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CLEVELAND BAR ASSOCIATION *v.* WITT.

[Cite as *Cleveland Bar Assn. v. Witt*, 1999-Ohio-198.]

Attorneys at law—Misconduct—One-year suspension with sanction stayed—Neglect of an entrusted legal matter—Failing to carry out contract of employment—Failing to cooperate in a disciplinary investigation.

(No. 98-827—Submitted December 2, 1998—Decided March 3, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 97-72.

{¶ 1} During 1996, relator, Cleveland Bar Association, made repeated unsuccessful attempts to contact respondent, C. David Witt of Cleveland, Ohio, Attorney Registration No. 0028987, with respect to a grievance filed against him. Relator then filed a complaint charging respondent with violations of DR 6-101(A)(3) (neglecting an entrusted legal matter), 7-101(A)(2) (failing to carry out a contract of employment), Gov.Bar R. V(4)(G) (failing to cooperate in a disciplinary investigation), and Gov.Bar R. V(11)(C) (refusal to obey a subpoena). Respondent did not answer the complaint, and relator filed a motion for a default judgment. Respondent did not oppose the motion.

{¶ 2} After considering the pleadings, a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board") found that after having been contacted by Audrey D. Tyus in November 1993 to pursue a matter against the Cleveland Metropolitan Housing Authority ("CMHA") for a suspected theft of belongings, respondent took no action and also failed to return her documents. The panel concluded that respondent had violated DR 6-101(A)(3), 7-101(A)(2), and Gov.Bar R. V(4)(G), but that he had not violated Gov.Bar R. V(11)(C), since relator did not prove that the subpoena had been served.

The panel recommended that respondent be suspended from practice for two years with one year stayed, provided that respondent take five hours of CLE professional responsibility courses during the two-year period and provided further that he be mentored by relator's designee. The panel further required as a condition of reinstatement that respondent make full restitution to Tyus for damages caused to her. The board adopted the findings, conclusions, and recommendation of the panel.

Robert J. Hanna and *Marjorie H. Kitchell,* for relator.

C. David Witt, pro se.

***Per Curiam*.**

{¶ 3} In response to our order to show cause why we should not adopt the report of the board, respondent filed objections, attaching an affidavit about his twenty-four years of practice, his public service, his former employment by CMHA, and his not having entered into a contract with Tyus. He also averred that he had not received any subpoena from relator and had not received any requests from Tyus for the return of documents. He further said that he had settled with Tyus. Respondent expressed his remorse and regret at not cooperating with relator's investigation, ascribing his failure to clinical depression for which he is currently being treated at the Cleveland Clinic. Respondent appeared at oral argument and made the same statements.

{¶ 4} We accept the findings and conclusions of the board. However, no evidence exists that the return receipt accompanying Tyus's demand for the return of her documents bore respondent's signature. Even Tyus's own affidavit states that the receipt was "[a]pparently" signed by respondent. Given these circumstances, we would have imposed only a public reprimand for respondent's violation of the Disciplinary Rules.

{¶ 5} But the evidence is clear that respondent also completely failed to cooperate with relator's investigation, failed to answer the complaint, and failed to reply to the default-judgment motion. Only after we issued an order to show cause did respondent awake to the consequences of his inaction and make a belated attempt to excuse and justify his failure to cooperate.

{¶ 6} Although we were impressed at oral argument by respondent's forthright admission of and remorse for his failure to abide by the Rules for the Government of the Bar, as we said in *Lake Cty. Bar Assn. v. Vala* (1998), 82 Ohio St.3d 57, 59, 693 N.E.2d 1083, 1084, "The requirement to cooperate in disciplinary investigations is rooted in the self-governing nature of the legal profession. As a corollary, each lawyer has a duty to participate in the regulation of the profession, even when he himself is the subject of the investigation." In this case, as in both *Vala* and in *Medina Cty. Bar Assn. v. Muhlbach* (1998), 83 Ohio St.3d 224, 699 N.E.2d 459, the relator may not have brought a disciplinary action had the respondent been forthcoming when first advised of the grievance. Therefore, agreeing with the board's conclusion that respondent violated Gov.Bar R. V(4)(G), we hereby suspend respondent from the practice of law in Ohio for one year with the entire year of the suspension stayed. No conditions are imposed. Costs are taxed to respondent.

Judgment accordingly.

DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER and LUNDBERG STRATTON, JJ., concur.

MOYER, C.J., and COOK, J., dissent and would suspend respondent from the practice of law for one year with six months stayed.