

STATE OF MAINE

Kennebec, ss.

**Board of Overseers of the Bar
Grievance Commission
File No. 02-03**

BOARD OF OVERSEERS OF THE BAR)
)
 Petitioner)
 v.)
)
 PETER D. FAULKNER, ESQ.)
 of Sanford, Maine)
 Me. Bar #7770)
 Respondent)

**REPORT OF FINDINGS
OF PANEL E OF
THE GRIEVANCE
COMMISSION**

INTRODUCTION

On December 3, 2002, 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), concerning alleged misconduct by the Respondent, Peter D. Faulkner, Esq., as described in a disciplinary petition dated and filed by the Board of Overseers of the Bar on October 15, 2002.

Bar Counsel J. Scott Davis represented the Board and Theodore H. Kirchner, Esq. represented Peter D. Faulkner, Esq. at that hearing. The complainant, Mousam Valley Orthopaedics (Orthopaedics), through its employee, Katharyn Lineweber, had been notified of the proceeding and the proposed disposition. Ms. Lineweber was not present, but indicated through Bar Counsel that she agreed with the proposed disposition. Accordingly, the Panel now adopts the factual stipulations of counsel as set forth below and hereby finds that a reprimand is the appropriate sanction for Mr. Faulkner's misconduct.

FINDINGS

Respondent Peter D. Faulkner, Esq. of Sanford, County of York, State of Maine is and 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. He has been practicing in Maine since 1993.

This matter was initiated when the Board received on January 2, 2002, a Grievance Complaint dated December 27, 2001, from Katharyn Lineweber (“Lineweber”), on behalf of Mousam Valley Orthopaedics (Orthopaedics).

In January 2001 Orthopaedics approached Faulkner relative to approximately 300 overdue patient accounts. Faulkner agreed to review those accounts and accepted a \$1000.00 retainer. He agreed to take additional fees on a contingency basis.* Orthopaedics then delivered those 300 files to Faulkner. Between January 2001 and September 2001, Faulkner directly contacted 38 of 300 debtors.

Orthopaedics believed Faulkner promised to give it monthly reports, but that in any event it reasonably was entitled to regular reports regarding Faulkner’s collection efforts, funds expended and funds received. Faulkner provided one accounting to Orthopaedics during the course of representation, doing so in March 2001 for the period from January 16, 2001 to March 20, 2001.

*There was no written fee agreement between the parties, which may be the reason there appears to be some confusion as to what that \$1000.00 “retainer” amount was intended to cover, and as to how any additional fees would be billed. In any event, Faulkner agrees it was an error for him to have deducted and credited from that retainer any amount of the 30% of legal fees he received from accounts he collected. After the error was discovered, Faulkner reimbursed Orthopaedics a total of \$890.81 to correct the error.

Faulkner failed to regularly inform Orthopaedics of the status of its collection accounts between March 14, 2001 and Orthopaedics' termination of his representation on September 25, 2001. During this time, Lineweber, on Orthopaedics' behalf, made several requests to Faulkner seeking information on the status of the accounts. Faulkner failed to respond timely to those requests.

On September 25, 2001, Orthopaedics dismissed Faulkner and retained Attorney Edwin R. Daggett (Daggett) to replace him and handle its collections accounts, including all accounts for which it had previously retained Faulkner.

On September 25, 2001, Orthopaedics sent a letter to Faulkner advising him that it had retained Daggett, and requesting that he transfer all Orthopaedics' collection files to Daggett's law firm, Daggett & Parker.

On October 25, 2001, Orthopaedics sent a copy of the same letter to Faulkner, with an additional notation of "SECOND REQUEST."

Orthopaedics also requested that Daggett try to get a response from Faulkner. Between September 25, 2001 and October 26, 2001 Daggett's firm made several unsuccessful attempts to contact Faulkner by telephone. On October 26, 2001 Daggett wrote to Faulkner asking him to transfer the files.

On November 2, 2001, Orthopaedics wrote to Faulkner and demanded an immediate response to its request of September 25, 2001 that Faulkner transfer the files to Daggett. Orthopaedics also requested that Faulkner provide an accounting and a refund of Orthopaedics' retainer.

On November 30, 2001, having had no response to its prior correspondence and understanding Faulkner had likewise not answered Daggett's requests, Orthopaedics sent Faulkner a letter by certified mail with the same demands.

On December 13, 2001, Orthopaedics learned that Faulkner refused to accept and sign for its certified mail. As a result, Orthopaedics then sent Faulkner a facsimile ("fax") of its November 30, 2001 letter.

Faulkner then called Orthopaedics and spoke with Lineweber. During that conversation, Faulkner promised her that he would deliver the files to Daggett the next day, December 14, 2001.

On December 14, 2001, Faulkner failed to deliver the files. On December 19, 2001, Faulkner delivered to Daggett's office the bulk of the collection files.

On June 4, 2002, a panel of the Grievance Commission reviewed Faulkner's conduct in this matter. That panel found probable cause to believe that Faulkner had engaged in misconduct subject to sanction under the Maine Bar Rules for which discipline should be imposed. That Panel authorized Bar Counsel to prepare and present a formal petition for disciplinary action before another Grievance Commission panel.

CONCLUSIONS

Faulkner's failure to provide adequate client information to Orthopaedics, either as to the small number of the 300 collection accounts he actually attempted to contact or the factual details of the status of all accounts constituted neglect of a client's matter in violation of Bar Rule 3.6(a)(3). His repeated failures to timely respond to either Daggett or Orthopaedics to turn over the files constituted misconduct in violation of Bar Rule 3.6(e)(2)(iv). Likewise, his failure after March 2001 to ever provide any further financial accounting as requested by the client violated Bar Rule 3.6(e)(2)(iii).

Faulkner has admitted his misconduct and agrees that he should be reprimanded for violation of the Maine Code of Professional Responsibility. He has no prior disciplinary record on file with the Board of Overseers of the Bar

As a result, the panel having found that Attorney Faulkner engaged in violations of Maine Bar Rules 3.6(a)(3); and 3.6(e)(2)(iii),(iv), the panel further concludes that the appropriate sanction is that Attorney Peter D. Faulkner be and hereby is reprimanded.

Date: December 3, 2002

Stephen G. Morrell, Esq., Chair

Charles W. Smith, Jr., Esq.

Harriet Tobin