STATE OF MAINE

Board of Overseers of the Bar
Grievance Commission
File Nos. 86-198 and 87-K-8

BOARD OF OVERSEERS OF THE BAR

v. REPORT

CALVIN B. SEWALL

By Petition dated February 26, 1988, Respondent was charged with violation of several Bar Rules in connection with two unrelated matters and violation of Bar Rule 2(c) for his failure to cooperate in Bar Counsel's investigation of those matters. A hearing open to the public was held on April 20, 1988, at the Probate Courtroom in the Cumberland County Courthouse in Portland. Petitioner was represented by J. Scott Davis, Esq.; Respondent appeared pro se.

A number of exhibits were received in evidence without objection and sworn testimony was received from Respondent and Frances Stapelin, Complainant in File No. 87-K-8. Bar Counsel and Respondent were afforded an opportunity to argue their respective positions at which time Bar Counsel contended that the evidence would support findings that Respondent had violated Bar Rule 3.4(a), (c), (d) and (j), Bar Rule 3.5(b)(2), and Bar Rule 3.1(a) as well as the Bar Rules specifically enumerated in the Petition which were Bar Rule 2(c), Bar Rule 3.2(f)(4), and Bar Rule 3.6(a)(2) and (3). The Panel also considered Bar Rule 3.4(b) and (e).

Because Respondent never filed or served an Answer, all of the factual allegations of the Complaint were treated as admitted in accordance with Rule 7(e)(1). Those admissions, coupled with the evidence at hearing, unmistakably established violation of Rule 2(c) and at least some of the other Rules identified above. Based upon this record and all the attendant circumstances, there is probable cause for Bar Counsel to file an Information with the Court seeking Respondent's suspension or disbarment on at least some of the grounds advanced in the Petition and at the Hearing.

In some respects, the evidence was not as clear or complete as it might have been had Respondent not violated Rule 2(c) by failing to respond until he appeared at the Hearing. Obviously, more or different evidence may be presented to the Court. For example, Respondent was engaged to represent the Estate and the Personal Representative and there was some confusion in the testimony concerning the nature of Respondent's relationship to the Beneficiaries of the Estate. There was no evidence concerning what disclosures were or were not made by Respondent to the Personal Representative; it was not established by the evidence that all of the Beneficiaries' grievances were properly directed at Respondent as distinguished from the Personal Representative; and there was evidence that there was some disagreement among the Beneficiaries as to the appropriate course of action.

Since the matter will be heard and determined de novo by the Court, the present determination that Respondent has violated some Bar Rules has no bearing whatever upon Petitioner's contentions that Respondent has also violated others. It is for the

Court and not the Commission to determine ultimately what Bar Rules will properly govern disposition of the Information.

DATED: May 02, 1988

Gerald F. Petruccelli, Chairman

David B. Soule, Jr.

Donald A. Leeber