

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)

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