petition for Reciprocal Discipline, Petitioner has offered evidence and/or made the judicial admission that the underlying conduct by Mr. Fletcher that the state of Arkansas found to constitute a violation of one or more of that state's disciplinary rules, occurred no later than November 3, 2002, and the Disciplinary Action of the state of Arkansas was concluded on September 29, 2011. Accordingly, neither the attorney conduct nor the action of the sister state has occurred within the last six years. As will be set forth hereinafter and in Respondent's Brief in Support of Motion for Summary Judgment, The State of Texas has a statutory statement of the Statute of Limitations for bringing a disciplinary action; namely, as a pre-requisite to suit, an attorney grievance must have been received by the office of the Chief Disciplinary Counsel of the State Bar of Texas within four years after the occurrence of the conduct made the subject of a Disciplinary Action in order to halt the running of the Statute of Limitations. Respondent asserts that the proper reading of the Statute of Limitations (Rule 15.06.A, TRDP) requires that an attorney grievance have been filed by someone on or before four years after November 3, 2002; namely, no later than November 3, 2006.

It would be contrary to the plain statement contained in Rule 15.06.A, TRDP, to allow the date limitations began to run to be calculated from only the date of the imposition of the Arkansas sanction, September 29, 2011, but even if that interpretation were to be applied to the facts, there is no evidence that an attorney grievance was filed at a date sufficient to stop the running of limitations; namely, no later than September 30, 2015.

Petitioner can present no evidence of an attorney grievance having been filed on or before either November 3, 2006 or September 30, 2015. As a matter of law, the instant case is barred by the Statute of Limitations for bringing a Disciplinary Action set forth in Rule 15.06, TRDP.

IV.

TRADITIONAL MOTION FOR SUMMARY JUDGMENT

Independently and without waiving the foregoing No Evidence Motion for Summary Judgment, Respondent brings this, his Traditional Motion for Summary Judgment pursuant to TEX. R. CIV. P. 166a(b). Respondent incorporates the above Factual Background, Authority for Motions, and statements of fact and law related to No Evidence Motions for Summary Judgment for all purposes, the same as if fully set forth here verbatim.

A. The instant suit brought by Petitioner is barred by limitations articulated in Rule 15.06, TRDP, as limitations expired on November 3, 2006.

Absent evidence of an attorney grievance having been brought to the attention of the Office of the Chief Disciplinary Counsel on or before November 3, 2006, this action is barred by the Statute of Limitations, as a matter of law.

B. In the alternative, the instant suit brought by Petitioner is barred by limitations articulated in Rule 15.06, TRDP, as limitations expired, at the latest, on September 30, 2015.

Absent evidence of an attorney grievance having been brought to the attention of the Office of the Chief Disciplinary Counsel on or before September 30, 2011, this action is barred by the Statute of Limitations as a matter of law.

V.

SUMMARY JUDGMENT PROOF

Respondent/Movants' Traditional Summary Judgment evidence consists of the following:

- A. Movant relies upon and incorporates by reference for all purposes, the same as if fully copied and set forth at length, the Affidavit of Scott Douglas Fletcher attached hereto as Exhibit A.
- B. Movant relies upon and incorporates by reference for all purposes, the same as if fully copied and set forth at length, the Petition for Reciprocal Discipline on file in this case.
- C. Movant requests that this tribunal take judicial notice of all provision of the Texas Rules of Disciplinary Procedure.

- D. Pursuant to Rule 201, Texas Rules of Evidence, Movant requests that this tribunal take judicial notice of the tribunal's own file. Movant relies upon and incorporates by reference for all purposes, the same as if fully copied and set forth at length, all documents on file with this court including but not limited to the live pleading of all parties.

VI.

CONCLUSION

Respondent's No Evidence Motion for Summary Judgment has identified a specific element of Petitioner's claim which Petitioner is obligated to support with credible evidence. Respondent is entitled to a No-Evidence Summary Judgment, as a matter of law, with respect to Petitioner's claim for Reciprocal Discipline as Petitioner is unable to establish any fact to demonstrate that the instant case was brought before the expiration of the Statute of Limitations. Additionally, Respondent has adduced credible and logical evidence in connection with his Traditional Summary Judgment Motion that demonstrates that Respondent is entitled to Summary Judgment, as a matter of law, with respect to Petitioner's claim for the imposition of Reciprocal Discipline.

VII.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully requests that this honorable tribunal Grant Respondent's No Evidence Motion for Summary Judgment and/or Respondent's Traditional Motion for Summary Judgment in all respects, that the tribunal enter judgment in favor of Respondent, and the tribunal award such other relief to which Respondent may show himself to be entitled, both in law or in equity.

Respectfully submitted,

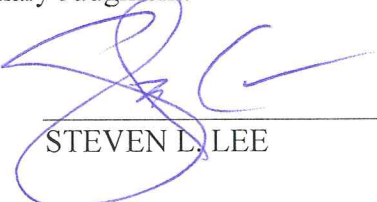
LAW OFFICE OF STEVEN L. LEE, P.C.
1411 West Ave., Suite 100
Austin, Texas 78701
Phone (512) 215-2355
Fax (512) 857-8108

slee@txethicslaw.com

By: 
STEVEN L. LEE
State Bar No. 12137400
Attorney for Respondent

CERTIFICATE OF CONFERENCE

By email dated June 19, 2018, the undersigned Respondent's Counsel provided a letter to Petitioner's Counsel asserting the instant case is barred by limitations and providing legal briefing on the topic. On June 22, 2018, Respondent Counsel called Petitioner's Counsel and was directed to voice mail where a message was left stating the intention to submit a Motion for Summary Judgment. Petitioner's Counsel left a voice message for Respondent's Counsel on June 26 stating a willingness to discuss the case but a return call led to the leaving of another voice message for Petitioner's Counsel. As of the date of this submission, counsel have not discussed the content of this Motion for Summary Judgment.


STEVEN L. LEE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Respondent's Motion for Summary Judgment was by sent email, this 28th day of June 2018, to:

Amanda M. Kates
Assistant Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
amanda.kates@texasbar.com


STEVEN L. LEE

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

**IN THE MATTER OF
SCOTT DOUGLAS FLETCHER
STATE BAR NO. 24029191**

§
§
§

CAUSE NO. 60490

**RESPONDENT'S AFFIDAVIT IN SUPPORT OF HIS
NO EVIDENCE MOTION FOR SUMMARY JUDGMENT
AND
TRADITIONAL MOTION FOR SUMMARY JUDGMENT**

Before me, the undersigned, personally appeared before me Scott Douglas Fletcher, who, after being identified by me and taking the oath, stated as follows:

“My name is Scott Douglas Fletcher, I am above the age 18 years, have never been convicted of a moral turpitude offense, and am in all regards competent to make this affidavit.

“I am the Respondent in the above-styled and numbered suit.

“I was served with suit on June 11, 2018.

“The document attached to the Petition for Reciprocal Discipline as Exhibit 1 is a true copy of the September 29, 2011, Order of the Arkansas Supreme Court Committee on Professional Conduct's that placed my Arkansas law license in a suspended status for a period of sixty (60) months.

“The suspension became effective the same day it was signed and I did not pursue an appeal from that decision. Under the law of the State of Arkansas, it became a final Order thirty (30) days after its filing with the Clerk of the Supreme Court on September 29, 2011.

“I served the entire term of sixty (60) months and so did not engage in the practice of law in the State of Arkansas during that time period or the time period during which my Petition for Reinstatement was being considered. My Petition

for Reinstatement was granted and, on March 7, 2017, I was reinstated to the practice of law in Arkansas. I have resumed the practice of law in Arkansas.

“At the time of my Arkansas law license suspension, I was also licensed to practice law in Texas. At no time during my Arkansas law license suspension did I practice law in Texas or on behalf of any persons in the State of Texas. Since the time of my Arkansas reinstatement as a lawyer, I have not practiced law in the State of Texas or on behalf of any persons in the State of Texas. To the best of my recollection, the last time I engaged in conduct which might be considered the practice of Texas law was in March and April of the year 2010 when, on a referral from an Arkansas client, I did some estate planning for her parents who resided in Texas. In that representation I did not enter the State of Texas, as the representation was handled by mail, email, and telephone.

“The conduct, whether acts or omissions, that was stated in the Arkansas Order as the basis for imposing attorney discipline in Arkansas primarily occurred in the calendar years 2001 and 2002. There was no finding of any violation or the concealment of any conduct going beyond calendar year 2002. My representation of the client named in the Order, Ms. Jewell Rapier, ended in mid-2003.

“The attorney grievance that was filed in Arkansas and that was investigated and led to the disciplinary action that was concluded by the September 29, 2011 Order of the Arkansas Supreme Court Committee on Professional Conduct, was submitted by a man named Sam Peroni in December of 2008, over five years after the representation of Ms. Jewell Rapier had concluded. Arkansas has no statute of limitations for the filing of a grievance complaint.

“At the time the matter was under investigation and subsequently prosecuted, I did not believe I had engaged in professional misconduct and presented my defenses. Several of the allegations of misconduct were found in my favor. However, several allegations were found against me. I elected to accept the findings and conclusions of the Committee on Professional Misconduct

and to cease defending my prior conduct and/or seeking to reverse the decision on appeal. I was disappointed in the outcome but accepted the authority of the Committee and determined to accept the punishment assessed, find gainful employment that did not require an active law license, and to dedicate myself to the rehabilitation of my reputation in the community and to making myself eligible to return to the practice of law in Arkansas at the conclusion of my suspension.

“I have no legal matters for myself or clients in the State of Texas at the current time and have neither the intention nor the prospect of engaging in the practice of law in Texas anytime in the foreseeable future, if at all. I currently have no plans to attempt to represent persons in Texas matters or in any manner establish a Texas law practice.

“I have never been the subject of an attorney grievance in the State of Texas. Accordingly, I have no disciplinary history in the State of Texas, public or private. I have never been served with notice from the State Bar of Texas that a grievance was filed against me by any person for any matter. It is significant for this proceeding and so I specifically state that I have never received a notice letter from the State Bar of Texas concerning a grievance related in any manner to Ms. Jewell Rapier, Sam Peroni, the Estate of Mildred Buck, or any of the acts or omissions described in the September 29, 2011, Order of the Arkansas Supreme Court Committee on Professional Conduct that forms the basis of the instant suit.

“All of the statements in this Affidavit are within my personal knowledge.”

FURTHER AFFIANT SAYETH NAUGHT.


SCOTT DOUGLAS FLETCHER

ACKNOWLEDGMENT

STATE OF ARKANSAS)

COUNTY OF Pulaski)

BE IT REMEMBERED, that on this day personally appeared before me, the undersigned, a Notary Public within and for the County and State aforesaid, duly commissioned and acting Scott D. Fletcher to me well known (or satisfactorily proven), and acknowledged to me that he has executed the foregoing instrument for the consideration and purposes therein set forth.

WITNESS my hand and seal this 26th day of June, 2018.

Deshal L. Kyzer
Notary Public

My Commission Expires:

4-14-2026

