

In the Supreme Court of Georgia

Decided: NOV 6 2006

PER CURIAM.

S06Y1079. IN THE MATTER OF JAMES A. ELKINS, JR.

This matter is before the Court on the Notice of Discipline filed by the State Bar against Respondent James A. Elkins, Jr. in which it alleged that Elkins violated Rule 9.3 of the Rules of Professional Conduct found in Bar Rule 4-102 (d). Although Elkins acknowledged service of the Notice of Investigation in this matter and filed a response, the response was not sworn in accordance with Bar Rule 4-204.3 (a). The State Bar advised Elkins that the rules required a sworn response, but Elkins never filed a proper response. The State Bar then filed the Notice of Discipline, which was personally served on Elkins but which he failed to reject. Therefore, under Bar Rule 4-208.1 (b), he is in default, has no right to an evidentiary hearing and is subject to the discipline of this Court.

The State Bar recommends that the Court impose a public reprimand, which is the suggested sanction for a violation of Rule 9.3.

After a review of the record, however, this Court disagrees with the State Bar that a public reprimand is appropriate due to the fact that Elkins has had five prior disciplinarys (a formal letter of admonition, three Investigative Panel reprimands and one public reprimand).¹ Under Bar Rule 4-103, a finding of a third or subsequent disciplinary infraction "shall, in and of itself, constitute discretionary grounds for suspension or disbarment." Therefore, it hereby is ordered that James A. Elkins, Jr. be suspended from the practice of law for a period of 90 days from the date of this opinion. He is reminded of his duties under Bar Rule 4-219 (c).

90-day suspension. All the Justices concur, except Hunstein, P.J., who dissents.

¹ Confidential discipline such as formal admonitions and Investigative Panel reprimands are waived in the event of subsequent discipline and may be used in aggravation and for the purpose of invoking Rule 4-103. Bar Rule 4-208.