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BOARD OF PROFESSIONAL
RESPONSIBILITY

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

**IN RE: FLETCHER WHALEY LONG,
BPR No. 18775, Respondent,
an Attorney Licensed to Practice
Law in Tennessee
(Montgomery County)**

DOCKET NO. 2017-2681-6-AW

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came to be heard June 29, 2017 whereby upon the record as a whole the Hearing Panel finds as follows.

STATEMENT OF THE CASE

1. This is a disciplinary proceeding against the Respondent, Fletcher Whaley Long, Jr., an attorney licensed to practice law in Tennessee in 1997.
2. The Petition for Discipline, Docket No. 2017-2681-6-AW, was filed February 9, 2017, and served upon Mr. Long.
3. Mr. Long did not file a response to the Petition for Discipline.
4. On May 3, 2017, the Board filed a Motion for Default and a proposed Order.
5. On May 16, 2017, the Hearing Panel was appointed.
6. On May 25, 2017, the Hearing Panel entered an Order for Default Judgment deeming the allegations in the Petition for Discipline admitted and set the final hearing for the consideration of the appropriate sanction, if any, to impose.

7. The Final Hearing was held June 29, 2017, before a duly constituted Hearing Panel consisting of Clinton L. Kelly, Douglas T. Bates, III, and Ryan P. Durham, Chair. The Board was represented by A. Russell Willis. Mr. Long did not appear or participate.

INTRODUCTION

8. The Petition for Discipline consists of four (4) complaints alleging Mr. Long (a) failed to provide substantial and material professional services for which he was retained; (b) made materially false representations to his clients; (c) failed to refund unearned retainers upon termination of the representation; (d) charged unreasonable fees in light of the professional services rendered; (e) failed to safeguard client funds; (f) failed to represent clients competently; (g) knowingly and intentionally withheld material information from clients preventing them from making informed decisions about the representation; (h) failed to reasonably communicate with clients; (i) engaged in misconduct involving dishonesty, fraud, deceit and misrepresentations; and (j) knowingly failed to respond to the Board's requests for information regarding four (4) disciplinary complaints in violation of the Rules of Professional Conduct (RPC) 1.2 (scope of representations); 1.3 (competency); 1.4 (communication); 1.5 (fees); 1.15 (safekeeping property and funds); 1.16 (declining or terminating representation); 8.1 (bar admissions and disciplinary matters) and 8.4 (misconduct).

9. In its case in chief, the Board introduced six (6) exhibits and called Steve Martinez as a witness.

10. The testimony and evidence presented to the Hearing Panel established the following facts.

FINDINGS OF FACTS

File No. 42889-6-ES – COMPLAINANT – TIMOTHY FLEMING

11. On August 22, 2015, Timothy Fleming submitted a complaint to the Board of Professional Responsibility alleging unethical conduct by Fletcher Whaley Long. Thereafter, on September 21, 2015, and November 20, 2015, Mr. Fleming sent additional information to the Board. See Exhibit 1.

12. On September 23, 2015, and November 23, 2015, the Board forwarded Mr. Fleming's complaints to Mr. Long for his response. See Exhibit 1.

13. On January 4, 2016, Disciplinary Counsel received a phone call and email from Mark R. Olson indicating he would file a response to the complaint after consulting with Mr. Long; however, on March 3, 2016, the Board received a string of emails from Mr. Olson indicating Mr. Long might not provide a response to the Board. See Exhibit 1.

14. Mr. Long never provided a response to the Board.

15. On or about January 23, 2014, Mr. Fleming retained Mr. Long to represent him in an employment dispute, but no written retainer fee agreement was executed.

16. Mr. Long was paid a flat fee retainer by Mr. Fleming in the amount of \$10,000.00.

17. Subsequent to being retained, Mr. Long drafted two (2) demand letters in or about April, 2015, and a proposed complaint for filing in Circuit Court for Kentucky.

18. Except for the draft demand letters and complaint, Mr. Long failed to provide substantial and material professional services to Mr. Fleming.

19. On May 15, 2015, Mr. Long was suspended from the practice of law and was disbarred by Order of the Supreme Court entered September 14, 2015.

20. Shortly after his suspension Mr. Long misrepresented to Mr. Fleming that attorney Sands Chewing would be representing Mr. Fleming.

21. Mr. Fleming confronted Mr. Long about his misrepresentation and was then informed that attorney David Rye would be representing Mr. Fleming.

22. Mr. Fleming informed Mr. Long he had retained Mr. Long to represent him at trial, and if Mr. Long could not provide the agreed upon services, Mr. Fleming wanted his retainer refunded.

23. Mr. Long did not refund any of the \$10,000.00 retainer paid by Mr. Fleming.

File No. 42308c-6-ES – COMPLAINANT – CHARLES BRUST

24. On November 6, 2015, the Board received a complaint from Mr. Brust alleging unethical conduct by Mr. Long. By letters dated November 10, 2015, November 17, 2015, and December 16, 2015, Disciplinary Counsel forwarded Mr. Brust's complaint to Mr. Long for his response within ten (10) days. See Exhibit 1.

25. By email dated July 21, 2016, Mr. Brust provided certain information to the Board, and the same was forwarded to Mr. Long by letter dated July 21, 2016. See Exhibit 1.

26. Mr. Long did not respond to the Board's request for information.

27. On or about February 17, 2015, Mr. Brust retained Mr. Long to defend him on criminal charges and a restraining order, and Mr. Brust paid Mr. Long a flat fee totaling \$10,000.00 for representation in both matters.

28. In addition to the flat fee, Mr. Brust was charged \$250.00 for each court appearance by Mr. Long.

29. No written retainer fee agreement was executed.

30. Mr. Long represented to Mr. Brust that Mr. Long would personally represent him in court proceedings.

31. Mr. Long did not appear in court on behalf of Mr. Brust as he represented to Mr. Brust.

32. Instead, an associate of Mr. Long appeared in court on three (3) separate occasions without the knowledge or consent of Mr. Brust.

33. Mr. Brust expressed his objections to Mr. Long after each court appearance, and Mr. Long assured Mr. Brust he would appear at the next scheduled court appearance.

34. Mr. Brust paid a total of \$1,000.00 for three (3) court appearances and one in-person meeting.

35. On May 15, 2015, Mr. Long was suspended from the practice of law and disbarred by Order of the Supreme Court entered September 14, 2015.

36. After being informed of Mr. Long's disbarment, Mr. Brust terminated Mr. Long, hired new counsel and requested a refund of the retainer fee.

37. Mr. Long did not provide the professional services to Mr. Brust for which he was retained and failed to refund the \$10,000.00 retainer fee paid by Mr. Brust.

File No. 47908-6-ES – COMPLAINANT – STEVE MARTINEZ

38. On June 15, 2016, the Board received a complaint from Mr. Martinez alleging unethical conduct by Mr. Long, and the same was forwarded to Mr. Long by letter dated June 29, 2016, for response within ten (10) days. See Exhibit 1.

39. On June 23, 2016, and July 19, 2016, Mr. Long indicated by email he did not intend to respond to the Board regarding Mr. Martinez's complaint, and Mr. Long, in fact, did not respond to the Board. See Exhibit 1.

40. Mr. Martinez testified he retained Mr. Long on or about January 7, 2013, to represent him in an employment discrimination action, executed a written fee agreement and paid Mr. Long a \$10,000.00 non-refundable retainer fee. See also Exhibit 1.

41. Pursuant to the written fee agreement and Mr. Martinez's testimony, he paid an additional \$2,000.00 to Mr. Long which was to be held in trust.

42. It does not appear from the record that Mr. Long deposited and/or maintained the \$2,000.00 in trust consistent with the requirements of RPC 1.15 and the retainer agreement.

43. Mr. Martinez testified he paid a total of \$14,000.00 to Mr. Long during the representation.

44. On October 17, 2014, Mr. Long filed a complaint for employment discrimination on behalf of Mr. Martinez in the United States District Court.

45. On May 15, 2015, Mr. Long was suspended from the practice of law and disbarred by Order of the Supreme Court entered September 14, 2015.

46. Mr. Martinez testified that Mr. Long did not inform him of his indictment, suspension or disbarment.

47. Mr. Martinez further testified that had Mr. Long disclosed his indictment, Mr. Martinez would not have retained Mr. Long to represent him or paid \$14,000.00 to Mr. Long.

48. On September 22, 2015, Mr. Martinez's lawsuit was dismissed for failure to prosecute and failure to respond to discovery.

49. Subsequent to the dismissal, Mr. Martinez retained new counsel and discovered that his employment action was filed after the statute of limitations expired.

50. Mr. Martinez testified that Mr. Long did not disclose the cause of action had been untimely filed by Mr. Long, and had he disclosed this material fact, Mr. Martinez would have terminated Mr. Long and not paid additional monies to Mr. Long.

51. Subsequent to learning of the disbarment, Mr. Martinez terminated Mr. Long and requested a refund of the retainer and the balance of his funds held in trust.

52. Mr. Long failed to provide Mr. Martinez with any refund or the funds in the trust account.

53. Mr. Long did not provide the professional services to Mr. Martinez for which he was retained.

File No. 41501c-6-ES – COMPLAINANT – KIERRA LEAVELL

54. On May 22, 2015, the Board received a complaint from Ms. Leavell alleging unethical conduct by Mr. Long in his representation of James Johnson, and the same was forwarded to Mr. Long on November 17, 2015, for a response. See Exhibit 1.

55. Having received no response, the Board sent a second letter to Mr. Long dated December 16, 2015, and requested a response within ten (10) days receipt. See Exhibit 1.

56. On January 4, 2016, Disciplinary Counsel received a phone call and email from Mark R. Olson indicating he would file a response to the complaint after consulting with Mr. Long. See Exhibit 1.

57. On March 3, 2016, the Board sent a letter to Mr. Olson requesting specific information be provided to the Board by Mr. Long. On March 3, 2016, the Board received a string of emails from Mr. Olson indicating Mr. Long might not provide a response to the Board. See Exhibit 1.

58. On June 2, 2016, the Board received information from attorney John M. Germanis regarding his representation of Mr. James Johnson. See Exhibit 1.

59. Mr. Long responded to the Board by email dated June 23, 2016. See Exhibit 1.

60. On or about March 4, 2015, Ms. Leavell retained Mr. Long to represent James Thomas Johnson, Jr., in a criminal matter pending in the Robertson County Circuit Court.

61. Ms. Leavell, Mr. Long and Mr. Germanis executed a written Contract of Employment for Legal Services dated March 4, 2015, and Ms. Leavell paid \$6,000.00 to Mr. Long.

62. Pursuant to the written terms of the Contract of Employment for Legal Services (Contract), the \$6,000.00 represented a nonrefundable flat fee for representing Mr. Johnson through all proceedings in the Circuit Court for Robertson County.

63. At the time the Contract was executed, Mr. Long failed to disclose to Ms. Leavell he was under indictment for felony extortion.

64. At the time the Contract was executed, Mr. Long failed to disclose to Ms. Leavell his criminal trial was scheduled for May, 2015.

65. Had Mr. Long disclosed these material facts to Ms. Leavell prior to March 4, 2015, Ms. Leavell would not have retained Mr. Long or paid a \$6,000.00 nonrefundable retainer fee.

66. Mr. Long filed a Notice of Appearance in the Robertson County Circuit Court on March 23, 2015.

67. On May 15, 2015, Mr. Long was suspended from the practice of law due to his conviction for felony extortion.

68. Between March 4, 2015, and May 15, 2015, Mr. Long met with Mr. Johnson approximately two (2) times and attended only one (1) court hearing.

69. As a result of Mr. Long's suspension, a new attorney, John Germanis, was appointed on July 10, 2015, to represent Mr. Johnson.

70. Although Mr. Long's unethical conduct resulted in the termination of the representation of Mr. Johnson, Mr. Long did not refund any of the \$6,000.00 retainer fee to Mr. Johnson or Ms. Leavell.

71. Mr. Long retained the vast majority of the \$6,000.00 retainer and only paid Mr. Germanis a small sum for the court appearances Mr. Germanis made on behalf of Mr. Long.

72. The fee charged and collected by Mr. Long was unreasonable in light of the facts and circumstances set forth above.

73. Subsequent to Mr. Long's suspension from the practice of law, Ms. Leavell and/or Mr. Johnson requested Mr. Long refund the \$6,000.00 retainer fee.

74. Mr. Long failed to refund the retainer fee and/or reasonably respond to Ms. Leavell or Mr. Johnson.

CONCLUSIONS OF LAW

75. The Respondent, Fletcher Whaley Long, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee in 1997. Mr. Long's most recent address as registered with the Board of Professional Responsibility is 925 Martin Street, Clarksville, Montgomery County, Tennessee 37040, being in Disciplinary District VI. The Respondent's Board of Professional Responsibility number is 18755.

76. Pursuant to Tenn. Sup. Ct. R. 9, § 8 (2014), attorneys admitted to practice law in Tennessee are subject to the disciplinary jurisdiction of the Supreme Court, the Board of

Professional Responsibility, the Hearing Committee, hereinafter established, and the Circuit and Chancery Courts.

77. Pursuant to Tenn. Sup. Ct. R. 9, § 1 (2014), the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

78. Pursuant to Tenn. Sup. Ct. R. 9, § 11 (2014), acts or omissions by an attorney, individually or in concert with any other person, which violate the Rules of Professional Conduct of the State of Tennessee constitute misconduct and grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

79. Based upon the evidence presented, the Hearing Panel finds by a preponderance of the evidence that Fletcher Whaley Long (a) failed to provide substantial and material professional services for which he was retained; (b) made materially false representations to his clients; (c) failed to refund unearned retainers upon termination of the representation; (d) charged unreasonable fees in light of the professional services rendered; (e) failed to safeguard client funds; (f) failed to represent clients competently; (g) knowingly and intentionally withheld material information from clients preventing them from making informed decisions about the representation; (h) failed to reasonably communicate with clients; (i) engaged in misconduct involving dishonesty, fraud, deceit and misrepresentations; and (j) knowingly failed to respond to the Board's requests for information regarding four (4) disciplinary complaints in violation of the Rules of Professional Conduct (RPC) 1.2(a) (scope of representations); 1.3 (competency); 1.4(a) and (b) (communication); 1.5(a), (b), (e) and (f) (fees); 1.15(a)-(e) (safekeeping property

and funds); 1.16(a) and (d) (declining or terminating representation); 8.1(b) (bar admissions and disciplinary matters) and 8.4(a), (c) and (d) (misconduct).

80. Based upon the testimony and documents presented, the Hearing Panel specifically finds that Mr. Long engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in the representation of each client set forth in the Petition for Discipline and induced said clients to make certain payments to Mr. Long they would not otherwise have done.

81. Despite several requests of the clients for a full refund, Mr. Long failed to refund the retainer fees or otherwise respond to the respective client. Tenn. Sup. Ct. R. 9, § 4.7 authorizes the Hearing Panel to award restitution to any person financially injured as a result of an attorney's misconduct. Under the facts and circumstances of this matter, the Hearing Panel finds that restitution is appropriate in the following amounts:

- (a) Steve Martinez - \$14,000.00.
- (b) Timothy Fleming - \$10,000.00.
- (c) Charles Brust - \$11,000.00.
- (d) Kierra Leavell and James Johnson - \$6,000.00.

APPLICATION OF THE ABA STANDARDS

82. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, the appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions, ("ABA Standards").

83. Based upon the facts and misconduct previously set forth, the Hearing Panel finds the following ABA Standards, entered into evidence as Exhibit 6, are applicable to this disciplinary action against Mr. Long:

- 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.

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

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

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.

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

Pursuant to ABA Standard 9.22, the Hearing Panel finds the following aggravating factors are applicable in this matter to determine the appropriate discipline to be imposed against Mr. Long:

(a) Mr. Long's dishonest or selfish motive is an aggravating circumstance justifying an increase in discipline to be imposed. Mr. Long was required to place client funds in his trust account. Mr. Long failed to do so and converted Mr. Martinez's funds to his personal use.

(b) Mr. Long's previous disciplinary history is an aggravating circumstance justifying an increase in discipline. Mr. Long received a Public Censure on June 22, 2009, for neglecting client matters and failing to reasonably communicate with his client in violation of RPC 1.3 (diligence); 1.4 (communication); 1.5 (fees); 3.2 (expediting litigation) and 8.4 (misconduct). See Exhibit 2.

Mr. Long received a Public Censure on June 5, 2014, for failure to deposit client funds other than those of this specific matter into his trust account, failure to provide an accounting and failure to refund unearned fees in violation of RPC 1.4 (communication); 1.15 (safekeeping property and funds); 1.16 (declining or terminating representation) and 8.4 (misconduct). See Exhibit 3.

Mr. Long received a Public Censure on October 29, 2014, and was ordered to pay restitution to two (2) clients. See Exhibit 4.

Mr. Long was disbarred by Order of the Supreme Court on September 14, 2015, based upon his felony conviction for extortion and neglect of other clients' matters. See Exhibit 5.

(c) Mr. Long's multiple offenses are an aggravating circumstance justifying an increase in the degree of discipline to be imposed.

(d) Mr. Long's substantial experience in the practice of law, having been licensed in Tennessee in 1997, is an aggravating circumstance justifying an increase in the degree of discipline to be imposed.

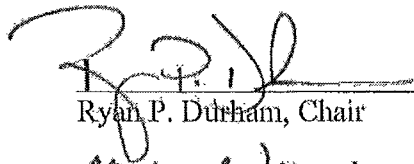
(e) Mr. Long's refusal to acknowledge the wrongful nature of his conduct is an aggravating circumstance justifying an increase in the degree of discipline to be imposed.

(f) Mr. Long's indifference to making restitution is an aggravating circumstance justifying an increase in the degree of discipline to be imposed.

JUDGMENT

Based upon the facts in this case; the application of the Rules of Professional Conduct and considering the ABA Standards, the Hearing Panel finds by a preponderance of the evidence that Mr. Long committed disciplinary misconduct and should be disbarred from the practice of law pursuant to Tenn. Sup. Ct. R. 9, § 12.1 and that said disbarment should be consecutive to his current disbarment.

Further, pursuant to Tenn. Sup. Ct. R. 9, § 12.7, the Hearing Panel finds Mr. Long should be compelled to pay restitution to Steve Martinez - \$14,000.00; Timothy Fleming - \$10,000.00; Charles Brust - \$11,000.00 and Kierra Leavell and James Johnson - \$6,000.00. Payment of restitution should be a condition precedent to any application for reinstatement filed by Mr. Long.



Ryan P. Durham, Chair

Clinton L. Kelley by RPD w/perm.
Clinton L. Kelley

Douglas T. Bates, III by RPD w/perm.
Douglas T. Bates, III

NOTICE

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a Petition for Review in the Circuit or Chancery Court within sixty (60) days of the date of entry of the hearing panel's judgment.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Fletcher Whaley Long, 200 Foston Chapel Road, Hopkinsville, KY 42240, by U.S. First Class Mail, and hand-delivered to A. Russell Willis, Disciplinary Counsel, on this the 10th day of August, 2017.

A handwritten signature in cursive script, reading "Rita Webb", written over a horizontal line.

Rita Webb
Executive Secretary