No. 55901

BOARD OF DISCIPLINARY APPEALS

TEXAS BAR

RE: CFLD V. CHARLES SEPTOWSKI - Case #201400356

APPEALANT REBUTTAL BRIEF

(ORAL ARGUMENT REQUESTED)

CASE CAPTION I

RE: CFLD V. CHARLES SEPTOWSKI - Case #201400356

CHARLES SEPTOWSKI

APPELLANT

12115 Lavinia Lane

Austin, Texas 78753

Ph (512) 653-7133 Fax (866) 856-2784 Email – Profchaz@Hotmail.com

CYNTHIA CANFIELD HAMILTON (APPELLEE'S COUNSEL)

APPEALS COUNSEL

OFFICE OF CHIEF DISCIPLINARY COUNSEL – STATE BAR OF TEXAS

1414 COLORADO PO BOX 12487

AUSTIN, TEXAS 78711-2487

Phone (512) 427.1350 Fax (512) 427-4167

Rebuttal Brief – Contents

Exhibits:

Introduction

This brief is the Appellant's last chance to respond in written form to the Texas Bar Disbarment and the allegations prosecuted as infractions, by Texas Bar Grievance Counsel. I apologize for any format or presentation issues as this is the first and only Appeals Response Brief I have ever written.

To summarize the Texas Bar's Grievance Counsel's position:

1) There were a series of infractions by Appellant;
2) There were penalties of an escalating nature imposed for these Infractions;

and

3) Appellant's continued lack of regard for the rules, penalties and sanctions – make Disbarment appropriate.

Were that all there was too it, then this Appeal and briefs and years of contentious exchanges would **NOT BE AN ISSUE** and there would be no appeal.

Now there are a number of issues raised in the original Appellant's Brief:

1) Bias & Undue Influence by Bar Grievance Counsel – mis-processing of infractions (making nothing into something repeatedly – morphing of infraction into a DR violation and in several cases helping that along);
2) Manipulation of the Grievance Process on a political or agenda basis;
3) Irregularities in the procedure and processing of these alleged infractions; as well as manipulating rulings to defeat motions and exclude evidence;

And

4) Fundamental lack of substantive due process and alleged corruption of the Grievance Process itself.

Some of these have been adequately addressed, and true or not are alleged issues of systemic flaw(s). Now these may or may not rise to the level of impugning the integrity of this self-administered disciplinary process, but the mere fact that they are something other than whim or suspect, makes them have legs and worse impugn what is supposed to be the most legitimate of processes.

Does the self-regulation process require that the procedure, form and process be free of bias, conflict and safeguard full due process? While we as lawyers would immediately assume that all are necessary, the mere fact that this abbreviated process has withstood constitutional challenges in Federal Court – bespeaks that these standards are lower or waived or have yet to be recognized by that Court. We all know that with an integrated bar and this process implemented by state employees makes this a state/governmental actions subject to the Texas Tort Claims Act and moreover the requirements and safeguards of the 14th Amendment to the United States Constitution. Given such a situation, these are to insure the process is adequately reviewed for compliance with our most basic human rights as set forth in the Bill of Rights, and no taking of a property interest without due compensation and substantive and procedural due process are required and are to be above reproach.

Further, we know that the Texas Bar Grievance Procedure/Process is based on a

> "philosophy of taking any infraction and dealing with it in as harsh a manner as possible – having risen to the prosecution of a Disciplinary Rules violation".
>
> (Quoting Past Chair of the Texas Grievance Commission – Betty Blackwell.)

Is this Philosophy a bias per se, a parochial agenda and abuse of the Grievance Process per se, thereby contrary to the express terms of the preamble to the Disciplinary Rules? Is this an acceptable philosophy? Is this even fair? Those are all questions which are part of this case and appeal.

At the core of this philosophical review - does the enforcement of the Disciplinary Rules require that both the black letter law of the Rules as well as the intent or spirit of the rules be made to achieve a reasonable result? The obligation that reason be a part of any determination – where is there room for that in this philosophy? The Preamble to the Disciplinary Rules seem to so require, as does common sense; more than that the process has to be reasonable per se.

We all know that we as lawyers can analyze any issue and argue both sides of it and that each of us can use **"snip-its/excerpts"** to characterize or suggest a feeling for the reviewer. It's using our oratory and influence to impact the reviewer's sense of what is going on, to get to a fair and appropriate resolution. Now this isn't considered lying or misleading, yet clearly is manipulation. Our advocacy system is that the parties come before the tribunal and make their case with facts, argument and a bit of showmanship to affect a decision.

The first casualty to this process is "**TRUTH**" – although absolute – the unadulterated form that speaks for itself – gets pushed aside.

There is the Plaintiff's truth in support of their claim,
The Defendant's truth in response to the claims
and

whatever really happened sitting on the sidelines – maybe invited in or pushed off as confusing to one side or the other or for that matter both sides to the adversary process. Winning ends up ahead of right or correct.

Now in this instance there is another casualty - which is the right to Counsel by the Appellant. Merely having that right is of no value if in fact the circumstances make it impossible for Appellant to actually get Counsel, who will take on the Disciplinary System of the Texas Bar. Here where there are allegations of impropriety to the process by Texas Bar Grievance Counsel and the Texas Bar system – **not one seasoned attorney that handles defense for Texas bar grievance issues would touch this case**. The reasoning was – they were too busy, this would take too much time or several came right out and stated they had a big part of their practices related to themselves and their ability to continue to provide bar ethics courses. Further there would be significant retaliation against that attorney and their other cases for daring to challenge any action of the Texas Bar Grievance System, in which these type of malfeasance was even raised.

Finally, as preamble – the Appellant is not a trial attorney. As you can tell reading the end of the hearing transcript of February 26th, 2015 – merely getting evidence before the panel into the record was a challenge – which for the most part Appellant lost due to inexperience in this type of exchange of submitting a proof in a hearing over objections. I have been a paper lawyer for over 30 years, with a minimal of trial activities during that time. My courtroom experience over 32 years in practice includes one jury trial with assistance, a couple of dozen tickets and a multitude of motions and hearings/deposition.

There is an old "STAR-TREK" episode, where every infraction on a visited planet by anyone – knowingly or unknowingly has the same penalty – death. This Disbarment is a professional death sentence – be it for a minor mis-step or the alleged pattern of allegations as set forth. Death means professional loss of esteem, loss of work, loss of income, loss of status, impacts financially, house into foreclosure, domestic issues and personal depression and anxiety while there is a great soul searching for 'reasonableness of what has occurred". There is an overwhelming sadness and worse a dis-heartedness of "what happened", where the entire practice for over 30 years was about helping folks – with or without compensation and whereas the allegations per se make no sense in that there is no personal profit, benefit or outcome anyone would desire.

Now what Appellant is going to do, is attempt to show the absurdities, exaggeration and mis-use of this process which invalidates the legitimacy of this Disbarment. That's the Rebuttal being offered.

REVIEW OF THE EVENTS IN THIS CASE

Let's first rehash the allegations and the Bar Grievance Response(s):

In August 2009, Appellant pays his bar dues on line, gets a receipt and confirming email, while we now know the payment processing software rejected the payment due to a typo in the bank Routing Number (one too many zeros in the routing number). So at that point, Appellant is given the impression by the bar payment software from the bar site that his dues are paid. Meanwhile, the bar software generates an error report which generates a letter to the Appellant that there is a payment problem. This was forwarded then by a letter in the US Mail which Appellant (claims) was never received. (Evidence is presented from the US Post Office of mail interruptions and mail errors for the Appellant from the Post Office). Bar Grievance Counsel set forth the Mail Box Rule for deemed "Constructive Notice" being sufficient for holding Appellant to the standard that there was a "Deemed" knowing of practicing while the dues payment went un-paid (i.e. practicing while not entitled to be practicing as under an Administrative Suspension).

This wasn't actual notice and the violations of the Bar rules "….knowingly practicing while suspended", isn't met by mere "deemed" constructive notice. We damn well shouldn't be pursuing DR violations over the "Mail Box Rule". Beyond absurd, it's wrong. A voluntary practicing while suspended means there was "Actual" knowledge the attorney was under a disability and dis-regarded that. Here there is no such knowledge – which is undisputed from the records in this case.

Appellant goes on and assists with a Pro Bono Child Custody Case – Post Divorce Decree where there are ongoing disputes by the divorced couple over the children of the divorce. The Appellant's Mom client had found the diary of the Dad listing all sorts of sexual perversion by Dad with Dad's sister, and Dad's own daughter. These items were included in zealous pleadings as to Dad's fitness, as a custodial caregiver.

Over the next couple of months there are exchanges over discovery etc. One of Dad's Attorneys was very cordial and seemed to be someone that could be worked with. Several meetings were cordial and positive. Dad then hires a second attorney – Daryl Weinman; who is much more aggressive and confrontational. At one point Appellant asks the Co-Counsel for Ms. Weinman – **"….is this Bitch for real"**. That question is relayed to Counsel Weinman who decides she can't attack the law, and can't attack Dad's Diary – so she will attack opposing Counsel. Dad's Attorney – Ms. Weinman files a Motion to Disqualify Appellant for setting forth issues in pleadings that are allegedly beyond zealous with a corresponding Bar Grievance? This Motion is proposed in December 2009 and heard the first week of January 2010.

Earlier in that January week, Appellant goes to Williamson County to have an agreed divorce entered. The Court advised Appellant that he was Administratively Suspended. This is news to the Appellant, as never having received the letter in the US Mail of a

payment problem (and no Emails despite monthly emails on all sorts of programs, job listings etc. from the Texas Bar.);
Immediately Appellant gets hold of the Membership Department of the Texas Bar, pays the dues and fine and is magically reinstated. All legal issues are deemed without issue by the case law. In speaking with Bar Membership personnel – Appellant is advised that this has been a huge problem with this payment processing vendor. (Later that is 100% refuted when these same bar clerks are asked to testify in the DR proceeding that Appellant had not timely paid his 2009 bar dues. All of those clerks are now no longer employed by the Texas Bar). When the hearing on the Disqualification motion comes up, Ms. Weinman searches the Courthouse for a favorable judge (Judge Naranjo), and gets hearing in that Court. It turns out the Plaintiff Mom knew this Judge socially some 20 years before. That is disclosed and with no objections from Dad's Attorney the hearing progresses. Dad's attorney makes a showing of the alleged overreaching by the Appellant's filings and Appellant defends based on the case law, court rules and practice guidelines. The Bar Administrative Suspension has already been resolved so while it is checked on by Dad's attorney's assistant – it never comes up as a nullity in this motion hearing. Thereafter, the Motion to Disqualify is denied after a tongue lashing by the Trial Judge to Appellant to be more circumspect in presenting filings, although she deems all of Dad's issues relevant to Child Custody.

But this Bar Grievance from Dad's Attorney then morphs. It seems Dad's Attorney is also a disciplinary hearing panel member for the Texas Bar. This totally resolved with administrative fines paid matter over dues, is brought up yet again (as a double jeopardy issue as this is a State Agency acting both administratively and in a semi prosecutorial manner – and becomes the basis for a practicing while Administratively Suspended issue as a DR Violation.) Now here Appellant fowls up. Appellant believes that he doesn't trust the Bar Hearing Process, is unaware of the Diversion Program (as never having had a grievance in 29 years of practice), and mistakenly selects the District Court option. Appellant consults with past chair of the Disciplinary Program for the Texas Bar (who is a personal friend), and is advised of the tone of this body and how it treats alleged allegations. Appellant wrongfully believes that he had a reasonable reliance on the receipt and confirming Email that the dues were paid. Appellant did not verify that the payment was taken from his bank account and transferred to the Texas Bar. That wasn't Appellant's practice in 2009 nor has it been since – as electronic payments have become common from car insurance, groceries or bill payments – once made and confirmed they are final payments without issue – **except in this case**.

I am told that part of the 2010 restructuring of the Grievance process was due to those within the Bar Grievance Enforcement process who felt helpless going after those they deemed offenders so they changed the structure to the 2010 model and were using it as a tool to "target" anyone they perceived to be a wrongdoer.

As this allegation of Practicing while Administratively Suspended proceed, there was a discovery dispute where the Bar responded to ONLY 4 of over 130 discovery requests by Appellant. Appellant filed a discovery violations motion for witness tampering as there were witnesses (membership bar employees), who would no longer speak with him, the lack of meaningful written responses and for being barred from the Texas Law Center for allegedly being disruptive? (Yet, there were no incidents of any kind which could be pointed to as a disruptive occurrence.)

The motion for discovery relief by Appellant failed and sanctions were imposed on Appellant for raising allegations of witness tampering and objecting to discovery misconduct. (How that outcome occurred, still baffles Appellant?)

The matter proceeded to trial Thanksgiving Week 2011.

There was agreement that the bar dues payment did not process. Despite this, a full day was spent in a hearing over the DR violation. Grievance Counsel made a point of going through every filing as to the Deadbeat Pedophile Dad – to demonstrate that Appellant was practicing law – which was already undisputed. Grievance Counsel did so by presenting every filing from the Pro Bono Custody case – as if Dad's attorney was handing them to Grievance Counsel – one by one. That was undisputed as was the fact that the dues payment didn't process. The Court found this to be a non-egregious error – rejected 39% of the Bar's penalty and issued sanctions of a one year suspension abated to one month and an $11,000 find as a reduced recovery for Texas Bar Grievance Counsel. There was no reasonable reliance on the receipt or confirming email – as there was an absolute duty to pay bar dues? (That was the verdict.)

Only after the trial did the Issue of payment rejection being due to a typo and the bar software giving contradictory information of both payments received and confirmed while also issuing a payment rejection. Literally the payment processing software mislead both sides into erroneous understandings of what had taken place. However, in addition to the software error in the Bar's Dues payment system – there was a direct targeting of the Appellant to make him an example over this obligation to pay dues and that the system of the Bar (while maybe not perfect) was no excuse that the dues weren't timely paid even after they were paid immediately upon notice of an issue and even though there was no impact on cases, the courts or the public. Appellant became the whipping boy of showing that if there is a dues payment problem – then the Bar can and will beat up the attorney. A fine of $400 plus $11,000 plus wasted time, effort, research and grief yielded a penalty disproportionate to the typo infraction (a 48.5 times penalty to the dues paid late), and definitely not within the spirit of the DRs nor any stretch of reason. Enforcement through intimidation is beyond the scope of the Ethical Rules and flat out wrong.

In 2010, Appellant paid his bar dues on time, in person, in cash with a receipt. The MCLE reporting was done all but for one hour of ethics. Appellant completed that course timely but the posting of that credit did not occur automatically due to the Texas Bar's Continuing education system not automatically adding credit to the Membership MCLE reporting system. Appellant was doing this late as the deadline approached (his error), and the credit posting was 8 minutes late. Appellant showed up before 9:00 AM the next day at the Bar CLE office to correct his matter. Filed for an "8 Minute" extension, which was denied – as not there was no basis for the extension within " good cause". A fine of $100 was imposed. Appellant didn't have a check with him – so he mailed a check to the Texas Bar – but to the general address, so of course it wasn't processed or returned. In Mid-March 2011, Appellant is handling his best friend's estate for his Friend's spouse and the issue arose that Appellant was again Administratively Suspended. Appellant fixes this matter immediately by paying not $100, but instead $400 dollars. This incident is then morphs into a DR violation of practicing while Administratively Suspended. Appellant admits the 8 minute snafu due to the computer and has no knowledge of the Administrative Suspension as again no letter is received of a fine problem. Appellant knew he'd paid the fine and despite what seemed an unreasonable denial of the "8 minute extension" – thought he'd complied fully. Defendant Appellant exchanges emails with Disciplinary Counsel to solve, complete this violation. At this Point the Email is sent in Error to Appellant (Attachment #1), which says"…FYI – he may have regained some of his senses. We'll See….". (Exhibit #1)

Email is recalled, and yet clearly this isn't just some simple 8 minute posting error, now it's about something else? (What we may never know, or its part of what needs to be investigated as to what was going on behind the scenes? This raises questions on its face. The old "WTF" – (what the "frank")

This double jeopardy matter costs Appellant another $400 dollars in fines and then a DR agreed penalty of $670 dollars and six months' probation for Bar software that was unlinked.

But now we have two penalties. Which are characterized in the Disbarment as part of a pattern of ignoring rules, penalties and obligations – yet both stem from Bar Software problems in which the Appellant is caught up into.

Onto 2011, August/September – Appellant has a client come to Appellant to handle holding a document escrows of worthless, outdated bond documents from investors that want to use these for collateral on European overnight trading platforms. Appellant is skeptical, but agrees to be escrow agent for these bailors. Appellant was acting like a title company holding items until a closing and then paid from the proceeds of the closing. What was supposed to happen were documents were to be transferred to trading agents who would fund on the documents and from the funding the document holders

would get trading platform proceeds with transactions costs to be paid to Escrow agent, Program Coordinator – my client, and various trading agents as part of the transactions. When the first transaction did not materialize on October 6th, 2011, I advised my client of my concerns and asked for document instructions from the various Bailors.
Later that day, I get a call thanking me for taking more documents through one of my client's staff. I then stopped all document transactions and notified Bailors for instructions for the return of their goods. Neither my client nor his staff had any authority to go behind my back taking custody of documents. One bailor (unknown to me at the time was a partner of my client), abandons their goods and after 7 weeks demands them back without notice and contrary to the escrow terms. (The same Thanksgiving Week as the 2009 Dues Trial.) Discussions go on and after these break down, Bailor is sued for breach of the Bailment and Bailor files grievance for wrongful withholding of bailment, despite and ignoring the abandonment. In resolving that suit, agent of Bailor admits on Agent's behalf that the Grievance filing was retaliatory and without merit. All of this is disclosed to Bar Grievance Counsel who pursues this as a DR violation for wrongfully withholding an Escrow, despite knowing that there is nothing true about the allegations and that the Escrow was abandoned. Meanwhile, Appellant client ends up admitting that he was behind all of this - the Grievance filing etc. in retaliation for ending the document escrow program and stopping the fraudulent receipt of documents, behind the back of Appellant.

None the less, Bar Grievance Counsel pursues this matter as a Grievance and Chuck Herring – Member of the Supreme Court's Disciplinary Committee coordinates a resolution of this supposed DR violation with a 3 month suspension, Psych Exam so (it is assumed Appellant can be monitored by the Texas Bar) and another $6700 dollar fine, plus legal fees. Well, Appellant passes the Psych Exam twice and there is nothing to monitor. The fine is paid and the 3 month suspension was ticking away.

So far over $40,000 dollars cash paid in fines, counsel, and Court costs over typos, 8 minutes late on MCLE credit posting and pursuit of a Grievance over a escrow of worthless abandoned goods.

During this time, a client is put on hold as to a civil suit and opposing Counsel notified of Appellant's incapacity. Emails from staff tell opposing counsel to wait. (Staff member in hearings forgets emails after having cancer twice at age 70. Meanwhile the Defendants in that case have medical issues and are incapacitated for two of the three months of the suspension. Opposing Counsel none the less presses for the litigation to proceed and specifically for depositions which Appellant can't attend to represent these parties as the parties themselves are dealing with life threatening medical situations, making any deposition moot. This was merely to entrap Appellant into breaching his suspension. An attorney was supposed to be retained as an associate to handle this case. That was directed to the Appellant's Assistant and never done. Appellant works with outside para-assuming the stand in counsel is in place and that Appellant is merely a clerk doing case processing under the auspices of a prior associate – specially retained for this case. A bankruptcy is filed, dismissed and refiled after the suspension period which then

adds the costs of the medical issues and saves the client another $50,000 dollars in unpaid medical bills beyond insurance. In that bankruptcy all secured creditors are paid, over $350,000 dollars and all Employment taxes of over $125,000 dollars, (Total over $543,000 for the Debtor's estate to pay debts). As well as many of the unsecured creditors are paid. The unpaid debts are those to the Debtors for the pension borrowings for the client's investment in their franchise business.

Bar Grievance Counsel then assists the US Trustee's Office to pursue an examination of Counsel as the Appellant's bar number was used for the Bankruptcy filing. That was correctly or incorrectly done, but ends up moot under final orders of the Bankruptcy Court first dismissing the original bankruptcy filing and then reinstating the case after the suspension was concluded – both Final Orders – like the original 2010 order dismissing the Grievances filed by Dad's Attorney Daryl Weinman. Bar Grievance Counsel none the less shows up at the Bankruptcy Hearing to Examine Counsel in Dallas and in that Transcript – the Appellant's assistant admits he never followed up with the prior associate and again on the Record of that hearing (previously admitted into the record of this Disbarment), Appellant makes the assertion – "…I misunderstood". **(Exhibit 2 – Deposition of James Alums P.12 Line 21)** Now it is well settled that a final Order clears all issues that were or could have been raised. As this Motion to Examine Counsel is post reinstatement of the Bankruptcy pursuant to a final Order of the Bankruptcy Court – then these errors over support Counsel are moot. Issues not raised are waived. Getting a second bite at the apple as an alleged professional standards issue doesn't get any more actionable in this DR prosecution than they were 4 years before in the Pro Bono Custody Case - where the Denial of the Motion to Disqualify killed the related Grievance filing by Dad's Attorney.

Yet Bar Grievance Counsel makes it an issue that Appellant mis-represents his role in this bankruptcy case. That is not what that hearing transcript demonstrates. It is a characterization issue disputed. Why in the hell would Appellant pursue filings outside the rules when he was being watched like a hawk in a case where his fee was fixed and was unpaid over $50,000 dollars' worth of fees? That is absurd per se.

But Bar Grievance Counsel is more creative and adds allegations as DR violations that Appellant did not have an associate, (so violated the DR that an Attorney may not hold himself out as having associates when he doesn't have them – Yet the Firm name has been Septowski and Associates for 32 years, has had associates in offices all over the country and has never been an issue except for now piling it on higher and deeper), which is exactly what was supposed to be added by his assistant but didn't happened. Bar Grievance Counsel also adds a DR violation that the occupation tax exemption was taken improperly when Appellant has been a Non-Profit Foundation director for almost 20 years. An exhibit during the Disbarment Hearing acknowledging the Non-Profit Director position **was ridiculed based on the format**? Supplemental state and federal filings demonstrate this ridicule was not only wrong but without merit. Bar Grievance

Counsel Investigator also talked to Appellant's Michigan associate counsel and those in Missouri. All provided nothing but support for Appellant. None of that was presented or acknowledged in the Bar Disbarment hearing.

As the hearing on February 26th, 2015 proceeded, Appellant attempted to introduce both written evidence of professional accomplishment and also 12 witnesses who had come – waited all day and were turned away. Panel member's comment that they would say nice things was true, but also condescending.

On the Hearing April 13th, 2015 – Motion to Abate Immediate Imposition of Sanctions, again the evidence of professional accomplishments is denied entry as evidence. Statements in support of Appellant from the witnesses prohibited from testifying were also excluded.

Bar Grievance Counsel admits before the Bar Investigator outside the hearing room that she was "targeting" the Appellant and tracking the civil case in the 191st District Court during the Appellant's suspension – watching for activity.

Motions to expand this record before this Appeals panel have also been denied.

So far, every substantive motion filed by Appellant has been denied – be it discovery, conflict, overreaching for privileged communication etc. - were all denied. A privacy log, requested was opposed as only listing privileged communications. It was produced with great effort and yielded nothing.

So let's summarize:

1) DR violation one is about a typo and broken payment processing software – an allegations that there was a "voluntary" violation of the Practicing while Administratively Suspended as a letter was mailed to the Appellant advising of the dues payment issue; yet upon actual notice this was resolved in a day;
2) A DR violation over 8 minutes late posting of MCLE credit and a fine paid but not processed so a second letter of the Administrative Suspension goes un-received and this too is resolved with more penalties – arising from Texas Bar posting software not being integrated and the fine going to the wrong Bar office;

   Both are later cited as part of a pattern by Appellant ignoring bar obligations and sanctions. (A mis-characterization or misleading and intentionally put forth as a "snip-it" to malign Appellant and mislead the disbarment Panel.)

3) An escrow is supposedly violated by an untimely return of goods, which is nothing but a scam by Appellant's client perpetrating a fraud which Appellant shuts down.

The penalty of a "Psych Exam" goes nowhere so there is a dogged effort to chase Appellant into another supposed DR violation. (There is great consternation that this gambit didn't put Appellant under control of the Psych Counseling section of the Office of Chief Disciplinary Counsel.)

4) The works on Client's bankruptcy and civil suits results in full repayment of secured creditors, all issues solved by Final Orders of the Bankruptcy Court and disclosure in Court that all actions were not done as directed by Appellant and were mooted by Final Orders of that Court.

According to Plato and Socrates as set forth in Aristotle's Nicomachean Ethics – an Ethics violation is about a voluntary act – a choice of an action that violates an ethical rule.

Aristotle's Nicomachean Ethics:

"…Section 3……

A voluntary action is one in which the (actor) knows … on what the action depends"

"…Section 4…..

A voluntary act is one deliberated upon – the greek word being "proaireton" – to choose before"

" …Section 2….

An involuntary actions is one done ….through ignorance."

"…Section 15

It makes no sense to reprimand ….an involuntary act."

A deemed notice by invoking **the three day mailbox letter rule** as to infractions events one and two, don't meet the standard of actual knowledge to yield a voluntary act. An abandoned escrow where Appellant has to sue Bailor to return the goods isn't a voluntary withholding of the Goods and where there is an attempt to interject substitute Counsel and final court orders, these too are not "voluntary ethical violations per se". Therefore describing these as ethics violations and prosecuting them as DR violations is void per se. The Bar Grievance Counsel can't make up its own rules to do enforcement by morphing facts to fit DR violations. (That is putting a square peg into a round hole by force.) That makes no sense, bespeaks a private agenda but mostly it is unfair and an absurd enforcement per se.

Is there a reasonable morphing of late bar dues payment processing under these facts or the 8 minute Mcle posting the type of infractions which needed to be prosecuted? Does any of that make any sense or can it be described as reasonable – or are these absurdities part of a "targeted enforcement against the Appellant". If this Appellant is a "Targeted" wrongdoer, what did he do to deserve this attention and expenditure of efforts. WHY this APPELLANT? Why make an issue out of this minor or non-existent infractions?

Things we will never know.

Pursuing a knowingly bad claim that an escrow was withheld when this plain wasn't true – isn't that an absurdity?

Finally, to pursue alleged violations of the suspension where opposing counsel pushes Counsel to break the suspension (this is also court hearings transcripts which are precluded from entry before this panel) beset with problems as the Bar Grievance Counsel is sending email, attending Bankruptcy Hearings and writing up new allegations before there is even resolution of the Motion to Examine Counsel. Isn't that all overreaching, targeting and an absurdity?

ARGUMENTS:

1) Bias to hurt Appellant as second bit at Disqualifying Counsel Motion, Apparent Undue Influence – Appearance of Conflict;
2) Expansion of DRs for Debt Collection beyond scope of DRs;
3) Creating DR violation out of whole cloth where there is no violation per se – alleged escrow withholding where in fact Appellant has to sue Bailor to return goods and in so doing gets admission that the Grievance over the Escrow was retaliatory and false;
4) Mischaracterization and intention mis-statement of violations where couldn't succeed with Psy control;
5) DR. Phil – **"Where is the payoff"**. As Appellant passed the psych exam (twice) and none of these issues are about creating benefit to the Appellant; how does any of this make any sense as no benefit to Appellant versus a "Targeting" to get Appellant. If people in fact do what's in their interest which is self-preservation, Freud, or any number of psychological analysts, then how does any of this make sense as there were no psychological pathologies identified in the Psych Exam of the Appellant.

6) There is also the constitutional argument that this use of the Disciplinary process violates the 4th, 5th, sixth and 14th amendments requiring responses to state action, providing of evidence against oneself and having procedural due process without substantive due process.

CONCLUSION:

As Voltaire said it best –

"Those who can make you believe absurdities can make you commit atrocities".

The enforcement of Disciplinary Rules in Retaliation, under bias and/or for agendas is the politicization of the Disciplinary System - voids our profession's self-regulation. Further, there is no legitimacy to a process run with any agenda other than absolute trust, integrity and fairness. This is an example of petty issues being blown up into supposed Ethical Violations and persecuted to create retaliatory havoc. The mere rendition of these events should scare every one of us in this profession as it takes us back to a time of the Star Chamber. We all know that was a farce and we have spent hundreds of years refining our system so this is avoided. This Appeals panel is better than this, this entity the Texas Bar is better than this and we as attorneys are better than this.

This is no dispute that there were clerical and software errors and administrative penalties. Turning that into DR investigations, prosecutions and professional discipline of Disbarment is inane on its face and worse bespeaks the worst mis-use of Professional Discipline System.

That is this Disbarment. Respectfully, Appellant requests this Disbarment be reversed, all costs abated, Appellant's out-of-pocket costs of $40,000 dollars be refunded and that there be notifications of other State Bars advised of the Disbarment reversal. Texas Bar Journal Article retracted and that there be an Independent Counsel appointed to review this matter with authority to make appropriate remedies.

Plus, if all of the above were not enough to show the mean spiritedness (Targeted nature) of this matter, an addition to the Disbarment Judgment – clarifies this completely. In giving cards to the stenographer at the Disbarment hearing, Appellant's card showed the title of "Financial Counsel". A card was presented to Bar Grievance Counsel. That yielded a Judgment provision which prohibits Appellant from **any representation in any capacity**. Yet Appellant is a retired CPA/Accounting/Tax Professor & Advisor, Certified Fraud Examiner and Financial Planner. How does this proceeding extend that a Judgment to a provision that far a field? But it goes further, Bar Grievance Counsel then pushes a Contempt proceeding against Appellant as he hands off a case for his spouse to new Counsel after his Disbarment – as Appellant listed himself only as agent and Trustee of his spouse's Trust. The Contempt was granted under this provision of the Disbarment Judgment.

Appellant requests that this broad prohibition against any type of representation be stricken as overbroad and void per se.

Life is what we make it, is and has always been true for all of us. Prior to this mis-adventure with the Texas Bar Grievance System, Appellant has had a life of profound successes as per the credentials (as his professional portfolio was denied submission as part of the record in this matter.) **Professor/Reverend CHARLES SEPTOWSKI PhD, JD, LLM Tax, CPA, ChFC, CUP** Holding two doctorates, licenses in multiple states and Federal District Courts and recognition as a CPA (Emeritus) officer, distinguished member of that profession and holding the Past Service Award in Austin & Philadelphia, plus Certifications/Masters in Educational Instruction, Software Development, Tax Law and Master's in Business Administration (Tax Accounting), Certified Fraud Examiner & Chartered Financial Planner among many other professional recognitions; it is a pattern of success as the mere rendition of the credential provide. Another, but obvious issue is why is this Appellant given to violations with no benefit and no psychiatric impediment that yield this Disbarment? If you can answer that question from this record as in any way rational or reasonable outcome – then you are more gifted intellectually than the Appellant.

Finally, if all of these irregularities and capacity of the Office of Chief Disciplinary Counsel's use of the DRs to punish clerical errors is ok, then affirm this Disbarment and God help every attorney in Texas from a hellish environment of the Bar as absolute demigod over every member for anything the Texas Bar wants to push as an infraction/discipline as there are no limits of common sense, legal reasoning or fairness. The rule of law is dead for self-regulation of the legal profession in Texas, by this delegation of power to Texas Bar Grievance Process without meaningful oversite and limits.

Now, there should be a conciliatory, respectful deference to the Appeals Hearing Panel and to the process of our profession. As a past ethics professor, I can and have said on the record in the Disbarment Hearing of my great respect for self-regulation of this and the CPA profession(s), as well as an abiding requirement that the process be strict. **Respect and strictness aren't about arbitrary, capricious or mis-use of a powerful position in the self-regulation of our profession**. Let me make that distinction but moreover ask that you as Panel members make the same distinction in carrying out your obligations and rendering your verdicts.

Exhibit 1

RE: Notice on Evidencary Hearing - Complaint over CLE

From: **Judith DeBerry** (Judith.DeBerry@TEXASBAR.COM) You moved this message to its current location.
Sent: Fri 3/30/12 3:49 PM
To: Chaz white (profchaz@hotmail.com)

FYI—he may have regained some of his senses. We'll see. . .

From: Chaz white [mailto:profchaz@hotmail.com]
Sent: Friday, March 30, 2012 3:15 PM
To: Judith DeBerry
Subject: Re: Notice on Evidencary Hearing - Complaint over CLE

Ms. DeBerry, Returned mail in error from mu Firm Will review code and damn near agree to anything to not violate probation. Will get you an offer next week. Thxs

Professor Septowski

On Mar 30, 2012, at 12:30 PM, "Judith DeBerry" <Judith.DeBerry@TEXASBAR.COM> wrote:

> Dear Mr. Septowski,
>
> If you would like to resolve this matter with an agreed judgment you may send me an offer. I know in one of your other correspondences you mentioned the deferral program (Grievance Referral Program or "GRP"). Because you have been sanctioned for misconduct within the past three years, you do not meet the criteria for GRP. When you make your offer please look at Texas Rule of Disciplinary Procedure 15.11 and 3.10 as well as Section 81.072 of the Government Code to determine whether a proposed sanction is available. After you make an offer I will present it to the Commission for a decision. Whenever we settle a case and enter into an agreed judgment, the respondent is required to pay out attorney's fees and expenses at the time we enter into the agreement. Obviously, the earlier a case is settled the lower the attorney's fees will be. We usually do not settle until after discovery has been conducted but in rare instances, when the Respondent stipulates to all the facts alleged and to the rule violations, we have been permitted settle prior to discovery.

1 of 2

~~Pg. 92 of 93~~ ~~543 of 51~~

Exhibit 1

Recall: Notice on Evidencary Hearing - Complaint over CLE

From: **Judith DeBerry** (Judith.DeBerry@TEXASBAR.COM) You moved this message to its current location.
Sent: Fri 3/30/12 3:52 PM
To: Chaz white (profchaz@hotmail.com)

Judith DeBerry would like to recall the message, "Notice on Evidencary Hearing - Complaint over CLE".

2 of 2

Henry Exhibit 20

Page 91 of 93

542 of 51

Exhibit 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	)	BK. NO: 13-33026-BJH-7
	)	
ROBERT & ESTHER JONES	)	
D E B T O R.	)	

* * * * * * * * * * *

TRANSCRIPT OF PROCEEDINGS

* * * * * * * * * * *

(Testimony of James Alums)

BE IT REMEMBERED, that on the 20th day of November, 2013, before the HONORABLE BARBARA J. HOUSER, United States Bankruptcy Judge at Dallas, Texas, the above styled and numbered cause came on for hearing, and the following constitutes the transcript of such proceedings as hereinafter set forth:

Page 1

Please take the witness chair again, sir. And I'll simply remind you, you are under oath.

EXAMINATION CONTINUED

THE COURT: Did you ever speak to Ms. Compton and ask her to handle the Jones case while Mr. Septowski was under suspension from the State Bar of Texas?

THE WITNESS: As I stated earlier, no, ma'am.

THE COURT: Have you ever had any conversations with her?

THE WITNESS: No, ma'am.

THE COURT: Did Mr. Septowski instruct you to call her to see if she would serve as substitute counsel for him while he was under suspension?

THE WITNESS: That conversation I do recall. I did not follow through.

THE COURT: Did you tell him you did?

THE WITNESS: No, ma'am.

THE COURT: He says that you told him you'd done that?

THE WITNESS: Not to my recollection, ma'am.

MR. SEPTOWSKI: Then I misunderstood, Your Honor. I thought that he had. Okay. That's my error.

(End of Testimony of James Alums.)

Page 2

C E R T I F I C A T E

I, CINDY SUMNER, do hereby certify that the foregoing constitutes a full, true, and complete transcription of the proceedings as heretofore set forth in the above-captioned and numbered cause in typewriting before me.

CINDY SUMNER, CSR #5832
Expires 12-31-15
National Court Reporters
16 Gettysburg Lane
Richardson, Texas 75080
214 651-8393
Firm #417

Page 3