

Board of Overseers of the Bar

Grievance Commission

GCF #03-349

BOARD OF OVERSEERS OF THE BAR)	
)	
Petitioner)	
v.)	Report of Reprimand
)	M. Bar R. 7.1(e)(3)
PHILIP DESFOSSSES, ESQ.)	
of Portsmouth, NH)	
Me. Bar #7193)	
Defendant)	

On this date, April 26, 2005, this disciplinary matter came before Panel E of the Grievance Commission at which time the Board of Overseers of the Bar was represented by Bar Counsel J. Scott Davis. The Defendant, Attorney Philip Desfossess, was present with his attorney, James M. Bowie. Scott Douglas, the involved client in the underlying matter, was also present at the hearing and had received prior notice from Bar Counsel concerning the parties' agreed proposed stipulated disposition which is now described and adopted by the panel as follows:

1. Attorney Philip Desfosses' law office is located in Portsmouth, New Hampshire, but he is also admitted to and engages in the practice of law in the State of Maine and is subject to the Maine Bar Rules.

2. In August 2001, Desfosses filed a negligence action for Scott Douglas in the York County Superior Court, that matter being *Scott Douglas v. Seth Martel et al* relating to a motor vehicle accident that had

occurred in August 1995.

3. On March 8, 2002 Martel's attorney served Desfosses with Interrogatories and Request for Production of Documents, to which answers were not timely filed by Desfosses.

4. On June 5, 2002, Martel's attorney wrote to Desfosses about the overdue signed answers to interrogatories and responses to Request for Documents, and also took the initiative to provide an Agreed Upon Motion to Extend the Discovery Deadline (to November 30, 2002).

5. In July 2002, Douglas moved from Maine to Pennsylvania. Prior to leaving Maine, he provided Desfosses with his new address information in Chambersburg, Pennsylvania.

6. By October 24, 2002 Desfosses had not filed complete responses to Martel's attorney's discovery requests, causing defense counsel to again seek an extension of the discovery deadline beyond November 30, 2002.

7. After conducting a conference with counsel on November 5, 2002, the court issued an order containing the following language: "...because discovery has been outstanding since March 8, 2002...(Douglas) shall submit signed responses to the defendants' interrogatories and answer the request for production of documents by November 22, 2002 or the complaint will be dismissed with prejudice."

8. Although Douglas had initially provided Desfosses with information to answer the interrogatories in the Spring of 2002,

Desfosses did not obtain signed answers to those interrogatories. Delay occurred when Desfosses waited until late October 2002 to have a non-attorney member of his staff correspond and “advise” Douglas that he needed to sign and return the interrogatories she was then sending to him.

9. Desfosses provided the signed interrogatories to Martel’s attorney on November 8, 2002, but failed to fully respond to the Request for Documents by the court-required deadline of November 22, 2002.

10. As a result, in January 2003, the court ordered Douglas to “answer the request for production of documents in full by January 31, 2003, and pay the defendant’s counsel a sanction of \$200. Failure to answer the request for production of documents in full by January 31, 2003, will result in a dismissal with prejudice of the complaint.”

11. No such response to the Request for Production of Documents having been filed by Desfosses for Douglas, by order dated March 14, 2003, the court dismissed Douglas’s complaint with prejudice “because of (Douglas’s) repeated failures to answer discovery requests.”

12. That dismissal was upheld by the Law Court in its decision of *Scott Douglas v. Seth Martel et al* 2003 ME 132, resulting in this grievance matter being initiated on a *sua sponte* basis by Bar Counsel.

13. In its decision, the Law Court found that “the record contains substantial evidence from which the trial court could have concluded that Douglas, and his attorney, acted with a lack of regard for the deadlines set by the court. Douglas’s complaint was dismissed after over a year of discovery, the expiration of several deadlines (two of which included warnings to Douglas that failure to comply would result in a dismissal with prejudice), four extensions and two conferences” (emphasis added).

14. In his initial defense to this grievance matter, Desfosses claimed that the dismissal was caused by Douglas’s failure to respond to Desfosses’s many mailings about discovery issues, including signing and returning the interrogatories he had earlier answered.

15. Documents from Desfosses’ file included copies of three virtually identical boilerplate unsigned form letters from him dated June 10, October 28 and November 8, 2002, each being addressed to Douglas and containing this same very limited language:

“To avoid delay, I am sending you a quick note rather than a formal letter.

Please review the enclosed document(s) and contact my office if you have any questions.”

16. Although the timing of those letters coincided with relevant events, e.g. Martel’s attorney’s efforts on June 5, 2002 and October 24, 2002 for extensions of the discovery deadlines, and the court’s discovery sanction order of November 5, 2002, none of those three letters contained any information whatsoever identifying what was actually

enclosed with each respective mailing for this client's attention.

17. In any event, Desfosses' letters dated October 28 and 30, 2002 were not received by Douglas until November 5, 2002 because Desfosses used a different address for Douglas in Chambersburg, Pennsylvania than Douglas was in fact using.

18. Desfosses now agrees that he should have better monitored his many letters to Douglas and practiced better case management skills instead of using the standard impersonal form letters he had sent to Douglas on June 10, October 28 and November 8, 2002.

19. He also agrees that when he had not received any response from Douglas after he moved to Pennsylvania, he should have personally confirmed that his correspondence had been correctly addressed to Douglas.

20. Desfosses concedes that he allowed delays to occur in responding to Martel's counsel's discovery requests, which resulted in the dismissal of Douglas's action.

21. Desfosses has apologized to Douglas for the resulting final dismissal of his personal injury matter, and properly notified his legal malpractice carrier of that court-ordered dismissal.

22. Desfosses has no prior disciplinary record on file with the Board of Overseers of the Bar.

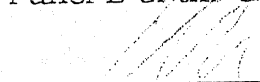
CONCLUSION

Considering the above facts stipulated by the parties, the Panel finds that Desfosses was not properly diligent and did neglect Douglas's legal action by not complying with the court's many discovery deadlines. He also failed to properly inform that client of those deadlines and the likely expected dismissal of his litigation if discovery was not properly provided by the date(s) so ordered. He also should have better monitored the client's mailing address actually used by his staff in correspondence sent to Douglas after he had moved to Pennsylvania.

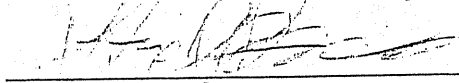
Desfosses's conduct was in violation of Maine Bar Rules 3.6(a)(2)(3) (inadequate preparation and neglect of a client's case) and 3.13(c) (responsibilities regarding non-lawyer assistants). In view of this misconduct, the Panel concludes, as Desfosses admitted at the hearing, that the appropriate disposition of this matter is that Attorney Phillip Desfosses be, and he hereby is, reprimanded for these stated violations of the Code of Professional Responsibility.

Dated: April 26, 2005

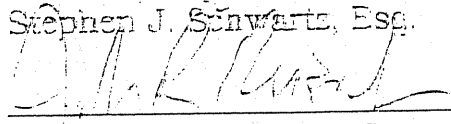
Panel E of the Grievance Commission



Charles W. Smith Jr., Esq. - Chair



Stephen J. Schwartz, Esq.



Joseph E. Feiser, Jr., Esq.