STATE OF MAINE

Board of Overseers of the Bar
Grievance Commission
File No. 93-S-240

BOARD OF OVERSEERS OF THE BAR,

Petitioner

V.

DONALD L. PHILBRICK, ESQ.
of PORTLAND, MAINE

Respondent

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

On August 2, 1994, 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 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 Donald L. Philbrick, as described in the petition dated June 28, 1994, filed by Bar Counsel of the Board of Overseers of the Bar.

The Board of Overseers of the Bar was represented by Karen G. Kingsley, Assistant, Bar Counsel, and Respondent Donald L. Philbrick appeared pro se. An Answer had been duly filed by Respondent.

Prior to the commencement of the hearing, Bar Counsel and Respondent agreed without objection to the admission of Exhibits 1, 2, 3, 4, 5, and 6 as attached to the Petition. The complainant in this matter, Norma Morris and her counsel, Maxine Paul philbrick.rpt
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

Donald L. Philbrick, Esq. (hereinafter Respondent) of Portland, County of Cumberland and State of Maine, was at all times relevant hereto, an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules.

1. Commencing at some point in approximately the mid-1960's, Respondent represented Gladys Morris (Mrs. Morris) on certain legal matters.

2. That representation had included a number of deeds changing the title of Mrs. Morris' home in Portland, including transfers for that purpose in 1983 whereby ownership was transferred from Mrs. Morris and her son, David, to David and Mrs. Morris' daughters, Mavis, Norma and Phyllis as joint tenants.

3. Mavis has had severe mental health problems most of her life, and when not living in a mental health institution, lived with Mrs. Morris who provided the care she needed.

4. In early 1992, Mrs. Morris' health and Mavis' mental health declined and Mrs. Morris' relations with Phyllis had become extremely poor. Mrs. Morris did not want Phyllis to have any share
in her residence upon Mrs. Morris' death.

5. In March 1992, Mrs. Morris, David and Norma met with Respondent at his office. At that time Mrs. Morris was 89 years old.

6. At that meeting, it was made very clear to Respondent what Mrs. Morris desired to have accomplished, to wit, her objectives were described to him as follows:

   a) To execute a general power of attorney in favor of David and Norma.
   b) To take whatever steps would assure Mavis' welfare.
   c) To remove Phyllis from the current joint deed on Mrs. Morris' residence.
   d) To have David and Norma appointed as guardians of Mavis.
   e) To prepare a deed to be executed by all four children transferring the property back to Mrs. Morris.
   f) To create a trust for David and Norma, wherein the residence was to be transferred to David and Norma, ensuring that it would be available to Mavis during her lifetime.

7. The power of attorney was accomplished on March 31, 1992.

8. The guardian appointments of David and Norma were accomplished in May of 1992.
9. The deed was executed and duly recorded in March of 1992.
10. Respondent did not attend to any work concerning the trust.
11. David telephoned Respondent on more than one occasion thereafter in 1992 concerning the status of matters – including the trust – and was told by Respondent that "everything had been done".
12. Norma telephoned Respondent from her residence in Florida on August 10, 1992 and requested that he send her a copy of the trust document. At that time, Respondent indicated that he had heard Mrs. Morris' earlier directive regarding a trust and "would get right on it".
13. As of October of 1992, in conversations between David and Respondent that all the work had been done by Respondent, both David and Norma assumed at that point that everything had been done by Respondent to complete the trust as requested by their mother.
14. At the time of the March 1992 meeting at Respondent's office, Mrs. Morris did not have a will, a fact that was known to Respondent.
15. On March 27, 1993, Mrs. Morris died with no will, and with no trust having ever been started or completed by Respondent.
16. As a result, ownership of Mrs. Morris' house passed to all four of her children with Mavis, David, Phyllis and Norma each having a one-quarter interest as tenants in common.
17. By letter of October 1, 1993, Maxine Paul Pouravelis, Esq., provided the Board with Norma Morris' grievance complaint of
October 1, 1993.

18. Respondent was requested to respond to that complaint, and did so by letter of October 22, 1993.


22. The parties agree that Respondent's conduct was in violation of M. Bar R. 2(c), 3.1(a), 3.2(f)(3), 3.5(a)(2) and 3.6(a)(2) and (3) because:

a) He completely neglected to take any steps to prepare, complete or execute the trust document as he was hired and agreed to do for the benefit of his client, Gladys Morris.

b) Respondent has admitted that he engaged in that neglect.

c) He misrepresented to David Morris that he had completed the trust document, and admitted to Bar Counsel that he so misrepresented the facts.

d) Respondent did not take adequate steps to either assist Norma or David in the obtaining of new counsel for
preparation of that trust document, either before or subsequent to Mrs. Morris' death.

e) Respondent has completely failed to assist that new counsel, Pouravelis, in that he never responded to her inquiry letters of May 7, 1993, June 15, 1993 or July 16, 1993.

f) Respondent's response to Bar Counsel's letter of further inquiry, was untimely, and indicates a general lack of serious attention or consideration by him to this grievance complaint.

26. As a result of Respondent's conduct, the central purpose and reason that Mrs. Morris and her children met with him in March of 1992 was never accomplished, and instead Mrs. Morris' purposes were completely thwarted, and great expense to her estate and her children has resulted.

CONCLUSION

This panel concludes, and Respondent admits that he failed to carry out his client's wishes and failed to take steps to ameliorate the situation caused by that failure when requested to do so.

The panel concludes that the appropriate disposition of this complaint is that Respondent be, and he hereby is reprimanded for violations of the Maine Bar Rules as established in the Findings of Fact discussed in this Report.

Dated this 2nd day of August, 1994
Kathryn Monahan Ainsworth, Esq.
Acting Chair, Panel E
Grievance Commission

Paula D. Silsby, Esq.

Lois Wagner