On November 26, 1991, pursuant to due notice, Panel D 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 filing of an information with respect to alleged professional misconduct of Respondent Frank B. Walker, as described in Petition dated September 4, 1991, filed by Bar Counsel of the Board of Overseers of the Bar.

The Board of Overseers of the Bar was represented by J. Scott Davis, Bar Counsel, and Respondent Frank B. Walker was represented by Peter R. Roy, Esq. An answer had been duly filed on behalf of Respondent.

Prior to the commencement of the hearing, Bar Counsel and Counsel for Respondent agreed without objection to the admission of Exhibits 1 through 22 as attached to the Petition. The witnesses presenting testimony were Respondent and Complainant Anthony M. D'Amico.
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. In December of 1987, Mr. D'Amico consulted with Respondent seeking representation in connection with certain collection matters. Subsequently a mechanics lien was filed by Respondent at the Hancock Registry of Deeds December 8, 1987 against Maine Maritime Academy for materials provided to Colleen Newey d/b/a Feather Touch Design. A complaint was filed with the Central Hancock District Court on January 8, 1988. According to Respondent's testimony, this collection file "slipped through the cracks" and was "lost and not pursued" and apparently no further collection action was taken.

2. Complainant testified that numerous calls were made to Respondent's office from time to time (allegedly every 3 to 5 months) with messages left with Respondent's staff. Claimant testified he never received any telephone or written response regarding the status of this matter until a complaint was filed with the Board of Overseers dated August 28, 1990. Respondent acknowledged possibly receiving one call and attempting to return the call stating Mr. D'Amico "was not in".

3. After the Board complaint process was commenced, Respondent by letter dated September 21, 1990 sent Complainant a check "which represents collection of the amount due you.... for painting done for Maine Maritime Academy" less indicated fees and
costs of Respondent’s office. Subsequent to receipt of the check, Complainant wrote the Board of Overseers indicating that Mr. Walker had been in touch and believed the matter could be brought to a satisfactory conclusion and thanked the Board for their interest and guidance. However, Bar Counsel continued to investigate the matter pursuant to Maine Bar Rule 7(g).

4. Respondent’s replies to Bar Counsel inquiries were consistently late, unresponsive, or misleading as to specific questions asked by Bar Counsel in the course of the investigation. When Respondent replied to Bar Counsel about the lien claim status inquiries, he referred (Board Exhibit 10) to the letter sent to Mr. D’Amico dated September 21, 1990 described above suggesting collection and payment. In fact, there had been a payment to Mr. D’Amico, but no collection under the lien. Instead of replying to Bar Counsel’s further inquiries, Respondent offered to meet with a Grievance Commission reviewing panel. Bar Counsel further requested response to specific inquiries indicating a meeting with panel would be premature. Finally, in partial response to Bar Counsel’s inquiries of December 1990 and January 1991 with reply deadlines in those respective months, Respondent’s counsel sent a copy of Respondent’s file April 5, 1991 (Exhibits 17 and 17 A-G) and a letter dated April 22, 1991 to Bar Counsel (Board Exhibit 19), in which it was represented that Respondent had deducted 1/3 of any amount recovered and disclosed that no funds had been collected from debtor. At the time of hearing, Respondent ultimately
disclosed that he had used his own personal funds to pay
Complainant because of his personal embarrassment regarding the
misplaced file. After Complainant’s concerns about status of the
collection matters was raised with the Board of Overseers of the
Bar, Complainant wrote to Respondent requesting certain
additional information regarding his collection matters reflected
by Board Exhibit 8A as a letter dated November 6, 1990.
Respondent chose not to reply to his client’s further inquiries
regarding the status of various matters believed to have been and
being handled by Respondent.

CONCLUSION

This Panel concludes, and Respondent admits, that he
misplaced Complainant’s file and apparently after filing the
complaint with the District Court in January of 1988, took no
other steps to pursue collection matters on behalf of
Complainant. Although such circumstances may constitute
technical neglect of a matter and a violation of Rule 3.6(a)(3),
the Panel acknowledges an unintentional oversight in the
collection matters and that Respondent sought to settle up
financially with Complainant.

The Panel, however, also concludes that in spite of
Respondent’s embarrassment regarding the collection inactivity,
Respondent failed to communicate with his client other than to
send a check represented as "collection" amounts. Further
Respondent’s late, incomplete, and misleading responses to Bar
Counsel’s investigation, in effect, ripened to a
misrepresentation of the pertinent facts and circumstances that initially caused the complaint with the Board of Overseers and such responses, as above characterized, continued throughout Bar Counsel’s investigation. The Panel believes that if Respondent had communicated the true facts and circumstances from the beginning with Complainant and Bar Counsel, this matter may never have ripened to the more complex circumstances that became issues resulting in Bar Counsel’s Petition and disciplinary hearing. Only upon hearing have responses to Bar Counsel’s specific investigation inquiries been fully and accurately addressed. If the public is to maintain confidence in the ethical standards of the profession, it is essential that communication between attorney and client and between attorney and Grievance Commission investigations be timely, accurate, and professional.

The Panel, based on the findings of fact and conclusions, has determined that the appropriate disposition of this Petition and Hearing is that Respondent be, and he is hereby is, reprimanded for violating Maine Bar Rules 2(c), 3.2(f)(3) and 3.6(a)(3).

Dated this 16th day of December, 1991

Panel D of the Grievance Commission

William F. Hufnagel, Chair

David B. Soule, Jr.

Carroll Lee