

ORIGINAL

IN THE SUPREME COURT OF OHIO

<b>CINCINNATI BAR ASSOCIATION</b>	:	Case No. 2012-0684
	:	
Plaintiff/Appellee	:	Panel No. 11-078
	:	
v.	:	
	:	
<b>KATHLEEN D. MEZHER &amp; FRANK ERIC ESPOHL</b>	:	
	:	
Respondents/Appellants	:	
	:	

**OBJECTIONS AND BRIEF IN SUPPORT OF OBJECTIONS BY  
RESPONDENT/APPELLANT FRANK ERIC ESPOHL**

**JAMES F. BROCKMAN (Bar #0009469)**  
 LINDHORST & DREIDAME  
 Attorney for Plaintiff/Appellee Cincinnati Bar Assn.  
 312 Walnut St., Suite 3100  
 Cincinnati, OH 45202  
 (513) 345-5798  
 Fax: (513) 421-0212

**FRANK E. ESPOHL (Bar #0065957)**  
 KATHLEEN MEZHER & ASSOCIATES  
 Respondent/Appellant *pro se*  
 8075 Beechmont Ave.  
 Cincinnati, OH 45255  
 (513) 474-3700  
 Fax: (513) 388-4652

**KATHERINE C. MORGAN (Bar #0068184)**  
 FROST BROWN TODD  
 Attorney for Plaintiff/Appellee Cincinnati Bar Assn.  
 201 E. Fifth St., Suite 2200  
 Cincinnati, OH 45202  
 (513) 651-6838  
 Fax: (513) 651-6981

**THOMAS W. CONDIT (Bar #0041299)**  
 Attorney for Respondent/Appellant  
 Kathleen D. Mezher  
 P.O. Box 12700  
 Cincinnati, OH 45212  
 (513) 731-1230  
 Fax: (513) 731-7230

**FILED**  
 JUN 11 2012  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

**I. TABLE OF CONTENTS  
AND OBJECTIONS**

**II. STATEMENT OF THE CASE** 3

A. PROCEDURAL POSTURE 3

B. STATEMENT OF FACTS 3

**III. ARGUMENT OF LAW** 6

FIRST OBJECTION: 6

THE PANEL ERRED TO THE PREJUDICE OF RESPONDENTS BY FINDING THAT THE COMPLAINANTS HAD BEEN CHARGED FOR A FREE CONSULTATION.

ISSUES PRESENTED:

1. The Complainants understood that when they signed the fee agreement, the free consultation was over. 6

2. When a client discharges an attorney or law firm before the conclusion of the matter for which the attorney or law firm was hired, *quantum meruit* is the legally imposed measure for compensating the attorney or law firm for services rendered prior to the discharge.<sup>9</sup>

SECOND OBJECTION: 11

THE PANEL ERRED TO THE PREJUDICE OF RESPONDENTS BY FINDING THAT THE FIRM'S WEBSITE ADVERTISING A FREE CONSULTATION IS DECEPTIVE OR MISLEADING.

ISSUES PRESENTED:

3. The Firm's website advertising a "Free Consultation" is not deceptive or misleading. 11

4. The Firm's website is not under the control of Respondent Frank E. Espohl.<sup>11</sup>

**IV. CONCLUSION** 12

**V. CERTIFICATE OF SERVICE** 13

**VI. APPENDIX** 14

## II. STATEMENT OF THE CASE

### A. PROCEDURAL POSTURE

Plaintiff/Appellee filed its Complaint against Respondents/Appellants on July 29, 2011. The allegations were that: 1) Respondents had advertised free consultations and had charged the complaining witnesses for a free consultation, 2) it is misleading to advertise free consultations, and 3) Respondents had not completely explained the distinction between the free initial consultation and when chargeable work had begun.

The Complaint came to hearing on March 13, 2012. The Complaining Witnesses were unwilling to appear in person; their testimony was presented by video depositions which had been taken in December 2011. The Panel then issued its Findings of Fact, Conclusions of Law, and Recommendations.

### B. STATEMENT OF FACTS

Kathleen D. Mezher had prepared the Will and Trust of Nora Burns while she was alive; Jessica Burns (daughter of decedent Nora Burns) and Stephanie Mahaffey (daughter of decedent Nora Burns) came to the offices of Kathleen Mezher & Associates, LLC for a probate consultation after Nora Burns died because Kathleen D. Mezher had prepared the Will and Trust. Jessica Burns Deposition, p. 5.

On February 3, 2011, Frank E. Espohl (attorney) and Michael B. Mezher, Sr. (paralegal) met with Jessica Burns (daughter of decedent Nora Burns), Stephanie Mahaffey (daughter of decedent Nora Burns), and Brian Mahaffey (husband of Stephanie Mahaffey). Hearing Transcript, p. 55, lines 10-12. Prior to the meeting, Mr. Espohl retrieved the Will and Trust

from the firm's safe. Relator's Exhibit 7.

There were factual disputes about what happened during the initial meeting. Recommendation of the Board, Paragraph 15. The panel found that the testimony of Mr. Michael Mezher, Sr. and Mr. Frank Espohl was the most credible account of the events of February 3, 2011. Recommendation of the Board, Paragraphs 15 through 18. At the initial meeting, Mr. Espohl and Mr. Mezher explained the probate process regarding their mother's Estate and thoroughly explained the fee guidelines of the Clermont County Probate Court. Hearing Transcript, pages 61-62. This initial consultation lasted approximately 30 minutes; Ms. Burns then signed a probate fee agreement. Recommendation of the Board, Paragraph 17; Relator's Exhibit 4 (Fee Agreement). The clients wanted to get started right away, so we asked them to stay for a while so we could do initial preparation of the Estate. Hearing Transcript, page 60. Mr. Espohl stepped out of the room for 20 to 30 minutes so he could thoroughly review the Will and Trust in depth. Id. Mr. Mezher stayed in the consultation room with Complainants while Mr. Espohl took the time to thoroughly review the Will and Trust. Id., pages 108-110. Mr. Espohl then went back to the consultation room and spent another 40 to 50 minutes going over more specific details of the Estate, such as stock in a closely held corporation that Nora Burns had owned. Id., pages 58-59. Mr. Espohl then gave the clients a list of additional documents and information needed to proceed further with opening the Estate. Relator's Exhibit 7. After the Complainants had their free consultation and signed the fee agreement, Mr. Espohl spent well over an hour working on the Estate. Hearing Transcript, pages 58-59.\*

---

\* Complainants falsely testified that they were at the office for "around half an hour", in an obvious attempt to bolster their claim that they had been charged \$250.00 for a free consultation.

On February 7, 2011, Frank E. Espohl further reviewed the Will and Trust and documents the clients had brought to the initial meeting and briefed Melissa McElfresh (paralegal) on the new probate case. Relator's Exhibit 7. Mr. Espohl asked Ms. McElfresh to send a letter to the heirs to remind them to bring in the documents we had asked them for at the initial meeting; said letter was sent to Ms. Burns on February 7, 2011. Relator's Exhibit 6.

On the afternoon of Friday, February 25, 2011, Jessica Burns called the office and spoke to Michael B. Mezher, Sr., informing him that they had decided to discharge Kathleen Mezher & Associates and use another law firm to handle their mother's estate; she wanted to retrieve the documents which were left at Kathleen Mezher & Associates' office. Hearing Transcript, page 79. Mr. Mezher informed Ms. Burns that we would ask them to pay for the work done by Kathleen Mezher & Associates to that point. Id., pages 112-113. Ms. Burns did not voice an objection to paying for work that was done on the file before discharge. Id. Mr. Mezher asked Mr. Espohl to prepare an itemization of work done and time spent in the Burns estate – Mr. Espohl hand-wrote an itemization of work done after the free initial consultation based on *quantum meruit* principles, which Mr. Mezher used to prepare the bill. Id., page 114.

Then, on the morning of Saturday, February 26, 2011, Ms. Burns came to the office to pick up the documents. Hearing Transcript, page 115. Ms. Burns asked about the consultation; Mr. Mezher explained that the Estate was being charged for work done after the free initial consultation. Id., pages 115-116. She voiced no objection to this, paid, took her documents (Trust, Will, and some other items), and left. Id., page 116.

Ms. Burns then filed a grievance with the Cincinnati Bar Association on the basis that she had not received a free consultation as advertised on Kathleen Mezher & Associates' website.

The Cincinnati Bar Association then filed the complaint in this action. Complaint; Amended Complaint.

### III. ARGUMENT OF LAW

#### FIRST OBJECTION

THE PANEL ERRED TO THE PREJUDICE OF RESPONDENTS BY FINDING THAT THE COMPLAINANTS HAD BEEN CHARGED FOR A FREE CONSULTATION.

#### Issues Presented for Review and Argument

1. **The Complainants understood that when they signed the fee agreement, the free consultation was over.**

The \$250.00 in quantum meruit charged for February 3, 2011 was not a charge for a free consultation. In weighing the evidence presented, the board made factual findings that the initial consultation lasted approximately 30 minutes; the heirs then signed a probate fee agreement. (Recommendation of the Board, Paragraphs 15 through 18.). After the fee agreement was signed, I then spent at least an hour working on the file, both while the Complainants were still at the office and after they left. Id. However, contrary to the conclusions of the Board, the Complainants did not believe that everything we did on their case on February 3, 2011 was a “free consultation” and thus was not chargeable. In her deposition, which was introduced into evidence, Complainant Stephanie Burns Mahaffey was asked the following question and replied as follows:

Q [from Mr. John Burlew, who was representing both Respondents at the time of the deposition]. Okay. So your understanding of the agreement [referring to the fee agreement] is, if it had lasted all day, regardless of what happened, that that was all a consultation till the moment you signed the document; was that your understanding?

A. My understanding is that, yes, we were there for the consultation, and that then **once we signed, they would begin working on the file.** (Emphasis added)

Deposition of Stephanie Burns Mahaffey, p. 28, lines 17-24.

Jessica Burns, the Executor and other complainant, also admitted that she was aware that signing the fee agreement ended the free consultation. She said:

Q [from Mr. John Burlew, who was representing both Respondents at the time of the deposition]. Okay. And you talked about and did in fact sign a fee agreement of some type, did you not?

A. I did sign this agreement at the end of the meeting.

Q. And did you ask what that agreement was about and why you were signing it?

A. I asked my sister if I should sign it, and she stated if this allowed them to act on my behalf in court, then I should.

Q. So at this point you were agreeing that they were to be acting on your behalf --

A. Yes.

Q. -- in court. They were being hired.

A. At the very end of the meeting, yes.

Deposition of Jessica Burns, p. 21, line 21 to p. 22, line 9.

Thus, contrary to the findings of the Board (Recommendation of the Board, Paragraph 19), both complainants did in fact understand that once they signed the fee agreement and we started working on their case, the work we did was not part of the free consultation. This is why both Complainants gave the false testimony that they were at the office for "around half an hour" on February 3, 2011 and left immediately after signing the Fee Agreement -- both Complainants understood full well that signing the Fee Agreement was the dividing line between the free consultation and chargeable work on the case.

Additionally, the Fee Agreement itself includes the statement, "This Fee Agreement shall become effective upon receipt of the signed Fee Agreement." Relator's Exhibit 4. Thus, the Fee Agreement itself creates the division between the free initial consultation and chargeable work.

Even if the Complainants had not admitted to understanding this distinction between free

consultation and chargeable work, this Court should apply a rule of reason. No reasonable person would think that an attorney would give a half-hour consultation to a client, have the clients sign a fee agreement, and then spend another hour working on the case without being entitled to some compensation for that hour of work performed on the case **after the free initial consultation**. The fact that no reasonable person would think that is supported by the fact that the Complainants did not make such a ridiculous assertion – instead, they falsely testified that they spent “around a half an hour” at my office on February 3, 2011 and falsely denied that I had done an hour of work after the free initial consultation. Mahaffey Deposition, page 12, lines 20-24; Jessica Burns Deposition, page 9, lines 16-19. The Board’s factual findings were that these statements were not credible (Recommendation of the Board, Paragraphs 15 through 18); and I can assure this Court that Ms. Burns’ and Ms. Mahaffey’s statements that they were only at our office for around half an hour on February 3, 2011 are utterly false. But the fact that these Complainants made these false statements prove that they understood that time I spent working on their case **after the free initial consultation** was not part of the free initial consultation – so they falsely testified that I had not done any work on the case on February 3, 2011 after the free initial consultation. These Complainants were clearly not confused or misinformed – rather, they chose to make false statements of fact in an effort to avoid paying for some of the services rendered after the free initial consultation.

**2. When a client discharges an attorney or law firm before the conclusion of the matter for which the attorney or law firm was hired, *quantum meruit* is the legally imposed measure for compensating the attorney or law firm for services rendered prior to the discharge.**

It is well established that, “A client has an absolute right to discharge an attorney or law firm at any time, with or without cause, subject to the obligation to compensate the attorney or firm for services rendered prior to the discharge.” Reid, Johnson, Downes, Andrachik & Webster v. Lansberry (1994), 68 Ohio St.3d 570, 629 N.E.2d 431 (Syllabus, paragraph 1). The purpose of this rule is to strike the proper balance between the client’s right to discharge one attorney and substitute another one, and the first attorney’s right to be paid for services rendered prior to discharge. Id. This rule imposes a *quantum meruit* clause on fee agreements between attorneys and clients even when the written fee agreement does not contain a *quantum meruit* clause. Id.; *see also* Fox & Associates Co., L.P.A. v. Purdon (1989), 44 Ohio St.3d 69, 541 N.E.2d 448.

In the instant case, both complainants admitted that they understood that once the fee agreement was signed and we started working on their case, the work we did was not part of the free consultation. Deposition of Stephanie Burns Mahaffey, page 28, lines 17-24; Deposition of Jessica Burns, page 21, line 21 to page 22, line 9. Thus, under the rule of Reid, when the Complainants chose to discharge our firm and hire another attorney to continue the work on their mother’s estate, our firm had the right to seek compensation for the work we performed after the free initial consultation on a *quantum meruit* basis. This is what we did. Our firm advertised a “free initial consultation” and the Complainants got a free initial consultation. We charged for work we did after the free initial consultation was over and the Complainants signed the fee agreement and said they wanted to get started working on their mother’s Estate.

The Complainants had an absolute right to discharge our firm and hire another attorney to do the remaining work on probating their mother's Estate; and our firm had a right to charge the Complainants for work we performed after the free initial consultation on a *quantum meruit* basis. Complainants in fact admitted that they were informed of this when they contacted our firm to discharge us, and they did not dispute all the charges on the itemization – just the hour spent on February 3, 2011 after the free consultation. Jessica Burns Deposition (Page 27, lines 10-20). Thus, at all times, the Complainants were properly informed of the basis of fees charged; the Complaint is based on the false allegations that I had not done any work on the case on February 3, 2011 after the free initial consultation.

The Panel made an issue of the fact that the itemized statement of *quantum meruit* does not have a line for “free consultation” with no charge. Recommendation of the Board, Paragraph 22; Relator's Exhibit 5. But the purpose of the itemization was to state the services provided after the free consultation and serve as a basis for billing on the basis of *quantum meruit*. Billing for a free consultation is a vain act – the *quantum meruit* would have reached exactly the same total whether or not the itemization had included an extra line for a free consultation. The Panel correctly noted that there likely would not have been a dispute over the fees had the Complainants not discharged Kathleen Mezher & Associates because in that case, the fees would have been governed by the fee agreement (i.e. by the Clermont County Probate Court's fee guidelines). Recommendation of the Board, Paragraph 20. However, because the Complainants did discharge Kathleen Mezher & Associates, the fees are governed under the principles of *quantum meruit*, even if the fee agreement does not contain a *quantum meruit* clause. Reid; Fox. Thus, I acted in full compliance with the disciplinary rules as interpreted by

this Court by billing the Complainants on the basis of *quantum meruit* for services provided **after the free initial consultation.**

## SECOND OBJECTION

THE PANEL ERRED TO THE PREJUDICE OF RESPONDENTS BY FINDING THAT THE FIRM'S WEBSITE ADVERTISING A FREE CONSULTATION IS DECEPTIVE OR MISLEADING.

### Issues Presented for Review and Argument

**3. The Firm's website advertising a "Free Consultation" is not deceptive or misleading.**

Kathleen Mezher & Associates advertises a "free initial consultation" and Kathleen Mezher & Associates in truth and in fact gives free initial consultations. Hearing Transcript, p. 230; Respondents' Exhibit I. As fully discussed above, our firm advertised a "free initial consultation" and the Complainants got a free initial consultation. We charged for work we did after the free initial consultation was over and the Complainants signed the fee agreement and said they wanted to get started working on their mother's Estate; we did not charge them for the free consultation. Thus, the Firm's website is not deceptive or misleading.

**4. The Firm's website is not under the control of Respondent Frank E. Espohl.**

As fully discussed above, I gave the Complainants a free initial consultation as advertised on the website. We charged for work we did after the free initial consultation was over and the Complainants signed the fee agreement and said they wanted to get started working on their mother's Estate; I did not charge them for the free consultation. Thus, the Firm's website is not deceptive or misleading.

However, if this Court is inclined to find it inherently misleading to advertise a “Free consultation”; it should be remembered that the website is not under my control.

#### IV. CONCLUSION

The Complainants were not in fact misled and did in fact understand when the free consultation ended. Further, Complainants were in truth and in fact given a free initial consultation and were not charged for the consultation; they were only charged for work done on the case after the conclusion of the free consultation. Thus, Respondent Frank E. Espohl properly charged Complainants for work performed on a *quantum meruit* basis and did not fail to properly inform the Complainants about the basis for fees charged. Respondent/Appellant respectfully requests that this Court not adopt the Recommendation of the Board and instead dismiss the Complaint.

Respectfully Submitted,

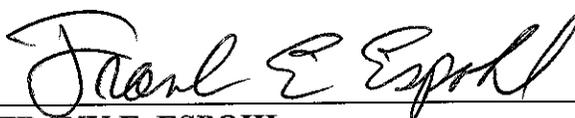


**FRANK E. ESPOHL**

Respondent/Appellant *pro se*  
Kathleen Mezher & Associates  
8075 Beechmont Ave.  
Cincinnati, OH 45255  
(513) 474-3700  
FAX: (513) 388-4652

**V. CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served upon James F. Brockman, Attorney for Plaintiff/Appellee Cincinnati Bar Association, Lindhorst & Dreidame, 312 Walnut St., Suite 3100, Cincinnati, OH 45202; and Katherine C. Morgan, Attorney for Plaintiff/Appellee Cincinnati Bar Association, Frost Brown Todd, 201 E. Fifth St., Suite 2200, Cincinnati, OH 45202 by First Class United States Mail and upon Thomas W. Condit, Attorney for Respondent/Appellant Kathleen D. Mezher, P.O. Box 12700, Cincinnati, OH 45212; and Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 S. Front St., Fifth Floor, Columbus, OH 43215-3431 this 11<sup>th</sup> day of June, 2012.



**FRANK E. ESPOHL**

Respondent/Appellant *pro se*

**VI. APPENDIX**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF THE  
BOARD OF COMMISSIONERS**

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

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



---

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