

**BOARD OF OVERSEERS OF THE
BAR,**

Petitioner

v.

**MICHAEL X. SAVASUK, ESQ.
Of Portland, ME,
Maine Bar No. 2708,**

Respondent

**REPORT OF FINDINGS AND
DETERMINATION OF PANEL B OF
THE GRIEVANCE COMMISSION**

This matter came before Panel B of the Grievance Commission on an Amended Disciplinary Petition of Bar Counsel alleging that Respondent Michael X. Savasuk of Portland, Maine violated the following Maine Bar Rules:

- Rule 2(c) - failure without good cause to respond to Bar Counsel
- Rule 3.1(a) – conduct “unworthy of an attorney”
- Rule 3.2(f)(1) – direct or indirect violation of the rules
- Rule 3.6(a) – failure to exercise reasonable care and skill and apply the lawyer’s best judgment in the performance of professional services

A public hearing was conducted on June 15, 2006 in Portland, Maine to determine whether a Bar Rule violation had occurred.

The Board of Overseers of the Bar (“the Board”) was represented by Aria eee, Esq. Respondent Michael X. Savasuk, Esq. was present and represented by Peter J. DeTroy, Esq. No objection was made to the composition of the Panel. At the hearing, the Panel admitted Board Exhibits 1 - 16 without objection. The Panel also heard testimony from the Respondent, Michael X. Savasuk, Esq., Susan Adams, Julia A. Zimont, and Nancy Hall Delaney. At the hearing, the Board also alleged that Respondent Michael Savasuk violated Rule 3.13(c) governing a lawyer’s responsibilities regarding non-lawyer assistants. On the basis of this evidence, Panel B finds that Respondent Michael Savasuk did violate Maine Bar Rules 2(c) and 3.13(c), and thus 3.1(a), 3.2(f)(1), and 3.6(a). For the reasons stated below, the Panel reprimands Michael X. Savasuk for his violation of the foregoing Bar Rules.

FINDINGS OF FACT

On May 13, 2005, Michael Savasuk ordered, via facsimile, a transcript from Jay H. Pilchick & Associates, a court reporting service in Miami, Florida. On May 19, 2005, Mr. Savasuk received a corresponding bill, which he asked his secretary, Julia Zimont, to investigate because of an earlier partial prepayment. Ms. Zimont did not do so. A second request for payment was mailed to Mr. Savasuk by Jay H. Pilchick & Associates without response. On August 19, 2005, Mr. Pilchick wrote to Mr. Savasuk for a third time and enclosed

a draft complaint against him to the bar (addressed to the Maine State Bar Association and not to the Board of Overseers), which he indicated would be mailed by August 29 if the bill remained outstanding. Mr. Savasuk did not respond.

On September 15, 2005, the Board of Overseers received Mr. Pilchick's grievance complaint against Michael Savasuk for failure to pay the outstanding bill for court reporting services. That day, Bar Counsel wrote to Mr. Savasuk informing him of the complaint and requesting a response by October 6. Mr. Savasuk did not respond.

Sometime after October 6, Board of Overseers staff member Nancy Delaney called Mr. Savasuk's office on two occasions to follow up the earlier September 15 correspondence. Both times, Ms. Delaney identified herself as a Board employee to the female who answered the telephone, and both times asked to speak directly with Mr. Savasuk. Each time, the female who answered the phone put Ms. Delaney on hold, then returned and reported that Mr. Savasuk was unavailable because he had just taken another telephone call. Because Ms. Delaney suspected that she was being treated evasively, she enlisted Deputy Bar Counsel Nora Sosnoff's assistance.

On October 28, Ms. Sosnoff called Attorney Savasuk's office. Ms. Sosnoff identified herself as Deputy Bar Counsel and asked to speak with Attorney Savasuk. The female who answered placed Ms. Sosnoff briefly on hold. Within a minute, the female voice returned to the call and said that Mr. Savasuk had just taken another call. Ms. Sosnoff emphasized that the office of Bar Counsel had now called three times and each time had received the same response. Ms. Sosnoff firmly and plainly requested that the message be relayed to Attorney Savasuk that it was very important that he call her back that same day. The female acknowledged that she had heard the message.

Mr. Savasuk did not return Ms. Sosnoff's call by the close of business on October 28. Accordingly, Assistant Bar Counsel Aria eee sent Mr. Savasuk a letter citing his failure to respond to the grievance complaint as of that date, providing a preliminary panel review date, and offering Mr. Savasuk the further opportunity to file a response by November 3, 2005. Again, Mr. Savasuk did not respond.

On November 28, a Grievance Commission panel found probable cause to believe that Mr. Savasuk had engaged in misconduct subject to sanction and authorized Bar Counsel to prepare a disciplinary petition.

In the meantime, Mr. Savasuk testified that, at the end of December (after Christmas), he noticed that the Pilchick & Associates bill was still outstanding. Rather than pay the bill, now some seven months old, he again asked Ms. Zimont to contact Mr. Pilchick to seek an explanation of the bill in light of the previously-mentioned partial prepayment. On January 19, 2006, Bar Counsel filed the Board's first Disciplinary Petition and mailed it to Mr. Savasuk. Mr. Savasuk had still failed to pay Mr. Pilchick's outstanding bill or to contact Bar Counsel. Once again, Mr. Savasuk did not answer the Petition. On February 28, 2006, Mr. Savasuk was served in-hand with the Petition, on the deputy sheriff's third try. By letter dated March 1, he responded to the Petition and mailed a copy of his response together with a payment check to Mr. Pilchick.

In his response, and at the evidentiary hearing before this Panel, Mr. Savasuk indicated that he did not receive any of the letters from the Board or Mr. Pilchick, or any of the telephone messages from the Board. He blamed his secretary, Julia Zimont, for this failure. Ms. Zimont submitted to this Panel an affidavit stating, "It was never my intention to circumvent payment of invoices, OR any communications from the Board of Overseers of the Bar. Any failure of my job performance causing this situation was unintentional and is deeply regretted." In his response to the Board, Mr. Savasuk stated, "In order that this never happen again, I have given specific written instructions and amendment to office procedures that all of my bills and notices are to be placed on my desk daily." According to Mr. Savasuk, these changes were made in writing to a preexisting office procedures document entitled "Office Procedures – Daily Grind."

Mr. Savasuk acknowledges receipt of the original bill from Mr. Pilchick. In addition, when Mr. Savasuk noticed that Mr. Pilchick had still not been paid in late December, he apparently took no action either to see that Mr. Pilchick was paid immediately, or to ascertain why his secretary had failed to follow up with his instruction to contact Mr. Pilchick some seven months earlier. Finally, between late December and March 1, when Mr. Savasuk sent Mr. Pilchick full payment, Mr. Savasuk apparently did nothing to double-check with his secretary that she had contacted Mr. Pilchick, as he had asked her to do a second time (she had not).

Unfortunately, the foregoing internal communication breakdown was not without precedent.

According to her own statement (Board Exh. 11), on July 3, 2003, Julia Zimont received the Board's annual registration packet for Mr. Savasuk, which was due to be returned to the Board by July 31, 2003. That deadline was not met. With the filing of a late fee, a grace period was provided until August 31, 2003. Again, that deadline was not met. On September 4, 2003, according to her statement, Julia Zimont received a certified letter from the Board indicating that, unless Mr. Savasuk's bar registration forms were received by October 3, 2003, he would be automatically suspended from the practice of law under Bar Rule 12(c). Once again, that deadline was not met, and Mr. Savasuk was automatically suspended from the practice of law.

Mr. Savasuk's license suspension was precipitated not only by his failure to return his annual registration packet by the due date, but also by his failure to have met his continuing legal education requirements in 2002. He was 5.45 hours short of meeting his 2002 CLE requirements.

On October 10, 2003, Mr. Savasuk submitted a letter to the Board of Overseers stating, "I failed to respond to the Board's correspondence warning of the CLE deficiency because I did not know that I had received such correspondence. ...I can honestly state that for whatever unexplainable reason, this office's secretary just did not pass the correspondences on to counsel in this office. Enclosed herewith is a correspondence from our secretary which we have asked her to write, confirming the unfortunate situation that has occurred in this office."

Enclosed with Mr. Savasuk's October 10 letter was a letter dated October 8 addressed to Mr. Savasuk from Julia Zimont. Just as she has in the instant matter, Ms. Zimont took responsibility for Mr. Savasuk not responding to the Board's mailings, stating "Please accept my deepest apologies for this mess. I acknowledge full responsibility for the failure of this process."

While Mr. Savasuk indicated in his October 10 letter to the Board that he was “deeply saddened and extremely embarrassed by this situation, and can sincerely state that it will never happen again,” he testified at the disciplinary hearing before this Panel that he took no steps to change his office protocol to ensure that he reviewed mail addressed to him. While he testified that he verbally reprimanded Ms. Zimont, he continued not only to employ Ms. Zimont but to allow her to open his mail and determine what mail he should see and what he need not.

BOARD ALLEGATIONS OF MISCONDUCT

Michael Savasuk is alleged to have violated several Maine Bar Rules because of his failure to pay his professional bills and his failure to respond to Bar Counsel:

Rule 2(c) - failure without good cause to respond to Bar Counsel

Rule 3.1(a) - conduct “unworthy of an attorney”

Rule 3.2(f)(1) - direct or indirect violation of the rules

Rule 3.6(a) - failure to exercise reasonable care and skill and apply the lawyer’s best judgment in the performance of professional services

Rule 3.13(c) – lawyer’s responsibilities regarding non-lawyer assistants

DISCUSSION

Maine Bar Rule 2(c) requires that a lawyer “respond to any inquiry by ... Bar Counsel.” Clearly, Mr. Savasuk did not do so, either in the original mailing to him by Bar Counsel of the Petition in this matter, or in response to the three telephone calls made to his office thereafter, or in response to Bar Counsel’s second mailing warning him of a referral to a Grievance Panel. As then Justice D. Brock Hornby observed, “The Board of Overseers can fulfill its responsibility to ensure lawyer discipline only if it is assured that it will receive the full cooperation of all lawyers.” Board of Overseers of the Bar v. George S. Hutchins, 1989 Me. LEXIS 213.

Mr. Savasuk defends himself against his undeniable failure to respond to Bar Counsel’s inquiry by arguing that he did not know about Bar Counsel’s inquiries because his secretary failed to inform him of them. This defense implicates squarely Maine Bar Rule 3.13(c), which mandates that lawyers take reasonable steps to ensure that their non-lawyer assistants’ conduct is compatible with the lawyers’ professional obligations. This Panel has no difficulty in concluding that Mr. Savasuk did not take reasonable efforts to ensure that he complied with Rule 3.13(c).

Two years before the instant failure to respond to Bar Counsel, Mr. Savasuk’s secretary had not brought to his attention repeated communications from the Board regarding his annual registration and his CLE credit shortfall. As of that time, Mr. Savasuk was clearly on notice that critical professional communications were not being forwarded to him by his secretary. Despite that notice, Mr. Savasuk apparently allowed his secretary to continue to “screen” his mail, in effect delegating to her the task of determining what correspondence addressed to him he should see. Second, shortly before the instant failure to respond to Bar Counsel, Mr. Savasuk was again reminded of his secretary’s professional shortcomings when he discovered in December that she had not followed up with Mr. Pilchick’s office, as he had asked her to do some seven months earlier. In neither case did Mr. Savasuk take any substantive disciplinary action against his secretary or change his office protocol so that he read his own mail in the first instance. Regrettably, his most recent decision to read his own mail comes too late.

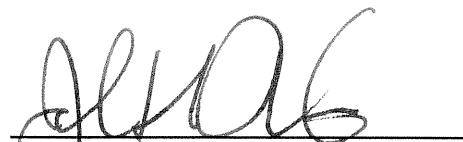
We recognize that lawyers cannot be the guarantors of the professional behavior of their non-lawyer assistants. But, the Maine Bar Rules require that they take reasonable steps to ensure that their non-lawyer assistants act in a manner consistent with the lawyers' professional obligations. In this instance, Mr. Savasuk failed to exercise the supervision and oversight necessary under Rule 3.13(c). Despite several clear warning signs that he had allowed too much latitude to his secretary to screen his mail, Mr. Savasuk continued to delegate to his secretary the critical task of determining what professional mail addressed to him should be brought to his attention. Had Mr. Savasuk read his own mail, the repeated communications both from Mr. Pilchick regarding the court reporter bill and the repeated communications from Bar Counsel regarding the instant Petition would not have been ignored.

Inadequate supervision of Ms. Zimont is also evidenced by her failure to deal appropriately with the three telephone calls received from Staff and Deputy Bar Counsel of the Board of Overseers. She failed either to connect the calls to Mr. Savasuk or to communicate to Mr. Savasuk the content of the three telephone calls, and most significantly the call from Deputy Bar Counsel Nora Sosnoff on October 10, 2005, stating that her call was the third one from the Board of Overseers and asserting the importance of Mr. Savasuk returning her call that same day.


DETERMINATION

In the event the Panel concludes lawyer misconduct subject to sanction under the Maine Bar Rules has occurred, Maine Bar Rule 7.1(e)(3) requires this Panel either to issue a dismissal with a warning or to issue a public reprimand or a finding of probable cause for suspension or disbarment and direct Bar Counsel to commence an attorney disciplinary action by filing an information pursuant to Maine Bar Rule 7.2(b). In determining an appropriate sanction, this Panel took into account the numerous communications to the Respondent that went unheeded, the importance of timely communication with Bar Counsel to the administration of the bar in general, and Respondent's prior record of non-responsiveness to the Board and Bar Counsel. Accordingly, we believe the appropriate sanction is that Michael X. Savasuk be and hereby is issued a public reprimand for violation of Maine Bar Rules 2 (c) and 3.13(c), and thus Maine Bar Rules 3.1(a), 3.2(f)(1), and 3.6(a).

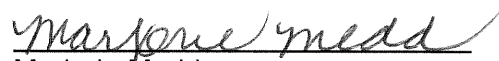
Dated: July 12, 2006



John H. Rich III



Susannah White



Marjorie Medd