STATE OF MAINE

BEFORE THE GRIEVANCE COMMISSION
BOARD OF OVERSEERS OF THE BAR
FILE 89-K-14

BOARD OF OVERSEERS
OF THE BAR

v.

FRANK G. CHAPMAN

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

On Thursday, June 14, 1990, pursuant to due notice, Panel C of the Grievance Commission conducted a disciplinary hearing open to the public pursuant 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 information with respect to misconduct alleged in the Petition filed by Bar Counsel and dated October 25, 1989.

The Board of Overseers for the Bar was represented by Bar Counsel, J. Scott Davis, and Respondent Frank G. Chapman appeared personally and was represented by Jack H. Simmons, Esq. A detailed answer had been filed on behalf of Respondent, and prior to the scheduled hearing, Counsel agreed to admission without objection to the Exhibits 1 through 4 attached to the Petition and there were no requests for sequestration of witnesses. Bar Counsel presented the evidence with respect to the Petition including the testimony of Respondent, as well as testimony of Cynthia Pearson, and attorney Stephen Hayes. Respondent’s case was presented with testimony of witnesses of Key Bank employees,
Betty Dix and Betty Harvey. At the conclusion of the factual hearing, Bar Counsel and Respondent’s Counsel offered summary arguments.

FINDINGS OF FACT

1. There was agreement on the facts that Cynthia Pearson, an employee of Key Bank, had filed a discrimination complaint with the Maine Human Rights Commission alleging certain employment discrimination issues based on her hearing impairment. A hearing before Mr. Raymond Gill of the Human Rights Commission was scheduled for December of 1988, but at that time the parties and their counsel agreed to continue the hearing and seek to resolve the issues with Mr. Gill acting as mediator encouraging Respondent to monitor the Bank’s progress in finding a new acceptable position for Cynthia Pearson with respective attorneys communicating through Raymond Gill to report on progress. Between the December meeting and February 6, 1989, Respondent and Stephen Hayes, as attorney for Cynthia Pearson individually, communicated with or responded to Mr. Gill relating to progress on issues involved in getting a new Bank employment position for Ms. Pearson.

2. There is also no dispute that a meeting took place February 6, 1989 at the law office of Respondent located in the Key Bank building. Present at that meeting were Respondent, Betty Dix and Betty Harvey of the Key Bank Human Resources Department and Cynthia Pearson. There is also no dispute that all participants had notice of the meeting Thursday or Friday
before the meeting held on Monday morning, February 6, 1989. There is no indication that Respondent advised the attorney for Cynthia Pearson of the meeting prior to the meeting being held February 6. Although Cynthia Pearson testified that she recalled calling Mr. Hayes to indicate a meeting had been called, Mr. Hayes had no record of phone messages or conversations with Ms. Pearson prior to the February 6 meeting. There were some inconsistencies in the testimony of participants in the February 6, 1989 meeting as to whether pressure was applied to have Cynthia Pearson accept a new position or not and certain other details of communications in the meeting. Clearly, the purpose of the meeting was to attempt to define the job terms and conditions of a "floater position" for Ms. Pearson with Key Bank.

3. Respondent's basic defense was that the Bank employment job definition issue with Cynthia Pearson was separate from resolving the pending Human Rights Commission complaint and thus any discussions of the job placement would not constitute the subject matter of the Human Rights Commission pending case in the absence of Cynthia Pearson's counsel. Respondent's further defense was that as a result of the meeting with Mr. Gill of the Human Rights Commission, there was an implied authority for Respondent to deal with the Bank's staff and Ms. Pearson to resolve the job issue directly. The employment concerns that Ms. Pearson discussed at the meeting included such items as
possibility of a trial period, compensatory time and time off for providing transportation for a child of Ms. Pearson at other than normal lunch breaks. Ms. Pearson was also confronted at the meeting with a checking account overdraft situation. It was clear that the meeting was intended to provide a method of memorializing the terms and conditions of the employment arrangement of the new job for Cynthia Pearson; yet the Bank staff had not considered defining the job conditions with a memorandum nor did anyone take notes of the February 6, 1989 meeting. At no time prior in the long history of Respondent’s association with Key Bank, or its predecessors, and with Betty Harvey of the Human Resources Department, had there been such a meeting with Respondent regarding conditions of employment for a position at Ms. Pearson’s level.

4. There is no dispute that subsequent to the meeting, Respondent called Mr. Hayes as attorney for Cynthia Pearson at some time in the afternoon of February 6, 1989. The Respondent and Mr. Hayes discussed the fact that the meeting took place and Mr. Chapman and Mr. Hayes confirmed that the purpose of those communications was to determine whether Mrs. Pearson was to accept the position with the Bank as defined and whether the parties could then resolve the Human Rights Commission complaint that was still pending.
CONCLUSIONS

Certainly the Key Bank Human Resources personnel had every right to work directly with Cynthia Pearson in resolving an employment job definition for her and various interviews and communications had taken place between them directly on those issues not involving Respondent as attorney for the Bank. It is clear that the job position was an essential part of the mediation effort with Mr. Gill to resolve the Human Rights Commission complaint. Any attempt to bifurcate the issues in the complaint before the Commission to separate the handling of the employment arrangement and other issues to settle the Human Rights Commission Complaint would be absurd. The Panel found that Respondent clearly violated Bar Rule 3.6(j) in communicating on the subject of the representation with a party, namely Cynthia Pearson, whom he knew to be represented by a lawyer and that such communication took place at the meeting February 6, 1989, at Respondent's office without prior consent of the attorney representing Cynthia Pearson. For such a meeting to take place with the Respondent as the attorney for the Bank and two senior human resources personnel of the Bank to attempt to clarify and define the terms of a job position for a known hearing impaired employee who was represented by counsel in the Human Rights Commission matter was clearly an adversarial environment against which Rule 3.6(j) is intended to protect. Even though circumstances would suggest that Respondent did not initiate the
meeting, he had opportunity to try to reach Mr. Hayes to get approval of the meeting without his presence. Also, even though after the meeting, communication with Ms. Pearson's attorney suggested that she had still had options to accept the position or not and that there still needed to be issues resolved regarding the Human Rights Commission complaint, Ms. Pearson testified that she felt pressured in the meeting to accept the new employment position which clearly was a part of the continuing efforts to resolve the Human Rights Commission complaint. Regardless of individual discrepancies about specific statements at the February 6, 1989 meeting in Respondent's office, the circumstances of the meeting clearly involved an issue related to the pending Commission complaint. Respondent's position suggesting that the job issue was unrelated to the Human Rights Commission matter, and that there was implied consent for Respondent to communicate with Ms. Pearson on the job issue would be inconsistent with all the testimony and facts and circumstances indicating that the Cynthia Pearson job issue was an essential issue in seeking a mediated resolution of the Human Rights Commission complaint. The position taken by Respondent at the time of the meeting and at all times subsequent thereto reflect Respondent's disregard for the Rule. In spite of Respondent's recent retirement from practice of law and long career without any prior discipline, the Panel found the violation of Rule 3.6(j) particularly egregious involving a
meeting with a hearing-impaired client of another attorney about an essential subject of the Human Rights Commission complaint. The circumstances of this case, the attitude of Respondent with regard to the Rule, and the necessity of emphasizing the importance of the Rule, all weighed strongly in the Panel’s deliberation and conclusions.

Consequently the Panel determines that the appropriate disposition of this case is that Respondent be, and he hereby is, reprimanded for violating Bar Rule 3.6(j) as established in the Findings of Facts addressed in this report.

Dated 16th day of July, 1990.

Panel C of the Grievance Commission

William F. Hufnagel, Esq.
Acting Chairman

Jon S. Oxman, Esq.

Marc V. Schnur