

SUPREME COURT OF TENNESSEE

Fletcher Whaley Long v. Board of Professional Responsibility of the Supreme Court of Tennessee

435 S.W.3d 174 (Tenn. 2014) · No. M2013-01042-SC-R3-BP · Decided June 4, 2014

SUMMARY

The Tennessee Supreme Court affirmed a chancery court judgment upholding a hearing panel's public censure of attorney Fletcher Whaley Long for violations of professional conduct rules involving client fees, trust-account funds, fee accounting, and refunding unearned fees. The Court rejected Long's arguments concerning the sufficiency of the evidence, laches, and res judicata. It also addressed and rejected his facial constitutional challenge to Tennessee Supreme Court Rule 9, which governs attorney disciplinary proceedings.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Sharon G. Lee, Justice; Gary R. Wade, Chief Justice; Janice M. Holder, Justice; Cornelia A. Clark, Justice; William C. Koch, Jr., Justice
JURISDICTION	Tennessee
DECIDED	June 4, 2014
DOCKET	M2013-01042-SC-R3-BP
DISPOSITION	affirmed
PROCEDURAL POSTURE	Attorney appealed from the Montgomery County Chancery Court's affirmance of a Tennessee Board of Professional Responsibility hearing panel decision imposing a public censure.
STANDARD OF REVIEW	The Supreme Court applies the same standard of review as the trial court. Review of a hearing panel decision is limited to whether the decision violates constitutional or statutory provisions, exceeds jurisdiction, results from unlawful procedure, is arbitrary or capricious or an abuse of discretion, or is unsupported by substantial and material evidence in light of the entire record. The reviewing court does not reweigh evidence or substitute its judgment for the hearing panel's credibility determinations.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; precedential.

PARTIES

Fletcher Whaley Long v. Board of Professional Responsibility of the
Supreme Court of Tennessee

TOPICS

administrative law judicial review of agency action due process procedural due process
appellate procedure

PRACTICE AREAS

attorney discipline administrative law constitutional law appellate procedure professional responsibility

QUESTIONS PRESENTED

1. Whether the hearing panel acted arbitrarily, capriciously, or pursuant to unlawful procedure by imposing a public censure rather than private discipline.
2. Whether substantial and material evidence supported the findings that Long violated RPCs 1.4(a), 1.15(a), 1.16(d)(5), and 8.4(a).
3. Whether the disciplinary charges were barred by laches.
4. Whether the disciplinary charges were barred by res judicata based on a prior disciplinary matter involving Long.
5. Whether Tennessee Supreme Court Rule 9 is facially unconstitutional because it combines investigative, enforcement, and adjudicative functions, creates a financial incentive to pursue formal proceedings, or creates institutional bias in favor of finding misconduct and imposing discipline.
6. Whether the hearing panel erred by requiring notice to the Attorney General under Tennessee Rule of Civil Procedure 24.04 before considering Long's facial constitutional challenge.

HOLDINGS

1. The hearing panel's decision to impose a public censure was not arbitrary or capricious and was not based on unlawful procedure.
2. Substantial and material evidence supported the hearing panel's findings that Long violated RPCs 1.4(a), 1.15(a), 1.16(d)(5), and 8.4(a).
3. The doctrine of laches does not apply to Tennessee attorney-disciplinary proceedings brought by the Board of Professional Responsibility.
4. The disciplinary charges were not barred by res judicata because the prior disciplinary matter involved different clients, allegations, and facts and did not concern the same claim.
5. Rule 9 is not facially unconstitutional under due process principles merely because investigative, enforcement, and adjudicative functions are placed within the same Board, where those functions are performed by different groups of individuals and ultimate review is vested in the Supreme Court.

6. Rule 9 is not facially unconstitutional because its cost-assessment provisions do not create a constitutionally impermissible financial incentive or institutional bias in the adjudicatory body.
7. Tennessee Rule of Civil Procedure 24.04 does not apply to Long's facial challenge because the Board, a state agency, was a party to the disciplinary proceeding; however, the panel's contrary ruling was immaterial because the panel and trial court lacked jurisdiction to decide the facial validity of Rule 9.

KEY QUOTATIONS

“Because the investigatory/enforcement responsibilities and the adjudicative responsibilities are functionally separate within the Board, Rule 9 does not violate due process principles.” (-13-)

“The doctrine of laches does not apply in our attorney disciplinary proceedings.” (-7-)

FACTUAL BACKGROUND

Long represented Lawrence Earl Ralph in criminal matters after Ralph's brother paid Long \$7,500 under a written agreement providing for deposit into an escrow account and withdrawal as earned at \$200 per hour. Long did not deposit the money into his trust account, did not provide an accounting when requested, and did not refund allegedly unearned fees after the representation ended. The hearing panel credited the brother's testimony that the written agreement had not been orally modified and found that Long violated multiple professional-conduct rules.

PROCEDURAL HISTORY

The Board filed a petition for discipline against Long. A hearing panel found violations of Tennessee Supreme Court Rule 8, RPCs 1.4(a), 1.15(a), 1.16(d)(5), and 8.4(a), and imposed a public censure. The Montgomery County Chancery Court affirmed the panel's decision, and the Tennessee Supreme Court affirmed the chancery court's judgment.

DISPOSITION

affirmed

CASES CITED

- *Brown v. Board of Professional Responsibility*, 29 S.W.3d 445, 449 (Tenn. 2000)
- *Doe v. Board of Professional Responsibility*, 104 S.W.3d 465, 469-70 (Tenn. 2003)
- *Hughes v. Board of Professional Responsibility*, 259 S.W.3d 631, 640 (Tenn. 2008)
- *Board of Professional Responsibility v. Allison*, 284 S.W.3d 316, 323 (Tenn. 2009)
- *Board of Professional Responsibility v. Love*, 256 S.W.3d 644, 653 (Tenn. 2008)
- *Hoover v. Board of Professional Responsibility*, 395 S.W.3d 95, 103 (Tenn. 2012)
- *Ferrell v. Long*, No. M2008-02232-COA-R3-CV, 2009 WL 1362321 (Tenn. Ct. App. May 14, 2009)
- *Culp v. Board of Professional Responsibility*, 407 S.W.3d 201, 208 (Tenn. 2013)
- *Dennis Joslin Co. v. Johnson*, 138 S.W.3d 197, 200 (Tenn. Ct. App. 2004)

- Jansen v. Clayton, 816 S.W.2d 49, 51 (Tenn. Ct. App. 1991)
- Weinstein, 459 P.2d 548, 549 (Or. 1969)
- Creech v. Addington, 281 S.W.3d 363, 376 (Tenn. 2009)
- Richardson v. Tennessee Board of Dentistry, 913 S.W.2d 446, 459 (Tenn. 1995)
- Moulton v. Ford Motor Co., 533 S.W.2d 295, 296 (Tenn. 1976)
- In re Estate of Boote, 198 S.W.3d 699, 718-19 (Tenn. Ct. App. 2005)
- Sweatt v. Tennessee Department of Correction, 88 S.W.3d 567, 570 (Tenn. 2002)
- Lien v. Couch, 993 S.W.2d 53, 56 (Tenn. Ct. App. 1999)
- Lee v. Hall, 790 S.W.2d 293, 294 (Tenn. Ct. App. 1990)
- Jackson v. Smith, 387 S.W.3d 486, 491-92 (Tenn. 2012)
- Barger v. Brock, 535 S.W.2d 337, 342 (Tenn. 1976)
- Petition of Tennessee Bar Association, 539 S.W.2d 805, 807 (Tenn. 1976)
- State v. White, 362 S.W.3d 559, 566 (Tenn. 2012)
- In re Ruffalo, 390 U.S. 544, 550 (1968)
- Heyne v. Metropolitan Nashville Board of Public Education, 380 S.W.3d 715, 735 (Tenn. 2012)
- Moncier v. Board of Professional Responsibility, 406 S.W.3d 139, 151-53, 161 (Tenn. 2013)
- In re Hanson, 532 P.2d 303, 306 (Alaska 1975)
- People v. Varallo, 913 P.2d 1, 4-5 (Colo. 1996)
- In re Zoarski, 632 A.2d 1114, 1121 (Conn. 1993)
- In re Baun, 232 N.W.2d 621, 623-24 (Mich. 1975)
- Goldstein v. Commission on Practice of Supreme Court, 995 P.2d 923, 928 (Mont. 2000)
- Tweedy v. Oklahoma Bar Association, 624 P.2d 1049, 1054-55 (Okla. 1981)
- Connally v. Georgia, 429 U.S. 245, 251 (1977)
- In re Dender, 571 S.W.2d 491, 492 (Tenn. 1978)
- Ward v. Village of Monroeville, 409 U.S. 57, 58-60 (1972)
- In re Ross, 656 P.2d 832, 834-40 (Nev. 1983)