No. 56406

IN THE BOARD OF DISCIPLINARY APPEALS

APPELLANT, CHARLES J. SEBESTA, JR.

v.

APPELLEE, THE TEXAS COMMISSION FOR LAWYER DISCIPLINE

REPLY BRIEF OF APPELLANT

Steve McConnico
Robyn B. Hargrove
Kim Gustafson Bueno
SCOTT, DOUGLASS & MCCONNICO LLP
303 Colorado Street, 24th Floor
Austin, TX 78701
(512) 495-6300
(512) 495-6399 Fax

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

SUMMARY OF ARGUMENT

Nowhere in its 48-page Brief does the Bar offer any real answer to the fundamental question raised by this appeal: when is the Bar's dismissal of a complaint ever really final? The Bar avoids this question by focusing on irrelevant procedural differences between its adjudicative procedures and traditional courthouse litigation. But it offers no legal justification for its fundamental position in this case—that it has no obligation to comply with the Government Code and Rules but rather can freely reopen complaints at will, and without limitation.

ARGUMENT

I. The material facts are undisputed, and the evidence regarding the Bar's internal decision-making in 2007—although not dispositive of this appeal—underscores the problems with its conduct throughout these proceedings.

The Bar argues that there are disputed issues of fact relevant to this appeal, but the only disputed fact issue the Bar actually identifies is the question of whether it dismissed the 2007 Complaint on the basis of limitations. Appellee's Brief, p. 22. As set forth in detail in Sebesta's Appellant's Brief, the Bar's internal reasoning for its dismissal of the 2007 Complaint is not legally dispositive of the issues presented on this appeal. Appellant's Brief, pp. 29-30, 39-43.[1] Res judicata

[1] The Bar also attempts to apply the summary judgment standard of review here, but it is not clear that this is the proper standard. Sebesta first raised his res judicata and estoppel defenses in a motion for summary judgment, but the Commission informed Sebesta this was inappropriate as

applies regardless of whether the 2007 dismissal was based on limitations. *See Igal v. Brightstar Information Tech. Group, Inc.*, 250 S.W.3d 78, 90 (Tex. 2007) (holding that the TWC's dismissal of a claim based on the statute of limitations had res judicata effect). And Sebesta's estoppel defense is not based on the Bar's internal decision-making process either; it is based on the Bar's representations to Sebesta that the 2007 Complaint was fully and finally dismissed and that the Bar would take no further action against him. Appellant's Brief, pp. 39-43. Regardless of why the Bar dismissed the Complaint the first time, the legal implications of its subsequent decision to reopen the Complaint are the same.

It is also important to note, however, that the actual record evidence regarding the Bar's conduct in 2007 and its representations to Sebesta wholly contradict the Bar's version of events and highlight the problems with its conduct. The CDC initially dismissed the 2007 Grievance as an Inquiry based on the statute of limitations. 8CR00123-124. Complainant appealed the CDC's limitations determination, and BODA granted the appeal, "finding that the complaint alleges a possible violation(s) of [certain] Texas Disciplinary Rules of Professional Conduct

---

the Bar's procedural rules did not provide for summary judgment motions. The parties therefore agreed to each present their legal issues to the Evidentiary Panel in a pretrial hearing and Sebesta re-filed his Motion as a "Motion on Res Judicata and Estoppel." 8CR00051-528; RR6-9. Regardless, there are no disputed fact issues here—the only issues presented by this appeal are questions of law.

. . .” and directing that the CDC “investigate this complaint further.” 8CR00128 (emphasis added).

The CDC then informed Sebesta that the Grievance was now classified as a Complaint, and that he must provide a response that “should address specifically each allegation contained in the Complaint, and should further provide all information and documentation necessary for a determination of Just Cause as defined in the Texas Rules of Disciplinary Procedure.” 8CR00130-131 (emphasis added). Sebesta followed these instructions by submitting a lengthy and detailed response that addressed each and every allegation against him, and that included favorable polygraph results. 8CR00133-159. Given BODA’s prior limitations ruling, Sebesta’s response did not even address the statute of limitations. *Id.*

The Bar nevertheless claims now that it “did not delve into all of the relevant facts in 2007 because it was clear that limitations applied.” Appellee’s Brief p. 46 (emphasis added). In other words, the Bar has directly represented to BODA that it ignored both BODA’s limitations ruling and BODA’s express directive to investigate the complaint further.

Regardless of whether or not the CDC was internally respecting BODA’s decision,[2] the Bar’s representations to Sebesta at the time were unambiguous.

[2] The only evidence the Bar presented regarding the alleged basis for its decision to dismiss in 2007 was the affidavit of Linda Acevedo. Appellee’s Brief App. 2. Ms. Acevedo attested that

After notifying Sebesta that it was going to consider every allegation in the 2007 Complaint in order to make a determination of Just Cause, the CDC ultimately informed him that it had "determined that Just Cause does not exist to proceed with the above-referenced Complaint." App. 1 (July 2007 CDC dismissal recommendation). Unlike its initial grievance classification letter, which specifically stated that the CDC intended to dismiss the grievance based on limitations, the July 2007 letter did not reference limitations at all and instead stated that the CDC had determined that "Just Cause does not exist." *Id.* Finally, in August 2007, the Bar informed Sebesta that the Summary Disposition Panel ("SDP") had also determined that the Complaint should be dismissed, the file was closed, and the Bar would take no further action. App. Tab 2. Again, the Bar did not reference limitations.

The Bar nevertheless now takes the position that "[a]t all times, CDC and the Commission have consistently maintained that the dismissal of the 2007 complaint was based on limitations." Appellee's Brief, p. 47. This representation is flatly contradicted by the record evidence of the Bar's actual conduct in 2007.

---

she and Assistant Disciplinary Counsel Stephen Moyik discussed the 2007 Complaint and decided it should be dismissed based on the statute of limitations. *Id.* ¶2. In other words, according to Ms. Acevedo, the CDC simply ignored BODA's ruling. However, Ms. Acevedo was not a member of the Summary Disposition Panel, and she does not provide any evidence as to why that Panel decided to uphold dismissal of the Complaint. *Id.* The Bar also refused to allow Sebesta's counsel to talk with any of the Panel members regarding the basis for their decision to approve the dismissal. 8CR00173-74; 00500-501; 00526-528.

There is no evidence that in 2007 the Bar ever told Sebesta—or anyone else for that matter—that its final dismissal was based on the statute of limitations.[3] But even if it had, the critical point here is that the Bar in 2007 represented to Sebesta that its dismissal was final and that it would take no further action on the allegations against him. The Bar has reversed that position, and in doing so is also flaunting mandatory provisions of the Texas Government Code and Texas Rules of Disciplinary Procedure.

II. Res Judicata mandates dismissal.

A. The Bar cites no legal authority that permits it to arbitrarily reopen proceedings it finally dismissed years ago.

Sebesta's Appellant's Brief provides this Board with extensive authority holding that an administrative agency is barred from reopening its prior orders that have become administratively final. Appellant's Brief, pp. 18-22. These cases do not base their holdings on the three elements of traditional "litigation" res judicata—rather, they address whether an administrative agency has the legal/statutory power to change its position after issuing a final determination. *See, e.g., Young Trucking, Inc. v. Railroad Comm'n of Texas*, 781 S.W.2d 719, 721 (Tex. App.—Austin 1989, no writ); *Sexton v. Mount Olivet Cemetery Assoc'n*, 720 S.W.2d 129, 141-42 (Tex. App.—Austin 1986, writ ref'd n.r.e.); and *Al-Jazrawi v.*

[3] The first time the Bar ever publicly stated that its 2007 dismissal was based on limitations was in the December 2013 Texas Monthly article that immediately preceded Graves' refiling of the complaint. 20CR00922.

Texas Board of Land Surveying, 719 S.W.2d 670, 672 (Tex. App.—Austin 1986, writ ref'd n.r.e.).[4]

Under Texas law, when an administrative agency has made a final determination, the agency itself is barred from changing its mind. *See, e.g.*, *Sexton*, 720 S.W.2d at 146 ("*Because* an agency may *only* exercise the powers expressly delegated to it by statute and those necessarily implied, it may not enlarge its delegated powers by its own orders.") (emphasis in original). This doctrine, although often couched in res judicata terms, is actually based on the fundamental tenet that an administrative agency cannot exceed its own legal authority. *Id.*

For this reason, the Bar's privity arguments are misplaced. There is no question that the Bar itself, as an administrative agency, is precluded from

[4] *Young*, for example, involved the Railroad Commission's decision to suspend Young Trucking's specialized motor carrier certificate. *Young*, 781 S.W.2d at 720. There is no indication that any other parties participated in the hearing—in other words, it was not an adversarial process in the same sense as traditional courthouse litigation would be. The Austin Court of Appeals nevertheless concluded that "once the Commission enters an order and the order becomes administratively final, the Commission does not have the inherent authority to reopen the proceeding." *Id.* at 721. The court's decision was not based on traditional res judicata analysis, but rather on the powers given to the Commission under the governing statute. *Id.* Similarly, *Al-Jazrawi* involved the Texas Board of Land Surveying's licensing decisions—again typically not determinations made in the multiple party adversarial context. *Al-Jazrawi*, 719 S.W.2d at 671. The court held: "[a] final administrative order bars subsequent agency adjudication of the same subject matter by the same party . . ." *Id.* Again, the determination was based on the finality of the agency's order, not the three traditional elements of litigation res judicata. *Id.*

reopening its prior orders—if those orders were administratively final.[5] *Id.*; *see also Young*, 781 S.W.2d at 720; *Al-Jazrawi*, 719 S.W.2d at 671. This is not because the Bar was a party or a privy in an earlier lawsuit—it is because the Bar's authority is limited by its enabling statute and the Rules of Disciplinary Procedure. *Sexton*, 720 S.W.2d at 146; *see also* Appellant's Brief pp. 19-26. The critical question in determining whether the Bar is precluded from reopening its own prior dismissal of the 2007 Complaint, then, is whether the Bar had the statutory power to do so, or whether its dismissal was, by statute, administratively final. *Id.* As set forth in detail in Appellant's Brief, the Government Code and Texas Rules of Disciplinary Procedure make clear that the Bar may not reopen its final dismissal of a Complaint after a finding of no Just Cause. Appellant's Brief pp. 22-26 (citing to Tex. Gov't Code §§ 81.072(o), 81.075; Tex. R. Disciplinary P. 2.10-2.13).

The Bar's Brief does not acknowledge this legal distinction, instead focusing only on whether the facts of this case meet the three elements of traditional/litigation res judicata. As set forth herein, traditional res judicata also applies, but BODA does not need to even reach that issue. There is no question under the law that the Bar's 2007 dismissal was administratively final, and that the Bar had no express or implied authority to revisit its earlier decision. The Bar

[5] As set forth in Appellant's Brief, even under the privity element of traditional litigation res judicata, the Commission would be barred from proceeding on these claims because it stepped into the Complainant's shoes when it filed the Petition in this case. Brief pp. 35-36.

offers no statutory authority that supports its arbitrary exercise of power here—because there is none. The Bar ignored its own enabling statute, procedural rules, and mandatory deadlines by reopening this Complaint seven years later, and the law bars it from doing so.

B. Traditional res judicata applies to final administrative determinations, and a full trial is not required for a determination to be final.

The Bar's primary position is that its Just Cause determinations are not binding under traditional res judicata because they do not involve full courtroom-like litigation procedures. But in the context of administrative agency determinations, the law does not require this level of process.[6] To the contrary, an agency's determinations are subject to res judicata when the agency is acting in a judicial capacity by resolving disputed issues of fact properly before it, and when those determinations "have attained finality." *Igal*, 250 S.W.3d at 87.

In *Igal*, the Texas Supreme Court applied res judicata to determinations by the Texas Workforce Commission (TWC). The court explained that the TWC's procedures, although adjudicative, were abbreviated in order to maximize efficiency. *Id.* at 82. In fact, the initial phase of a TWC claim involves only written submissions by employer and employee, a brief investigation, and a final

[6] In fact this level of process is not always required in the litigation context either. Cases may be finally dismissed on the merits at summary judgment, for example, and those determinations are still entitled to res judicata effect. *See Pines of Westbury, Ltd. v. Paul Michael Constr., Inc.*, 993 S.W.2d 291, 294 (Tex. App.—Eastland 1999, pet. denied).

determination by the TWC in writing. Tex. Labor Code § 61.052; *see also* http://www.twc.state.tx.us/jobseekers/how-to-submit-wage-claim-under-texas-payday-law. If the initial determination is not timely appealed, it becomes the final order of the commission for all purposes. *Id.* § 61.055. If it is appealed, an appellate hearing is then available. *Id*. § 61.054; 40 Tex. Admin. Code § 815.18. However, even these appellate procedures are "abbreviated mechanisms of an adversarial judicial process." *Igal*, 250 S.W.3d at 82. Nevertheless, the supreme court concluded that a final determination by the TWC is entitled to res judicata:

> In deciding wage claims under Section 61, TWC acts in a judicial capacity. The parties had an adequate opportunity to litigate their claims through an adversarial process in which TWC finally decided disputed issues of fact. Res judicata, therefore, will generally apply to final TWC orders.

Id. at 87.

The Bar's procedures under the current disciplinary system meet these criteria for applying res judicata to administrative determinations. The Bar acts in a judicial capacity—it evaluates written submissions and evidence in order to make a determination of whether there is Just Cause. Tex. Gov't Code §81.074(a)-(c); Tex. R. Disciplinary P. 2.12, 2.13. Its procedures are adversarial and provide parties the opportunity to present evidence in support of their positions—both complainant and respondent have the right to present written evidence and argument, the complainant has the right to appeal the CDC's initial classification

decision to BODA, and the CDC's ultimate decision to dismiss a complaint is also subject to independent review by the SDP. Tex. R. Disciplinary P. 2.13. And most critically, the governing law makes clear that the Bar's dismissal of a complaint following the SDP's review is a final dismissal with prejudice. Tex. Gov't Code §§ 81.072(o), 81.075; Tex. R. Disciplinary P. 2.10-2.13.

The Bar contends that "litigation commences" only when the Commission files a petition in court or before an evidentiary panel. This is true as to a final determination of whether a lawyer has actually violated the Disciplinary Rules of Professional Conduct. Sebesta does not contend here that the Bar's Just Cause determination is a final adjudication of that question. However, as to whether or not there is sufficient "Just Cause" to merit such a proceeding in the first place, the culmination of the CDC and SDP's review is absolutely a final determination. The Government Code and Rules of Disciplinary Procedure are clear that this decision is binding and may not be revisited. As a result, the Bar was legally precluded from initiating this proceeding again and reversing its earlier determination of no Just Cause.

C. The current statutory regime places the Bar in an adjudicative role and affords finality to its Just Cause determinations—key changes from earlier procedures.

As set forth in Appellant's Brief, the disciplinary system has changed significantly from when the *Sewell* case was decided in 1972. Appellant's Brief pp. 30-35; *State v. Sewell*, 487 S.W.2d 716 (Tex. 1972). Before the Evidentiary Panel below, the Bar adamantly contended that Sebesta's counsel was "wholly incorrect" in arguing that the old disciplinary system did not give lawyers the right to respond to allegations against them at the initial investigatory stage. 20CR00907; 27CR00977-980; RR75-77. The Bar even presented testimony from Linda Acevedo suggesting that, prior to 2004, the respondent attorney was always given the opportunity to participate in grievance committee investigative hearings. 20CR00917-18. The Bar now admits that the disciplinary regime in place in 1972 did not in fact afford lawyers the right to participate and respond. Appellee's Brief pp. 31-32. Instead, the Bar suggests that the statutory regime has not really changed that much because "the current rules also provide no opportunity for a respondent attorney to respond . . . if a grievance appears to be without merit." *Id.* p. 32. But current procedures do provide attorneys an opportunity to respond at the complaint investigation stage, which is the stage that is relevant here. Tex. R. Disciplinary P. 2.10. Further, the Bar continues to ignore other significant differences between the old and new procedures.

First, the old procedure gave the grievance committee wide latitude on what steps it could perform as part of its complaint investigation, permitting it to make "such investigation of each complaint as it may deem appropriate under the circumstances of the case."[7] Tex. State Bar R. art. 12, § 12, *reprinted in* Tex. Gov't Code Ann., tit. 14 App. (Vernon 1973) (reflecting the Rules as amended to December 20, 1971), App. 6. The Rules did not require that the committee even notify the respondent attorney of the complaint, if it was not of such a nature as would call for disciplinary action. *Id.* They also did not require that the committee give the lawyer an opportunity to be heard—unless the committee decided to conclude the proceedings with a written reprimand. *Id.* Otherwise, the Rules had no such requirements. *Id.* §§ 12-16.

The Rules referred to the committee's procedures as an "investigation" only; they did not mandate a "determination" on the question of Just Cause as is now required. *Id.* § 12. And there was no provision in the Rules suggesting that the

[7] *McGregor v. State*, the Bar's case regarding these procedures, confirms this level of unbridled investigatory discretion. 483 S.W.2d 559 (Tex. Civ. App.—Waco 1972, writ set aside w.r.m.). In *McGregor*, the Bar grievance committee held investigatory hearings in which it subpoenaed witnesses. *Id.* at 561. Although the committee invited the lawyer to attend those hearings and testify or produce his own witnesses, it refused to permit him to confront or cross-examine any of the Bar's witnesses. *Id.* It also refused to disclose any information about those proceedings in its ongoing, related lawsuit against the lawyer, claiming that the proceedings were confidential. The Waco Court of Appeals did not question the Bar's general authority to investigate in that manner, but it did hold that once the Bar had proceeded in a lawsuit against the lawyer it could no longer exercise its investigatory authority and was instead bound by the Texas Rules of Civil Procedure. *Id.* at 562.

Committee's dismissal of a complaint after such investigation was final.[8] *Id.* § 16(a).

By contrast, the current procedures mandate both that lawyers be informed of complaints filed against them, and that they have the opportunity to respond to the allegations in those complaints.[9] Tex. R. Disciplinary P. 2.10. The Rules do not state that the CDC and SDP act only in an investigative capacity. Instead, the CDC is directed to make a determination of Just Cause and the SDP must either "approve" or "deny" the dismissal. Tex. Gov't Code § 81.075; Tex. R. Disciplinary P. 2.12; 2.13. Finally, the current Rules are clear that the Bar's dismissal based on a finding of no Just Cause is a final determination. *Id.*; *see also* Tex. Gov't Code § 81.072(o).

	***Sewell*-era Procedures**	**Current Procedures**
Notice to attorney	Not required if the committee intends to dismiss.	Required at the Complaint stage.
Opportunity to respond	Not required in most circumstances.	Required at the Complaint stage.
Investigation versus adjudication	Committee is directed to investigate and then take action.	CDC is directed to investigate and then "determine" whether there is Just Cause. SDP is to

[8] The Committee's decision to reprimand the lawyer, which it could only make after the lawyer had notice of the complaint and an "opportunity to be heard," could become final if the lawyer did not file suit to set the reprimand aside. *Id.* § 16(b). The court in *Sewell* did not address whether a Committee's reprimand in such a circumstance was binding. *Sewell*, 487 S.W.2d 716.

[9] The Rules do not require notice to lawyers of the CDC's initial classification decision, but they do require notice and an opportunity to be heard once the grievance is classified as a complaint, triggering the CDC's investigation and Just Cause determination.

		"approve" or "deny" the dismissal.
Finality	The Rules do not state or suggest that a dismissal is final and cannot be reopened.	Dismissal is expressly final.

In sum, the differences between the old system and the new are significant, particularly on questions that directly impact the res judicata analysis. *Sewell* and its progeny do not address these new procedures, and BODA must therefore consider this legal question anew.

III. The Bar's legal position—that the seriousness of the allegations against Sebesta justifies its conduct—underscores the importance of applying estoppel here.

The Bar argues that it was not unconscionable for it to exceed its legal authority and ignore its governing Rules because of the seriousness of the allegations against Sebesta. Appellee's Brief p. 44. This argument is exactly consistent with the Bar's behavior throughout these proceedings. Because the allegations against Sebesta were so serious, and because of political and media pressure, the Bar simply ignored its own Rules in order to achieve the result it desired. But this is exactly why estoppel must apply here. The Bar must follow its own Rules, and treat the lawyers it oversees and prosecutes fairly, regardless of what the allegations may be. And when the allegations are as serious as they were

in this case, resulting in disbarment, it is critically important that the Bar not act arbitrarily and exceed its authority.

As set forth above, the Bar's position has been wholly inconsistent—irrespective of whether its 2007 dismissal was based on limitations. The Bar told Sebesta in 2007 that it was dismissing the Complaint based on a finding of no Just Cause, and that it would take no further action against him. In 2014, the Bar reopened the matter, made the opposite finding, and took further action against Sebesta. This is a 180-degree reversal, regardless of why the Bar chose to dismiss in 2007.

Further, if the Bar's 2007 dismissal was based on limitations as it now claims, and if the Bar did not actually examine the merits in 2007, then it was disregarding BODA's order and its own legal mandate when it dismissed the Complaint. If the Bar did examine the merits and dismiss due to a finding of no Just Cause,[10] then its subsequent reversal of position is even more egregious.

[10] The Bar claims that "no reasonable attorney" would have reviewed the 2007 complaint and response and conclude that no Just Cause existed. Appellee's Brief p. 45, n.9. In fact, quite a few "reasonable attorneys" have reached such a conclusion. The trial court judge who presided over Graves' criminal trial testified under oath that Graves had a fair trial and Sebesta's conduct in prosecuting Graves had been ethical. 8CR00281-283. Magistrate Judge Froeschner and District Judge Kent both concluded that Sebesta's alleged failure to disclose evidence was not material. *See Graves v. Dretke*, 442 F.3d 334, 337-339 (5th Cir. 2006) (discussing these conclusions and then ultimately disagreeing with them). Sebesta also submitted polygraph results in his response confirming that he did in fact disclose the exculpatory evidence to Graves' attorney. 8CR00148-150. This case has never been as black and white as the Bar now claims.

Either way, the Bar is attempting to play fast and loose with its governing rules and legal duties, and it should not be permitted to do so.

The Bar also argues that it did not benefit from its 2007 no Just Cause dismissal, but a benefit is not a necessary element of quasi-estoppel—it is just an example of a situation when a party's reversal of position is unconscionable. *See, e.g., Forney 921 Lot Development Partners I, L.P. v. Paul Taylor Homes, Ltd.*, 349 S.W.3d 258, 268 (Tex. App.—Dallas 2011, pet. denied) ("Quasi-estoppel (estoppel by contract) is a term applied to certain legal bars, such as ratification, election, acquiescence, *or* acceptance of benefits. . . [I]t precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken.") (emphasis added). Regardless, the Bar has plainly benefitted from its reversal of position, at Sebesta's expense. The Bar was able to promptly "investigate" and dismiss the Complaint in 2007, when the statute of limitations and political climate were not as favorable as they are now, and to reopen proceedings seven years later when doing so was of political benefit to the Bar. This has also permitted the Bar to effectively extend its mandatory investigative deadline of 60 days under Disciplinary Rule 2.12 to seven years.

Finally, there is no legitimate question that the Bar's reversal prejudiced Sebesta. The Bar does not really dispute that Sebesta's ability to call witnesses and present evidence in support of his defense was hampered by the Bar's delay and

the destruction of its files following the 2007 dismissal. The Bar instead focuses on whether this evidence would have altered the Evidentiary Panel's judgment. Appellee's Brief p. 46. Although this evidence, which substantiated Sebesta's version of events, may well have had an impact, this is not the relevant question. The Bar's argument improperly conflates the type of reversible error analysis that would apply in connection with the exclusion of evidence at trial[11] with the more basic question of whether Sebesta was prejudiced simply by losing his access to the evidence. The loss of evidence, in and of itself, establishes prejudice.

More importantly, however, the record evidence regarding the course of the proceedings in 2007 and 2014 conclusively establishes that Sebesta was harmed by the Bar's reversal—regardless of the evidentiary issues discussed above. In 2007, the Complaint against Sebesta had been finally dismissed and his law license was intact. In 2014, the Bar forced him to relitigate the Complaint again, and to ultimately lose his license. These facts, in and of themselves, establish significant prejudice to Sebesta. BODA does not need to examine the evidentiary panel trial transcript in order to address the question of prejudice.

[11] If a party wishes to object to the exclusion of witness testimony in a trial, the party can offer proof of what that testimony would have been in order to preserve error and challenge the exclusion of the evidence on appeal. Here, Sebesta could not even make an offer of proof because the witnesses were all dead—and the contents of the Bar's 2007 file long since destroyed.

CONCLUSION

The Bar's position here is that it is not bound by its own Rules. The Bar argues it was permitted to disregard BODA and its own legal duties in 2007 and decline to investigate the merits of the allegations against Sebesta. The Bar claims that it does not have to respect the legal finality of its prior dismissals of complaints, and can instead reconsider and reinvestigate, at will, as many times as it wishes. The Bar argues that, even if it represents to lawyers that it will take no further action on complaints against them, it can always take further action. And finally, the Bar assumes that it does not have to respect the mandatory deadlines in the Texas Rules of Disciplinary Procedure.

Regardless of how serious the allegations against a lawyer may be, that lawyer has the right to expect that the Bar will treat him fairly and in accordance with the Rules. That did not happen here. Sebesta respectfully requests that this Board hold the Bar accountable to its own Rules and the legal limits of its authority.

Respectfully submitted,

SCOTT, DOUGLASS
& McCONNICO LLP
303 Colorado St., Suite 2400
Austin, Texas 78701-2589
(512) 495-6300
(512) 495-6399 Fax

By /s/ *Steve McConnico*
Steve McConnico
State Bar No. 13450300
smcconnico@scottdoug.com
Robyn B. Hargrove
State Bar No. 24031859
rhargrove@scottdoug.com
Kim Gustafson Bueno
State Bar No. 24065345
kbueno@scottdoug.com

ATTORNEYS FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2016, a true and correct copy of the foregoing was served via email and hand delivery to Appellee's counsel of record as indicated below.

Linda Acevedo—***Via email and hand delivery***
Chief Disciplinary Counsel
linda.acevedo@texasbar.com

Laura Bayouth Popps—***Via email and hand delivery***
Deputy Counsel for Administration
laura.popps@texasbar.com

Rebecca (Beth) Stevens—***Via email and hand delivery***
Assistant Disciplinary Counsel
beth.stevens@texasbar.com

Shelly Hogue—***Via email and hand delivery***
Evidentiary Panel Clerk
shelly.hogue@texasbar.com

Cynthia Canfield Hamilton –***Via email and hand delivery***
Senior Appellate Counsel
cynthia.hamilton@texasbar.com

Office of the Chief Disciplinary Counsel
STATE BAR OF TEXAS
1414 Colorado Street
Austin, Texas 78701

/s/ Robyn B. Hargrove
Robyn B. Hargrove

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Reply Brief of Appellant was prepared using Microsoft Word 2010, and that, according to its word-count function, the sections of the foregoing brief covered by BODA Rule 4.05(d) contain 5,707 words in a 14-point font size and footnotes in a 12-point font size.

/s/ *Robyn B. Hargrove*
Robyn B. Hargrove