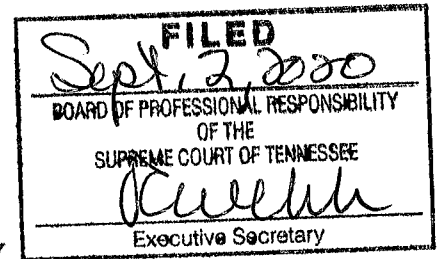


**IN DISCIPLINARY DISTRICT III  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE**



**IN RE: GLEN ROY FAGAN, DOCKET  
BPR No. 034666, Respondent,  
an Attorney Formerly Registered to  
Practice Law in Tennessee  
(Hamilton County)**

**NO. 2020-3075-3-BL**

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**JUDGMENT OF THE HEARING PANEL**

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This matter came to be heard before this Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on August 5, 2020 via teleconference. This cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court. This Hearing Panel, Stevie Phillips Persinger (chair), W. Tyler Weiss, and Peter Alliman, after considering the argument of Disciplinary Counsel and the entire record in this matter and after thorough deliberations, makes the following Findings of Fact and Conclusions of Law and renders its Judgment in this case.

**I. BACKGROUND**

Glen Roy Fagan was an attorney registered as in-house counsel to practice law in Tennessee. Mr. Fagan was in-house counsel for U.S. Express Enterprises, Inc. and his Board of Professional Responsibility number is 034666. Mr. Fagan was admitted to practice law in Georgia in 2000. A Petition for Discipline was filed against Mr. Fagan on February 24, 2020, and served on Mr. Fagan by mailing a copy by First Class U.S. Mail and certified mail. On March 25, 2020, Mr. Fagan emailed Disciplinary Counsel to request an extension to file his Answer, and

Disciplinary Counsel agreed to extend the deadline to April 17, 2020. On April 27, 2020, Disciplinary Counsel emailed Mr. Fagan to inquire as to the whereabouts of the Answer or any difficulty in providing a timely Answer. Mr. Fagan responded to advise on April 30, 2020, that he would not be filing an Answer.

On May 1, 2020, Disciplinary Counsel filed a Motion for Default Judgment and that Charges in the Petition for Discipline be Deemed Admitted. On May 26, 2020, the Hearing Panel entered an Order Denying Default Judgment on the basis that Disciplinary Counsel's Motion was filed prematurely. On June 25, 2020, Disciplinary Counsel filed a second Motion for Default Judgment and that Charges in the Petition for Discipline be Deemed Admitted. On July 10, 2020, the Hearing Panel entered an Order Granting Default Judgment and ordering that the charges in the Petition for Discipline be deemed admitted.

## II. FINDINGS OF FACT

1. U.S. Xpress, Inc. is a trucking and logistics business headquartered in Chattanooga, Tennessee.
2. Mr. Fagan was employed as an in-house labor and employment attorney at U.S. Xpress, Inc. from August 3, 2015 through February 26, 2019.
3. Mr. Fagan's duties included oversight of employment-related lawsuits, administrative charges, complaints, and allegations of employee misconduct for U.S. Xpress, Inc. and its subsidiaries.
4. Mr. Fagan falsified a complaint allegedly filed by a person named Karen Sawyer on April 30, 2018.
5. On May 2, 2018, Mr. Fagan incorporated a nonexistent law firm, Kirk James and Associates, LLC.

6. On August 27, 2018, Mr. Fagan sent a text message to his supervisor indicating that he attended a mediation in the Karen Sawyer matter.
7. Mr. Fagan falsified a Confidential Settlement Agreement and General Release in the Karen Sawyer matter, which Mr. Fagan signed on August 27, 2018.
8. On August 28, 2018, Mr. Fagan instructed the U.S. Xpress, Inc. Accounting Department to issue a settlement check in the amount of \$27,000 to Kirk James and Associates, LLC.
9. On August 31, 2018, the \$27,000 check was deposited to Kirk James and Associates, LLC.
10. Mr. Fagan provided a fraudulent W-9 for Kirk James and Associates, LLC.
11. On January 29, 2019, Mr. Fagan signed a confidential settlement agreement and general release purporting to be both initialed and signed by Virginia Ladd to settle her claim against U.S. Xpress, Inc.
12. Mr. Fagan forged Ms. Ladd's initials and signature on the settlement agreement.
13. On January 29, 2019, Mr. Fagan emailed Tammi Thompson at U.S. Xpress, Inc. to authorize the disbursement of funds to the fraudulently established law firm, Kirk James and Associates, LLC, in the amount of \$ 14,000 based upon the forged Ladd settlement agreement.
14. On January 29, 2019, pursuant to Mr. Fagan's instructions, U.S. Xpress, Inc. issued a check in the amount of \$14,000.00 payable to Kirk James and Associates LLC to settle the Ladd case.
15. The Ladd check was deposited into Kirk James and Associates LLC's account.

16. On February 1, 2019, Mr. Fagan gave U.S. Express, Inc. his resignation notice stating he was leaving to accept a position with the Southern Company in Atlanta.
17. On February 13, 2019, Mr. Fagan signed and filed a six-page Position Statement with the Equal Employment Opportunity Commission ("EEOC") on behalf of U.S. Xpress, Inc. even though the case was allegedly settled.
18. On February 14, 2019, his last day of employment with U.S. Express, Inc., Mr. Fagan met with the employees of U.S. Xpress, Inc. concerning his cases as of February 15, 2019.
19. At that time, he listed the Virginia Ladd EEOC complaint as pending with a note that he submitted the Position Statement to the EEOC on February 13, 2019.
20. February 15, 2019, was Respondent's last day of employment at U.S. Xpress, Inc.
21. On August 20, 2019, counsel for U.S. Xpress, Inc. received a call from the EEOC concerning whether there would be a settlement in the Virginia Ladd case.
22. Celeste Bradley, Associate General Counsel for U.S. Xpress, Inc., reviewed the Ladd file and settled the case for \$500.00.
23. In her review of the case, Ms. Bradley discovered documents related to the Ladd claim which were concealed in an electronic file for a Karen Sawyer case.
24. Ms. Bradley eventually discovered the false Ladd case settlement documents.
25. In Ms. Bradley's review with the EEOC she established there had been no prior mediation or settlement as Mr. Fagan had asserted.
26. Mr. Fagan created a forged settlement document for \$14,000 in the Ladd matter and those funds were deposited in the fraudulent law firm, Kirk James and Associates, LLC, account.

27. Mr. Fagan then converted those funds for his own use.
28. During the investigation of the Ladd matter, Ms. Bradley discovered documents related to a fraudulent Karen Sawyer case created by Mr. Fagan.
29. On August 21, 2019, months after Mr. Fagan had resigned to work for Southern Company, U.S. Xpress, Inc.'s Corporate General Counsel Leigh Anne Battersby first learned of a fraudulent settlement entered into by Mr. Fagan.
30. There appear to be no records relating to a verifiable claim by a Karen Sawyer at any point. The claim appears to be fabricated in its entirety.
31. Mr. Fagan originally denied any involvement when questioned by U.S. Express, Inc. However, two days later, Mr. Fagan called U.S. Xpress, Inc.'s Corporate General Counsel Leigh Anne Battersby, asked to meet with her in person, and fully confessed his misconduct. In Ms. Battersby's October 16, 2019 letter to Board of Professional Responsibility, she states, "During our meeting, Mr. Fagan fully recognized the gravity of what he had done, expressed his deep regret for his actions, and apologized to both me and the Company for the breach of trust."
32. On November 11, 2019, Mr. Fagan sent an email to the Board of Professional Responsibility explaining that he was "in active alcohol addiction" and "under the influence of alcohol on a daily basis" at the time of his misconduct. He provided proof of attendance in an alcohol treatment program and stated that he was currently attending individual therapy on a weekly basis and AA meetings on a daily basis.
33. In his November 11, 2019, email to the Board of Professional Responsibility, Mr. Fagan further stated that he was citing his alcoholism not as an excuse for his conduct

but merely an explanation. His letter further states, "I am truly, deeply ashamed and remorseful for my conduct."

34. Finally, Mr. Fagan has repaid the money owed to U.S. Express, Inc. with interest.

### **III. AUGUST 5, 2020 TELEPHONIC HEARING**

Disciplinary Counsel attended the August 5, 2020 telephonic hearing. Mr. Fagan did not attend. No evidence was introduced during the hearing. The Hearing Panel heard from Disciplinary Counsel who argued for Mr. Fagan's disbarment. Immediately following the August 5, 2020, telephonic hearing, the members of the Hearing Panel conferred.

### **IV. BURDEN OF PROOF**

Tennessee Supreme Court, Rule 9, Section 8.2 states that "[i]n a hearing on formal charges of misconduct, Disciplinary Counsel must prove the case by a preponderance of the evidence."

### **V. ANALYSIS**

**Informant – Leigh Anne Battersby, Esq. (File No. 62457-3-ES)**

Pursuant to Tennessee Supreme Court Rule 9, section 8.1, attorneys registered to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, through the Board of Professional Responsibility, the hearing panel, and the Circuit and Chancery Courts. Pursuant to Tennessee Supreme Court Rule 9, section 1, the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to act at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Pursuant to Tennessee Supreme Court Rule 9, section 11.1, acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline.

The charges in the Petition for Discipline have been deemed admitted by virtue of the Hearing Panel's July 10, 2020, Order Granting Default Judgment. We find that Mr. Fagan's conduct violated Rules 4.1 and 8.4(b)(c)(d).

**Rule 4.1: Truthfulness in Statements to Others**

- (a) in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

**Rule 8.4(b)(c)(d): Misconduct**

It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice[.]

Mr. Fagan violated Rule 4.1 and Rule 8.4(b),(c), and (d) when he made false statements to employees of U.S. Express, including falsification of the Karen Sawyer complaint and settlement documents; texting his supervisor about a mediation that never occurred; giving false instructions to his client's accounting department, falsifying a W-9 for a law firm that did not exist and that he had falsely incorporated, and; falsifying the confidential settlement agreement and general release in Virginia Ladd's case.

**VI. APPLICATION OF ABA STANDARDS FOR IMPOSING  
LAWYER SANCTIONS**

Once disciplinary violations have been established, the appropriate discipline must be based on application of the ABA Standards for Imposing Lawyer Sanctions, pursuant to Tennessee

Supreme Court, Rule 9, Section 8.4. The following sections of the ABA Standards apply in this matter:

### **3.0 Generally**

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

### **4.1 Failure to Preserve the Client's Property**

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

### **4.6 Lack of Candor**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

4.61 Disbarment is generally appropriate when lawyer knowingly deceives a client with the intention to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

### **5.1 Failure to Maintain Personal Integrity**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:



5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

Pursuant to Section 9.1 of the ABA Standards, "After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose." Under Section 9.2 of the ABA Standards, aggravating factors include:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction, of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution;
- (k) illegal conduct, including that involving the use of controlled substances.

Under Section 9.3 of the ABA Standards, mitigating factors include:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;

- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical disability;
- (i) mental disability or chemical dependency including alcoholism or drug abuse when:
  - (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
  - (2) the chemical dependency or mental disability caused the misconduct;
  - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
  - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.
- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse;
- (m) remoteness of prior offenses.

Applying the ABA Standards, the Hearing Panel finds that Mr. Fagan violated his duty to preserve his client, U.S. Express, Inc.'s, property; his duty of candor to his client by engaging in fraud, deceit, and misrepresentation, and; his duty to maintain personal integrity. The Hearing Panel further finds that Mr. Fagan acted intentionally and for his own benefit in violating of each of these duties. Mr. Fagan caused actual injury to his client in the form of lost funds. U.S. Express, Inc. also had to spend time and energy identifying and addressing the problems Mr. Fagan created when he fraudulently settled one real claim and falsified another claim entirely.

The Hearing Panel finds that the following aggravating circumstances are present: Mr. Fagan's dishonest or selfish motive, Mr. Fagan's pattern of misconduct, Mr. Fagan's multiple offenses, and Mr. Fagan's substantial experience in the practice of law. The Hearing Panel also finds, however, that the following mitigating circumstances are present: Mr. Fagan's absence of prior disciplinary record, timely good faith effort to make restitution or to rectify consequences of misconduct, chemical dependency, and remorse.

Pursuant to the ABA Standards cited above, disbarment is generally appropriate when, as here, the lawyer knowingly converts client property, knowingly deceives a client with the intent of benefiting the lawyer, or engages in serious criminal conduct involving fraud as a necessary element. The Hearing Panel finds, however, that the mitigating factors in this case are compelling and weigh in favor of a suspension.

Specifically, although Mr. Fagan originally denied any involvement when questioned by U.S. Express, Inc., he called his supervisor two days later, asked to meet with her in person, and fully confessed his misconduct. In her words, "During our meeting, Mr. Fagan fully recognized the gravity of what he had done, expressed his deep regret for his actions, and apologized to both me and the Company for the breach of trust." On November 11, 2019, Mr. Fagan notified the Board of Professional Responsibility via an email that he was "in active alcohol addiction" and "under the influence of alcohol on a daily basis" at the time of his misconduct. He provided proof of attendance in an alcohol treatment program and stated that he was currently attending individual therapy on a weekly basis and AA meetings on a daily basis. Finally, Mr. Fagan promptly repaid the money owed to U.S. Express, Inc. with interest.

## VII. JUDGMENT

The Hearing Panel finds that Mr. Fagan violated the Rules of Professional Conduct as discussed above. After considering the actions of Mr. Fagan, the aggravating and mitigating factors, and the entire record in this case, it is the opinion of the Hearing Panel that Mr. Fagan shall be suspended from the practice of law for a period of six (6) years. Pursuant to Rule 9, Section 8.5, one (1) year of the suspension ordered herein shall be suspended in conjunction with a one-year period of probation. In other words, after five (5) years of suspension, Mr. Fagan may begin practicing under a probationary period of time for one (1) year. During that probationary period

of time, Mr. Fagan is required to have a practice monitor. The duties and the responsibilities of the practice monitor in this situation shall include:

1. Supervision of Mr. Fagan;
2. Confirming that Mr. Fagan is meeting at least once a month with a licensed counselor or therapist to discuss any personal problems that may arise in his life and identify healthy ways to cope with said problems;
3. Confirming that Mr. Fagan is attending AA meetings at least twice a month.

The practice monitor shall be approved by the Board of Professional Responsibility and shall report to the Board every thirty (30) days whether Mr. Fagan is compliant with his probation. Pursuant to Rule 8.5, Mr. Fagan shall pay the costs associated with probation, including without limitation a reasonable fee for the practice monitor.

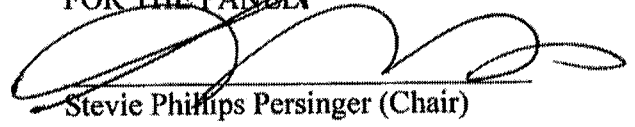
Further, Mr. Fagan is required to complete six (6) hours of continuing legal education on subjects related to the ethical practice of law in addition to the mandatory fifteen (15) hours required by the Tennessee Commission on Continuing Legal Education in the calendar year of taking the courses. The six (6) hours of courses must be completed by the end of the probationary period.

IT IS SO ORDERED.

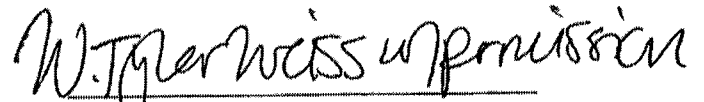
**THIS JUDGMENT MAY BE APPEALED PURSUANT TO SECTION 1.3 OF RULE 9 OF THE TENNESSEE SUPREME COURT RULES BY FILING A PETITION FOR WRIT OF CERTIORARI, WHICH PETITION SHALL BE MADE UNDER OATH OR AFFIRMATION AND SHALL STATE THAT IT IS THE FIRST APPLICATION FOR THE WRIT.**

ENTER on this the 2nd day of September 2020.

FOR THE PANEL

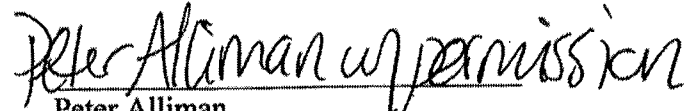


Stevie Phillips Persinger (Chair)



W. Tyler Weiss

W. Tyler Weiss



Peter Alliman

Peter Alliman

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to Respondent, Glen Roy Fagan, 4080 Jenkins Road, Chattanooga, TN 37421-1174, and 1771 Donna Lynn Drive SE, Smyrna, GA 30080-2411, via U.S. First Class Mail, and hand-delivered to Brittany Lavalley, Disciplinary Counsel, on this the 3<sup>rd</sup> day of September, 2020.



Rita Webb  
Executive Secretary

**NOTICE**

**This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.**