On November 25, 2019, with due notice, Panel D of the Grievance Commission conducted a public disciplinary hearing pursuant to M. Bar R. 13(e)(7), concerning misconduct by the Respondent, James F. Daily III. This disciplinary proceeding had been commenced by the filing of a Disciplinary Petition by the Board of Overseers of the Bar (the “Board”) on August 1, 2019.

At the hearing, the Board was represented by Assistant Bar Counsel Alan P. Kelley. Mr. Daily did not appear.

FINDINGS

Respondent James F. Daily III of Needham, MA was, at all times prior to his administrative suspension and relevant hereto, an attorney duly admitted to practice law in the State of Maine. As such, he is subject to the Maine Rules of Professional Conduct and the Maine Bar Rules.

Effective October 16, 2018, Mr. Daily was administratively suspended by the Board pursuant to M. Bar R. 4(g)(2) due to his failure to comply with the annual registration requirement of M. Bar R. 4(a), and the continuing legal education credit hours requirement of M. Bar R. 5(a). On December 14, 2018, a
sua sponte complaint was docketed and filed by Bar Counsel alleging that Mr. Daily had violated M. R. Prof. Conduct 8.4(a) and M. Bar R. 4(k)(8) based upon his failure to file the required "notification affidavit" attesting to his compliance with M. Bar R. 4(k) in light of his suspension from practice in Maine, effective October 16, 2018.

On January 4, 2019, Bar Counsel mailed to Mr. Daily a letter notifying him of his obligation to file an affidavit pursuant to M. Bar R. 4(k)(8). Mr. Daily did not respond. On March 1, 2019, Bar Counsel mailed a letter requesting comments and a response to the complaint. Mr. Daily did not respond. Mr. Daily's failure to respond to Bar Counsel's inquiries was in violation of M. R. of Prof. Conduct 8.1(b).

On July 2, 2019, a three-member panel of the Grievance Commission reviewed the grievance complaint and the results of Bar Counsel's investigation, found probable cause to believe he had engaged in misconduct subject to sanction under the Maine Bar Rules, and authorized Bar Counsel to prepare and present a formal disciplinary petition pursuant to M. Bar R. 13(e).

Accordingly, on August 1, 2019 Bar Counsel filed a formal disciplinary petition alleging that Mr. Daily had violated M. Bar R. 4(k)(8) and M. R. of Prof. Conduct 8.1(b) and 8.4(a) and (d). Mr. Daily did not respond to the petition.

Mr. Daily did not appear at or otherwise participate in the November 25, 2019 hearing in this matter, nor did he show good cause for his failure to appear.

As of the date of the hearing, Mr. Daily remains suspended from the practice of law in Maine, and he has not addressed the administrative failures that caused his suspension to be imposed.
Mr. Daily’s failure to respond within the prescribed time to the formal disciplinary petition in this matter constitutes an admission of the factual allegations and misconduct alleged therein. M. Bar R. 13(e)(3) and 20(a).

Furthermore, Mr. Daily’s failure to appear at the disciplinary hearing without good cause constitutes an admission of the factual and misconduct allegations that were the subject of the hearing. M. Bar R. 20(b). For these reasons, the Panel accepts the facts and misconduct alleged in the disciplinary petition and at hearing. Specifically, the Panel finds the Mr. Daily violated M. Bar R. 4(k)(8) and M. R. of Prof. Conduct 8.1(b) and 8.4(a) and (d).

CONCLUSION AND SANCTION

Having concluded that Mr. Daily violated M. Bar R. 4(k)(8) and M. R. of Prof. Conduct 8.1(b) and 8.4(a) and (d), the Panel must issue an appropriate sanction. The purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who, by their conduct, have demonstrated that they are unable to properly discharge their professional duties. The Grievance Commission relies on M. Bar R. 21(c) for guidance as to the proper factors to consider and apply in the issuance of an appropriate disciplinary sanction, which are as follows:

1. Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

2. Whether the lawyer acted intentionally, knowingly, or negligently;

3. The amount of the actual or potential injury caused by the lawyer’s misconduct; and

4. The existence of any aggravating or mitigating factors.
In this matter, Mr. Daily violated his duties to the legal system by failing to complete the annual registration requirements, by failing to file the required notification affidavit once he was administratively suspended, and by failing to respond to Bar Counsel's inquiries in this matter. Mr. Daily's neglect caused minor injury to the legal system. The Maine Supreme Judicial Court promulgated the Maine Bar Rules and the Maine Rules of Professional Conduct to govern the practice of law by Maine attorneys. The information collected by the annual registration of lawyers facilitates the protection of the public and courts. Respondent's continuing failure to file an affidavit complying with M. Bar R. 4(k)(8) is an aggravating factor.

For the above-stated reasons, the Panel concludes that the appropriate disposition of this case is a Public Reprimand to James F. Daily III, which is now hereby issued and imposed upon him pursuant to M. Bar R. 21(b)(5).

Date: [June 16, 2019]

[Signatures]

Carolyn A. Silsby, Esq.
Chair

L. Dennis Carrillo, Esq.

Tim I. Marks
Public Member