



"not to sound cheap, but we were looking for the free consultation."

13. The Board failed in this finding because one and one-half hours were spent defining problems, objectives and possible situations. Respondent testified to these matters at pages 85 to 88 of the transcript.
14. Respondent strenuously objects to the Board's finding of fact in this paragraph. Respondent did not have to be asked several times and clearly set forth the agreed approach to resolving the problems and steps to be taken in doing so. See pages 85 to 88 of the transcript.
15. The Board failed in this finding because Respondent testified that he memorialized the agreed terms into a fee agreement and mailed it to Hirsch and Joyce for signature. That was the purpose of the phone call (94-95).
16. The Board failed in this finding because Respondent testified the fee was agreed to (81-82). Respondent did the proper thing by memorializing the understanding with the written fee agreement.
17. The Board failed in this finding because Respondent has been steadfast in the fact that he never used obscene language with Mr. Hirsch (102). Hirsch also testified that approximately 20 minutes after he spoke with Respondent, Respondent spoke with Bob Joyce and,  
  
"He was very nice and very friendly, very professional with him, from what Bob said." (24)

20. The Board failed in this finding because Respondent testified that Joyce had called and stated that pursuant to Respondent's advice he had called Gemberling and that Gemberling had agreed to meet (87). Joyce also testified that he did in fact call Respondent after having talked to Gemberling (70).
21. The Board failed in this finding because it was Hirsch that testified that Bob Joyce wanted to pay \$300.00 to Respondent to cover Respondent's time prior to the institution of the lawsuit by Respondent (25). Hirsch testified that he did not pay any attorney fees to defend the lawsuit. He paid \$300.00 to Respondent for two hours work and bought his old friend/attorney dinner (41).
22. The Board failed in this finding because Respondent clearly explained in great detail at pages 85 to 89 and Respondent was not CONFRONTED with the fact that an attorney was hired but was merely asked about same.
23. The Board failed in this finding because Respondent testified in detail about the agreement at pages 81 and 82 of the transcript.
26. Respondent strenuously objects to this finding of fact. Respondent testified that he cooperated with the investigation on six separate occasions prior to the meeting that did not take place (113, 114). Respondent left a voice message with Attorney Schrader on the morning

prior to the meeting and Schrader acknowledged receiving same (115).

Respondent did not receive confirmation of a meeting (114).

28. The Board failed in this finding because the record clearly establishes the fact that Respondent cooperated with the Board's order for examination.

**Brief in Support of Respondent's Objections to Conclusions of Law**

Relator's burden of proof for each of the alleged violations by Respondent is clear and convincing evidence. Black's Law Dictionary, 8<sup>th</sup> edition, 2004, defines:

Clear and convincing evidence. Evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials. Also termed clear and convincing proof.

This Court in Cross v. Ledford, 161 Ohio St. 469 (1954) defined clear and convincing evidence at page 477 as follows:

"It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

**Respondent's Objections to Conclusions of Law**

Respondent's objections to the Board's conclusions of law correspond to the paragraph numbers of the Board's findings.

30. Respondent objects to this conclusion of law because the evidence offered by Relator does not meet the clear and convincing evidence burden.

Mr. Joyce revealed the true intent of he and his partner and that was to get "free consultation" from Respondent. These gentlemen were not satisfied with the twenty-minute free phone call and as Mr. Joyce testified at page 65 of the transcript,

"No. Because again, not to sound, what's the word cheap, but we were looking for the free consultation."

The only problem is Hirsch and Joyce did not tell Respondent they were looking for additional free consultation. Respondent has consistently testified that Hirsch agreed that he would pay for Respondent's time commencing with the detailed one and one-half hour long meeting.

The Akron Bar Association's attorney referral service doesn't offer free consultation.

Respondent testified at page 80 that Hirsch and Joyce suggested \$1,000.00 for five months. Respondent then did what a responsible lawyer would do and that is memorialized the terms into a fee agreement.

Why would Mr. Joyce call Respondent to report on progress with Gemberling if they hadn't hired Respondent? Why did they leave their corporate documents to be reviewed by Respondent after the meeting as testified to by Respondent without challenge?

32. This finding is not supported by clear and convincing evidence.

Respondent testified that he had not received a fee or retainer of any amount until his lawsuit for breach of contract was settled for the

quantum meruit value of two hours of his time, that being \$300.00.

Respondent never received one cent from Hirsch and Joyce prior to settlement of the suit and that \$300.00 was a check on Attorney Jaknides account. How can Respondent be found to have charged and collected an excessive fee when the testimony of both parties established the fact that he only received \$300.00 for the undisputed devotion of two hours of his time.

34. This conclusion is not supported by clear and convincing evidence. Mr. Joyce testified that he and Hirsch were looking to get free legal advice. It would be impossible for any attorney to make a living if the actions of Hirsch and Joyce were sanctioned by this Court.

Hirsch and Joyce clearly intended to mislead Respondent as is evidenced by Mr. Joyce's testimony at page 65 of the transcript.

It is unfortunate that Respondent had to file suit, but the misleading actions of Hirsch and Joyce were unacceptable. The result of the suit is that Hirsch and Joyce received two hours of legal advice and paid the going rate for two hours of legal advice.

The Board's conclusion of intent to intimidate or harass is simply not supported by clear and convincing evidence.

36. This conclusion is not supported by clear and convincing evidence. Attorney Schrader on behalf of Relator at page ~~26~~<sup>3</sup> of the transcript admits that Respondent has cooperated with the investigation.

Respondent has testified without challenge that he cooperated on six separate occasions in telling Relator's investigators what happened with Hirsch and Joyce.

Respondent had also admitted that there was miscommunication about a meeting scheduled by Attorney Schrader. Respondent testified that he did not receive notice of the meeting prior thereto and Attorney Schrader has confirmed the fact that Respondent left a voice mail and a request for a return phone call from Schrader which was not returned.

Respondent admits that he may have been less than warm and fuzzy during his deposition, but he did cooperate with every question relevant to the investigation.

A reading of the entire deposition would show Mr. Schrader asking questions of Respondent regarding personal matters that took place years before Respondent had ever met Hirsch and Joyce.

There is a preponderance of evidence in the record that indicates Respondent cooperated with the investigation.

Certainly the Board doesn't support Respondent's reluctance to answer personal questions that are totally irrelevant as an indication of non-cooperation.

37. This conclusion is not supported by clear and convincing evidence as set forth in the preceding paragraph which is fully incorporated herein by reference.

The only threat made in this matter was the threat of Attorney Zavarello to "get" Respondent.

Certainly the Board doesn't suggest that Respondent turn a blind eye to any ethical violations that occurred during this case. Such suggestion would be tantamount to suggesting that Respondent not conduct himself as an attorney has taken an oath to do.

38. The panel's finding of aggravating circumstance is not supported by the evidence in this matter and certainly doesn't meet the burden of proof required.

40. The statements of the panel in this paragraph should have ended with the second sentence thereof. Respondent submitted to an examination by Dr. Nigro for the sole issue specified in sentence one of paragraph 6 of the Board's findings.

Dr. Nigro has violated Respondent's privacy rights by reporting without written authorization from Respondent to matters not ordered to be examined by the Panel.

The Panel improperly allowed Attorney Schrader to read this irrelevant and damaging conjecture into the record over Respondent's objections. Dr. Nigro did not testify at trial. The second and unauthorized part of Dr. Nigro's report is based upon documentation provided to Dr. Nigro without Respondent's knowledge by the Panel. Respondent as of this writing does not know what hearsay documents

were received by Dr. Nigro. Dr. Nigro did not spend more than forty-five minutes with Respondent, did not tell Respondent about any documentation received from the Panel, and does not state that he did.

Respondent has been irreparably damaged by the presence of Dr. Nigro's surplusage in the record and same should be stricken from the record.

42. Respondent objects to this paragraph as it contains neither a statement of aggravation nor mitigation.

#### Objection to Proposed Sanction

Respondent objects to the Board's proposed sanction as being too severe in the event he is found to have violated any of the rules and regulations by clear and convincing evidence.

Respondent has already been irreparably damaged by the improper publication of a portion of Dr. Nigro's report. Respondent devoted two hours of his time normally billed at \$150.00 per hour and received only \$300.00 therefore. Respondent properly settled his lawsuit for exactly the quantum meruit value of his services. There is no doubt in Respondent's mind that Hirsch and Joyce agreed to the contract because it is they that suggested the specific terms of said contract. Unfortunately, for Respondent, he did not find out until Mr. Joyce testified in this matter that they only wanted free advice. Joyce testified at page 65 of the transcript.

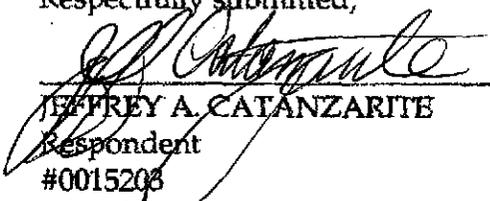
"No. Because again, not to sound, what's the word

cheap, but we were looking for free consultation."

If this Court believes a sanction is proper in this matter, Respondent believes a reprimand would be sufficient.

Lastly, Respondent objects to costs being taxed to him in this matter, especially the fee of Dr. Nigro which is outrageous for the forty-five minutes spent with Respondent. The Board's order for examination stated Respondent may be responsible for Dr. Nigro's fee in the event mental illness was found. No mental illness was found and it would be appropriate for Relator to bear the cost of this unnecessary expense which Relator requested be incurred.

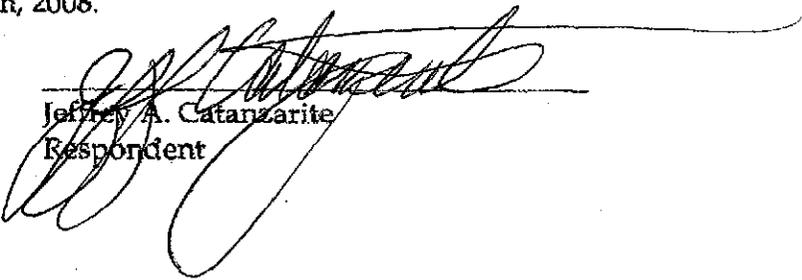
Respectfully submitted,



JEFFREY A. CATANZARITE  
Respondent  
#0015208  
372 Afton Avenue  
Akron, OH 44313  
(330) 867-4901

**PROOF OF SERVICE**

A copy of the foregoing was mailed to the Board of Commissioner and the Relator on this 28<sup>th</sup> day of March, 2008.



Jeffrey A. Catanzarite  
Respondent