

SUPREME COURT OF KENTUCKY

Kentucky Bar Ass'n v. Marcum

377 S.W.3d 550 (Ky. 2012) · Decided September 20, 2012

SUMMARY

The Kentucky Supreme Court adopted the Kentucky Bar Association Board of Governors' recommendation to permanently disbar Leo Marcum. The court found Marcum guilty of committing six felony counts involving failure to file Kentucky income tax returns and failing to respond to disciplinary authorities. The court also ordered compliance with client-notification requirements and payment of \$1,443.93 in proceeding costs.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	John D. Minton, Jr.
JURISDICTION	Kentucky
DECIDED	September 20, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding arising from the Kentucky Bar Association's charges against Respondent. The Board of Governors found Respondent guilty by default and recommended permanent disbarment; the Supreme Court of Kentucky adopted the recommendation without ordering review.
STANDARD OF REVIEW	The court reviewed and adopted the Board of Governors' findings and recommendations; it determined that review under SCR 3.370(8) was unnecessary because neither party filed notice of review.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion and order; precedential attorney-discipline decision.

TOPICS

tax evasion tax appellate procedure civil procedure

PRACTICE AREAS

attorney discipline legal ethics tax offenses

QUESTIONS PRESENTED

1. Whether Marcum violated the applicable Kentucky Rules of Professional Conduct by committing criminal acts that reflected adversely on his honesty, trustworthiness, or fitness as a lawyer.
2. Whether Marcum violated SCR 3.130-8.1(b) by knowingly failing to respond to lawful demands for information from a disciplinary authority.
3. Whether permanent disbarment was the appropriate sanction in light of the six felony convictions, the failure to respond, and Marcum's extensive prior disciplinary history.

HOLDINGS

1. The court adopted the Board of Governors' finding that Marcum violated former SCR 3.130-8.3(b) and current SCR 3.130-8.4(b) by committing six felony offenses involving failure to file Kentucky state income taxes.
2. The court adopted the Board's finding that Marcum violated SCR 3.130-8.1(b) by knowingly failing to respond to lawful demands for information from the Kentucky Bar Association's disciplinary authority.
3. Permanent disbarment was warranted and was imposed because Marcum's six felony offenses, failure to respond to disciplinary authorities, and extensive prior disciplinary record demonstrated conduct sufficient to justify permanent removal from the practice of law.

KEY QUOTATIONS

“Respondent’s conduct in this case, the six felonies for committing crimes that reflect adversely on the lawyer’s honesty, trustworthiness, and fitness as a lawyer, would be more than sufficient to merit permanent disbarment.” (552)

“Including his previous disciplinary record, and his failing to respond to a lawful demand for information from a disciplinary authority, there can be no doubt that the Board was justified in recommending permanent disbarment.” (552)

FACTUAL BACKGROUND

Leo Marcum, a Kentucky lawyer admitted in 1971, pleaded guilty to six felony counts for failing to file Kentucky state income tax returns for tax years 2004 through 2009. After the Kentucky Bar Association served a misconduct complaint and repeatedly demanded information, Marcum failed to respond and filed no answer to the charges. He also had an extensive prior disciplinary record, including multiple reprimands, admonitions, and suspensions.

PROCEDURAL HISTORY

Respondent Leo Marcum failed to answer disciplinary charges alleging that he committed criminal acts reflecting adversely on his honesty, trustworthiness, and fitness as a lawyer and knowingly failed to respond to lawful demands for information from a disciplinary authority. The Board of Governors proceeded by default, found both counts proven, and recommended permanent disbarment. The Supreme Court adopted the Board's findings and recommendation and entered a permanent disbarment order.

DISPOSITION

other

CASES CITED

- Kentucky Bar Ass'n v. Leo Marcum, 830 S.W.2d 389 (Ky. 1992)
- Kentucky Bar Ass'n v. Leo Marcum, 28 S.W.3d 861 (Ky. 2000)
- Kentucky Bar Ass'n v. Leo Marcum, 292 S.W.3d 317 (Ky. 2009)
- Kentucky Bar Ass'n v. Leo Marcum, 308 S.W.3d 200 (Ky. 2010)
- Kentucky Bar Ass'n v. Leo Marcum, 336 S.W.3d 95 (Ky. 2011)

OPINION

Kentucky Bar Ass'n v. Marcum 377 S.W.3d 550

MINTON, J.

*551

OPINION AND ORDER

The Board of Governors (Board) of the Kentucky Bar Association (KBA) has recommended that Respondent, Leo Marcum, KBA Member Number 43870, with a Bar Roster Address of P.O. Box 178, Lowmansville, Kentucky, 41232, be permanently disbarred from the practice of law in the Commonwealth of Kentucky. Having reviewed the Board's findings of fact and conclusions of law, we now adopt its recommendation.¹ Respondent, Leo Marcum, was admitted to practice law in this Commonwealth on August 1, 1971. On June 23, 2011, Respondent pled guilty to six felony counts for failing to file Kentucky state income taxes from 2004 to 2009.² On July 29, 2011, pursuant to SCR 3.160(2), the Inquiry Commission issued a complaint of misconduct against the Respondent. On August 26, 2011, Respondent was served with the complaint via the Executive Director of the KBA pursuant to SCR 3.175(2) and informed that the Inquiry Commission required additional information from Respondent and that failure to respond could result in an additional charge of misconduct pursuant to SCR 3.130-8.1. Failing to respond, Respondent was served (via the Executive Director) a reminder letter and another copy of the complaint on September 13, 2011. The letter again advised the Respondent that failure to respond would subject him to an additional charge of misconduct, however, he failed to respond. The Inquiry Commission issued a Charge against Respondent on February 28, 2012, which was served by the Franklin County Sheriffs Office on April 3, 2012. Count I alleged violations of former SCR 3.130-8.3(b) and current SCR 3.130-8.4(b) (as the conduct took place both prior to and following the July 15, 2009, rule amendment), for committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. Count II alleged violation of SCR 3.130-8.1(b) for failing to respond to the numerous requests to respond to the bar complaint against him. SCR 3.130-8.1(b) requires that a lawyer shall not knowingly fail to

respond to a -lawful demand for information from a disciplinary authority. Respondent filed no answer to the charges. Pursuant to SCR 3.210 the case came before the Board by default. The Board concluded, by a vote of 19-0, that Respondent was guilty of the violations set forth in Counts I and II. In recommending an appropriate sanction, the Board considered Respondent's previous discipline. Respondent has extensive priors:

1. Public Reprimand on May 14, 1992, Kentucky Bar Ass'n v. Leo Marcum, 830 S.W.2d 389 (Ky.1992), for violation of DR 9-101(b) which is the equivalent of SCR 3.130-1.11 (conflict in successive government and private employment);
2. Public Reprimand on October 26, 2000, Kentucky Bar Ass'n v. Leo Marcum, 28 S.W.3d 861 (Ky.2000), *552 for violations of SCR 3.130-1.4(a) and (b) (communication);
3. Private Admonition on May 17, 2002, for violation of SCR 3.130-1.7(b) (conflict of interest);
4. Private Admonition on July 15, 2005, for violation of SCR 3.130-8.1(a) (false statement in a disciplinary matter);
5. Amended and Substituted Private Admonition on February 23, 2005, for violation of SCR 3.130-1.2(a) (failing to abide by a client's decision), SCR 3.130-1.3 (diligence), SCR 3.130-1.16(d) (termination of representation), and SCR 3.130-8.1(b) (failing to respond to disciplinary authority);
6. Suspended from the practice of law on August 27, 2009, for 181 days, Kentucky Bar Ass'n v. Leo Marcum, 292 S.W.3d 317 (Ky.2009), for violating SCR 3.130-1.15(a) (commingling) and SCR 3.130-8.3(c)3 (dishonesty, fraud, deceit, or misrepresentation);
7. Suspended from the practice of law on April 22, 2010, for one year, Kentucky Bar Ass'n v. Leo Marcum, 308 S.W.3d 200 (Ky.2010), for violations of SCR 3.130-1.1 (competence), SCR 3.130-1.3 (diligence), SCR 3.130-1.4(a) (communication), SCR 3.130-1.15(a) (commingling), SCR 3.130-1.15(b) (notifying clients of receipt of funds), SCR 3.130-3.2 (expediting litigation), SCR 3.130-8.1(b) (failure to respond to disciplinary authority), and SCR 3.130-8.3(c)4 (dishonesty, fraud, deceit, or misrepresentation);
8. Suspended from the practice of law on March 24, 2011, for three years, consecutive to any other suspensions, Kentucky Bar Ass'n v. Leo Marcum, 336 S.W.3d 95 (Ky.2011), for violating SCR 3.130-1.15(a) (commingling) and SCR 3.130-8.1(a) (false statement in a disciplinary matter).

Respondent's conduct in this case, the six felonies for committing crimes that reflect adversely on the lawyer's honesty, trustworthiness, and fitness as a lawyer, would be more than sufficient to merit permanent disbarment. Including his previous disciplinary record, and his failing to respond to a lawful demand for information from a disciplinary authority, there can be no doubt that the Board was justified in recommending permanent disbarment. We agree with the Board's recommendation without the need for further citation. No notice of review has been filed by either party, and this Court concludes that it is unnecessary to order review of this case under SCR 3.370(8). Therefore, pursuant to SCR 3.370(9), this Court hereby adopts the decision and recommendations of the Board. Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent Leo Marcum is adjudged guilty as charged in Count I and Count II as set out above;
2. Respondent is hereby permanently disbarred from the practice of law in the Commonwealth of Kentucky;
3. Respondent shall, within ten (10) days of the date of this Opinion and Order, notify all courts in which he has matters pending, if any, and shall notify all clients for whom he is actively engaged in continuing litigation or similar legal matters, if any, *553of his inability to continue to represent them and of the necessity and urgency of promptly retaining new counsel, and shall provide a copy of all such letters to the Office of Bar Counsel;
4. Respondent shall, to the extent possible, cancel and cease any advertising activities in which he is engaged; and
5. Respondent shall pay the costs of this proceeding, certified in the amount of \$1,443.93, for which execution shall issue upon finality of this Opinion and Order.

All sitting. All concur. ENTERED: September 20, 2012. /s/ John D. Minton, Jr. Chief Justice . The Respondent failed to file an answer contesting the charges, hence the case was before the Board as a default case. . On February 9, 2012, the Franklin Circuit Court entered a Judgment finding Respondent guilty and sentencing him to three years in prison. . Now SCR 3.130-8.4(c). . Now SCR 3.130-8.4(c).