

Board of Overseers of the Bar

Grievance Commission
File No. GCF #03-266

BOARD OF OVERSEERS OF THE BAR)

Petitioner)

v.)

THOMAS J. PETERSON, ESQ.)
of Windham, ME)
Me. Bar #860)

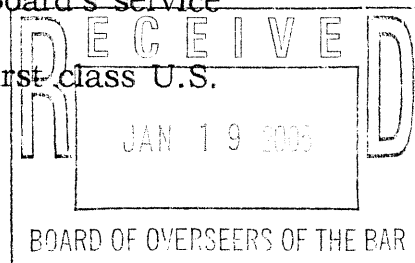
Respondent)

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

On January 10, 2005 Panel C of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1 (e)(2), to determine whether there were grounds for the issuance of a reprimand or whether probable cause existed for the filing of an information concerning alleged misconduct by Respondent, Thomas J. Peterson, Esq. (Peterson), as described in the Petition dated October 28, 2004 filed by the Board of Overseers of the Bar (the Board).

Bar Counsel, J. Scott, Davis, Esq., represented the Board, and Peterson was *pro se*, both counsel being present at the hearing. The complainant, David G. Moores, Sr., died while this matter was pending, and his two adult children, David G. Moores, Jr., and Sandra Stevens, pursued their father's complaint against Peterson. Bruce A. McGlaufflin, Esq., represented both Ms. Stevens and Mr. Moores, and he had been notified and given an opportunity to be present at the hearing.

On November 2, 2004 Peterson acknowledged the Board's service of its Petition and related exhibits upon him by regular first class U.S.



Mail, but he neither answered nor otherwise responded to it. Consistent with M. Bar R. 7.1(e)(1), therefore, the allegations contained in the Petition are deemed admitted, and the Panel heard Peterson only upon the question of sanctions. Accordingly, the Panel now finds and adopts the following facts:

1. On or about August 31, 1961 and January 26, 1962 Bessie M. Johnson (Johnson) conveyed certain real estate (the Johnson Property) to Winifred S. Bridges (n/k/a Winifred S. Moores [Winifred]).

2. On an unknown date Winifred later married David G. Moores, Sr. (David), and on or about February 23, 1996 Peterson began representing both David and Winifred by drafting their wills and by discussing with them the creation of a joint tenancy regarding the Johnson Property.

3. On or about March 6, 1996 and because of their joint representation by Peterson, Winifred conveyed the Johnson Property to Winifred and David as joint tenants with warranty covenants.

4. Pursuant to 33 M.R.S.A. §159, Winifred's conveyance to the couple vested in them a joint tenancy with right of survivorship, and under 14 M.R.S.A. §6501, either Winifred or David could thereafter have partitioned the property by a civil action. Either party also could have broken the joint tenancy by conveying their undivided one half interest to a third party (See paragraph #9 below).

5. Contemporaneously with Winifred's conveying the Johnson Property to the couple as joint tenants, David also signed his last will and testament, which Peterson had prepared for him.

6. On or about November 20, 1998 Peterson again represented Winifred and David by revising their wills and preparing a health care power of attorney for David.

7. On or about January 6, 1999 David signed the revised will that Peterson had drafted for him.

8. David's 1999 will differed significantly from his 1996 will concerning the disposition of any real estate, which did not pass to Winifred by right of survivorship. David's 1999 will also deleted various cash bequests.

9. On or about September 16, 1999 Peterson prepared two deeds concerning the Johnson Property. In Deed No. 1, Winifred conveyed her undivided one half interest in the property to Peterson as a "straw" thereby breaking David and Winifred's joint tenancy. In Deed No. 2, Peterson reconveyed the same interest in the property back to Winifred, the net effect of both transactions being to convert the couple's former joint tenancy into a tenancy in common with no right of survivorship.

10. David neither knew of nor consented to the above referenced transactions and to Winifred's unilateral breaking of their joint tenancy as assisted and orchestrated by Peterson.

11. By helping Winifred to break her joint tenancy with David and establish a tenancy in common with him without his prior knowledge and consent and by failing to decline representation of her, Peterson violated, *inter alia*, M. Bar R. 3.1(a); 3.2(f)(3),(4); 3.4(d)(1) and 3.5(b)(2)(ii).

12. On or about July 17, 2003 David executed a new will in which he bequeathed Winifred the nominal sum of \$1.00 if she survived him, and on or about August 20th David complained about Peterson's former client conflict of interest.

13. On or about September 10, 2003 Peterson responded to David's grievance complaint, his response showing, in part, the following facts:

a. On January 30, 1996 Peterson discussed with Winifred and David a complete estate plan including wills, powers of attorney and advanced health care directives;

b. Because of Winifred and David's mutual objectives in 1996, Peterson advised Winifred to make David a joint owner of the Johnson Property;

c. On or about November, 1998 and at Winifred and David's request, Peterson prepared changes to their wills and also to David's health care directive;

d. On or about September 3, 1999 Winifred visited Peterson at his office alone stating that: 1) the joint tenancy transaction of 1996 had been a mistake; 2) she did not trust David to ensure that

Winifred's side of the family would receive an equal inheritance if she predeceased him; and 3) she had made David a joint owner of the Johnson Property because she was afraid of and intimidated by him;

e. During her office visit of 1999 Peterson discussed with Winifred breaking the joint tenancy as well as the possibility of her seeking a divorce with other counsel; and

f. Peterson could not dispute that breaking the joint tenancy between Winifred and David appeared to directly conflict with the advice he had given the couple at their first meeting on March 6, 1996.

17-16. On or about September 26, 2003 Peterson wrote Fernand A. Martineau, Esq. (Martineau), successor counsel for David, enclosing copies of Peterson's files concerning his representation of David. Peterson also stated that he felt badly and, reiterated that Winifred specifically had instructed Peterson not to contact David or her home.

SANCTION

By representing Winifred in September, 1999 and helping her to break the joint tenancy with David in the Johnson Property, Peterson engaged in an improper former client conflict of interest. While Peterson himself might have believed that he merely was "rectifying a wrong" as he saw it, his later representation of Winifred in 1999 was improper because the Johnson Property transactions of 1996 and 1999 were substantially

related, the second one clearly being adverse to David. See M. Bar R. 3.4(d)(1). Instead, Peterson should have declined to represent Winifred under M. Bar R. 3.5(b)(2)(ii), and sent her to another attorney who ethically could have done for Winifred what Peterson did. We note for the record Peterson's lack of any prior disciplinary record.

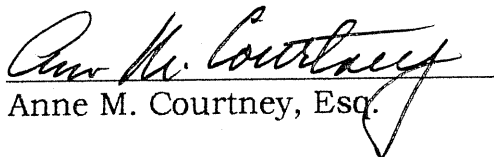
In view of the foregoing, the Panel hereby reprimands Peterson for his professional misconduct.

Date: January 10, 2005

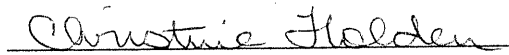
Panel C of the Grievance Commission



David S. Abramson, Esq., Chair



Anne M. Courtney, Esq.


Christine Holden, Ph.D.