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BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF  
THE SUPREME COURT OF OHIO

*In Re*

*Complaint Against*

NANCY COLE FINAN (0042335)  
31116 Carlton Drive  
Bay Village, Ohio 44140

Respondent,

v.

CLEVELAND METROPOLITAN  
BAR ASSOCIATION  
1375 E. Ninth Street, Floor 2  
Cleveland, Ohio 44114,

Relator.

NO. 16 - 002

**COMPLAINT  
AND  
CERTIFICATE**

(Rule V of the Supreme Court rules for  
the Government of the Bar of Ohio)

Relator, Cleveland Metropolitan Bar Association, alleges that Respondent, Nancy Cole Finan, an Attorney at Law, duly admitted to the practice of law in the state of Ohio on November 6, 1989, is guilty of the following misconduct:

**Background**

1. Nancy Cole Finan ("Respondent"), Attorney Registration Number 0042335, is subject to the Ohio Rules of Professional Conduct and the Ohio Rules for the Government of the Bar.

2. Respondent registered as “Inactive” with the Office of Attorney Services of the Supreme Court of Ohio on May 11, 2009.

3. Respondent is currently employed as a social worker.

**Estate of Frank Melis, Sr.**

4. Frank Melis, Sr. (“Decedent”) died January 23, 2007, leaving assets totaling approximately \$668,385.46.

5. Frank Melis, Jr. (“Melis”) engaged Respondent to handle Decedent’s estate.

6. Most assets were non-probate assets left directly to Decedent’s son, Melis, as joint and survivorship accounts or payable on death.

7. Because Decedent died while the Ohio Estate Tax was still in effect, an Ohio Estate Tax return should have been filed within 9 months after the date of death. However, this was not done and has not been done to date.

8. When asked to produce records of her time for Decedent’s Estate, Respondent was only able to produce two.

9. One record, for the period of January 2007 through March 2007, had no break down of time but simply descriptions of work done totaling 33 hours and 20 minutes at \$150 an hour for a total of \$5,000.00.

10. This time included calls and trips to the Probate Court as well as trips to banks and annuity representatives, most of which were unnecessary.

11. Respondent’s second time record was for the period of April 5, 2007 through November 16, 2007 for an additional 42 hours of work at a total cost of \$6,775.00.

12. This time included several multi-hour phone calls with Melis, multiple lunch meetings with Melis and another attorney to discuss “estate tax issues” as well as other meetings with Melis.

13. Based upon these time records, Respondent spent 75 hours administering an estate with non-probate assets.

14. Respondent states she presented her time records to Melis and gave him the option of paying the \$11,775 hourly bill or the Probate Court’s “statutory fee.”

15. Melis opted to pay the Probate Court’s “statutory fee” believing it would be the smaller amount of the two options.

16. Cuyahoga County Probate Court Local Rule 71.1 provides a 1% statutory fee for non-probate assets.

17. The total amount of Decedent’s non-probate assets totaled \$668,385.46; one-percent of which is \$6,683.85.

18. The total fee due by Respondent’s statutory fee calculations was \$26,287.71.

19. Decedent’s estate was not a probated estate and no inventory was ever filed.

20. However, Melis paid Respondent \$25,968.00 in fees.

21. Melis did not learn that it was improper for Respondent to charge the statutory fee or that no estate was ever probated until after Respondent’s representation ended.

22. Melis challenged Respondent’s computation believing he had overpaid by \$3,000.00.

23. Respondent agreed that she overcharged Melis by \$3,000.00 and on November 19, 2007, paid him \$1,000.00, and signed a handwritten IOU/promissory note stating she would pay the remaining \$2,000.00 by January 31, 2008.

24. Respondent did not pay the balance of \$2,000.00 to Melis by January 31, 2008.

25. After Melis filed a grievance, Respondent made several payments of \$75 per month to Melis.

26. During Relator's investigation of Melis's grievance, Respondent was slow to respond to requests for information and typically left voicemails for Bar Counsel after business hours or on weekends.

27. Respondent did not respond to an inquiry from Relator's investigator, which was received by Respondent on May 22, 2015, until August 31, 2015.

28. Respondent also told Relator's investigator she has 20 to 25 years estate experience, mostly in Cuyahoga County. However, a review of the Probate docket shows the only probate cases she has handled were simple Release of Assets from Administration, all in 2001.

#### **Respondent Violated the Rules of Professional Conduct**

29. Respondent's conduct as described above amounts to violations of the following provisions of the Rules of Professional Conduct:

- a. Prof. Cond. R. 1.1 – Failure to provide competent representation to a client;
- b. Prof. Cond. R. 1.5(a) – Charging the client a clearly excessive fee;
- c. Prof Cond. R. 8.1(b) – Failure to cooperate in a disciplinary matter; and
- d. Prof. Cond. R. 8.4(c) – Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

#### **Damage and Restitution**

30. The total amount of Decedent's non-probate assets totaled \$668,385.46; one-percent of which is \$6,683.85.

31. Melis paid Respondent fees totaling \$25,968.00.

32. Although Relator takes issue with the Probate Court's statutory fee being charged by Respondent in a case that was never filed with the Probate Court, the Respondent owes Melis a refund of at least \$19,284.15 in restitution for the clearly excessive fee she charged in a simple estate administration of non-probate assets.

WHEREFORE, Relator respectfully requests that Respondent be sanctioned for her misconduct and an order of restitution be imposed.

Respectfully Submitted,



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Heather M. Zirke (0074994)

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**CERTIFICATE**

The undersigned, **KAREN E. RUBIN, CHAIRPERSON**, of the **CLEVELAND METROPOLITAN BAR ASSOCIATION'S CERTIFIED GRIEVANCE COMMITTEE**, hereby certifies that **HEATHER M. ZIRKE** and **KARI L. BURNS** are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: 2/2/16

  
Karen E. Rubin, Chairperson  
Certified Grievance Committee

**Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, Section (10)**

(E)(1) Content of the Complaint. A complaint filed with the Board shall be filed in the name of either disciplinary counsel or the bar association that sponsors the certified grievance committee, as relator. The complaint shall include all of the following:

- (a) Allegations of specific misconduct including citations to the rules allegedly violated by the respondent, provided that neither the panel nor the Board shall be limited to the citation to the disciplinary rule in finding violations based on all the evidence if the respondent has fair notice of the charged misconduct;
- (b) If applicable, an allegation of the nature and amount of restitution that may be owed by the respondent or a statement that the relator cannot make a good faith allegation without engaging in further discovery;
- (c) A list of any discipline or suspensions previously imposed against the respondent and the nature of the prior discipline or suspension;
- (d) The respondent's attorney registration number and his or her last known address;
- (e) The signatures of one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator and, where applicable, by bar counsel;
- (f) A written certification, signed by disciplinary counsel or the president or chair of the certified grievance committee, that the counsel are authorized to represent the relator in the action and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute the authorization of the counsel to represent the relator in the action as fully and completely as if designated and appointed by order of the Supreme Court with all the privileges and immunities of an officer of the Supreme Court.