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

In Re:	:	08-0723
Complaint against	:	**Case No. 07-021**
Harry J. Wittbrod **Attorney Reg. No. 0066021**	:	**Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio**
Respondent	:	
Akron Bar Association	:	
Relator	:	

DISCIPLINE BY CONSENT

This matter was considered by a panel consisting of the Honorable Thomas F. Bryant, Jean M. McQuillan, and Sandra J. Anderson, Chair. None of the panel members is from the district from which the Complaint originated or served on the probable cause panel that certified this matter to the Board.

The panel was appointed by Entry filed on December 14, 2007. Within 60 days thereafter, specifically on February 11, 2008, the parties timely filed an "Agreement of Relator and Respondent Pursuant to BCGD Proc. Reg. Section 11: Consent to Discipline," a copy of which is attached hereto.

The Relator is represented by Joseph S. Kodish and Kathryn A. Belfance. The Respondent is represented by Matthew Oby.

FILED
APR 17 2008
CLERK OF COURT
SUPREME COURT OF OHIO

By the attached Agreement and Affidavit, Respondent admits to violating the following disciplinary rules, all stemming from his representation of one client, for whom he defended a workers' compensation claim in 2005 and 2006:

> DR 6-101(A)(3) (a lawyer shall not neglect a matter entrusted to him);
>
> DR 6-101(A)(1) (a lawyer shall not handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it);
>
> DR 1-104(A) and (B) (a lawyer shall inform a client if the lawyer does not maintain professional liability insurance);
>
> DR 6-102 (a lawyer shall not attempt to exonerate himself from or limit his liability to a client for malpractice); and
>
> DR 1-102(A)(5)[1] (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

Although the Complaint also included an allegation of failure to cooperate in violation of Gov. R. V(4)(G), the Consent recites that Respondent has cooperated fully since retaining legal counsel in this matter.

In summary: Respondent undertook the client's representation in an area of law in which he had little experience; he failed to timely file an appeal from an adverse ruling; he failed to advise the client that he did not have malpractice insurance; and he attempted to obtain an agreement to withdraw the disciplinary grievance in negotiating toward settlement of a legal malpractice case filed by the client.

No aggravating factors are presented. Mitigating factors include that Respondent has no prior disciplinary record and no dishonest or selfish motive; that he has cooperated

[1] The Consent to Discipline describes a violation entitled "Conduct Prejudicial to the Administration of Justice" but omits specific citation to DR 1-102(A)(5). This disciplinary rule is cited in Count V of the Relator's Complaint.

in the investigation and made full and free disclosure to Relator; that he has a good character and reputation; and that he is under counseling for depression. Respondent's affidavit reports that he received his law degree in 1995 and a Masters of Business Administration in 1996; that he has been a sole practitioner with a general practice focusing on bankruptcy, business law and estate planning; and that he intends to wind down his law practice and obtain employment in the private sector.

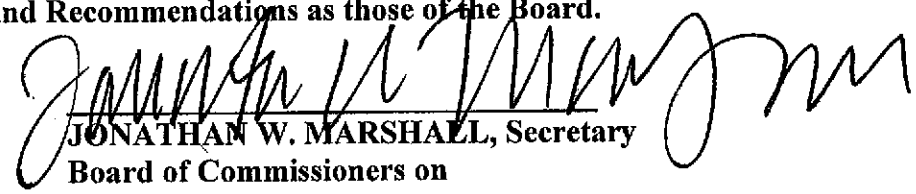
The parties have stipulated to the sanction of one year suspension, all stayed upon the condition that Respondent cooperates with a monitor appointed by Relator and that he continue treatment for depression until released by his treating healthcare provider.

The panel recommends acceptance of the Consent to Discipline, including the stipulated sanction.

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 April 11, 2008. The Board voted to accept and adopt the agreement entered into by the relator and respondent. The agreement sets forth the misconduct and the sanction of a one year suspension with the entire year stayed upon the conditions contained in the panel report which is the recommendation of the Board. 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 Recommendations as those of the Board.



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

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

IN RE:	)	
	)	Case No. 07-021
COMPLAINT AGAINST	)	
HARRY J. WITTBROD	)	
Registration No. 0066021	)	AFFIDAVIT OF
1630 Schiller Ave.	)	HARRY J. WITTBROD
Suite 1	)	
Cuyahoga Falls, OH 44223	)	
	)	
RESPONDENT	)	
	)	
VS.	)	
	)	
AKRON BAR ASSOCIATION	)	
57 S. Broadway	)	
Akron, OH 44308	)	
	)	
RELATOR	)	

AFFIDAVIT OF HARRY J. WITTBROD

STATE OF OHIO)
) SS
COUNTY OF SUMMIT)

Harry J. Wittbrod, being duly sworn and of lawful age and competence, deposes and says:

1. I am an attorney licensed to practice law in the State of Ohio since 1996.
2. I received my undergraduate degree from Bowling Green State University in 1985, my law degree from the University of Akron in 1995, and a Masters of Business Administration from the University of Akron in 1996.
3. I am a sole practitioner with a general practice focusing on bankruptcy, business law and estate planning.

4. I admit to committing the misconduct specified in the Amended Complaint and the Agreement; that grounds for sanctions against me exist for the misconduct;

   and that the agreement sets forth all grounds for discipline currently pending before the Board.

5. I admit the truth of the material facts relevant to the misconduct listed in the Agreement.

6. I agree with the sanction to be recommended to the Board.

7. My admissions and agreement are freely and voluntarily given, without coercion or duress, and I am fully aware of the implications of the admissions and agreement on my ability to practice law in the State of Ohio.

8. I understand that the Supreme Court of Ohio has the final authority to determine the appropriate sanction for the misconduct admitted herein.

9. There are no aggravating factors as specified in Section 10 of the Rules and Regulations.

10. There are mitigating factors pursuant to Section 10 (B) (2) of the Rules and Regulations. I have had no prior disciplinary penalties or sanctions. My conduct had no dishonest or selfish motive. I have acknowledged my error in failing to file the appeal since it first came to my attention. I made a timely good faith effort to rectify the consequences of my misconduct by admitting the misconduct. Although I recognize that it is no excuse, I was unaware of the ethical prohibition of requesting dismissal of the grievance proceedings as part of the settlement of the malpractice action. I cooperated with the Relator, freely admitted the misconduct, and stipulated to the facts herein.

11. I deeply regret my misconduct. I made a serious mistake and must face the consequences. I have the highest respect for the Bar and have always tried to act in accordance with the highest ethical standards. I have learned never again to compromise my principles.

12. It is my intention to wind down my law practice and obtain employment in the private sector.

13. I have been attending weekly therapy sessions with a psychologist in order to learn how to lessen the symptoms of stress and anxiety, and I will continue to do so.

HARRY J. WITTBRCD

Sworn to and subscribed in my presence this 11th day of February, 2008 in Akron, Ohio.

Notary Public--Attorney's Commission

MATTHEW W. OBY, Atty. at Law
Notary Public – State of Ohio
My Commission has no expiration date.
Section 147.03 R. C.
Recorded in Wayne County

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

IN RE:	)	
COMPLAINT AGAINST	)	CASE NO. 07-021
HARRY J. WITTBROD Registration No. 0066021 1630 Schiller Avenue Suite 1 Cuyahoga Falls, OH 44223	)	**AMENDED COMPLAINT AND CERTIFICATE** (Rule V of The Supreme Court Rules for the Government of The Bar of Ohio)
RESPONDENT	)	
AKRON BAR ASSOCIATION 7 West Bowery Street, Suite 1100 Akron, OH 44308	)	FILED SEP 07 2007 BOARD OF COMMISSIONERS ON GRIEVANCES & DISCIPLINE
RELATOR	)	

Now comes the Relator and alleges that Harry J. Wittbrod, an Attorney at Law, Registration No. 0066021, duly admitted to the practice of law in the State of Ohio, is guilty of the following misconduct:

PARTIES

1. The Akron Bar Association ("the ABA") is a Certified Grievance Committee under Gov. Bar R. V (3)(C).
2. Harry J. Wittbrod ("Wittbrod" or "Attorney") is an attorney at law licensed to practice in Ohio, Registration No. 0066021, with his office at 1630 Schiller Avenue, Suite 1, Cuyahoga Falls, OH 44223.
3. Gregory P. Feriance ("Feriance" or "Client") is the former client of Wittbrod and the complaining witness herein.

ALLEGATIONS OF FACT

4. Client met with Attorney on May 12, 2005 for a consultation relating to bankruptcy.

EXHIBIT A

5. As part of the financial issues, Attorney states that Client desired to defend a Workers' Compensation claim filed against him by an employee, Christopher Kittinger, who was injured as a result of a collision while he was parked waiting to make a delivery to the U.S. Post Office on behalf of Client.

6. On May 13, 2005, Client retained Attorney and paid him Five Hundred Dollars ($500.00) to defend the Workers' Compensation claim.

7. At all times herein, Client did not pay Workers' Compensation premiums.

8. Attorney represented Client from May 26, 2005 through March 15, 2006 with respect to the defense of the Workers' Compensation claim.

9. Attorney admitted to the Grievance Investigator that he was not very experienced in the Workers' Compensation area and did not ally himself with anyone experienced in the field.

10. Client received an adverse ruling from the Industrial Commission respecting the Workers' Compensation claim filed by Christopher Kittinger.

11. Client requested that Attorney appeal the adverse ruling to Summit County Common Pleas Court.

12. Attorney requested that Client pay a Two Hundred Dollar ($200.00) filing fee to file the appeal. Client delivered a $200.00 check to Attorney on January 2, 2006 in order to satisfy the filing fee requirement and Attorney admitted to the Grievance Investigator in October 2006 that he was still in possession of the filing fee.

13. Attorney states that he believed that the sixty (60) day time period for filing said appeal would have lapsed on December 27, 2005 and admits that he made an error.

14. Attorney now acknowledges that the sixty (60) day period would have lapsed on January 19, 2006.

15. Attorney failed to file the appeal in the Summit County Common Pleas Court within sixty (60) days of the date of the final entry.

16. Client has filed a lawsuit against Attorney for malpractice.

17. At all times mentioned herein, Attorney did not have malpractice insurance and Attorney failed to advise Client in writing of that fact and Attorney failed to obtain Client's signed acknowledgement.

COUNT ONE
FAILING TO ACT COMPETENTLY – DR 6-101(3)

18. Attorney, in accepting the representation of Client, neglected a legal matter entrusted to him by permitting the time period to file an appeal to lapse, thereby barring Client from pursuing an appeal of the decision of the Industrial Commission.

COUNT TWO
FAILING TO ACT COMPETENTLY – DR 6-101(1)

19. Attorney undertook to represent Client in a legal matter which he knew or should have known that he was not competent to handle, to wit: defense of a Workers' Compensation claim.

COUNT THREE
DISCLOSURE OF INFORMATION TO THE CLIENT – DR 1-104(A) and (B)

20. Attorney failed to inform Client at the time of Client's engagement that Attorney did not maintain professional liability insurance in the amount of at least One Hundred Thousand Dollars ($100,000.00) per occurrence and Three Hundred Thousand Dollars ($300,000.00) in the aggregate and, further, failed to provide Client with a separate form setting forth that Attorney did not have malpractice insurance and obtain Client's signed acknowledgement on said form.

ADDITIONAL ALLEGATIONS OF FACT

21. Client filed a Civil Action against Respondent for legal malpractice. Said case is identified as G. Feriance v. H. Wittbrod identified as case number CV 2006 08 5387 in the Summit County Common Pleas Court.

22. From November 2006 through May 2007, during settlement negotiations, Respondent repeatedly demanded, both orally and in writing, that Feriance withdraw his pending Grievance complaint with the Akron Bar Association as a condition for settlement of the malpractice case.

23. Respondent was notified by letter from Relator dated May 17, 2007, of the additional allegations against him. See attached "Exhibit B" which is incorporated herein.

24. Relator mailed to Respondent a follow-up letter dated July 9, 2007, a copy of which is attached hereto and incorporated herein and marked as "Exhibit C."

25. Respondent has failed to respond to either letter.

COUNT FOUR
LIMITING LIABILITY TO CLIENT DR 6-102, ORPC Rule 1.8 (h)

26. Attorney attempted to exonerate himself or limit his liability to his client for his personal malpractice.

COUNT FIVE
CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE DR 1-102(A)(5), ORPC Rule 8.4(d)

27. Attorney engaged in conduct prejudicial to the administration of justice by offering a financial incentive in order to interfere with the prosecution of the Respondent in the instance matter, to wit, the payment of $7,500 as well as other considerations.

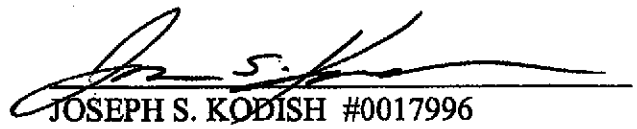
COUNT SIX
FAILURE TO COOPERATE GOV. R. V(4)(G)

28. Attorney has not responded to Relator's letters relating to the allegations set forth in the amended complaint since May of 2007.

REQUEST FOR RELIEF

Petitioner asks that such discipline be administered to Attorney as may be deemed appropriate following a hearing on the merits.

Respectfully submitted,



JOSEPH S. KODISH #0017996
Attorney for Relator
Legal Defender Office of Summit County, OH, Inc.
One Cascade Plaza, Suite 1940
Akron, OH 44308
(330) 434-3461
Fax: (330) 434-3371

KATHRYN A. BELFANCE #0018035
Kathryn A. Belfance & Associates, L.L.C.
One Cascade Plaza, Suite 2100
Akron, OH 44308-1134
(330) 535-0505
Fax: (330) 535-0411

CERTIFICATE

The undersigned Bar Counsel
(President, Secretary, Chairman of the Grievance Committee or Disciplinary Counsel)
of the Akron Bar Association

hereby certifies that Joseph S. Kodish and Kathryn A. Belfance

, are *duly authorized to*
(is or are)
represent Relator in the premises and have *accepted the responsibility of*
(has or have)
prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated August 31, 2007

Bar Counsel
(Title)

(Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.)

Section (4)

(4) (I) (8) *The Complaint; Where Filed; By Whom Signed.* A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall not be accepted for filing unless signed by one or more members of the Bar of Ohio in good standing, who shall be counsel for the Relator, and supported by a certificate in writing signed by the President, Secretary or Chairman of the Certified Grievance Committee, which Certified Grievance Committee shall be deemed the Relator, certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. It shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

Complaints filed by the Disciplinary Counsel shall be filed in the name of Disciplinary Counsel as Relator.

Upon the filing of a complaint with the Secretary of the Board, Relator shall forward a copy thereof to Disciplinary Counsel, to the Certified Grievance Committee of the Ohio State Bar Association, to the local bar association and to any Certified Grievance Committee serving the county or counties in which the Respondent resides and maintains his office and for the county from which the complaint arose.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing Complaint and Certificate was sent by Regular and Certified US Mail, postage prepaid, the 5th day of September, 2007 to:

Attorney Harry J. C. Wittbrod
1630 Schiller Ave.
Suite 1
Cuyahoga Falls, OH 44223

Stephen A. Fallis #0021568
Bar Counsel
Akron Bar Association
7 West Bowery Street, Suite 1100
Akron, OH 44308-1152
(330) 253-5007

COPY

akron bar association

(Serving all of Summit County)

VIA CERTIFIED & REGULAR U.S. MAIL

May 17, 2007

Attorney Harry J. C. Wittbrod
1630 Schiller Ave.
Suite 1
Cuyahoga Falls, OH 44223

Re: #07-050437G/AKRON BAR ASSOCIATION VS. WITTBROD

Dear Attorney Wittbrod:

Please be advised that the Akron Bar Association has received the enclosed complaint against you on May 4, 2007.

The investigation of this complaint has been assigned to:

Attorney Joseph S. Kodish, Chair
One Cascade Plaza
Suite 1940
Akron OH 44308
(330)434-3461

Attorney Kathryn A. Belfance
One Cascade Plaza, Ste. 2100
Akron OH 44308-1134

Mr. Virgil L. Brown
1858 McTaggart Dr.
Akron OH 44320

The investigation will be in accordance with Rule V of the Rules for Government of the Bar of Ohio, and the Bylaws of the Grievance Committee of the Akron Bar Association.

You are reminded of every attorney's obligation under Rule V. Section 4(G) of the Supreme Court Rules for the Government of the Bar to cooperate fully with the investigator and the Bar Association in this investigation. As you know, failure to

EXECUTIVE OFFICE ◆ 7 WEST BOWERY STREET, SUITE 1100, AKRON, OHIO 44308-1152 ◆ 330-253-5007 ◆ FAX 330-253-2140 ◆ http://www.akronbar.org

WILLIAM D. DOWLING, President
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GERALD J. GLINSEK

EXHIBIT B

cooperate in a disciplinary investigation can, in and of itself, constitute a violation of the Code of Professional Responsibility.

In addition to discussing this complaint fully and candidly with the investigator, you should provide a written response and copies of all relevant documents relating to the complaint to the assigned investigator and Jackie M. Forcina, Grievance Director, within seven (7) days from the RECEIPT of this letter. (An extension beyond seven (7) days must be requested in writing to the Grievance Director.)

PLEASE NOTE: Gov. Bar R. V Sec 11 (E) (3) requires us to share your response with the complainant, absent your expressed written request that your response not be turned over. If you choose not to share your response with the complainant, please execute the enclosed request and return it to my office. (THE FORM SHOULD BE RETURNED TO THE BAR OFFICE WITHIN SEVEN (7) DAYS FROM THE DATE OF THIS LETTER WITH YOUR WRITTEN RESPONSE.) A copy of your response directed to the complaint will not constitute a waiver of any other right to privacy or confidentiality provided by Rule V.

Please be advised that if the investigator is unable to reach you, if you do not respond to the investigator's efforts or to the admonitions of this letter, the investigator may assume that all facts set forth in the complaint are accurate and issue a report accordingly. So, we urge you to contact the investigator at your first convenience.

In any event, the assigned investigators must act on this complaint within approximately thirty (30) days from the date of the complaint and it is therefore imperative that the investigation be completed expeditiously and that you cooperate fully and promptly.

Yours very truly,

CERTIFIED GRIEVANCE COMMITTEE
OF THE AKRON BAR ASSOCIATION

Stephen A. Fallis Jr

Stephen A. Fallis, Bar Counsel
Certified Grievance Committee

Enclosure

cc: Assigned Investigator/Grievance Chair/Vice Chair

7003 1010 0001 6913 0754

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CERTIFIED MAIL™ RECEIPT

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05-17-07

Sent To ATTY. HARRY J.C. WITTBROD

Street, Apt. No.; or PO Box No.

City, State, ZIP+4

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Attorney Harry J. C. Wittbrod
1630 Schiller Ave.
Suite 1
Cuyahoga Falls, OH 44223

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☒ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1010 0001 6913 0754

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE

18 MAY 2007 PM 1 L

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Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

AKRON BAR ASSOCIATION
7 W BOWERY ST STE 1100
AKRON, OH 44308-1152

CUYAHOGA FALLS OH 44223
MAY 18 2007
USPS

RECEIVED
MAY 21 2007
Akron Bar Association

52

akron bar association
(Serving all of Summit County)

July 9, 2007

RECEIVED
JUL 12 2007
Akron Bar Association

Akron Bar Association
7 W. Bowery St.
Akron, Ohio 44308
Attn: Steven Fallis
Bar Counsel

RE: 07-050437G/AKRON BAR ASSOCIATION vs. WHITTBROD

Dear Steve:

Per our discussion of July 9, 2007 enclosed please find a copy of the letter that I have directed to Attorney Whittbrod.

Yours truly,

Joseph S. Kodish
Chair

EXHIBIT C

EXECUTIVE OFFICE ◆ 7 WEST BOWERY STREET, SUITE 1100, AKRON, OHIO 44308-1152 ◆ 330-253-5007 ◆ FAX 330-253-2140 ◆ http://www.akronbar.org

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MARC B. MERKLIN
JOHN L. REYES
L. TERRENCE UFHOLZ
HON. BRENDA BURNHAM UNRUH

Ex-Officio:
CARMEN V. ROBERTO

Bar Counsel:
STEPHEN A. FALLIS

akron bar association
(Serving all of Summit County)

July 9, 2007

Harry J.C. Whittbrod
Attorney at Law
163 Schiller Ave. Suite One
Cuyahoga Falls, OH 44223

RE: 07-050437G/AKRON BAR ASSOCIATION vs. WHITTBROD

Dear Attorney Whittbrod:

This letter shall serve to confirm the fact that the Akron Bar Association has not received a response from the letter directed to you May 17th 2007 concerning the above-captioned matter.

Also this letter shall further serve to confirm the fact that you are in default in the matter of case number 07-021 with the Board of Commissioners and Grievances and Discipline of the Supreme Court of Ohio.

Please be mindful that your lack of response could be interpreted as a failure to cooperate which in an additional violation of the Disciplinary Rules.

Yours truly,

Joseph S. Kodish

Cc: Akron Bar Association
Attn: Steven Fallis

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Ex-Officio:
CARMEN V. ROBERTO

Bar Counsel:
STEPHEN A. FALLIS

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

FILED
FEB 11 2008
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

IN RE:	)	
	)	Case No. 07-021
COMPLAINT AGAINST HARRY J. WITTBROD Registration No. 0066021 1630 Schiller Ave. Suite 1 Cuyahoga Falls, OH 44223	)	AGREEMENT OF RELATOR AND RESPONDENT PURSUANT TO BCGD PROC.REG.SECTION 11: CONSENT TO DISCIPLINE
RESPONDENT	)	
VS.	)	
AKRON BAR ASSOCIATION 57 S. Broadway Akron, OH 44308	)	
RELATOR	)	

AGREEMENT OF RELATOR AND RESPONDENT PURSUANT TO BCGD PROC. REG. SECTION 11: CONSENT TO DISCIPLINE

The parties respectfully submit this Agreement pursuant to Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline of the Supreme Court Of Ohio.

Attorney Harry J. Wittbrod met with client, Gregory Feriance, on May 12, 2005 for a consultation relating to bankruptcy. After an analysis of the various issues, it was decided that Attorney Wittbrod would represent Mr. Feriance in defending a Workers' Compensation claim filed by one of his employees. Mr. Feriance had not paid his Workers' Compensation premiums.

On May 13, 2005, Mr. Feriance retained Attorney Wittbrod and paid him Five Hundred Dollars ($500.00) to defend the Workers' Compensation claim. Attorney

Wittbrod represented Mr. Feriance from May 26, 2005 through March 15, 2006 with respect to the defense of the Workers' Compensation claim. Attorney Wittbrod admitted to the Grievance Investigator that he was not very experienced in the Workers' Compensation area and did not ally himself with anyone experienced in the field.

Mr. Feriance received an adverse ruling from the Industrial Commission respecting the Workers' Compensation claim filed by his employee. Mr. Feriance requested that Attorney appeal the adverse ruling to Summit County Common Pleas Court. Attorney Wittbrod requested that Mr. Feriance pay a Two Hundred Dollar ($200.00) filing fee to file the appeal. Mr. Feriance delivered a $200.00 check to Attorney Wittbrod on January 2, 2006 in order to satisfy the filing fee requirement and Attorney Wittbrod admitted to the Grievance Investigator in October 2006 that he was still in possession of the filing fee.

Attorney Wittbrod states that he believed that the sixty (60) day time period for filing said appeal would have lapsed on December 27, 2005 and admits that he made an error. Attorney Wittbrod now acknowledges that the sixty (60) day period would have lapsed on January 19, 2006. Attorney Wittbrod failed to file the appeal in the Summit County Common Pleas Court within sixty (60) days of the date of the final entry. Mr. Feriance has filed a lawsuit against Attorney Wittbrod for malpractice.

At all times mentioned herein, Attorney Wittbrod did not have malpractice insurance and Attorney Wittbrod failed to advise Mr. Feriance in writing of that fact and Attorney Wittbrod failed to obtain Mr. Feriance's signed acknowledgement.

Mr. Feriance filed a civil action against Attorney Wittbrod for legal malpractice. Said case is identified as G. Feriance v. H. Wittbrod, Summit County Common Pleas Court, Case No. CV 2006 08 5387.

From November 2006 through May 2007, during settlement negotiations, Attorney Wittbrod requested, both orally and in writing, that Mr. Feriance withdraw his pending Grievance complaint with the Akron Bar Association as a condition for settlement of the malpractice case.

This matter was referred to the Certified Grievance Committee of the Akron Bar Association, Relator herein. The matter was thoroughly investigated and a formal complaint filed with the Board of Commissioners on March 16, 2007. A probable cause

panel was assigned, probable cause was found to exist for the filing of a formal complaint, and the panel certified the complaint to the Board of Commissioners. Attorney Wittbrod filed his Answer to the Amended Complaint on 29th day of November 2007, admitting all of the allegations of fact contained in paragraphs one through seven and denying the two counts of misconduct in paragraphs eight and nine.

Although Attorney Wittbrod initially did not respond to the investigation, he cooperated fully with the investigation by Relator subsequent to obtaining legal counsel in this matter. He freely acknowledged his misconduct and admitted to the facts contained in the Amended Complaint. Attorney Wittbrod expressed his shame and remorse to the investigating attorneys of the Grievance Committee. He also took full responsibility for his conduct and expressed a willingness to accept the consequences of his actions.

There are no aggravating factors as contained in BCGD PROC.REG. Section 10. There are mitigating factors as contained in BCGD PROC.REG. Section 10 as follows: Attorney Wittbrod has no prior disciplinary record; he had no dishonest or selfish motive; he made a timely good faith effort to rectify the consequences of his misconduct; he made a full and free disclosure of his misconduct to Relator; he cooperated fully with the investigation of this matter upon obtaining legal counsel, he is known to have good character and reputation, he states that he is suffering from depression and is currently obtaining counseling for that condition.

Attorney Wittbrod, as evidenced in his attached Affidavit, admits to his misconduct as follows:

FAILING TO ACT COMPETENTLY – DR 6-101(3)

Attorney Wittbrod, in accepting the representation of Client, neglected a legal matter entrusted to him by permitting the time period to file an appeal to lapse, thereby barring Client from pursuing an appeal of the decision of the Industrial Commission.

FAILING TO ACT COMPETENTLY – DR 6-101(1)

Attorney Wittbrod undertook to represent Client in a legal matter which he knew or should have known that he was not competent to handle, to wit: defense of a Worker's Compensation claim.

DISCLOSURE OF INFORMATION TO THE CLIENT – DR 1-104(A) and (B)

Attorney Wittbrod failed to inform Client at the time of Client's engagement that Attorney did not maintain professional liability insurance in the amount of at least One Hundred Thousand Dollars ($100,000.00) per occurrence and Three Hundred Thousand Dollars ($300,000.00) in the aggregate and, further, failed to provide Client with a separate form setting forth that Attorney did not have malpractice insurance and obtain Client's signed acknowledgment on said form.

LIMITING LIABILITY TO CLIENT DR 6-102

Attorney attempted to exonerate himself or limit his liability to his client for his personal malpractice.

CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE

Engaging in conduct prejudicial to the administration of justice to wit offering a financial incentive in order to interfere with the prosecution of the Relator in the instance matter to wit the payment of $7,500 as well as other considerations.

The parties agree that the appropriate sanction for his misconduct is one year suspension from the practice of law, with the entire one year stayed conditioned upon Respondent cooperating with a monitor of his practice to be appointed by Relator and continued treatment for his depression until released by his treating healthcare provider.

Respectfully submitted,

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