STATE OF MAINE

Before the Grievance Commission
Grievance Commission
File No. 95-K 39

BOARD OF OVERSEERS OF THE BAR,

Petitioner

v.

DAVID L. BROOKS,

Respondent

REPORT OF FINDINGS &
CONCLUSIONS OF PANEL E
OF THE GRIEVANCE
COMMISSION

On March 18, 1996, pursuant to due notice, Panel E of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1(e)(2), to determine whether there were grounds for the issuance of a reprimand or whether probable cause existed for the filing of an information concerning alleged misconduct by Respondent David L. Brooks as described in the petition dated November 9, 1995 filed by Bar Counsel of the Board of Overseers of the Bar.

Petitioner was represented by Karen G. Kingsley, Assistant Bar Counsel. Respondent David L. Brooks was represented by Robert E. Mongue, Esq. The record in this matter includes the pleadings, testimony from witnesses David L. Brooks, Esq. and William Dunn, Esq., and Exhibits offered and admitted into evidence by both parties.

FINDINGS OF FACT

Respondent is an attorney admitted to and engaged in the practice of law in the State of Maine. Respondent is also a Judge of Probate. Respondent has for many years owned "Hurd Manor", a large Victorian Mansion located in North Berwick, Maine. Respondent resides in Hurd Manor, maintains his law office in Hurd Manor, and has leased out space at Hurd Manor to other tenants. The adjacent property and buildings located thereon are owned by Tilcon Maine, Inc. (the "Tilcon property"). Until 1988 Tilcon operated a paving contractor business from the Tilcon property. In 1988 Tilcon moved the operation to another location. Since that time, Tilcon has leased the Tilcon property to others, including Hussey Seating Company.
Respondent, for years, had been Tilcon's legal counsel, and until 1991 Tilcon was Respondent's biggest client. Respondent's representation of Tilcon had commenced in the early 1980's. At one time he represented Tilcon in the preparation of a lease of the Tilcon property by a truck repair business. The representation of Tilcon included collection matters. Respondent knew he was being "phased out" as counsel for Tilcon in 1991. In 1991, however, Respondent filed several collection actions in Maine District Court as attorney of record for Tilcon. (91-CV-50, 91-CV-51, 91-CV-179). After filing these cases Respondent took no further action on the cases, and in 1995 he received from the District Court notices of dismissal of the cases, pursuant to M.R.Civ.P. 41(b). Respondent also represented Tilcon in a collection action against Bartlett Farms. On November 16, 1994, Respondent wrote to Tilcon that he had collected a compromised amount on the Bartlett Farms account, and Respondent charged a 27% fee (in excess of $10,000) on the amount collected. Referring to the "successful outcome" of the Bartlett case, Respondent wrote "Hopefully, we can have similar success in our future dealings."

In 1988, Respondent asked Tilcon if he could store some personal property items (mostly architectural salvage, spare lumber, window shutters, etc.) in a building located on Tilcon's property, and Tilcon agreed. There was no written document evidencing this agreement. Also in 1988 Respondent approached Tilcon concerning a possible purchase of the Tilcon property by Respondent. Negotiations between Respondent and Tilcon continued, and in 1992 a purchase and sale agreement was signed. The agreement was contingent on Respondent obtaining financing and approval by the Planning Board of Respondent's plans for the property. A closing on the property did not take place, and on September 30, 1993 Tilcon (through the President's assistant, Richard Johnson) wrote to Respondent requesting that he remove any and all property he was storing on the property so that Tilcon could proceed to market the property. Tilcon also requested that Respondent and his tenants observe and respect the property line.

On October 12, 1993, Respondent wrote to Mr. Johnson of Tilcon listing matters he needed to resolve in order for Respondent to purchase the Tilcon property, including dealing with Planning Board and DEP issues, financing issues, and "certification of grandfather rights by Tilcon" at the property. In this strongly worded letter, Respondent criticized Tilcon's "tactic of telling me to get out of the carriage barn" and invited Tilcon to commence eviction proceedings if they thought it would hasten his departure, but Respondent also said he would consider his own legal remedies if he considered his property at risk. In the same letter he attempted to continue negotiations on the price of the Tilcon property. Respondent criticized the deadlines he contended Tilcon had arbitrarily imposed on the closing, and the
"accompanying threats" and how they wear thin their relationship. Respondent stated "Then all we have left is that you screw me and I screw you and we both end up screwed." Respondent sent a copy of this letter to Manley Gove, a realtor who apparently was marketing the Tilcon property, and to "clients", who Respondent testified were his "investors" in the financing of the purchase (and who were also his clients in other matters).

On November 5, 1993, Respondent again wrote to Mr. Johnson, providing an "update" of Respondent's activities with regard to the property, including that he has "kept my clients informed as to my activities and we continue to discuss the project." These "clients" were the same "investors" to whom Respondent had sent a copy of the October 12th letter. He stated that he was still having trouble financing the project, and expressed a desire to advertise for prospective "commercial tenants", and an intention to approach potential investors to sell shares to raise the necessary capital (he said he had already approached one investor who was interested). Respondent also attempted to negotiate the price by suggesting a lower purchase price $125,000, or having Tilcon hold some paper to free up some of his available cash. Respondent also noted that Tilcon was considering dividing the buildings and putting the back buildings for sale. He expressed an interest in purchasing the carriage barn, and stated that "I think I could get approval of the existing roadway to serve the back property, as is, and would be willing to help as part consideration for the carriage barn."

Respondent admitted that during the negotiations concerning the purchase of the Tilcon property, and the drafting and execution of the purchase and sale agreement, Tilcon was not represented in the transaction by independent counsel. Respondent did not advise Tilcon to seek independent professional advice of counsel with regard to the transaction (or with regard to the dispute over the storage of Respondent's property on the Tilcon property), and did not obtain written consent from Tilcon pursuant to Maine Bar Rule 3.4(f)(2).

By June 1994 Respondent still had not removed his personal property from the Tilcon property. At the request of Tilcon, William R. Dunn, Esq. (Attorney Dunn) sent Respondent a letter dated June 6, 1994, reiterating Tilcon's request that Respondent remove his property, and requested that he do so within fourteen days. On July 7, 1994 Attorney Dunn wrote to Respondent informing him that since Respondent had not removed his property as requested, Tilcon will place the items back onto Respondent's real estate within one week.
On July 12, 1994 Respondent responded in writing to Attorney Dunn's June 6 letter. In this strongly worded letter, Respondent stated that he took Tilcon's position as a "personal affront" and decided that he would "respond accordingly." Respondent contended that he was a "tenant at will" with regard to the storage of the property. He contended that, with the agreement and/or acknowledgment by Dick Johnson of Tilcon, and as "consideration" specifically in return for the use of the space, he had "kept an eye on the place for Tilcon" and "mowed the grass on that part of Tilcon's property which lies within what would otherwise look like my yard." As a result, he demanded entitlement to receive "eviction process" and stated that "any breach of my rights as a tenant will be met with vigorous prosecution of all available remedies." In later pleadings, Respondent contended that other consideration for the creation of this tenancy was his providing gratuitous legal services for Tilcon as part of his duties as regular counsel for them in various legal matters over a period of several years.

In the same letter, he accused Tilcon of escalating the situation by having Attorney Dunn tell him to "get out (in your diplomatic way) instead of them telling me." He stated "if they want to get personal, I can get very personal right back." Respondent then stated that Tilcon's use of the property and the use of it by Tilcon's tenants have been illegal, on the basis that any "grandfather" rights that Tilcon and its tenants had, which would have exempted them from applicable zoning regulations, had been lost from non-use of the property after Tilcon moved from the property. He also complained of the sounds and smells from the operation of the activities on the property.  

In the letter, Respondent claimed that there were two ways to protect himself from the damage he asserted he was sustaining from activities on the Tilcon property: (1) to purchase the property and control the uses (although he claimed he had been unable to do this because of Tilcon's lack of cooperation with Respondent); or (2) to demand and pursue enforcement of zoning laws. He stated that "if forced to" he would take action to establish that the "grandfather rights" pertaining to use of the Tilcon property had been lost, but "if I were to acquire the property, I would not want to pursue this course of action." He accused Tilcon of backing him into a corner and stated that this time he is prepared to "come out scratching." He "tried to get

1 On July 13, 1994, Petitioner wrote to Hussey Seating Company, Tilcon's tenant, complaining of the use of machinery and offending noise at the property, and how it was disturbing Petitioner and his own tenants. He also told Hussey that its activities were unlawful under the zoning ordinance. He requested that Hussey make changes to their operation to ameliorate the noise at the property.
this message across to [Tilcon]" when the issue of his removing his property from the barn came up, but they did not get the message. He expressed that he had wanted to buy the property for a long time, but he had been frustrated in his efforts by Tilcon's positions and Tilcon's broker's advice. Respondent wrote: "I have knowledge about facts and law which would, if property presented, destroy the grandfather privilege on the entire Tilcon property. A way to have silenced me would have been to do business with me on some sort of reasonable basis." He criticized Tilcon for hiring a lawyer to evict him, and noted that "this could be the beginning of a blood bath," the "bottom line" of which would be that "Tilcon would have a set of buildings they cannot sell or even use." Respondent said "before that happens" he would like the opportunity to "cut a deal" that would help them both, and that "A new attitude would do them a whole lot of good." Respondent asked that the subject of the letter be kept "strictly confidential" with Tilcon in order to protect the information in his letter, in the event they were able to come to a "deal". In a "p.s." to the letter, Respondent threatened to sue for damages if Tilcon disturbs his property as suggested in Attorney Dunn's July 7, 1994 letter.

Tilcon, through Attorney Dunn, then commenced eviction proceedings against Respondent. On September 2, 1994, Respondent wrote a letter to Dick Johnson (with a c.c. to Attorney Dunn), in which he stated that he had just received a "Notice to Quit" regarding his eviction, and "Before (sic) I take the next step, I wanted to make sure there was no chance of making a deal." Respondent then offered to take an option to buy the property under terms set forth in the letter. He stated "If I don't take the option, then I'll shut up and go away."

On September 7, 1994 Attorney Dunn wrote to Respondent advising him not to police the Tilcon property, not to mow the lawn, and to advise his tenants not to park on the Tilcon property. On October 26, 1994 Attorney Dunn realized that he had not properly identified a party in the eviction proceeding and the Petition was dismissed so that he could renew the procedure properly (the Complaint was refiled and on December 28, 1994, a judgment was rendered to plaintiff by agreement, and an order for a Writ of Possession to issue to Tilcon on June 15, 1995). On November 8, 1994 Tilcon placed boulders on its own property in an effort to keep Respondent's tenants off its property, and on December 12, 1994, Respondent went on Tilcon's property and removed the boulders.

On December 19, 1994 Respondent handed Attorney Dunn an eleven count complaint entitled David L Brooks v. Tilcon (York County Superior Court CV-94-679), alleging Illegal Eviction, Trespass, Declaratory Relief (to
determine the existence of an easement by prescription), Nuisance, Breach of Contract, Intentional Infliction of Emotional Distress, and Punitive Damages. The Complaint related Respondent's version of many of the events relating to the storage of the property and Respondent's attempts to purchase the Tilcon property, and included an allegation that during various negotiations when Plaintiff [Respondent] was trying to buy the property, Defendants "exploited Plaintiff's passion for acquiring the Tilcon property by making unrealistic demands and setting unrealistic time limits." Respondent also filed for injunctive relief against Tilcon. On January 13, 1995, Tilcon, through Attorney Dunn filed an answer and counterclaim against Respondent.

Also on December 19, 1994 Respondent sent Attorney Dunn by Facsimile transmission a Rule 41(B) list (M.R.Civ.P. 41(B)) from the Maine District Court in Springvale indicating that two cases in which Respondent was still representing Tilcon (which were filed in 1991) were on the list. Respondent later faxed to Attorney Dunn a second Rule 41 list from the District court, and a copy of a complaint relating to a case in which Respondent was the attorney for Tilcon and which was filed in 1991. After receiving the first list, Attorney Dunn, at the instruction of Tilcon successfully moved to restore the cases to the docket, and eventually settled the cases by recovering some money for Tilcon. The case on the later list was not pursued by the client.

CONCLUSIONS AND DISCUSSION

The Board of Overseers of the Bar contend that the Respondent has conducted himself in a manner unworthy of an attorney and should receive disciplinary action for violating several provisions of the Maine Bar Rules: 3.1(a); 3.4(a); 3.4(b)(1)(2); 3.4(c)(1), (2); 3.4(f)(1),(2); 3.5(b)(2)(ii); 3.6(c); 3.6(f)(1),(2); and 3.7(a). Respondent denied these contentions.

A. Conflict of Interest

Pursuant to Maine Bar Rule 3.4 a lawyer has a continuing duty to disclose to a client "any information that, in light of circumstances arising after the commencement of representation, might reasonably give rise to" a conflict of interest. The Rule precludes a lawyer from continuing representation of a client if the representation would involve a conflict of interest. Representation would involve a conflict of interest if "there is a substantial risk that the lawyer's representation of one client would be
materially and adversely affected by the lawyer's duties to another current client,. . .or by the lawyer's own interest" Maine Bar Rule 3.4(a) and (b)(1).

Respondent continued to represent Tilcon in legal matters, including at least three collection actions in the District Court and a legal matter involving Bartlett Farms, at the same time he was vigorously attempting to protect his own adverse interests against positions taken by his client, Tilcon with respect to Respondent's unsuccessful attempts to purchase the Tilcon property, and the eviction of his personal property from the Tilcon property. This representation continued at the time Respondent was writing hostile and threatening letters to or concerning his client, Tilcon, and continued while litigation was pending against him for eviction by Tilcon. He remained counsel of record in collection actions pending in the District Court at the same time Respondent filed an eleven count Complaint against his client, Tilcon, in the Superior Court.

Respondent made no disclosures to Tilcon regarding his representation in these matters, as required by 3.4(a). Respondent's continued representation of Tilcon in the collection matters, under these circumstances and in light of the intensity of the feelings expressed by Respondent towards Tilcon, his threats to Tilcon, the institution of litigation against Tilcon, and the eviction proceeding against Respondent by Tilcon, created a substantial risk that his representation of the client would be materially and adversely affected by his own interests. Pursuant to Maine Bar Rule 3.4(f), except with the informed written consent of the client, a lawyer shall not commence representation if there is a substantial risk that any financial interest of the lawyer will materially and adversely affect the lawyer's representation of the client. An attorney has a continuing duty to the client under this section, even after commencement of representation. Respondent neither obtained informed written consent from Tilcon for his continued representation of them, nor did he withdraw from representation. Maine Bar Rule 3.5(a)(2). Although Respondent's representation of Tilcon had been declining, the fact is that he did commence representation of Tilcon in the collection matters in 1991 and continued to represent Tilcon into 1995 when he received the Rule 41(b) notices. Respondent was required to immediately withdraw from employment as attorney for Tilcon at least no later than the date of the institution of the eviction proceeding against him by Tilcon.

We also believe that Respondent violated Rule 3.4(c)(2). As we note in our discussion of Rule 3.6(f), infra, Respondent was representing himself in legal matters involving the use and purchase of the Tilcon property. This was simultaneous with his representation of Tilcon in the pending collection and the Bartlett legal matters. Under these circumstances, Rule 3.4(c)(2) required
informed consent of each affected client to representation of the other, even though representation did not involve the same or substantially related matters. Respondent did not obtain informed consent from Tilcon.

We conclude that Respondent's conduct constituted a violation of Maine Bar Rules 3.4(a), (b)(1) and (b)(2); 3.4(c)(2); 3.4(f)(1); and 3.5(a)(2).

B. Avoiding Adverse Interests

Maine Bar Rule 3.4 (f)(2) prohibits a lawyer from knowingly acquiring a property or pecuniary interest adverse to a client, or entering into any business transaction with a client unless (A) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully described and transmitted to the client in manner and terms which should have reasonably been understood by the client, (B) The client is advised and given a reasonable opportunity to seek independent professional advice of counsel of the client's choice on the transaction; and (C) The client consents in writing thereto.

There are at least two instances in which, during the period when there existed an attorney/client relationship between Respondent and Tilcon, these provisions were implicated. The first was in 1992 when Respondent entered into a Purchase and Sale Agreement with Tilcon for the Tilcon property. The second was the agreement of storage, which Respondent contends resulted in the creation of a landlord/tenant relationship between Respondent and Tilcon. In addition, these provisions may well have been implicated with regard to Respondent's obtaining financing for the "project" from investors who were also his clients, although on this record we are unable to discern enough facts to rule on this aspect.

Respondent admits that in all three of these occurrences, he did not advise the client to seek independent professional advice, nor did the client consent in writing. With regard to the Purchase and Sale agreement, he stated that Tilcon was represented by a real estate broker. The broker, however, was not an attorney. He further contends that Tilcon is a large business with other attorneys in Maine and that Tilcon often engages in the purchase and sale of property, although he did not testify that these facts played any part in his not following the requirements of Rule 3.4(f)(2). Indeed, he knew that no other attorney was representing Tilcon in the business transactions between Tilcon and himself. Nevertheless, these
contentions, if accurate, would not exempt Respondent from following the requirements of Rule 3.4(f)(2).

Respondent asserted in legal documents and in correspondence that he performed caretaking services, and gratuitous legal services for Tilcon which constituted consideration for his use of the Tilcon property, resulting in his acquiring a legally protected tenancy interest in the property. This, however, had not been disclosed and transmitted to the client at the commencement of the storage arrangement, or prior to his being asked to remove the property. Respondent therefore did not fully disclose and transmit to the client the transaction and terms in which the lawyer acquired the interest in a manner and terms which should have reasonably been understood by the client, as required by Rule 3.4(f)(2). Additionally, it is clear that at the time Tilcon allowed Respondent to store personal property at the Tilcon property, Tilcon did not understand that this would create any formal tenancy relationship, since Respondent testified that this occurred over time. Had this been disclosed or had Tilcon been advised to seek the advice of separate counsel, it is likely that the result would have been different - either permission would have been denied or Tilcon's interests in the property would have been protected. We cannot conclude, under these circumstances, that the storage agreement, which according to Respondent resulted in him acquiring a continuing tenancy interest in the property, was fair and reasonable to the client. Since a copy of the Purchase and Sale Agreement was not offered in evidence, we are unable to evaluate the fairness of its provisions.

We conclude that Respondent had a duty to follow the provision of Rule 3.4(f)(2), and that he did not.

**CONDUCT DURING REPRESENTATION**

Petitioner alleges that Rule 3.6(c) and Rule 3.6(f) were violated by the Respondent.

A. Rule 3.6(c)

Petitioner contends that Respondent threatened prosecution of administrative action against Tilcon in order to gain an advantage in his efforts to maintain his personal property on Tilcon's property and force the sale of that property to himself. Respondent asserts that he never intended to threaten administrative action to gain a personal advantage, but rather was exercising his right to protect his property and tenants from an unlawful use of Tilcon's property.
Rule 3.6(c) prohibits a lawyer from threatening to present criminal, administrative, or disciplinary charges solely to obtain an advantage in a civil matter. Initially, we note that "civil matter" is not synonymous with "civil litigation," and encompasses conduct prior to the institution of litigation. Compare Rule 3.6 (Conduct During Representation) with Rule 3.7 (Conduct During Litigation). We conclude that the dispute concerning the storage of the property and the purchase of the Tilcon property were civil matters under the Rule.

Given the highly charged context in which the letters referencing administrative action were sent by Respondent, and the language used in the letters, the Panel concludes that Respondent threatened to bring administrative enforcement action against Tilcon in order to gain an advantage in his efforts to maintain his personal property on Tilcon's property and to force the sale of that property to himself.

By his own admission, Respondent had wanted to buy this property "for a long time," commencing in 1988, and at times only wanted parts of the property. He even referred to his "passion" to buy the property. He had attempted to arrange for investors in the "project" who would earn a return on the investment, and wanted to continue commercial uses at the property. It was at the point in September of 1993, when Tilcon refused to sell him the property and told him to remove his personal property (which was their right to do), that Respondent escalated the dispute. In a letter he sent to Tilcon, Respondent impliedly threatened to "screw" Tilcon as a result of the positions they were taking. After Tilcon had Attorney Dunn demand, again, that Respondent remove his property, Respondent fired back a letter, which for the first time, threatened to prosecute administrative enforcement of the zoning ordinance against Tilcon. He said that if he acquired the property, he would not pursue this course of action. He said that he had knowledge of facts and law which, if properly presented, would "destroy the grandfather privilege on the entire Tilcon property. A way to have silenced me would have been to do business with me on some sort of reasonable basis." He suggested that if he takes the threatened administrative action then he would not have a "convenient place to store my stuff and Tilcon has a set of buildings they cannot sell or even use." In the same paragraph he suggests that they "cut a deal", and suggested that Tilcon needed to get educated on their exposure to the loss of their commercial use privileges and "my . . . ability to make it happen. He stated: "A new attitude would do them a whole lot of good." In the September 2, 1994 letter from Respondent to Mr. Johnson (copy to Attorney Dunn) Respondent stated that before he "takes the next step" he wanted to see if a deal was possible. He set forth an offer for an
option to purchase the property, and stated that if Respondent did not exercise the option he would "shut up and go away."

In an Opinion by Maine's Professional Ethics Commission of the Board of Overseers of the Bar dealing with negotiations surrounding a malpractice claim and the filing of a grievance complaint, it was noted:

"Indeed, any mention of the possibility of filing a grievance made in the course of negotiations concerning the malpractice claim would be suspect if it conveyed a subtle inference that a trade-off might be possible. Opinion No. 100, Maine Manual on Professional Responsibility. Issue 0-340 (1989)(Emphasis added)."


Respondent's threats to Tilcon were not subtle, but were given considerable emphasis by Respondent, at the same time that he stated that a trade-off would be possible to avoid the prosecution of enforcement action. The Panel concludes that Respondent threatened to present administrative charges solely to obtain an advantage in a civil matter, and violated the provisions of Maine Bar Rule 3.6(c).

B. Rule 3.6 (f)

After Respondent was fully aware that Attorney Dunn was representing Tilcon in the civil matters involving Respondent, and after being served with a Notice to Quit, and after having corresponded directly with Attorney Dunn relating to these matters, Respondent on September 2, 1994 wrote a letter directly to Dick Johnson (Tilcon Maine, Inc.) with a copy to Attorney Dunn. In this letter Respondent referred specifically to the eviction and his having received a Notice to Quit, inquired if there was any chance of making a deal, and offered to take an option with Tilcon providing financing. If Respondent did not exercise the option, he would "shut up and go away." In a p.s., he set forth an alternative offer. He asked to hear from "you" regarding the offer by September 14, 1994.

Rule 3.6 (f) provides: "During the course of representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so."

Petitioner contends that Respondent violated Rule 3.6 (f).
The first question is whether this communication occurred while Respondent was representing a client. Throughout this dispute, and in all dealings with Attorney Dunn, Respondent was representing himself. His correspondence, including the September 2, 1994 letter, was on his legal stationery. Until Attorney Mongue's attendance on December 21, 1994, at a Court meeting on a Temporary Restraining Order in Respondent's Civil Action against Tilcon, he never had independent counsel represent his interests in negotiations or discussions with Tilcon or its attorney, Mr. Dunn. Respondent hired Attorney Bannon simply to provide Respondent with an opinion, dated July 8, 1994 concerning the zoning issues. The Panel concludes that on September 2, 1994, Respondent was representing a client - himself. We further conclude that Rule 3.6(f) applies when an attorney is representing himself. We also conclude that the communication related to the subject matter of the representation, and that Respondent did not have the prior consent of Attorney Dunn to correspond directly with Tilcon, and that Respondent was not authorized by law to do so.

Finally, we must determine whether Rule 3.6(f) is violated even though Respondent sent a copy of the September 2, 1994 letter to Attorney Dunn. We conclude that under Rule 3.6(f) when an attorney knows that the other party is represented by an attorney, correspondence must be directed to the lawyer and not to the opposing client personally. The Rule is violated even if a copy is sent to opposing lawyer. Opinion No. 136, Maine Manual on Professional Responsibility, (December 1, 1993); See also ABA/BNA Lawyers Manual on Professional Conduct, page 71:303, Communications With Represented Persons. We can discern no legitimate reason why Respondent communicated directly with Tilcon after being served with eviction papers. The thrust of the letter was to, once again, by direct contact, attempt to obtain a trade off from Tilcon. We can see the potential for such conduct to undermine the opposing lawyer's maintenance of an effective lawyer-client relationship. The Panel concludes that Respondent violated Maine Bar Rule 3.6(f).

**IMPROPER LEGAL ACTION**

Petitioner alleges that Respondent violated the Provisions of Rule 3.7(a). We interpret that allegation as pertaining to Respondent's claim of a tenancy interest in the Tilcon property, and the various counts asserted by Respondent in his Complaint in the Superior Court against Tilcon. It is noted that Tilcon filed a counterclaim alleging abuse of process. At hearing we were informed by Attorney Mongue and Attorney Dunn, that Respondent and Tilcon have resolved many of the substantive issues in those matters as a
result of mediation, based on the joint recommendation of Attorneys Mongue and Dunn. Accordingly, we have insufficient evidence upon which to base a decision whether or not Respondent violated Rule 3.7(a).

**DISCIPLINARY ACTION**

Respondent's conduct in his relationship with Tilcon constitutes violations of several provisions of the Maine Bar Rules. We are mindful that Respondent has no prior disciplinary record, and that Respondent's conduct may have been affected, in part by his passion for preserving the historic character of the original Hurd property, including the three original buildings on the Tilcon property. An attorney's personal passions, however, even if well motivated, do not justify disregard of rules that govern the conduct of attorneys with respect to their professional activities and as officers of the Court, and which provide appropriate standards for attorneys, including their relationship with their clients, the general public, and other members of the legal profession.

The Panel, however, is persuaded that Respondent's violations of multiple provisions of the Maine Bar Rules were not minor, but are serious enough and sufficient to warrant discipline. We also believe that Respondent's conduct has resulted in injury to Tilcon (which was required to hire a lawyer to evict Respondent, which would likely have been avoided had Respondent followed the Maine Bar Rules), and to the public and profession as a result of Respondent's threats of prosecution and engaging in adverse relationships with his client.

Consequently, the panel concludes that, for violating Maine Bar Rules 3.4(a); 3.4(b)(1) and (2); 3.4(c)(2); 3.4(f)(1) and (2); 3.5(b)(2); 3.6(c); and 3.6(f), Respondent is hereby reprimanded and Bar Counsel is hereby directed to notify Respondent of the reprimand by furnishing a copy of this report.

Dated: 4/10/96

Robert Edmond Mittel, Esq., Presiding

Alan G. Stone, Esq.

Celeste Branham