On September 16, 2013 with due notice, Panel E of the Grievance Commission conducted a public disciplinary hearing pursuant to Maine Bar Rule 7.1(e)(2)(E), concerning alleged misconduct by the Respondent, David P. Pancoast. This disciplinary proceeding had been commenced by the filing of a Petition pursuant to M. Bar R. 7.1(e) by the Board of Overseers of the Bar on June 24, 2013. On July 15, 2013 Pancoast filed his answer to that Petition and admitted the misconduct alleged by the Board.

By agreement of the parties and approval of the Panel, Pancoast participated and attended the hearing by a speaker telephone that was audible for everyone in attendance and participating at the hearing. The Board was represented by Bar Counsel J. Scott Davis and Pancoast so appeared pro se. Prior to the disciplinary proceeding, the parties had filed and submitted to the Board Clerk a stipulated, proposed Report for the Panel's review and consideration.
Having reviewed the agreed proposed findings as presented by the parties, the Panel makes the following disposition:

**FINDINGS**

David P. Pancoast was, until the imposition of an administrative suspension by the Board on October 22, 2012, at all times relevant hereto an attorney duly admitted to the practice of law in the State of Maine and subject to the Maine Bar Rules. He was admitted to the Maine Bar in 1986.

On October 22, 2012 Pancoast was administratively suspended by the Board due to his failure to file his annual registration statement, pay the required fee and complete the proper credit hours of continuing legal education as required by Maine Bar Rules 6(a)(1), 10(a)(1) and 12(a)(1), respectively. He also did not thereafter file the affidavit certifying his compliance with the suspension notification requirements of Maine Bar Rule 7.3(i)(2)(A)(B) as is mandated to occur within 30 days after that suspension date.

By a certified letter of November 29, 2012, Bar Counsel notified Pancoast of the consequence of his failure to file that required affidavit. On or about December 26, 2012 the Board received notice from the United States Postal Service that the November 29, 2012 certified mailing from Bar Counsel had not been accepted or received by Pancoast at his last provided and known business address of 9 Tellison (sic) Road, Rowley, MA 01969 and that the USPS was “unable to forward” the mailing to Pancoast. Therefore, Pancoast did not then receive that notice of his need to meet Bar Counsel’s response filing deadline.
date of December 24, 2012 in order to comply with Maine Bar Rule 7.3(i)(2) and avoid the docketing of this grievance matter against him.

On or about January 29, 2013, Bar Counsel initiated and docketed a *sua sponte* grievance complaint against Pancoast based upon his continuing failure to comply with the affidavit requirement. Bar Counsel’s docketing and request letter to Pancoast in this grievance matter was again mailed to the last business address for Pancoast known to the Board, i.e. 9 Tellison (sic) Road, Rowley, MA 01969. As a result, on February 4, 2013 that undelivered mailing was returned and received by the Board with a notice to “Return to Sender.”

By letter dated March 28, 2013 addressed to Pancoast at his home address of 22 Elm Street, Unit 1R, Ipswich, MA 01938-2311, Bar Counsel provided him with notice of his failure to respond to this docketed grievance matter. Pancoast was also then informed that Bar Counsel intended to have this matter reviewed under Maine Bar Rule 7.1(d) in the near future, and that Pancoast should file his response by April 8, 2013. That mailing of March 28, 2013 was never returned to the Board, and Pancoast never filed any response.

On May 23, 2013 a panel of the Grievance Commission reviewed Pancoast’s actions and found probable cause to believe that he had engaged in misconduct subject to sanction under the Maine Bar Rules.

In his “Answer to Disciplinary Petition” of July 15, 2013 Pancoast admitted he had engaged in the alleged misconduct, apologized for his actions and for the first time provided substantive information relating to the basis for
his administrative suspension from practice in Maine and resulting failure to timely submit the required suspension notification affidavit.

From the very detailed personal account that Pancoast provided to the Panel in that Answer, it is clear that the recent deaths in his family caused emotional and financial difficulties for him.

First, the death of his brother, Gary, from cancer in July 2011 resulted in Pancoast becoming the primary caregiver for their very elderly mother who had her own serious medical issues. Pancoast’s assumption of those caregiver duties for his mother had negative effects upon Pancoast’s professional career and personal life. He became separated from his wife in the fall of 2011, and his mother then passed away in October 2012. The financial and personal obligations incurred by Pancoast both as his mother’s caregiver and following her death, coupled with his own health issues, caused him to fail to meet his payment and related obligations to the Board in 2012.

By his three-page Affidavit of September 5, 2013 (a copy of which was provided to the Panel) Pancoast then finally complied with the requirements of Maine Bar Rule 7.3(i)(2)(A)(B). That affidavit confirms that Pancoast had no Maine clients to notify of his administrative suspension in 2012, but he agrees and understands the Maine Bar Rules still required him to file an affidavit with the Board so confirming that he had no Maine clients at the time he was suspended. The Panel also notes and understands that Pancoast is in the
process of filing a petition for reinstatement to practice in Maine, but currently remains administratively suspended.

CONCLUSION AND SANCTION

Pancoast agrees that he violated Maine Bar Rule 7.3(i)(2)(A)(B) and Maine Rules of Professional Conduct 8.4(a). He regrets those errors and has corrected them by belatedly filing his Affidavit of September 5, 2013.

M. Bar. R. 2(a) provides that 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. Among the factors to be considered in imposing sanctions are: the duty violated, the lawyer's mental state, the actual or potential injury caused by the lawyer’s misconduct and the existence of any aggravating or mitigating circumstances. See ABA Standards for Imposing Lawyer Sanctions, 1991 (ABA Standards). See also M. Bar R. 7.1(e)(3)(C).

The first factor to be considered for sanctions under the ABA Standards is to determine what duty has been breached. The Maine Rules of Professional Conduct require attorneys to uphold their responsibilities to clients and the courts. Pancoast violated his duties to the legal system by failing to complete the annual registration requirements in 2012 and by then failing to file the required notification affidavit once he was administratively suspended. Such misconduct 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.

There is one relatively minor aggravating circumstance. Twenty years ago, in April 1993, Pancoast received a confidential dismissal with a warning for an improper withdrawal in a client's court matter. That matter concerned a New Hampshire client for a matter in that state, as Pancoast has virtually had no Maine practice or clients since being admitted in Maine. He has no other sanction record on file with the Board. There are, however, several mitigating circumstances. This current instance of misconduct by Pancoast is not the result of dishonest or selfish motives and occurred during a time of personal emotional difficulty relating to the recent deaths of his brother and then their mother. There was no injury to any Maine clients as a result of his misconduct, and Pancoast has taken responsibility for his transgressions. At the disciplinary hearing, he expressed remorse for his violations of the Maine Rules of Professional Conduct and the Maine Bar Rules and also apologized to Bar Counsel and the Grievance Commission Panel.

Because the misconduct was minor, there was no harm to any clients, little harm to the profession and the misconduct appears very unlikely to be repeated by Pancoast, the Panel accepts the agreement of the parties, including Pancoast's separately executed waiver of the right to file an Objection to Warning. As a result, the Panel concludes that the appropriate disposition of this case is a public **Dismissal With a Warning** to David P. Pancoast which is now hereby issued pursuant to M. Bar R. 7.1(e)(3)(B),(4).
For the Panel:

Date: September 16, 2013

Victoria Powers, Esq.
Chair

John C. Hunt, Esq.

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