

BEFORE THE BOARD OF COMMISSIONERS  
ON  
GRIEVANCES AND DISCIPLINE  
OF  
THE SUPREME COURT OF OHIO

12-0684

FILED  
APR 19 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 11-078</b>
<b>Kathleen Donohoe Mezher</b> <b>Attorney Reg. No. 0016982</b>	:	<b>Findings of Fact,</b>
	:	<b>Conclusions of Law and</b>
	:	<b>Recommendation of the</b>
<b>Frank Eric Espohl</b> <b>Attorney Reg. No. 0065957</b>	:	<b>Board of Commissioners on</b>
	:	<b>Grievances and Discipline of</b>
	:	<b>the Supreme Court of Ohio</b>
<b>Respondents</b>	:	
<b>Cincinnati Bar Association</b>	:	
<b>Relator</b>	:	

OVERVIEW

{¶1} This matter was heard on March 13, 2012, in Columbus, Ohio before a panel consisting of members John H. Siegenthaler, Patrick L. Sink, and Bernard K. Bauer, chair. None of the panel members was from the district from which the complaint arose or served as a member of the probable cause panel in this matter.

{¶2} Relator was represented by James F. Brockman and Katherine C. Morgan. Respondent, Kathleen D. Mezher, was represented by Thomas W. Condit, and was present at the hearing. Respondent, Frank E. Espohl, represented himself and was present at the hearing.

{¶3} Relator proceeded upon its complaint that alleged Respondents committed misconduct in their advertising of a free initial consultation regarding their services when, in fact, a fee of \$250 was charged and collected respecting an initial consultation on February 3, 2011, thereby violating Prof. Cond. R. 1.5(b) and Prof. Cond. R. 7.1.

{¶4} For the reasons that follow, the panel recommends Respondent Mezher be found to have violated Prof. Cond. R. 7.1 and, based upon such conclusion, recommends that Respondent Mezher receive a public reprimand.

{¶5} Further, for reasons that follow, the panel recommends Respondent Espohl be found to have violated Prof. Cond. R. 1.5(b) and, based upon such conclusion, recommends that Respondent Espohl receive a public reprimand.

### **FINDINGS OF FACT**

{¶6} Based upon the stipulations of the parties, the testimony and the exhibits, the panel makes the following findings based upon clear and convincing evidence.

{¶7} Respondent Mezher was admitted to the practice of law in the State of Ohio on December 17, 1984, and is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶8} Respondent Espohl was admitted to the practice of law in the State of Ohio on May 13, 1996, and is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶9} For a number of years and up to the date of the hearing, Respondents practiced together in the Law Offices of Kathleen Mezher & Associates, L.L.C. (“Mezher & Associates”), with Respondent Mezher being the owner and Respondent Espohl being an associate. Stipulations, ¶3.

{¶10} The website for Mezher & Associates ([www.mezherlaw.com](http://www.mezherlaw.com)) advertises a free consultation for individuals interested in hiring the firm. Stipulations, ¶4.

{¶11} The website does not disclose any limitations on the free consultation nor do any written policies of Mezher & Associates place any limitations on the free consultations. However, the firm policy adopted by Respondent Mezher, as the owner, was that no fees were to

be charged for the free consultation, but the free consultation ended when the individual either hired or left the meeting without engaging the firm. A fee agreement signed at some point during an initial consultation results in the first part of the consultation being free while the attorney time spent after the signing, although during that initial consultation, is billed to the client. This policy was conveyed by Respondent Mezher to the associates in the firm. Hearing Tr. 34-36; 56.

{¶12} Respondent Mezher had approved the website information, which, without further explanation of the firm's policies, was inherently misleading.

{¶13} In February of 2011, Stephanie Mahaffey contacted Mezher & Associates to schedule a free consultation about the handling of her mother's estate. Mezher & Associates had prepared her mother's will and a trust.

{¶14} On February 3, 2011, Mahaffey, her husband, and her sister, Jessica Burns went to the main office of Mezher & Associates located on Beechmont Avenue in Cincinnati for an initial consultation and met with Mike Mezher, the husband of Respondent Mezher a non-attorney office manager of the firm, and Respondent Espohl.

{¶15} The participants in the meeting have different recollections of what transpired. However, the most reasonable explanation of what transpired was offered by Respondent Espohl and corroborated by Mike Mezher. Hearing Tr. 60-62; 105-111.

{¶16} The initial portion of the meeting lasted 20 to 30 minutes and consisted of Respondent Espohl reviewing the will and trust that were brought in by the prospective clients. Additionally, Respondent Espohl answered some questions asked by the prospective clients. Mike Mezher sat in on the meeting because the potential estate consisted of stocks, bonds, and an interest in a closely held corporation. There was some tension between the sisters during the

meeting regarding the real estate since one of the sisters was living with the mother at the time of her death.

{¶17} The initial portion of the meeting concluded with the signing of a probate fee agreement. Relator's Ex. 4.

{¶18} After the fee agreement was signed, Respondent Espohl left the room for about 20 minutes to research real estate issues on his computer. Espohl then returned to the meeting with the clients and spent an additional 30 to 35 minutes with them answering questions and advising them about additional information that would be needed.

{¶19} At the time of the meeting, Respondent Espohl did not advise the sisters that the "free consultation" ended when they signed the fee agreement.

{¶20} There likely would not have been a dispute had the undertaking agreed to on February 3, 2011, been completed, as the fees would have been governed by the fee agreement. However, after that meeting, the sisters decided that they did not want Mezher & Associates to represent them in concluding their mother's affairs.

{¶21} Burns contacted Mezher & Associates, advised Mike Mezher that the firm was being discharged and requested return of the file.

{¶22} Mike Mezher advised Respondent Espohl that the firm was being discharged and asked him to prepare a bill for his time spent on the file. The invoice which Respondent Espohl prepared totaled \$375, including a charge of \$250 for the February 3, 2011 meeting. The invoice did not show any portion of the initial consultation as being free. Relator's Ex. 5.

{¶23} On February 26, 2011, Burns and a friend went to the offices of Mezher & Associates to pick up the file. When Burns reviewed the invoice, she challenged the charge for

the February 3, 2011 meeting, which she and her sister believed was to be a free consultation, and spoke with Mike Mezher about the matter.

{¶24} Mike Mezher apparently refused to turn over the file until the invoiced charges were paid. Burns' friend paid the bill to retrieve the file.

{¶25} Respondent Mezher refunded the disputed \$250 charge "about a week" before the hearing. Hearing Tr. 224.

### **CONCLUSIONS OF LAW**

{¶26} Relator alleges that Respondent Mezher violated the following: Prof. Cond. R. 1.5(b) [any change in the basis or rate of a fee shall be promptly communicated to a client] and Prof. Cond. R. 7.1 [a lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services].

{¶27} Based upon clear and convincing evidence, the panel concludes that Respondent Mezher, by her actions, violated Prof. Cond. R. 7.1.

{¶28} However, based upon the evidence submitted, the panel cannot conclude that Respondent Mezher violated Prof. Cond. R. 1.5(b) and recommends that such allegation of misconduct be dismissed.

{¶29} Relator alleges that Respondent Espohl violated Prof. Cond. R. 1.5(b) and Prof. Cond. R. 7.1.

{¶30} Based upon clear and convincing evidence, the panel concludes that Respondent Espohl, by his actions, violated Prof. Cond. R. 1.5(b).

{¶31} However, based upon the evidence submitted, the panel cannot conclude that Respondent Espohl violated Prof. Cond. R. 7.1 and recommends that such allegation of misconduct be dismissed.

## AGGRAVATION AND MITIGATION

{¶32} Based upon the evidence presented the only aggravating matter offered in this case as to either Respondent was the failure to make timely restitution.

{¶33} In mitigation as to Respondent Mezher, there is an absence of a prior disciplinary record and there is an absence of a dishonest or selfish motive. Further, Respondent Mezher exhibited a cooperative attitude toward the proceedings and demonstrated active participation in both the legal community and the community at large. Finally, Respondent Mezher has taken steps to attempt to rectify the problems associated with her website and has reviewed and modified her various fee agreements.

{¶34} In mitigation as to Respondent Espohl, there is an absence of a prior disciplinary record and there is an absence of a dishonest or selfish motive. Further, Respondent Espohl exhibited a cooperative attitude toward the proceedings and demonstrated active good character and reputation.

## RECOMMENDED SANCTION

{¶35} Relator has recommended that each Respondent receive a public reprimand.

{¶36} Respondents have moved the panel to dismiss all of the violations charged or, in the alternative, impose a sanction of a public reprimand.

{¶37} Respondent Mezher approved the contents of her firm's website that were inherently misleading, as it was in the Burns matter, and developed and trained her associates in her firm's policy regarding when a free consultation ceased being a free consultation.

{¶38} In *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 105 S.Ct. 2265 (1985), the Court held that a public reprimand was affirmed as it related to Zauderer's failure to disclose that notwithstanding the fact that no attorney fee would be owed in

the event the contingent Dalkon Shield case was lost, costs and expenses associated with the undertaking would still be owed by the client. This was determined to be inherently misleading to members of the public.

{¶39} Similarly, a public reprimand was the appropriate sanction in *Medina County Bar Assn. v. Grieselhuber*, 78 Ohio St.3d 373, 1997-Ohio-58 and *Disciplinary Counsel v. Shane*, 81 Ohio St.3d 494, 1998-Ohio-609.

{¶40} Finally, in *In re Pacior*, 770 N.E.2d 273 (Ind. 2002), the Indiana Supreme Court imposed a reprimand and admonishment for advertising a free initial consultation and later charging the client for their initial meeting.

{¶41} Respondent Espohl was aware of the advertising and the firm's policy regarding when fees were to be charged and failed to advise the sisters that they could be charged for any time spent after the fee agreement was signed, thereby causing the confusion that led to this case.

{¶42} For these reasons, the panel recommends that Respondent Mezher receive a public reprimand and that Respondent Espohl receive a public reprimand.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on April 13, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendations of the panel and recommends that Respondents, Kathleen Donohoe Mezher and Frank Eric Espohl, each be publicly reprimanded. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on  
Grievances and Discipline of the Supreme Court of Ohio,  
I hereby certify the foregoing Findings of Fact, Conclusions  
of Law, and Recommendation as those of the Board.**

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

**RICHARD A. DOVE, Secretary  
Board of Commissioners on  
Grievances and Discipline of  
the Supreme Court of Ohio**