



Jun 22, 2018

Board of Disciplinary Appeals

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

<b>IN THE MATTER OF</b> <b>SCOTT DOUGLAS FLETCHER</b> <b>STATE BAR NO. 24029191</b>	§ § §	<b>CAUSE NO. 60490</b>
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RESPONDENT'S FIRST ORIGINAL ANSWER

Comes now, Respondent, Scott Douglas Fletcher, and files this, his First Original Answer, showing as follows:

I.

On or about May 24, 2018, State Bar of Texas initiated this action by filing a Petition, obtained a Show Cause Order dated May 25, 2018, and on June 11, 2018, Mr. Fletcher was personally served with the Petition and Show Cause Order in this cause.

II.

General Denial

Pursuant to Rule 92, TRCP, and Rule 7.03 of the Board of Disciplinary Appeals' Internal Procedural Rules, to prevent default and to join the issues in this case, Respondent files a General Denial and demands strict proof of all elements of Petitioner's asserted cause of action.

III.

Affirmative Defense

Respondent further pleads the affirmative defense of statute of limitations showing that Rule 15.06.A of the Texas Rules of Disciplinary Procedure (hereinafter TRDP) states that, "No attorney may be disciplined for Professional Misconduct that occurred more than four years before the date on which a Grievance alleging the Professional Misconduct is received by the Chief Disciplinary Counsel."

"Professional Misconduct" is defined, in pertinent part, by TRDP Rule 1.06.W.2. as "[A]ttorney conduct that occurs in another state or in the District of Columbia and

results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.”

On the face of Petitioner’s pleading, Petition for Reciprocal Discipline, the Petitioner judicially admits that Respondent Fletcher is the subject of a sister state Order of professional discipline dated September 29, 2011. Further reference to the Order that is attached to the Petition for Reciprocal Discipline as Exhibit 1, in numbered paragraph IV, “Rule Violations,” shows that any conduct that was found to support the Arkansas disciplinary Order occurred, at the very latest, in November of 2002.

Standard rules of statutory construction require TRDP Rule 1.06.W.2. to be read to require both the conduct of the attorney AND the finding of the sister state to have occurred within the period of limitations. Given proper statutory construction, the date for the commencement of the running of limitations must be no later than December 1, 2002.

Furthermore, while TRDP Rule 1.06.W.2. should be construed to require that out-of-state conduct found to be attorney misconduct by a sister state must have occurred within the period of limitations, even under a misreading TRDP Rule 1.06.W.2. to commence the running of limitations after the later of the two events (the imposition of discipline by a sister state), this suit is barred by the statute of limitations stated in TRDP 15.06.A. as the sanction made the basis of this suit was signed on September 29, 2011.

Petitioner has failed to allege that an attorney “Grievance alleging the professional misconduct” was received by the Office of the Chief Disciplinary Counsel for the State Bar of Texas concerning the matters made the subject of this suit prior to either: 1. four years after the date of the conduct made the basis of the sister state Order or 2. four years after the date of the imposition of professional discipline by the sister state.

Accordingly, this cause of action is barred by the applicable Statute of Limitations.

#### IV.

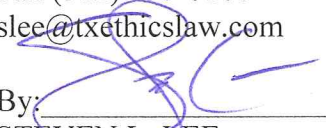
#### Statutory Defenses

Pleading in the alternative, should Respondent not prevail on his Affirmative Defense of Statute of Limitations, Respondent reserves the right to assert any or all of the defenses to the imposition of identical discipline in this action set forth in TRDP Rule 9.04, “Defenses,” but brings particular attention to 9.04.C., that imposition of the identical discipline would result in a grave injustice, and 9.04.D., the misconduct established in the other jurisdiction warrants substantially different discipline in this state.

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully prays that, after consideration of evidence and the argument of counsel, this honorable tribunal enter judgment that no Texas sanction is applicable or warranted in this case, or, alternatively that substantially different discipline is warranted, and that Respondent have such other and further relief to which he is entitled in law or in equity.

Respectfully submitted,

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

#### CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Respondent's First Original Answer was by sent email, this 22<sup>nd</sup> day of June 2018, to:

Amanda M. Kates  
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STEVEN L. LEE