STATE OF MAINE

Before the Grievance Commission: Grievance Commission

BOARD OF OVERSEERS OF THE BAR, ) File No. 90-K-177

) Petitioner

v. ) REPORT OF FINDINGS AND

PETER C. FESSENDE, ) CONCLUSIONS OF PANEL E

) OF THE GRIEVANCE

) COMMISSION

) Respondent

On June 4, 1991, pursuant to due notice, Panel E\(^1\) of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7(e)(2), to determine whether grounds existed for the issuance of a reprimand or whether probable cause existed for the filing of an information with respect to alleged professional misconduct of Respondent Peter C. Fessenden, as described in the petition dated March 8, 1991 filed by Bar Counsel of the Board of Overseers of the Bar.

The Board of Overseers of the Bar was represented by Bar Counsel J. Scott Davis, and Respondent Peter C. Fessenden was represented by Peter J. DeTroy, III, Esq. An answer had been duly filed on behalf of Respondent.

\(^1\) Pursuant to Maine Bar Rule 7(b)(2), the parties suggested and consented to have this proceeding conducted by two members of Panel E of the Grievance Commission, consisting of one lawyer member and one lay member of that duly-appointed panel.
Prior to the commencement of the hearing, Bar Counsel and Counsel for Respondent agreed without objection to the admission of Exhibits 1A, 1B, 1C, 1D, 2 and 3 as attached to the Petition, as well as Exhibits 4 and 5, discussed below. Although the complainant in this matter, Steven A. Brown of Virginia, was given notice by Bar Counsel of the hearing, he did not attend, and no testimonial witnesses were presented. The parties — as primarily set forth in the pleadings — have stipulated as to the following facts, and the panel so finds:

**FINDINGS OF FACT**

Respondent was at all times relevant hereto, an attorney duly admitted to and engaging in the practice of law in the State of Maine, and is subject to the Maine Bar Rules.

1. Christina Brown, minor daughter of Steven A. Brown (Brown), suffered personal injuries in March of 1985 as the result of an accident with a defective water heater at a Brunswick Naval Air Station housing unit in Brunswick, Maine. Brown hired Respondent to pursue this matter, file a lawsuit, and seek a recovery on behalf of his daughter.

2. Respondent worked on the matter from 1985 until September of 1988. At that time, Brown was in the military, had moved away from Maine and was living in Virginia.

3. After September of 1988, Brown made numerous efforts to contact Respondent with regard to the status of the lawsuit, with
no result. Consequently, Brown sought counsel in Virginia for assistance in attempting to receive information from Respondent. Attorney Clay L. Macon wrote to Respondent on February 19, 1990 (Exhibit 1B) and May 8, 1990 (Exhibit 1C). On July 18, 1990 he wrote to Respondent's partner, Orville Ranger, in an effort to get some sort of response regarding the status of Brown's case (Exhibit 1D). Macon also left several telephone messages for Respondent, but those calls were never returned by Respondent to Macon. Macon was concerned that there might be a Maine statute of limitations problem in that Christinia's accident had occurred in March of 1985.

4. Macon complained to the Board on behalf of Brown reference Respondent's conduct in this matter by letter dated August 21, 1990 (Exhibit 1A). Respondent was asked by Bar Counsel to reply to the Macon complaint, and Respondent replied by letter of October 9, 1990 (Exhibit 4).

5. Within that response Respondent admitted that he 1) had neglected Brown's case; 2) had engaged in a "flight avoidance" reaction in not responding to Macon's inquiries, and 3) expected to be disciplined for his neglect and avoidance of the Brown matter.

6. The panel also received and admitted without objection a copy of Macon's letter of April 8, 1991 (Exhibit 5).

7. Within his Answer to the Petition Repondent has admitted
his violation of Maine Bar Rule 3.6(a)(2) and (3).

CONCLUSION

This panel concludes, and Respondent has so admitted, that Respondent neglected the Brown matter. Respondent belatedly did file a complaint in the Brown personal injury matter and it appears that the statute of limitations did not lapse. Respondent has also acknowledged this was done after Brown filed this complaint with the Board and he knew he would likely be replaced as counsel. Replacement counsel has, in fact, pursued the Brown personal injury action.

As a result of the lack of serious prejudice to the Brown case, Brown's subsequent indication and request that "harsh" discipline not be imposed, and Respondent's remorseful candor throughout the grievance process, the panel further concludes, as Respondent has acknowledged throughout, that the appropriate disposition of this complaint is that Respondent be, and he hereby is reprimanded for violating Maine Bar Rule 3.6(a)(2) & (3) as established in the Findings of Fact discussed in this Report.

Dated this 4th day of June, 1991.

[Signature]
Panel E of the Grievance Commission
Kathryn Monahan Ainsworth, Acting Chair

[Signature]
Dr. Donald A. Leeber