

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

09-0042

In Re: :

Complaint against : Case No. 07-066

Eric Lamar Emerson : Findings of Fact,
Attorney Reg. No. 0072916 : Conclusions of Law and
Respondent : Recommendation of the
Board of Commissioners on
Cincinnati Bar Association : Grievances and Discipline of
the Supreme Court of Ohio

Relator :

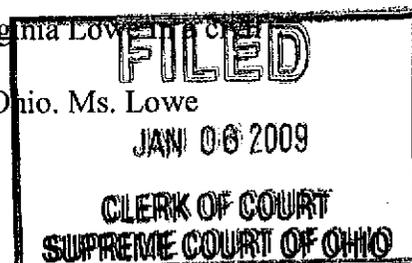
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came to final hearing on September 12, 2008 in Columbus, Ohio before panel members, Joseph L. Wittenberg, David E. Tschantz, and Francis E. Sweeney, Jr., Chair. Representing the Relator, Cincinnati Bar Association, were Anita S. Cross, and Robert J. Gehring. Respondent was pro se.

During 2006 and 2007 the Respondent, Eric Lamar Emerson, received grievances from four of his clients. These grievances became the basis for Relator's Complaint against him and are discussed below. Although initially represented by counsel, a Motion to Withdraw as such was granted halfway through these proceedings. Respondent admitted the essential facts of each count.

COUNT I - LOWE MATTER

In August, 2005, Respondent undertook representation of Uneek Virginia Lowe in a civil rights action in the United States District Court for the Southern District of Ohio. Ms. Lowe



advanced \$1,200 to Respondent for costs in her case. On August 25, 2005, Respondent filed a Notice of Appearance and an Amended Complaint on behalf of Ms. Lowe.

Thereafter, Respondent failed to appear at two scheduled depositions and failed to respond to requests for discovery in the case. Further during a telephone conference with the Court in October 2006, Respondent was ordered to immediately file a motion to withdraw as counsel or else continue on as Ms. Lowe's counsel. Respondent admitted he failed to file the motion to withdraw as required by the Court's order, and also failed to assist Ms. Lowe in advancing her case. In fact, on two occasions Ms. Lowe was forced to file motions herself to continue the proceedings.

Due to the Respondent's neglect of Ms. Lowe's case, she obtained new counsel to pursue her matter. Ms. Lowe requested the Respondent provide an itemized bill for services rendered and return her file. The Respondent admitted during the hearing that he failed to return her file or provide an accounting.

Respondent did not cooperate with the investigation. He failed to respond to the investigator's letters and did not provide a written response as promised in his deposition of March 20, 2007.

Based upon clear and convincing evidence and testimony, the panel finds violations of the following Rules:

- DR 6-101 (A)(3) (neglect of an entrusted legal matter);
- DR 7-101 (A)(1),(2), and (3) (intentionally fail to seek the lawful objective of his client, intentionally fail to carry out an employment contract and intentionally prejudice or damage his client);
- DR 7-106 (A) (failure to comply with an Order of a Judge);

- DR 9-102 (B)(3) (failure to maintain records of client funds);
- DR 9-102 (B)(4) (failure to promptly deliver the client's complete file);
- Gov. Bar R. V(4)(G) (failure to cooperate with the investigation).

COUNT II – WILKERSON MATTER

In November, 2005, Respondent joined Deborah K. Brown Gaines, as the primary litigation attorney in the representation of Chun Chan (aka Ruby) Wilkerson in a dispute with her ex-husband regarding certain real estate which was set for trial in early December.

Respondent received a retainer in the amount of \$2,500.00 from his client on or about December 1, 2005. During the litigation of this matter Ms. Wilkerson was ordered by the Court to sign documents transferring certain property rights to her ex-husband, pursuant to the divorce decree. When Respondent advised Ms. Wilkerson that she needed to sign these documents, the client demanded a refund of her money and reclaimed her file.

Respondent was unable to demonstrate whether he owes Ms. Wilkerson a refund of unearned fees or not, and admitted he failed to keep records accounting for his time. During the hearing Respondent admitted that he failed to respond to a request for an accounting, but otherwise believed he did everything he had a duty to do under the circumstances.

Respondent failed to respond to three letters from the investigator and did not provide a written response as promised in his deposition of April 27, 2007.

Based upon clear and convincing evidence and testimony the panel finds violations of the following Rules:

- DR 9-102 (B)(3) (failure to maintain records); and
- Gov. Bar R. V(4)(G) (failure to cooperate with the investigation).

COUNT III – WOODY MATTER

In March 2006, Respondent undertook representation of Henry Woody, Jr. regarding injuries he sustained in a motor vehicle accident.

Thereafter, Respondent failed to review the docket or the file at the clerk's office, request Mr. Woody's file from his original counsel, and failed to appear in court on Mr. Woody's behalf resulting in dismissal of the case for want of prosecution. Respondent also failed to communicate with his client and failed to return the case file when requested.

Respondent failed to respond to five letters from the Relator requiring the grievance committee to subpoena him for a March 20, 2007 deposition.

Based upon clear and convincing evidence and testimony the panel finds violations of the following Rules:

- DR 6-101 (A)(3) (neglect of an entrusted legal matter);
- DR 7-101 (A)(1),(2), and (3) (intentionally fail to seek the lawful objectives of his client, intentionally fail to carry out an employment contract and intentionally prejudice or damage his client);
- DR 9-102 (B)(4) (failure to promptly deliver the client's complete file);
- Gov. Bar R. V(4)(G) (failure to cooperate with the investigation).

COUNT IV – TALLEY MATTER

In May 2006, Respondent undertook representation of Michael Talley Jr., an Ohio resident who was arrested in Covington, Kentucky for DUI, weapons and drug charges. The family of Mr. Michael Talley paid the Respondent a retainer of \$2,500.00, to represent Talley Jr. on state charges in Kentucky. However, before Mr. Talley was indicted on state charges, the federal prosecutor took over the case. Anticipating federal charges the Respondent informed the family of Mr. Talley that his fees would be \$15,000.00 but that he would credit the

\$2,500.00 they already paid. The Talleys did not pay the additional fee, and their son was eventually represented by a federal public defender. (As a result of Respondent's actions he was disciplined by the Supreme Court of Kentucky and required to return a portion of his fees.)

Respondent failed to respond to four letters from Relator and following his deposition on April 27, 2007, failed to provide a written response.

Based upon clear and convincing evidence and testimony the panel finds a violation of the following Rule:

- Gov. Bar R. V(4)(G) (failure to cooperate with the investigation).

MITIGATION AND AGRAVATION

The panel notes that the key aggravating factor in this case is the Respondent's repeated failure to cooperate with the disciplinary process. He failed to provide written responses or cooperate in any of the four grievance investigations despite his repeated promises to do so. Respondent admitted that he repeatedly violated Gov. Bar R. V (4)(G). Respondent was initially represented by counsel, who filed an Answer to the Complaint, but has since withdrawn. The panel did not anticipate Respondent's attendance at the hearing of this matter until he appeared pro se.

Mitigating factors consist of no prior disciplinary record. Respondent also showed apparent remorse during the hearing. Further, during the hearing it became clear that there were other factors which contributed to Respondent's mental and emotional state surrounding the time of the grievances that revolved around his divorce from his wife. Upon questioning by the panel however, Respondent failed to elaborate. Although there is no evidence that this served as a mitigating factor, it is relevant to the overall milieu.

RECOMMENDED SANCTION

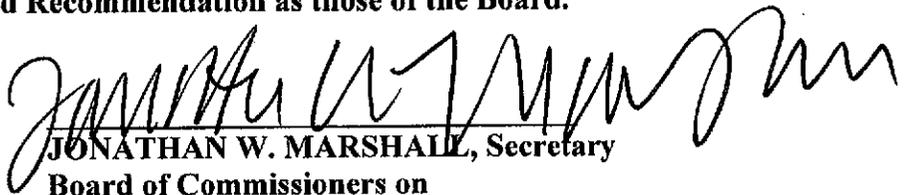
The panel is particularly concerned with the Respondent's failure to cooperate with the disciplinary process. Although the Rules that were violated were serious, of equal seriousness is Respondent's inability and/or unwillingness to cooperate.

Relator relied upon *Disciplinary Counsel v. Treneff*, 104 Ohio St. 3d 336, 2004-Ohio-6562, which levies an indefinite suspension on those Respondents who are found guilty of neglect and fail to cooperate in the disciplinary process. Thus the panel unanimously recommends an indefinite suspension from the practice of law.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 4, 2008. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. However, the Board, based on the nature of his misconduct in the record, recommends that the Respondent, Eric Lamar Emerson, be suspended from the practice of law for two years with one year stayed conditioned upon the assignment of a practice monitor. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.


JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio