IN THE SUPREME COURT OF OHIO

IN RE:	:	
Complaint Against:	:	Case No. 09-0042
ERIC L. EMERSON (#0072916),	:	
RESPONDENT	:	RELATOR'S OBJECTIONS
CINCINNATI BAR ASSOCIATION,	:	
RELATOR	:	

RELATOR'S OBJECTIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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RESPONDENT WAS THE SUBJECT OF FOUR GRIEVANCES FILED BY SEPARATE CLIENTS DURING A FIVE MONTH PERIOD. HE NEGLECTED THESE CLIENTS, FAILED TO ACCOUNT FOR THEIR FUNDS OR THEIR FILES, AND FAILED TO PROVIDE ANY WRITTEN RESPONSES TO THESE GRIEVANCES. THIS COURT HAS REPEATEDLY HELD THAT LAWYERS WHO NEGLECT CLIENT MATTERS AND FAIL TO COOPERATE IN GRIEVANCE INVESTIGATIONS WILL BE INDEFINITELY SUSPENDED. A UNANIMOUS HEARING PANEL FOLLOWED THAT MANDATE, BUT THE BOARD OF COMMISSIONERS DID NOT DO SO. RELATOR ASKS THIS COURT TO IMPOSE AN INDEFINITE SUSPENSION FROM THE PRACTICE OF LAW.

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IN THE SUPREME COURT OF OHIO

In re		
Complaint Against	:	
ERIC L. EMERSON (#0072916)	:	No. 09-0042
RESPONDENT	:	
	:	
	:	
	:	
	:	
CINCINNATI BAR ASSOCIATION	:	
RELATOR	:	

RELATOR'S OBJECTIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

Relator hereby objects to the Board's recommended sanction against the Respondent, Eric Lamar Emerson.

Relator submits the following brief in support of this objection.

STATEMENT OF FACTS

Relator accepts the Findings of Fact as presented by the Board. In addition, Relator requests this Court to take judicial notice of two recent disciplinary orders from the Supreme Court of Kentucky which are expected to be filed with the Clerk of this Court by the Disciplinary Counsel in accordance with the provision of Gov. Bar R. V §11 (F)(1). (*Kentucky Bar Ass'n v. Emerson* (Dec. 18, 2008), 2008-SC-000732-KB, *Kentucky Bar Ass'n v. Emerson* (Jan. 22, 2009), 2008-SC-00487-KB; attached in the appendix.)

At the conclusion of the hearing in this matter on September 12, 2008, the hearing panel chair ordered the filing of post-hearing closing briefs within six weeks of that date. Relator's brief was filed with the Board on or about October 23, 2008. To the best of Relator's knowledge, the record below contains no such filing by Respondent. Relator recommended that Respondent be indefinitely suspended from the practice of law in Ohio.

The hearing panel unanimously recommended an indefinite suspension from the practice of law. The Board recommended that Respondent be suspended from the practice of law for two years with one year stayed conditioned upon the assignment of a practice monitor.

In its Findings of Fact, the Board noted: "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." (Findings, p. 5) In fact, Respondent herein was publicly reprimanded by the Supreme Court of Kentucky on August 21, 2008, and this Court imposed its own public reprimand as reciprocal discipline on November 14, 2008 in Case No. 2008-1874, 120 Ohio St.3d 1206, 2008-Ohio-6352.

By order of December 18, 208, the Supreme Court of Kentucky suspended Respondent from the practice of law for 61 days. By order of January 22, 2009, the Supreme Court of Kentucky increased Respondent's suspension to 181 days. Upon information and belief, the Disciplinary Counsel of this Court will obtain certified copies of the two additional Kentucky disciplinary orders and file those with the Clerk of this Court pursuant to Gov. Bar R. V §11 (F)(1).

ARGUMENT

PROPOSITION OF LAW

RESPONDENT WAS THE SUBJECT OF FOUR GRIEVANCES FILED BY SEPARATE CLIENTS DURING A FIVE MONTH PERIOD. HE NEGLECTED THESE CLIENTS, FAILED TO ACCOUNT FOR THEIR FUNDS OR THEIR FILES, AND FAILED TO PROVIDE ANY WRITTEN RESPONSES TO THESE GRIEVANCES. THIS COURT HAS REPEATEDLY HELD THAT LAWYERS WHO NEGLECT CLIENT MATTERS AND FAIL TO COOPERATE IN GRIEVANCE INVESTIGATIONS WILL BE INDEFINITELY SUSPENDED. A UNANIMOUS HEARING PANEL FOLLOWED THAT MANDATE, BUT THE BOARD OF COMMISSIONERS DID NOT DO SO. RELATOR ASKS THIS COURT TO IMPOSE AN INDEFINITE SUSPENSION FROM THE PRACTICE OF LAW.

Over a period of merely five months, Respondent undertook representation of four separate clients. Respondent admits to neglecting the legal matters which were entrusted to him by these clients.[1] Furthermore, Respondent failed repeatedly to cooperate in Relator's investigation of these grievances. The only response which Relator was able to obtain resulted from the service of two deposition subpoenas on Respondent by the Sheriff. In fact, the hearing panel noted that Respondent's continuing failure to cooperate is the key aggravating factor in this case.[2]

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[1] Trial Transcript, p. 12.
[2] Findings, p. 5.

In *Disciplinary Counsel v. Treneff*, 106 Ohio St. 3d 336, 337, 2005-Ohio-6562, the respondent undertook representation of a client who was arrested for driving under the influence of alcohol. The respondent failed to appear at two hearings in the case, which resulted in the court issuing a warrant for his client's arrest. *Id.* at 337-38. After the client was arrested and released, he notified respondent of a new court date. On that date, the respondent once again failed to appear on his client's behalf, which led to his client's appearing without counsel and entering a guilty plea. *Id.* at 338. After this plea, the client repeatedly attempted to telephone the respondent, however the respondent failed to return any of these calls. *Id.*

Furthermore, the respondent failed to respond to the relator's inquiries into this matter or otherwise cooperate in the relator's investigation. *Id.* The Court found that the respondent had neglected an entrusted legal matter, failed to carry out a contract for professional employment, prejudiced his client, as well as failed to assist in an investigation of misconduct. *Id.* at 338. The Court ordered an indefinite suspension from the practice of law in Ohio, noting, "As we have consistently held, neglect of legal matters and the failure to cooperate in the ensuing disciplinary investigation warrant an indefinite suspension from the practice of law."[3]

In *Dayton Bar Assn. v. Fox*, 108 Ohio St. 3d 444, 444-45, 2006-Ohio-1328, the respondent was hired by a client to prepare a will. The respondent promised to contact the client soon after their initial meeting, but failed to do so. Six months later, the client hired a new attorney who tried to obtain the client's file, however the respondent failed to return it. *Id.* The respondent did not respond to the relator's repeated attempts to contact him in order to discuss these allegations. *Id.* at 445.

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[3] Citing *Cleveland Bar Ass. v. Judge* (2002), 94 Ohio St. 3d 331, 332, 763 N.E. 2d 114; *Akron Bar Assn. v. Snyder* (1999), 87 Ohio St. 3d 211, 212, 718 N.E. 2d 1271.

One year later, another client retained the respondent to represent him in a child custody matter. The respondent took no action on this client's behalf for two months then he told the client that he had prepared and filed a petition for custody. That statement was false. In fact, the respondent never took action on this client's behalf either. The Court affirmed the Board's findings that the respondent had neglected an entrusted legal matter, failed to return client property, acted dishonestly, and failed to cooperate in the disciplinary process. *Id.* The Court held that given the extensive history of neglect of legal matters paired with the failure to cooperate with a disciplinary investigation, an indefinite suspension was warranted. *Id.* at 446.

In *Columbus Bar Assn. v. Torian,* 106 Ohio St. 3d, 14, 15 2005-Ohio-3216, the respondent undertook representation of a client seeking parole. Thereafter, the respondent took no further action on the client's case. The respondent failed to cooperate with the relator's communications and request for documents pertaining to this matter. *Id.*

Later, the respondent was hired by another client to file an application for an executive pardon on his behalf. Although respondent collected a fee from the client, she failed to apply for his pardon. *Id.* at 16. The client terminated the representation, however the respondent failed to return the client's file and fee pursuant to his request. *Id.* at 16-17. The respondent was retained to file an application for commutation with the Ohio Parole Board. *Id.* at 17. Although the respondent gathered the relevant documents, she never filed the application as she had promised to do. The clients were unable to get in contact with the respondent for a period of eighteen months. When the respondent finally did agree to meet with the clients, she again promised to file the commutation application and subsequently failed to do so. The clients terminated the representation, but the respondent never returned their file or retainer fee. *Id.*

The Court affirmed the Board's findings that the respondent had neglected entrusted legal matters, failed to carry out a contract of employment, and failed to cooperate with a disciplinary investigation. *Id.* at 15-17. In light of the aforementioned misconduct, the Court once again ordered an indefinite suspension from the practice of law. *Id.* at 17.

Here, Respondent neglected his clients and repeatedly failed to cooperate with the grievance process. He offered no evidence in mitigation. Moreover, as is evident from the three Kentucky disciplinary proceedings, there is a persistent and continuing course of conduct by Respondent such that he neglects clients and fails to cooperate in the grievance process.

The Board's recommendation of a two-year suspension with one year stayed conditioned upon the appointment of a practice monitor is puzzling. The panel that heard the evidence recommended an indefinite suspension, consistent with this Court's repeated imposition of indefinite suspensions upon those attorneys who neglect their clients and fail to cooperate in the disciplinary process. The lesser sanction recommended by the Board would allow the respondent to begin practicing law in one year without any showing of rehabilitation.

Relator does not understand how a practice monitor would change Respondent's behavior. His unwillingness to respond to clients or disciplinary authorities is not related to office management deficiencies. Further, Relator has severe doubts as to whether a monitor will be effective. Respondent did not respond to disciplinary authorities in this matter and in three Kentucky cases. There is no reason to believe he will cooperate with a monitor.

An indefinite suspension will protect the public. If Respondent chooses to return to the practice of law, he will have to prove his fitness to practice law to this Court if an indefinite suspension is imposed. The Court can then determine what conditions, if any, should be imposed for his readmission.

CONCLUSION

Relator respectfully requests that this Court to reject the Board's recommended sanction and instead impose an indefinite suspension from the practice of law.

Respectfully submitted,

CINCINNATI BAR ASSOCIATION

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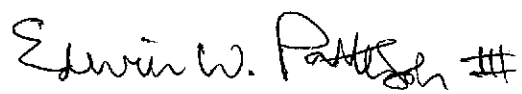
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Relator's Objections to the Findings of Fact, Conclusions of Law, and Recommendation of The Board of Commissioners on Grievances and Discipline was mailed by first class United States mail, postage prepaid, to Eric L. Emerson, Gateway Center West, 300 Madison Ave., Ste. 300, Covington, KY 41011 and to Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline, Supreme Court of Ohio, 65 S. Front St., 5th Floor, Columbus, OH 43215-3431.



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

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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 AGRAVATON

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

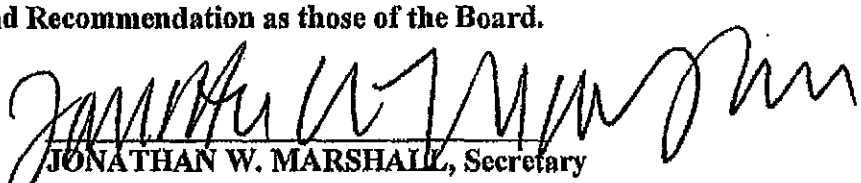
The panel is particularly concerned with the Respondent's failure to cooperate with the disciplinary process. Although the Rules that were violated were serious, of equal seriousness is Respondent's inability and/or unwillingness to cooperate.

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

AS MODIFIED: AUGUST 22, 2008
TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2008-SC-000353-KB

DATE 9-3-08 Ella Grauel D.C.

KENTUCKY BAR ASSOCIATION — MOVANT

V. — IN SUPREME COURT

ERIC LAMAR EMERSON — RESPONDENT

OPINION AND ORDER

The Board of Governors of the Kentucky Bar Association has recommended to this Court that Respondent, Eric Lamar Emerson, who was admitted to practice law in Kentucky in October 2002, whose Bar Roster Address is 300 Madison Ave, Suite 300, Covington, Kentucky 41011, and whose KBA Member Number is 89553, be publicly reprimanded, ordered to repay a client fee, and to attend remedial ethics education.

The Charge against Emerson stems from his taking a fee of $2500 from a client in a criminal case in July 2006 and later withdrawing without returning the fee. The client's mother, Barbara Talley, paid the fee, which according to her was to be one-half of the ultimate fee for representation. Emerson appeared in court on behalf of the client at a detention hearing. At the hearing, the judge ordered that any suppression motion be filed by July 28, 2006. Emerson then asked the client for a higher fee for the increased amount of work on the case; the client could not afford the higher fee. Emerson filed a motion to withdraw on July 28, stating that his representation only extended to the detention hearing. (Because Emerson has not responded to the

Complaint and did not appear at the hearing on this matter, this is the only statement we have from him about the scope of the agreed-upon representation). The motion was granted, and the client was represented by another attorney. After the withdrawal, the client's mother requested a refund and complained of inconvenience, delay, and misrepresentation.

Multiple copies of the resulting Bar Complaint were mailed to the bar roster address on file for Emerson at the time, but they were returned as undeliverable. Service was completed by sending a copy to the Executive Director of the KBA as agent of service. On May 27, 2007, Emerson was personally served with a copy of the Complaint by the Campbell County Sheriff's Office. Emerson did not respond to the Complaint.

On September 18, 2007, the Inquiry Commission returned a six-count Charge against Emerson alleging violations of SCR 3.130-1.1 (competence), SCR 3.130-1.3 (diligence), SCR 3.130-1.16(b) (withdrawal with adverse effects), SCR 3.130-1.16(d) (taking steps to protect a client's interests upon termination of representation), SCR 3.130-8.1(b) (failure to respond), and SCR 3.130-3.4(c) (knowing or intentional disobedience of an obligation under the rules of a tribunal for failing to update his bar roster address). A copy of the Charge was served on Emerson by certified mail. Emerson has never responded to the Charge.

Because Emerson never responded, the matter went to the Board of Governor's as a default case under SCR 3.210(1). The Board voted 17 to 2 to find Emerson not guilty of counts I to III (violations of SCR 3.130-1.1, 3.130-1.3 and 3.130-1.16(b)). The Board voted 19 to 0 to find Emerson guilty of counts IV to VI (violations of SCR 3.130-1.16(d), SCR 3.130-8.1(b), and 3.130-3.4(c)). During the penalty phase, twelve

members voted for a public reprimand, return of $1,250 of the fee, and completion of six hours of remedial ethics education; three members voted for a thirty-day suspension probated two years on the condition that he return $1,250 of the fee and complete six hours of remedial ethics education; three members voted a public reprimand; and one member voted for a public reprimand and return of $1,250 of the fee.

Neither Emerson nor Bar Counsel has filed a notice pursuant to SCR 3.370(8) for this Court to review the Board's decision, and we do not elect to review the decision of the Board pursuant to SCR 3.370(9). The decision of the Board is hereby adopted pursuant to SCR 3.370(10). We must note that the decision to discipline Emerson was not due to the amount of the fee he charged, which was not necessarily unreasonable or improper; rather, the discipline for his other violations, including his withdrawal on the day a suppression motion was due without taking reasonable steps to protect the client's interests. Nevertheless, because this matter proceeded by default and we see no reason not to accept the Board's recommendation, portions of the sanction imposed do relate to the fee itself.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Respondent, Eric Lamar Emerson, is publicly reprimanded for violating SCR 3.130-1.16(d), SCR 3.130-8.1(b), and 3.130-3.4(c).

2. Respondent shall return $1,250 to Barbara Talley.

3. Respondent shall attend six hours of remedial ethics education, to be approved by Bar Counsel, to be completed in a timely manner and for which Respondent will not apply for CLE credit of any kind, even if the courses he attends are approved for CLE in Kentucky. Respondent will furnish a release and waiver to the Office of Bar Counsel to review his records in the CLE department that might otherwise

Supreme Court of Kentucky

2008-SC-000353-KB

KENTUCKY BAR ASSOCIATION MOVANT

V. IN SUPREME COURT

ERIC LAMAR EMERSON RESPONDENT

ORDER

On the Court's own motion, the Opinion and Order rendered August 21, 2008 shall be modified on page 2, last paragraph, line 3. Pages 1 and 2 shall be substituted, as attached hereto, in lieu of pages 1 and 2 of the Opinion and Order as originally rendered. Said modification does not affect the holding.

Entered: August 22, 2208.

CHIEF JUSTICE

CINCINNATI BAR ASS'N.
REC'D Nov. 17, 2008

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CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

ON CERTIFIED ORDER OF
Supreme Court of Kentucky
Case No. 2008-SC-000353-KB

Disciplinary Counsel,
Relator,
v.
Eric Lamar Emerson,
Respondent.

Case No. 08-1874

ORDER

This cause is pending before the Supreme Court of Ohio in accordance with the reciprocal discipline provisions of Gov.Bar R. V(11)(F).

On September 22, 2008, relator, Disciplinary Counsel, filed with this court a certified copy of an order of the Supreme Court of Kentucky entered August 22, 2008, in *Kentucky Bar Association v. Eric Lamar Emerson*, in Case No. 2008-SC-000353-KB, publicly reprimanding respondent. On October 17, 2008, this court ordered respondent to show cause why identical or comparable discipline should not be imposed in this state. Respondent filed no response to the show cause order. This cause was considered by the court and on consideration thereof,

It is ordered and adjudged by this court that pursuant to Gov.Bar R. V(11)(F)(4), respondent, Eric Lamar Emerson, Attorney Registration Number 0072916, last known business address in Covington, Kentucky, be publicly reprimanded.

It is further ordered, sua sponte, by the court, that within 90 days of the date of this order, respondent shall reimburse any amounts that have been awarded against the respondent by the Clients' Security Fund pursuant to Gov.Bar R. VIII(7)(F). It is further ordered, sua sponte, by the court that if, after the date of this order, the Clients' Security Fund awards any amount against the respondent pursuant to Gov.Bar R. VIII(7)(F), the respondent shall reimburse that amount to the Clients' Security Fund within 90 days of the notice of such award.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, by certified mail to the most recent address respondent has given to the Office of Attorney Services.

It is further ordered that the clerk of this court issue certified copies of this order as provided for in Gov.Bar R. V(8)(D)(1), that publication be made as provided for in Gov.Bar R. V(8)(D)(2), and that respondent bear the costs of publication.

THOMAS J. MOYER
Chief Justice

I HEREBY CERTIFY that this document is a true and accurate copy of the entry of the Supreme Court of Ohio filed Nov. 14, 2008 in Supreme Court case number 2008-1874

In witness whereof I have hereunto subscribed my name and affixed the seal of the Supreme Court of Ohio on this 14th day of Nov., 2008

CLERK OF COURT
by _____, Deputy

TO BE PUBLISHED

Supreme Court of Kentucky

KENTUCKY BAR ASSOCIATION
OFFICE OF THE SECRETARY CLERK

2008-SC-000732-KB

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KENTUCKY BAR ASSOCIATION MOVANT

V. IN SUPREME COURT

ERIC LAMAR EMERSON RESPONDENT

OPINION AND ORDER

The Board of Governors of the Kentucky Bar Association has unanimously recommended to this Court that Respondent, Eric Lamar Emerson, who was admitted to practice law in Kentucky in October 2002, whose Bar Roster Address is Gateway Center West, 300 Madison Ave., Suite 200, Covington, Kentucky 41011, and whose KBA Member Number is 89553, be suspended from the practice of law for 61 days.

The Charge against Emerson stems from his failure to file two motions for shock probation in the Kenton County Circuit Court after his client paid him to do so. The client and others repeatedly tried to contact him about this matter to no avail, and the client instead filed his own pro se requests for shock probation. The time to file these motions had expired, and they were denied.

Prior to the Charge being issued in this case, the Bar Complaint was served upon Emerson by the Kenton County Sheriff on April 2, 2008. Emerson

made no response to the Bar Complaint. The Inquiry Commission issued a five-count Charge against Emerson on May 6, 2008. The five counts alleged that Emerson violated SCR 3.130-1.1 (competence),[1] SCR 3.130-1.3 (diligence),[2] SCR 3.130-1.4(a) (communication),[3] SCR 3.130-1.16(d) (failure to take reasonable steps to protect client's interest upon termination of representation),[4] and SCR 3.130-8.1(b) (failure to respond to demand from disciplinary authority).[5] Emerson signed a certified mail return receipt for the Charge on May 9, 2008, and a reminder letter was mailed to him on July 18, 2008. No Answer to the Charge was ever filed.

Since Emerson did not answer the Charge and he did not appear before the Board of Governors, this Charge proceeded as a default case pursuant to SCR 3.210(1). The Board voted 15 to 0 to find Emerson guilty of Counts I to IV (violations of SCR 3.130-1.1, 3.130-1.3, 3.130-1.4(a), and 3.130-1.16(d)). The

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[1] SCR 3.130-1.1 provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

[2] SCR 3.130-1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client."

[3] SCR 3.130-1.4(a) provides: "A lawyer should keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

[4] SCR 3.130-1.16(d) provides: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned."

[5] SCR 3.130-8.1(b) provides: ". . . [A] lawyer . . . in connection with a disciplinary matter, shall not:

. . .

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from . . . [a] disciplinary authority . . . ."

Board also voted 14 to 1 to find Emerson guilty of Count V (violation of SCR 3.130-8.1(b)).

The Board of Governors then considered the prior discipline of Emerson. On August 28, 2008, this Court publicly reprimanded Emerson for his violations of SCR 3.130-1.16(d), 3.130-8.1(b), and 3.130-3.4(c). See Kentucky Bar Ass'n v. Emerson, 260 S.W.2d 782 (Ky. 2008). After considering this prior discipline, the Board of Governors voted unanimously to recommend that Emerson be suspended from the practice of law for 61 days.

Neither Emerson nor Bar Counsel has filed a notice pursuant to SCR 3.370(8) for this Court to review the Board's decision, and we do not elect to review the decision of the Board pursuant to SCR 3.370(9). This Court sees no reason not to accept the Board's recommendation, and the decision of the Board is hereby adopted pursuant to SCR 3.370(10).

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Respondent, Eric Lamar Emerson, is suspended from the practice of law for 61 days for violating SCR 3.130-1.1, SCR 3.130-1.3, SCR 3.130-1.4(a), SCR 3.130-1.16(d), and SCR 3.130-8.1(b).

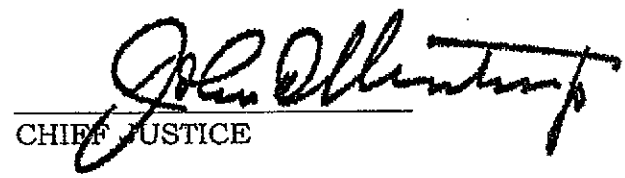
2. Pursuant to SCR 3.390, Respondent is directed to notify in writing all clients and all courts in which he has matters pending of his inability to practice law, within ten days from the date of entry of this Opinion and Order. Respondent is further directed to furnish copies of said letters of notice to the Director of the Kentucky Bar Association.

3. Respondent shall without delay, to the extent reasonably possible, cancel and cease any advertising activities in which he is engaged.

4. In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings in the amount of $449.42, for which execution may issue from the Court upon finality of this Order.

All sitting. All concur.

ENTERED: December 18, 2008.



CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

2008-SC-000487-KB

KENTUCKY BAR ASSOCIATION MOVANT

KENTUCKY BAR ASSOCIATION
OFFICE OF THE SECRETARY CLERK

V. IN SUPREME COURT

JAN 22 2009
FILED

ERIC LAMAR EMERSON RESPONDENT

OPINION AND ORDER

The Kentucky Bar Association (KBA) has moved this Court pursuant to SCR 3.370(8) to determine the limited issue of whether Eric Lamar Emerson, whose bar roster address is 300 Madison Avenue, Suite 200, Covington, Kentucky, 41011, and whose KBA number is 89553, is guilty of violating SCR 3.130-8.1(b) for failing to respond to the bar complaint filed against him. If this Court finds Emerson guilty of the charge, the KBA has also asked the Court to determine what effect, if any, that finding of guilt would have on Emerson's recommended discipline. Having found that Emerson is guilty of violating SCR 3.130-8.1(b), we conclude that the KBA's recommended discipline suspending Emerson from the practice of law for thirty days and requiring him to pay $750.00 to his former client is too lenient. In light of this subsequent finding of guilt and Emerson's history of ethical violations, we find

that in addition to repaying his former client $750.00, Emerson's period of suspension should be increased to 181 days.

Emerson was admitted to practice law in the Commonwealth of Kentucky in October 2002. On May 5, 2007, Michael Deckard hired Emerson to defend him in district court and paid Emerson $1,500.00 as part of their fee arrangement. Approximately one month later, on June 12, 2007, Deckard terminated his legal relationship with Emerson, complaining that Emerson failed to return his phone calls, would not explain anything to him, and lost some of the documents to be used in his defense. Following this termination, Emerson neither provided Deckard with a detailed billing nor an explanation of why he refused to refund any portion of the $1,500 fee, which was not fully earned. On August 27, 2007, Deckard filed a bar complaint against Emerson.

On October 24, 2007, the Disciplinary Clerk sent the bar complaint and a letter to Emerson via certified mail, informing Emerson of the twenty-day deadline for responses and reminding him that failing to respond to a lawful demand for information from the disciplinary authority could result in an additional charge of violating SCR 3.130-8.1. Although the return receipt for this letter was signed by someone other than Emerson, on December 3, 2007, the Campbell County Sheriff's Office personally served Emerson with a copy of the bar complaint. Having received no response from Emerson for over a month, on January 18, 2008, the Disciplinary Clerk sent a reminder letter to Emerson, which he personally signed for on January 25, 2008. Again, however, Emerson never responded.

Thereafter, on March 18, 2008, the Inquiry Commission issued a three count charge against Emerson, alleging that he violated SCR 3.130-1.4(a) and/or (b) (communication), SCR 3.130-1.16(d) (failure to follow proper steps on termination of representation), and SCR 3.130-8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority). The Kenton County Sheriff's Office personally served a copy of this charge and a letter explaining the twenty-day deadline to file an answer on Emerson on April 2, 2008. A reminder letter was mailed to Emerson on April 22, 2008, but the Bar Counsel never received a response or an answer from Emerson. Thus, on May 16, 2008, the KBA presented Emerson's charges to the Board of Governors as a default case. On July 7, 2008, the Board of Governors filed its findings of facts and conclusions of law, recommending that Emerson be found guilty of violating SCR 3.130-1.16(d) and not guilty of violating SCR 3.130-1.4(a) and/or (b). As to Emerson's charge of violating SCR 3.130-8.1(b), the Board was unable reach the required eleven votes to find Emerson guilty of this charge.[1] The KBA has sought review in this Court pursuant to SCR 3.370(8) to determine whether Emerson is indeed guilty of violating this charge. Emerson has not filed a reply brief to the KBA's position in this case. Having found that Emerson did fail to respond to a demand for information from a disciplinary authority, we agree with the KBA's recommendation that Emerson is guilty of violating SCR 3.130-8.1(b).

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[1] According to SCR 3.370(6), the findings of fact and disciplinary recommendations must be agreed upon by eleven members of the Board of Governors. In Emerson's case, only nine members found him guilty of failing to respond to a lawful demand for information, while six members found him not guilty.

SCR 3.130-8.1 states that "a lawyer . . . in connection with a disciplinary matter shall not . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority . . . ." Although this Rule does not expressly state that a bar complaint or a complaint issued by the Inquiry Commission is "a lawful demand for information," this Court has consistently adopted such an interpretation and has held that a lawyer who fails to respond to a bar complaint violates SCR 3.130-8.1(b). Heist v. KBA, 951 S.W.2d 326 (Ky. 1997) (finding an attorney guilty of violating SCR 3.130-8.1 when he failed to respond to two bar complaints filed against him and to the complaint issued by the Inquiry Tribunal); Gilliam v. KBA, 8 S.W.3d 571 (Ky. 2000) (holding that an attorney violated Rule 8.1 when he failed to respond to the bar complaint served on him by the sheriff); KBA v. Perry, 102 S.W.3d 507 (Ky. 2003) (finding a lawyer guilty of violating SCR 3.130-8.1 for failing to respond to a bar complaint); KBA v. Griffith, 186 S.W.3d 739 (Ky. 2006) (holding that an attorney violated SCR 3.130-8.1 for not responding to the charges brought by the KBA). Furthermore, Emerson has previously twice been found guilty of violating SCR 3.130-8.1(b) for this same conduct, *i.e.*, failing to respond to a bar complaint. KBA v. Emerson, 260 S.W.3d 782 (Ky. 2008); KBA v. Emerson, --- S.W.3d --- (Ky. 2008).

Here, despite the bar complaint personally served on Emerson in December 2007, the reminder letter sent in January 2008, the Inquiry Commission charge personally served on Emerson in early April 2008, and the second reminder letter sent in late April 2008, Emerson has repeatedly failed to

respond to any of the charges brought against him. Thus, Emerson plainly violated SCR 3.130-8.1(b).

As far as Emerson's discipline, we find that due to his numerous recent ethical violations, the KBA's recommendation of a thirty-day suspension and repayment of $750.00 is too light. In August 2008, this Court publicly reprimanded Emerson for violating SCR 3.130-1.16(d), SCR 3.130-3.4(c), and SCR 3.130-8.1(b). Emerson, 260 S.W.3d at 783. These violations stemmed from Emerson's conduct in July 2006, when he accepted a $2500 fee from a client, later withdrew as counsel without returning any portion of the fee, and failed to respond to both the bar complaint and the charges brought by the Inquiry Commission. Id. at 782. In December 2008, Emerson was suspended from the practice of law for 61 days for violating SCR 3.130-1.1, SCR 3.130-1.3, SCR 3.130-1.4(a), SCR 3.130-1.16(d) and SCR 3.130-8.1(b). Emerson, --- S.W.3d at ---. These charges were based on Emerson's failure to file two motions for shock probation in the Kenton Circuit Court after accepting payment from his client to do so, and his failure to respond to the complaint issued against him. Id. Having considered Emerson's prior disciplinary matters and the additional finding of guilt for violating SCR 3.130-8.1(b), we find that in addition to repaying the $750.00, Emerson should be suspended from the practice of law for 181 days. In addition, because the Board's findings and conclusions as to Emerson's other charge of violating SCR 3.130-1.16(d) are supported by the record and the law, we adopt this decision pursuant to SCR 3.370(10).

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Eric L. Emerson is adjudged guilty of violating SCR 3.130-1.16(d) and SCR 3.130-8.1(b).

2. Eric L. Emerson is suspended from the practice of law in this Commonwealth for a period of 181 days. The suspension shall commence from the date of entry of this order and shall continue until Emerson is reinstated pursuant to SCR 3.510(2).

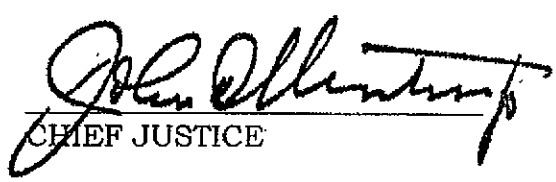
3. Eric L. Emerson is directed to refund $750.00 to Michael Deckard within thirty (30) days from the entry of this Opinion and Order.

4. Pursuant to SCR 3.390, Eric L. Emerson shall, within ten (10) days from the entry of this Opinion and Order, notify all clients, in writing, of his inability to represent them; notify, in writing, all courts in which he has matters pending of his suspension from the practice of law; and furnish copies of all letters of notice to the Executive Director of the Kentucky Bar Association. Furthermore, to the extent possible, Emerson shall immediately cancel and cease any advertising activities in which he is engaged

5. Pursuant to SCR 3.450, Emerson is directed to pay all costs associated with these disciplinary proceedings in the amount of $211.65.

All sitting. All concur.

Entered: January 22, 2009



CHIEF JUSTICE