

BEFORE THE TEXAS BOARD OF DISCIPLINARY APPEALS

FILED



JUL 09 2015

Board of Disciplinary  
Appeals

COMMISSION FOR LAWYER  
DISCIPLINE,  
Petitioner

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Appeal from Judgment in  
201400539

v.

CHARLES J. SEBESTA, JR.,  
Respondent

BODA # 56406

NOTICE OF APPEAL

This notice of appeal is filed by Respondent/Appellant Charles J. Sebesta, Jr. ("Respondent"). Respondent hereby gives notice of his intent to appeal the *Judgment of Disbarment* signed by the Evidentiary Panel for State Bar District No. 08-2 State Bar of Texas on June 11, 2015, attached as **Exhibit A**, and the *Order on Respondent's Motion on Res Judicata and Estoppel* signed on December 17, 2014, attached as **Exhibit B**. Respondent intends to limit his appeal to only the Panel's rulings on the legal issues raised by Respondent in his Motion on Res Judicata and Estoppel.

Respectfully submitted,

SCOTT, DOUGLASS & McCONNICO, L.L.P.  
600 Congress Avenue, Suite 1500  
Austin, Texas 78701-2589  
(512) 495-6300—Telephone  
(512) 474-0731—Facsimile

By: /s/ Steve McConnico

Stephen E. McConnico  
State Bar No. 13450300  
smconnico@scottdoug.com  
Kimberly Gustafson Bueno

**BEFORE THE EVIDENTIARY PANEL FOR  
STATE BAR DISTRICT NO. 08-2 STATE BAR OF TEXAS**

**COMMISSION FOR LAWYER  
DISCIPLINE,  
Petitioner**

**V.**

**CHARLES J. SEBESTA, JR.,  
Respondent**

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**201400539**

**JUDGMENT OF DISBARMENT**

**Parties and Appearance**

On May 11th, 12th, 13th, and 14th, 2015, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, Charles J. Sebesta, Jr., Texas Bar Number 17970000, appeared in person and through attorney of record and announced ready.

**Jurisdiction and Venue**

The Evidentiary Panel 8-2, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District 8, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

**Professional Misconduct**

The Evidentiary Panel, having considered all of the pleadings, evidence, stipulations and argument, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.

**Findings of Fact**

The Evidentiary Panel, having considered the pleadings, evidence and argument of counsel, makes the following findings of fact and conclusions of law:

1. Respondent, Charles Sebesta, Jr. ("Sebesta"), is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Sebesta resides in and maintains his principal place of practice in Burleson County, Texas.
3. Sebesta was the district attorney for Burleson and Washington counties from 1975-2000.
4. On August 18, 1992, six members of the Davis family, including four children, were murdered in Somerville, Texas. On August 23, 1992, law enforcement officers questioned Robert Carter ("Carter"), father of one of the child victims. Carter eventually admitted being at the scene of the murders but implicated Anthony Graves ("Graves") as the killer. Carter testified before the grand jury, and contrary to his previous admissions he denied that he or Graves had any involvement in the murders.
5. Carter was tried, convicted and sentenced to death in February of 1994. Sebesta was the lead prosecutor for that case.
6. Graves' trial began on September 19, 1994 with jury selection. Sebesta was the lead prosecutor for the case. Prior to trial, Sebesta began negotiations with Carter through his appellate attorney for testimony against Graves. On October 20, 1994, the night before Carter was called to testify at Graves' trial, Sebesta met with Carter, in order to finalize the agreement. At that meeting, Carter informed Sebesta that he had committed the murders alone, a statement that necessarily excluded Graves as a participant in the murders.
7. On the morning of October 21, 1994, shortly before Carter took the stand, Sebesta provided the court with the details of the final agreement reached for Carter's testimony. Sebesta stated on the record that he was agreeing not to ask Carter any questions about his wife Theresa Carter. However, the exculpatory statement made by Carter the night before – that he acted alone in committing the murders – was not placed on the record at that time or at any other time. The evidence shows that Sebesta never disclosed this exculpatory information to Graves' attorneys. Sebesta's failure to disclose this information was in violation of Rule 3.09(d).
8. Sebesta conducted the examination of Carter at Graves' trial on October 21, 1994. Sebesta elicited testimony from Carter that, aside from his statement to the grand jury, Carter had always maintained that Graves participated in the murders. This testimony was false based on Carter's statements to Sebesta the night before when he recanted Graves' involvement and admitted to committing the murders alone. No steps were taken by Sebesta to correct Carter's false testimony or to bring the perjured statement to the courts attention. Because Sebesta knew that Carter's testimony was false and yet used and presented Carter's testimony at trial, Sebesta violated Rule 3.03(a)(5).

9. Sebesta conducted the examination of the lead investigator Ranger Ray Coffman on October 24, 1994. Sebesta elicited testimony from Ranger Coffman that, aside from Carter's statement to the grand jury, Carter had always implicated Graves in the murders. Again, this testimony was false based on Carter's statements to Sebesta the night of October 20, 1994 when he recanted Graves' involvement and admitted to committing the murders alone. Sebesta took no steps to correct the false impression left by Ranger Coffman's testimony. Because Sebesta knew that Ranger Coffman's testimony was false, Sebesta violated Rule 3.03(a)(5).

10. Graves presented an alibi defense at trial. The defense centered around witnesses that put him in Brenham, Texas on the night of the murders. Yolanda Mathis ("Mathis") was Graves' girlfriend and had previously testified at grand jury that she had been with Graves during the critical time period on the night of the murders. After being sworn in and placed under the Rule, but before the defense called her to the stand at trial, and while Mathis was not in the courtroom, Sebesta stated in open court that:

**Mr. Sebesta:** Judge, when they call Yolanda Mathis we would ask, outside the presence of the jury that the Court warn her of her rights. She is a suspect in these murders and it's quite possible, at some point in the future, she might be indicted. I don't know. And I feel outside the presence of the jury that it would be proper to warn her of her rights.

Sebesta had no evidence or information tending to show Yolanda Mathis was a suspect or had any involvement in the murders. Whether the result was intended or not, Yolanda Mathis refused to appear as a witness for the defense after this false statement was uttered to the court. Sebesta's statement to the court was false and in violation of Rule 3.03(a)(1).

11. In conjunction with providing an alibi for Graves, the defense was simultaneously attempting to show Carter had falsely implicated Graves. Defense counsel made both written and oral pretrial requests for all exculpatory evidence and for any evidence of a third person's involvement in the murders. Sebesta told defense counsel and the court during a pretrial hearing that Carter had implicated an individual nicknamed "Red" in the murders, and had given law enforcement specific information to locate that individual. However, Sebesta never disclosed to Graves' attorneys that law enforcement eventually identified this individual as Kevin Dwayne Vincent ("Vincent") and had been able to rule him out as a suspect; nor did Sebesta disclose to Graves' attorneys that Carter confirmed for law enforcement that Vincent was not involved. Sebesta's failure to disclose this information to Graves' attorneys was in violation of Rule 3.09(d).

12. Sebesta admits that he failed to disclose that John Robertson, one of the State's witnesses who allegedly overheard admissions by Graves, was under indictment in Burleson County on felony charges of Criminal Mischief at the time of his testimony. Sebesta's failure to disclose this information was in violation of Rule 3.09(d).

13. Graves was convicted and sentenced to death. In 2006, Graves' conviction was reversed and remanded for a new trial by the United States Court of Appeals for the Fifth Circuit due to prosecutorial misconduct by Sebesta. In 2010, after sixteen years in prison, twelve of them on death row, Graves was released from prison when the special prosecutor appointed to pursue the case against him determined that there was no credible evidence that Graves had any involvement in the murders.
14. Due to the rule violations enumerated above, the Panel finds that Sebesta violated Rule 8.01(a)(1) and 8.04(a)(3).

#### Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: 3.03(a)(1), 3.03(a)(5), 3.09(d), 8.04(a)(1), and 8.04(a)(3).

#### Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that proper discipline of the Respondent for his acts of Professional Misconduct is DISBARMENT.

#### Disbarment

It is therefore ORDERED, ADJUDGED and DECREED that effective June 11, 2015, Respondent, Charles J. Sebesta, Jr., State Bar Number 17970000, is hereby DISBARRED from the practice of law in the State of Texas.

It is further ORDERED Respondent is prohibited from practicing law in Texas, holding himself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any administrative body or holding himself out to

others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

#### Notification

It is further ORDERED Respondent shall immediately notify each of his current clients in writing of this disbarment. In addition to such notification, Respondent is ORDERED to return any files, papers, unearned monies and other property belonging to clients and former clients in the Respondent's possession to the respective clients or former clients or to another attorney at the client's or former client's request. Respondent is further ORDERED to file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that all current clients have been notified of Respondent's disbarment and that all files, papers, monies and other property belonging to all clients and former clients have been returned as ordered herein.

It is further ORDERED Respondent shall, on or before thirty (30) days from the signing of this judgment by the Panel Chair, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing. Respondent is further ORDERED to file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice has received written notice of the terms of this judgment.

**Surrender of License**

It is further ORDERED Respondent shall, within thirty (30) days of the signing of this judgment by the Panel Chair, surrender his law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of the State of Texas.

**Publication**

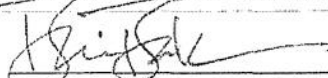
It is further ORDERED this disbarment shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

**Other Relief**

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 11<sup>TH</sup> day of JUNE, 2015.

EVIDENTIARY PANEL  
DISTRICT NO. 8-2  
STATE BAR OF TEXAS

  
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Brian M. Baker  
District 8-2 Presiding Member



BEFORE THE EVIDENTIARY PANEL FOR  
STATE BAR DISTRICT NO. 08-2 STATE BAR OF TEXAS

COMMISSION FOR LAWYER  
DISCIPLINE,  
Petitioner

v.

CHARLES J. SEBESTA, JR.,  
Respondent

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201400539

**ORDER ON RESPONDENT'S MOTION ON RES JUDICATA AND ESTOPPEL**

On November 12, 2014, the Evidentiary Panel for State Bar District No. 08-2 heard Respondent Charles J. Sebesta, Jr.'s Motion on Res Judicata and Estoppel. Further, this Panel met and deliberated on the above motion on December 16, 2014 after reviewing motions, responses, and the supplemental briefing from both parties. Having considered the law and arguments of counsel, this Panel is of the opinion that the Motion should be DENIED.

IT IS THEREFORE ORDERED that Respondent's motion is DENIED.

Signed this 17<sup>th</sup> day of Dec., 2014

  
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PANEL CHAIR

Exhibit  
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