

STATE OF MAINE

Board of Overseers of  
The Bar

Grievance Commission  
File No. 02-60

BOARD OF OVERSEERS OF THE BAR	)
	)
Petitioner	)
v.	)
	)
DAVID N. FISHER, JR., ESQ.	)
of Portland, Maine	)
	)
Respondent	)

REPORT OF FINDINGS  
OF PANEL C  
OF THE GRIEVANCE  
COMMISSION

On August 7, 2003, pursuant to due notice, Panel C of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1(e)(2), concerning misconduct by the Respondent, David N. Fisher, Esq. This disciplinary proceeding was commenced by the filing of a Petition by the Board of Overseers of the Bar on April 18, 2003.

Assistant Bar Counsel, Nora Sosnoff, represented the Board and Attorney Peter J. DeTroy represented the Respondent, Attorney Fisher, at the hearing. The complainant, Alan S. Carter, was present.

The Panel hereby makes the following findings pursuant to the stipulation of the parties:

**FINDINGS**

1. Respondent David N. Fisher (Attorney Fisher) of Portland, County of Cumberland, State of Maine, is and was at all times relevant

hereto an attorney duly admitted to and engaged in the practice of law in the State of Maine and subject to the Maine Bar Rules.

2. Attorney Fisher was admitted to the Maine Bar in 1966. He is a principal in the law firm of Drummond & Drummond, LLP, having offices in Portland, Maine. Attorney Fisher has no record of prior discipline or sanction under the Maine Bar Rules.

3. On September 11, 2000, Attorney Fisher applied in his individual capacity to the Cumberland County Probate Court seeking appointment as Personal Representative for the probate estate of Pauline G. Carter. The Probate matter was docketed in Cumberland County as Docket No. 2000-1287.

4. Attorney Fisher in his individual capacity was duly appointed personal representative in the said matter by the Cumberland County Probate Court on September 26, 2000.

5. Attorney Fisher employed the firm of Drummond & Drummond, LLP, of which he is a principal, to represent him in his capacity as Personal Representative for the said estate.

6. Shortly after his appointment as Personal Representative, Attorney Fisher's wife became terminally ill. She eventually passed away on March 17, 2003. During this same time period, Attorney Fisher attended to her and his family's needs. He was also experiencing his own medical problems which culminated in knee replacement surgery in the spring of 2002.

7. On March 19, 2002, Alan S. Carter, one of several heirs to the estate of Pauline G. Carter, complained to the Board that Attorney Fisher was failing to meet ethical standards in the discharge of his professional obligations.

8. Attorney Fisher admits that his inattention caused delays to the processing of the affairs of the probate estate and that the heirs to that estate were justified in expecting him to perform more efficiently.

9. Attorney Fisher's failures included delay in filing of estate tax returns; delay in liquidating stock certificates; and failure adequately to articulate his firm's billing practices.

10. Attorney Fisher is apologetic for his conduct. He admits that while his inattention may have been the result of his need to give significant time to dealing with family health problems, he accepts that it does not excuse his conduct. He admits that better professional judgment would have led to delegating responsibility, rather than allowing this matter to be neglected.

11. Attorney Fisher's billing practice for Pauline G. Carter during her lifetime was unusual in that substantial legal fees were incurred but were postponed until after her death. Ms. Carter was concerned about having enough money to support herself during her lifetime and, as an accommodation, Mr. Fisher agreed to defer any payment with the proviso that if there were sufficient monies in her estate upon her death that the firm's bill would be paid. That agreement was not reduced to writing.

12. After Mr. Fisher was appointed Personal Representative of the estate, and given the nature of the billing agreement, he failed to exercise adequate judgment in the performance of his professional commitments when he paid the firm's legal bill which had accumulated over ten years, without notifying the estate's beneficiaries or seeking the Probate Court's approval.

### **CONCLUSION AND SANCTION**

13. Attorney Fisher engaged in professional misconduct by failing to exercise his best judgment in the performance of his professional commitments as required by M. Bar R. 3.6(a).

14. Attorney Fisher engaged in professional misconduct by neglecting his duties as Personal Representative for the estate of Pauline G. Carter, in violation of M. Bar R. 3.6(a) (3).

15. Attorney Fisher's violations of M. Bar R. 3.6(a) and M. Bar R. 3.6(a) (3) constitute conduct unworthy of an attorney in violation of M. Bar R. 3.1(a).

The Panel concludes that the appropriate disposition of this case is a public reprimand to Attorney Fisher.

Dated: August 7, 2003

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Barbara L. Raimondi, Esq.  
Acting Chair, Grievance  
Commission Panel C

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David S. Abramson, Esq.

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Nancy Butland