John P. Messina
541 North Cuyler Avenue
Oak Park, IL 60302-2306

(708) 228-4507
jpmessina@live.com

January 31, 2012

Meriel Coleman
Attorney Registration & Disciplinary Commission
One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, IL 60601-6219

Re: John Patrick Messina,
In relation to Christina O'Donnell
No. 2011-IN-04978

Dear Ms. Coleman:

I am writing to supplement the responses I submitted on November 21 and December 7, 2011, as corrected and amended on January 18, 2012 (cited as "Dec. 7th Response").

This supplement focuses on two disputes that were subjects of ARDC inquiries I initiated on August 5, 1993. One dispute concerned a Legal Services and Consulting Agreement ("Consulting Agreement") I had been required to execute as a condition to a $2,000,000 settlement of four lawsuits, including *Grove Fresh Distributors, Inc. v. John Labatt Ltd., et al.*, No. 90c5009 ("90c5009"). I represented the plaintiff in all four suits; the Consulting Agreement purported to create an attorney-client relationship between the defendants and me for a $200,000 fee payable over 30 months. (Dec. 7th Response, pp. 19-20)

The other dispute concerned a brief that the 90c5009 defendants filed in the Seventh Circuit Court of Appeals on July 14, 1993. The brief opposed journalists who were seeking access to sealed materials. The defendants justified the seal by accusing my client and me of misconduct, alleging that we had "abused judicial mechanisms" in an attempt to extort the settlement of groundless claims. In support of these charges ("the Misconduct Charges") they made statements about me that, if accepted as true, would result in my being disbarred or suspended from the practice of law. (Dec. 7th Response, pp. 22-23.)

These disputes came to a head on August 5, 1993, when I served notice that I was rescinding the Consulting Agreement. That same day I sent a letter to the ARDC complaining about the brief. The Administrator opened inquiries into the conduct of five attorneys, as follows:

a. David Stetler, No. 93-CI-3835

b. Jeffrey Stone, No. 93-CI-3836

c. Lazar Raynal, No. 93-CI-3837

d. Steven Kowal, No. 93-CI-3838

e. Joseph Duffy, No. 93-CI-3839

The concessions regarding the Misconduct Charges

In their responses to the ARDC's inquiries, Kowal and the lawyers from McDermott Will & Emery, *i.e.*, Stetler, Stone, and Raynal ("the McDermott lawyers"), tacitly admitted that they had no evidence to support the Misconduct Charges. *See* ¶¶67-68, 75-76, below. The sole bases for the Charges, they acknowledged, were the *subjective* beliefs of the defendants and their lawyers. *See* ¶¶70-72, below.

Subsequently, Kowal and the McDermott lawyers abandoned the Misconduct Charges as grounds for resisting the journalists' access claims. *See* ¶85, below.

Despite the respondents' admissions that the Misconduct Charges were groundless, the ARDC closed the inquiries on the ground that "the evidence does not warrant further action by this office." (Ex. 20-W, DX-41.)

The concessions regarding the Consulting Agreement

In support of my claim regarding the Consulting Agreement I submitted the expert opinion of Professor Daniel Coquillette, currently the Charles Warren Visiting Professor of American Legal History at Harvard Law School. Prof. Coquillette opined that the Consulting Agreement violated R.P.C. 5.6(b). *See* ¶¶90-93, below.

Kowal and the McDermott lawyers admitted that they had required the Consulting Agreement as a condition of settlement and as a means for restricting my right to practice law. *See* ¶95, below.

Despite these admissions, the ARDC closed the inquiries into the Consulting Agreement on the ground that "the evidence does not warrant further action by this office." (Ex. 20-W, DX-41.)

Procedural History of the 1993-94 Inquiries

A. Background.

1. On August 28, 1990, I filed the 90c5009 complaint in the United States District Court for the Northern District of Illinois, Eastern Division. The 90c5009 case was related to three other cases that a prior lawyer had filed for Grove Fresh in February 1989. (Dec. 7th Response, pp. 5-7.)

2. Pursuant to stipulation, I filed the 90c5009 complaint under seal pending a hearing on the merits of whether a seal was warranted. I made the stipulation to resolve, temporarily, an emergency motion one of the defendants had filed. No hearing was ever held, however. The claim alleged in the emergency motion was eventually denied, but the trial judge, the Honorable James B. Zagel, kept the seal in place. (Dec. 7th Response, pp. 13-14.)

3. In September 1991 journalists intervened in 90c5009 to challenge the seal. In briefs filed on October 23 and November 29, 1991, the defendants defended the seal by alleging the Misconduct Charges against Grove Fresh and me. (Ex. 21, ¶¶29-32, 37-41.)

4. The briefs filed by the defendants in October and November 1991 were the first times the defendants presented the Misconduct Charges. Nonetheless, these briefs falsely alleged that the defendants had presented the Misconduct Charges in August 1990 at the hearing on the emergency motion, and that the Misconduct Charges were the reason why Judge Zagel had sealed 90c5009.

1. The settlement negotiations.

5. The journalists' motion was still pending on September 29, 1992, when settlement negotiations between Grove Fresh and the defendants commenced. The negotiations concluded on April 16, 1993, when the defendants paid Grove Fresh $2,000,000. The payments came from John Labatt Ltd. ("Labatt") and American Citrus Products Corp. ("American Citrus").

6. One of Labatt's and American Citrus's key settlement demands was for a restriction on my right to practice law. The Consulting Agreement was the instrument by which they restricted my practice. (Dec. 7th Response, pp. 19-20.)

7. Even though the demand for this restriction affected me alone, I was excluded from all settlement negotiations between September 29, 1992, and February 19, 1993, the date Judge Zagel brokered a settlement package that was conditioned on my executing the Consulting Agreement. (Ex. 19-C, p. 2.)

8. Labatt and American Citrus drafted the Consulting Agreement without any input from me. Section 4 of their draft included a purported representation by me that I had "reviewed the applicable ethical rules and restrictions that apply to attorneys in the State of Illinois and that [I had] concluded that this consulting agreement is consistent with and not in violation of any of those ethical rules or restrictions." (Ex. 19-B.)

9. The representation regarding the ethical propriety of the Consulting Agreement was one of many provisions in Labatt's and American Citrus's draft that I rejected when my attorney sent them a marked-up copy of their draft. (Ex. 19-C, pp. 2, 5; Ex. 19-D.) My lawyer's transmittal letter made plain that I preferred not to execute the Consulting Agreement:

> Here is my markup of your draft agreement. Mr. Messina understands that your clients required this Agreement as part of the Grove Fresh settlement. *If that is not correct, please conclude the Grove Fresh settlement without this Agreement and the $200,000 that would be payable thereunder*.

(Ex. 19-D.) [emphasis added]

10. Labatt and American Citrus complained to Judge Zagel about my refusal to yield to their demands, including their demand for a representation about the ethical propriety of the Consulting Agreement. Judge Zagel summoned me to chambers and told me I'd be subject to a $2,000,000 malpractice claim if Grove Fresh lost the settlement because of my refusal to yield to the defendants' demands. (Ex. 4, ¶¶119-21.)

11. On March 25, 1993, at my client's request, I executed the Consulting Agreement as a condition of settlement. (Ex. 4, ¶125; Ex. 19-C, p. 2..)

12. The Grove Fresh settlement closed on Friday, April 16, 1993. That same day I received a check for Labatt's $25,000 share of the initial $50,000 installment of the consulting fee. The following Monday I delivered the check to my attorney and instructed him to deposit the funds in an escrow account. I did the same when I received American Citrus's $25,000 share.

13. I created the escrow account to preserve my right to rescind the Consulting Agreement on the grounds that I had executed it under duress. *See* Ex. 19-F.

14. From and after April 16, 1993, Labatt and American Citrus were supposed to be my clients, but I never heard from them, even after they tendered the $50,000 consulting fee. They never asked me for any advice or services.

2. The defendants' requirement that, as a condition of settlement, Grove Fresh cease all support for the journalists' appeal.

15. In the meanwhile, on January 15, 1993, Grove Fresh had filed a brief in support of the journalists' right to take an interlocutory appeal from a November 1992 order denying their access claims. (Ex. 12-E.)

16. Steven Kowal, American Citrus's attorney, threatened to terminate settlement negotiations unless Grove Fresh withdrew its brief. (Ex. 19-A.) Grove Fresh yielded to his demand.

17. Afterwards, Kowal and his co-counsel demanded as a condition of settlement that Grove Fresh refrain from participating in the appeal on the merits of the journalists' access claims. Grove Fresh yielded to this demand as well.

18. The settlement contract between Grove Fresh and the defendants required Grove Fresh to execute: (a) a mutual release of all claims against Labatt and American Citrus, and (b) a stipulated order dismissing, with prejudice, all of its

claims against Labatt and American Citrus. *See* Ex. 19-E, p. 3. Grove Fresh executed the stipulated order; Judge Zagel entered it on April 29, 1993.

19. The mutual release and the stipulated order of dismissal effectively precluded Grove Fresh from participating in the appeal on the merits of the journalists' access claims.

3. The five steps taken by the defense to eliminate any effective response to their Misconduct Charges.

20. Three months after the settlement closed, the 90c5009 defendants presented the Misconduct Charges to the Seventh Circuit in a brief opposing the journalists' appeal. *See* ¶21, below. Prior to the filing of the brief, the defendants had taken five steps to ensure that the Misconduct Charges would go unanswered:

a. First, they had obtained Grove Fresh's and Judge Zagel's consent to the defendants' removing from the courthouse all of the papers in the sealed 90c5009 case. (Ex. 4, ¶¶107-08.)

b. Second, they had obtained Grove Fresh's consent to a reconstructed record for the journalists' appeal that excluded all of the papers Grove Fresh had filed in the district court in response to the Misconduct Charges. (Ex. 4, ¶¶97-99; Dec. 7th Response, p. 19.)

c. Third, they had obtained Grove Fresh's agreement not to participate in the appeal. *See* ¶¶15-19, above.

d. Fourth, with a crucial assist from Judge Zagel (*see* ¶¶10-11, above), they had procured my signature on a Consulting Agreement that effectively barred me from defending against the Misconduct Charges, on pain of forfeiting the $200,000 fee payable thereunder. (Ex. 4, ¶115-16)

e. Fifth, after the Seventh Circuit stayed Judge Zagel's order authorizing the removal of the 90c5009 records from the courthouse, they had induced Judge Zagel to continue suppressing the 90c5009 docket, in derogation of the usual practices (*see* Ex. 16-G, ¶22). As a result of the suppression, none of the 90c5009 records could be reviewed by the Seventh Circuit, other than the five sets of papers included in the reconstructed record.[1]

4. The defendants' Seventh Circuit brief.

21. On July 14, 1993, the defendants filed their brief in opposition to the journalists' appeal. The brief contained the following false and defamatory

[1] *See International Business Machines Corp. v. Edelstein*, 526 F.2d 37, 45 (2d Cir. 1975) (a pleading, motion, or brief that is not docketed is not part of the official record and cannot be considered by a court of appeals); *Stelpflug v. Federal Land Bank of St. Paul*, 790 F.2d 47, 49 (7th Cir. 1986) (an order, judgment or verdict that is not docketed cannot be appealed).

statements concerning me and describing certain pleadings and correspondence I had prepared in the summer of 1990:

> Grove Fresh's attorney [sent] a letter threatening to file a completely new lawsuit against Everfresh, among others, which would contain *unsubstantiated and scandalous allegations ... The letter was obviously intended to extract a large settlement* (Br. 7.) (emphasis added)
>
> * * *
>
> [M]any of the allegations in the [new] complaint were false, contained information derived from confidential discovery subject to the protective order, and *were designed to embarrass, harass and falsely accuse the defendants*. (Br. 7-8.) (emphasis added)
>
> * * *
>
> [O]n the eve of the close of discovery in 89 C 1113, plaintiff threatened to file a new action with *baseless and scandalous allegations* unless Everfresh settled the case for a significant amount of money. (Br. 26.) (emphasis added)
>
> * * *
>
> Plaintiff's subsequently filed new complaint did indeed attach to it many documents subject to the protective order [in 89c1113] and referenced therein much protected information. (Br. 27.)
>
> There is little doubt that plaintiff *sought to misuse* the District Court's files to harm Everfresh. (Br. 27.) (emphasis added.)

22. If accepted as true by the Seventh Circuit, the defendants' allegations would have had the following consequences:

a. They would have sufficed to keep the case sealed.

b. They would have been repeated and affirmed in a judicial opinion published in the Federal Reporter. The publication of the allegations would have destroyed my reputation for honesty and integrity.

c. The allegations would have subjected me to a rule to show cause why I should not be disciplined by the Seventh Circuit in accordance with Fed. R. App. P. 46(c).

d. They would have subjected me to an investigation by the ARDC for violations of R.P.C. 1.2(f)(l); 3.1; 3.3(a)(l); 4.4; 8.4(a)(4); and 8.4(a)(5).

e. An ARDC investigation would have presented me with two punitive alternatives:

    i. If I defended myself with evidence corroborating the 90c5009 allegations against Labatt and American Citrus, I would breach

the gag imposed by the Consulting Agreement, and thereby forfeit the $200,000 fee owed me thereunder.

ii. If I honored the gag imposed by the Consulting Agreement, I would be deemed to have admitted the allegations against me, and I would face disbarment or suspension from the practice of law.

(Ex. 4, ¶¶115-16.)

5. My rescission of the Consulting Agreement.

23. On August 5, 1993, I sent letters to Labatt, American Citrus, and their lawyers rescinding the Consulting Agreement and demanding that they retract their defamatory charges. If they refused, I said, I would seek to defend myself in the Seventh Circuit. (Ex.20-A, pp. 4-5; Ex. 20-B, p. 2.)

B. My August 1993 complaint to the ARDC.

24. On the same day that I rescinded, I sent a letter to the ARDC complaining about the Misconduct Charges in the defendants' Seventh Circuit brief. (Ex. 20-C; DX-1) The respondents included the McDermott lawyers who had drafted and filed the brief (David Stetler, Jeffrey Stone, and Lazar Raynal) and co-counsel who had filed motions to adopt the brief (Steven Kowal and Joseph Duffy). My letter made the following claims:

a. The brief made "false statements….[and] omit[ted] material facts in a manner that creates false and defamatory innuendoes."

b. If accepted at face value, the false statements and false innuendoes would support findings that I had violated the Rules of Professional Conduct, including violations of Rule 1.2(f)(l); Rule 3.1; Rule 3.3(a)(l); Rule 4.4; Rule 8.4(a)(4); and Rule 8.4(a)(5).

c. There was no party to the appeal who could defend my interests, for the following reasons:

i. Grove Fresh, which was also slandered by the Misconduct Charges, had agreed, as consideration for the $2,000,000 settlement, to cease its participation in the appeal.

ii. The defendants' only adversaries in the Seventh Circuit were the journalists, but they did not represent my interests or have any reason to defend my conduct to the Seventh Circuit.

iii. Even if the journalists were inclined to defend my conduct, an effective defense would require them to be familiar with the record of the case under seal. The journalists were not familiar

with that record because they had been denied access to it. Indeed, their lack of access was the whole point of their appeal.

25. I cited with specificity only one of the false statements—the defendants' claim that the 90c5009 "complaint did indeed attach to it many documents subject to the protective order [in the 89c1113 case]." In support of this claim I submitted a two-page summary of the sources for all of the exhibits to the 90c5009 complaint.

26. I did not particularize the other false statements and false innuendoes because doing so required "a detailed and lengthy explanation of the record and the evidence in the underlying litigation." If the defendants did not take appropriate corrective action, "this complaint will be amended to include these other matters."

1. The replacement brief.

27. I sent the defense lawyers copies of the August 5th letter I had sent to the ARDC. Five days later the McDermott lawyers filed a "Motion…to Correct Brief and Argument of Defendants-Appellees." The brief they proposed to file made only one material change—it deleted the original brief's contention that the 90c5009 "complaint did indeed attach to it many documents subject to the protective order [in the 89c1113 case]."

28. The replacement brief did not change any of the other statements that I believed to be false, nor did it add any of the material facts that, by their omission from the original brief, had created false innuendoes.

29. The motion was unopposed; the Seventh Circuit granted it.

2. Defendants' contention that the Consulting Agreement barred me from responding to the Misconduct Charges in their Seventh Circuit brief.

30. On August 12 and 17, 1993, defense counsel replied to the rescission letters that I had sent to them and to their clients. (Ex. 20-D, 20-E, 20-F.) They "[did] not accept any of the arguments" in my letters, but neither did they dispute my contentions that:

- Their Seventh Circuit brief made false and defamatory statements.
- Their false statements implicitly accused me of violating the Rules of Professional Conduct.

31. Defense counsel warned me not to respond to their Seventh Circuit brief, claiming that the Consulting Agreement barred me from doing so. (*See* Ex. 20-D, p.1; Ex. 20-E, p. 1, Ex. 20-F, p. 1.)

3. The defendants' Rule 60(b) motion.

32. On August 20, 1993, McDermott filed a Rule 60(b) motion in 90c5009 seeking relief against Grove Fresh and me. The gist of the motion was that I had fraudulently induced the settlement by falsely warranting that the Consulting Agreement complied with "the applicable ethical rules in Illinois."[2] In support of this fraud claim Everfresh submitted to Judge Zagel copies of my rescission letters and my August 5th letter to the ARDC. (*See* Ex 4, ¶140.)

33. Everfresh's motion prayed for an order specifically enforcing both the Settlement Agreement and the Consulting Agreement or alternatively, for an order rescinding the $2,000,000 settlement and requiring the return of all settlement proceeds, with interest. (Ex. 4, ¶141.)

4. The McDermott lawyers' response, including their false claim about the record available to the Seventh Circuit.

34. On September 8, Alan Rutkoff, a McDermott partner, responded to the ARDC's inquiries regarding Stone, Stetler, and Raynal. His two-page letter asserted that the misstatement about the exhibits to the 90c5009 complaint was an "inadvertent error," and that the error had been corrected by the filing of an amended brief. (Ex. 20-G; DX-3)

35. Rutkoff acknowledged that my letter "contains other unparticularized allegations of false statements and material omissions," but he declared his confidence "that the brief as corrected is accurate, fully supported by the record, and in compliance with all applicable rules, including those governing the professional conduct of the lawyers who prepared and filed the brief."

36. Rutkoff closed with a declaration that "any determination about the contents of the brief should be made by the Seventh Circuit which has the benefit of all of the briefs, record, and pleadings."

37. Rutkoff's representation that the Seventh Circuit had "the benefit of all of the briefs, record, and pleadings" was untrue. As a result of the arrangements that the McDermott lawyers had made with Radler and Judge Zagel, the Seventh Circuit did not have access to 195 of the approximately 200 records in the 90c5009 file. *See* ¶¶20a, b, e, above.

5. Duffy's response.

38. Joseph Duffy responded on September 14. He declared that "Mr. Rutkoff's letter of September 8 adequately addresses the merits of Mr. Messina's

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[2] This is an astonishing claim, given the coercive tack taken by the defendants during the negotiations. See ¶¶8-11, above.

complaint." He also reported that due to his firm's "limited role in this appeal, we recently moved to withdraw our appearances for the Labatt entities." (DX-4)

6. Kowal's response, including his false claim that Grove Fresh was participating in the appeal.

39. Kowal responded on September 16. (Ex. 20-H; DX-6.) He, too, asserted that the replacement brief filed by McDermott resolved my complaint. He then made two false claims:

a. He claimed that Grove Fresh was participating in the appeal.

b. He argued that Grove Fresh's participation guaranteed that "there is an ample opportunity to bring all relevant information to the attention of the court."

40. In fact, Grove Fresh was barred from participating in the appeal by virtue of the settlement agreement. *See* ¶¶18-19, above.

41. Nor was there any opportunity, much less an "ample" one, "to bring all relevant information to the attention of the court." Judge Zagel had suppressed the docket, so there was no official record for the Seventh Circuit to consider other than the five items in the reconstructed record created in response to the February 1st order. That reconstructed record excluded 195 of the 200 records in the 90c5009 file. The excluded records included all of the papers I had filed in the district court in response to the Misconduct Charges. (Ex. 4, ¶¶97-99.)

42. On September 16 and 28, the ARDC sent me copies of Rutkoff's, Duffy's, and Kowal's responses. (DX-5, DX-8.)

7. My response to the ARDC's request for a letter "identifying every false statement and the reason why it is false."

43. In the meanwhile, on August 23, the ARDC asked me for a letter "identifying every false statement [in the defendants' brief] and the reason why it is false." (DX-2.) On September 17, I responded to the ARDC's request this way:

> I would like to answer your request directly, but if I do, I may jeopardize the settlement between my client and the defendants in the underlying litigation. On August 20, 1993, the defendants *in Grove Fresh Distributors, Inc. v. John Labatt, Ltd., et al*, No. 90 C 5009, filed a motion which seeks to require my client to refund the full amount of the settlement if I proceed to make disclosures about that litigation to the ARDC.
>
> I am today filing in the trial court a response to the defendants' motion. [Note: This response is described below in ¶¶45-46.] The response includes the information that you requested in your August 23rd letter. However, I cannot unilaterally send you a copy of my response because the case in which the motion and response were filed is under seal. If the

> respondents and their clients consent to my sending you a copy, I will forward one promptly.

(Ex. 20-I; DX-7.) The defendants refused to give their consent. *See* Ex. 20-L, ¶26; DX-18, p.2.

8. My particularized response to the defendants' defamatory claims, filed under seal in the district court.

44. After the defendants filed their Rule 60(b) motion I sought to negotiate a procedure whereby I might defend myself against the defamation in their Seventh Circuit brief. Defense counsel would not agree to any such procedure unless they were given the right to review my papers before they were filed. That condition was not acceptable to me. (Ex. 4, ¶¶153-54.)

45. On September 17, 1993, I filed in the district court, under seal, a 27-page response to the Rule 60(b) motion. (Ex. 20-J.) After summarizing the Misconduct Charges alleged in the defendants' appellate brief and the events leading to the Rule 60(b) motion, I described the controversy this way:

> Implicit in [the Rule 60(b)] Motion are two contentions: (a) that respondent has no right to defend himself against the defendants' accusations of professional misconduct; and (b) if respondent defends himself, his client will have to pay a penalty in the form of returning the $2,000,000 settlement payment. The defendants do not cite any legal authority for these extraordinary contentions.
>
> The defendants' only argument is that if respondent acts to defend his reputation, defendants will be deprived of "the peace for which they bargained." (Motion, p. 2.) This argument ignores the fact that the defendants are the ones who first broke the peace when they attacked respondent's character. The settlement agreement did not give them a license to make false statements or to impugn respondent's fitness to practice law.

46. The balance of my response presented three sets of arguments: (a) The defendants' Seventh Circuit brief was a fraud on that court; (b) I had a right to defend myself in the Seventh Circuit; (c) The fraud claims implied by the Rule 60(b) motion, and my responses thereto, required an evidentiary hearing.

47. On or about September 21, 1993, defense counsel told my attorney that, because of the response I had filed on September 17, "all bets were off"—the defendants would not negotiate any further over a procedure whereby I might defend myself in the Seventh Circuit. (Ex. 4, ¶151.)

9. Defendants' objection to my being heard even if my submission was filed under seal.

48. On October 1, 1993, I proposed to the defendants a stipulation regarding the papers I was planning to file in the Seventh Circuit. In exchange for an acknowledgment that my papers would not breach the settlement agreement between Grove Fresh and them, I would: (a) request a temporary seal of my papers for a period of 14 days for the limited purpose of enabling the defendants to present their arguments on the issue; and (b) refrain from serving my papers on the journalists pending a ruling on whether the reply should be sealed. (Ex. 20-K.)

49. On October 5, 1993, defense counsel rejected this proposal. They told me that I had no standing to file a pleading in the Seventh Circuit.

50. On October 12, defendants served notice that they would re-present their Rule 60(b) motion on October 21. I reminded them that my attorney (Judson Miner) was on trial and not available to represent me until his trial was concluded. I told them that if their intent was to seek an order of relief against me that day, I would not appear in court without my attorney.

51. The defendants appeared in court on October 21; my attorney was still on trial. At their request, Judge Zagel met with them in chambers. When they emerged form chambers, Judge Zagel issued a rule to show cause why I should not be held in contempt for not appearing in court that day.

52. There is no record of what the defense lawyers told Judge Zagel during the conference in chambers.

53. On October 22, I filed in the Seventh Circuit *Motion Of John P. Messina For A Hearing Regarding Allegations Of Misconduct In Appellees' Brief Of July 14, 1993, And For Other Relief*. (Ex. 20-L.) I argued in my motion, as I had in my August 5th letter to the ARDC, that my reputation would be damaged if the Seventh Circuit accepted as true, and repeated in a published opinion, the defendants' statements about me. Publishing such charges in the Federal Reporter would be a form of attorney discipline, I argued, for which I had a right to a hearing before the discipline was imposed. (Ex. 20-L, ¶¶18-32.)

54. In support of my request for a timely hearing I relied on these cases, among others:

a. *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), which holds that "where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Id.* at 437.

b. *FDIC v. Tekfen Constr. and Installation Co.*, 847 F.2d 440, 444 (7th Cir. 1988), which holds that a professional has no "stock in trade" other than his reputation.

c. *In re Harte*, 701 F.2d 62 (7th Cir. 1983), which holds that publicly reprimanding an attorney is a form of discipline under Fed. R. App. P. 46(c).

d. *Ingraham v Wright*, 430 U.S. 651 (1977), which holds that "adequate notice and a fair opportunity to be heard in advance of any deprivation of a constitutionally protected interest are essential."

10. The defendants' attacks on my right to respond to their Misconduct Charges.

55. Between October 25 and November 15, the defendants launched a series of attacks on my right to respond to their Misconduct Charges and also sought to punish me for my October 22nd attempt be heard in the Seventh Circuit:

a. On October 25-27, they filed motions to strike my motion for a hearing in the Seventh Circuit on the ground that I had no standing to be heard in that court. Contradicting their own Rule 60(b) papers, which alleged that I was a Grove Fresh attorney as of August 5, 1993, the date I rescinded the Consulting Agreement (Ex. 4, ¶149), they alleged that Grove Fresh had discharged me on January 21, 1993.

b. On November 3, they filed a new Rule 60(b) motion alleging that the settlement with Grove Fresh "had been procured through material misrepresentations by Mr. Messina." The motion sought an immediate return of all settlement proceeds, including the $400,000 contingent fee I had received from Grove Fresh.

c. On November 9, they filed a petition in Judge Zagel's court to cite me for contempt, alleging that my motion for a hearing in the Seventh Circuit had disclosed information allegedly protected by the seal.

d. On November 15, they filed a motion under FRAP 46(c) asking the Seventh Circuit to discipline me for allegedly misrepresenting my status as a Grove Fresh attorney.

56. My attorney was on trial through November and unavailable to assist me in responding to the defendants' various filings. I moved for an extension of time to respond to the motions to strike my motion for a hearing in the Seventh Circuit.

57. Judge Kanne, sitting as the motions judge, denied my request, granted the defendants' motions, and issued a rule to show cause ("RTSC") why I should not be disciplined for filing a frivolous motion.

58. I responded to the RTSC on November 22 and 30. My response included an 11-page affidavit by Arthur Berney, a constitutional law professor at Boston College. Professor Berney analyzed Supreme Court precedents that

supported my request to be heard prior to the court's adjudicating the Misconduct Charges.

C. The evidence that the settlement contract required me to concede to Misconduct Charges that would result in my being disbarred or suspended from the practice of law.

59. The defendants' actions between August 5 and November 15, 1993, were based on their understanding of the rights they had acquired in the settlement contract between themselves and Grove Fresh.

60. The defendants' actions during this period concerned Misconduct Charges they had made which, if unanswered, would have resulted in my being disbarred or suspended from the practice of law.

61. The defendants' actions show that when they "bought the case from plaintiff" (Ex. 4, ¶127), they believed that a tacit benefit of the bargain for which they had paid $2,000,000 was the right to present the Misconduct Charges without any rebuttal by me in any forum.

62. If the defendants' construction of the settlement contract is accepted, then they had bought the right to require me concede to Misconduct Charges that would result in my being disbarred or suspended from the practice of law.

63. The defendants' belief that they had "bought" the right to require me to concede to being disbarred or suspended from the practice of law is evident from the following actions:

a. Their August 1993 declarations that the Consulting Agreement barred me from responding to the Misconduct Charges in the Seventh Circuit. *See* ¶¶30-31, above.

b. Their refusal to consent to my providing the ARDC with a copy of the papers I had filed in the district court on September 17, in response to their Rule 60(b) motion. *See* ¶43, above.

c. Their refusal to consent to my filing in the Seventh Circuit, under seal, a substantive defense to the Misconduct Charges. *See* ¶48, above.

d. Their moving to rescind the settlement contract with Grove Fresh on the ground that I had breached that contract on October 22, when I filed in the Seventh Circuit a motion for a hearing on the Misconduct Charges. *See* ¶55b, above.

D. The December 1993 expansion of my complaint to the ARDC.

64. On December 24, 1993, I sent the ARDC a particularized complaint consisting of 49 numbered paragraphs. The complaint identified four statements in

the "Statement of Facts" section of the defendants' Seventh Circuit brief that were false:

a. The statement (at pp. 7-8) that "many of the allegations in the complaint were false... and were designed to embarrass, harass, and falsely accuse defendants."

b. The statement (at p. 7) that in August 1990, "Grove Fresh was facing the prospect of losing Case No. 89 C 1113 at the summary judgment stage."

c. The statement (at p. 7) that Grove Fresh's attorney wrote a letter "threatening to file a completely new lawsuit... which would contain unsubstantiated and scandalous allegations."

d. The statement that the August 23rd demand letter "was obviously intended to extract a large settlement."

The complaint named as respondents four of the five lawyers who were the subject of my August 5th letter to the ARDC—Stone, Stetler, Raynal, and Kowal. (Ex. 20-M, DX-10, DX-10A.)

65. On January 5, 1994, I filed a four-page supplement to the complaint identifying statements that falsely disparaged Grove Fresh's ability to prove damages. (Ex. 20-N, DX-11).

1. The McDermott lawyers' tacit admission that they had no evidentiary support for the Misconduct Charges, in violation of Rule 11.

66. Rutkoff responded for the McDermott lawyers on February 24, 1994. (Ex. 20-O, DX-13.) For the first time in the 28 months since the Misconduct Charges were first presented, the McDermott lawyers, through Rutkoff, finally specified allegations in the sealed complaint that, purportedly, were false.

67. Whereas the McDermott lawyers had alleged that "*many* of the allegations in the [90c5009] complaint were false" (emphasis added), Rutkoff specified only two:

a. The allegation that the defendants had engaged in a conspiracy beginning no later than May 1975.

b. The allegation that Labatt had devised a scheme to lie to the FDA.

68. Rutkoff did not cite any evidence in support of the McDermott lawyers' claim that these allegations were false. Nor did he describe the inquiry (if any) they had conducted before making the Misconduct Charges. His silence on these matters was a tacit admission that they had conducted no inquiry and had no evidence.

69. The McDermott lawyers' failure to conduct an inquiry into the Misconduct Charges, and their presentation of those Charges without any evidentiary support, violated their Rule 11 certification "that to the best of [their]

knowledge, information, and belief, *formed after an inquiry reasonable under the circumstances*… the factual contentions [underlying the Misconduct Charges had] evidentiary support." (emphasis added)

70. Lacking any objective evidence for the Misconduct Charges, Rutkoff could cite only two subjective sources:

a. the belief of the firm's clients that the allegations in the 90c5009 complaint were false ("my clients believed and continue to believe that these allegations were false…")

b. the belief of the McDermott lawyers that the circumstantial nature of Grove Fresh's evidence justified their labeling the allegations as false. ("Mr. Messina's client had no proof… other than his strained and illogical 'inference'")

71. Neither of these sources sufficed to satisfy the McDermott lawyers' Rule 11 duties:

a. A client's subjective belief, by itself, is *never* a sufficient basis for a factual contention. *See Regan v. Ivanelli*, 246 Ill. App. 3d 798, 617 N.E.2d 808, 818 (2nd Dist. 1993).

b. A defense lawyer's belief that the plaintiff can't prove his case is *never* a sufficient basis for *denying* an allegation. *Hernandez v. Williams*, 258 Ill. App. 3d 318, 632 N.E.2d 49, 52 (3d Dist. 1994). *A fortiori*, a mere belief that the plaintiff's lawyer cannot prove his client's case is not a sufficient basis for charging the lawyer with professional misconduct.

72. Moreover, the predicate for the lawyers' belief that they could accuse me of misconduct was not well-grounded in law. That predicate was a disparaging view of circumstantial evidence. However, "mak[ing] reasonable inferences from the available facts" is a respected and time-honored tool for drafting pleadings and proving claims. MOORE'S FEDERAL PRACTICE §11.11[2][a], p.11-19 (3rd ed. 2011). Indeed, in cases alleging conspiracy and fraud, inferential evidence is the norm:

a. "[C]ivil conspiracy is almost never susceptible to direct proof" 11 ILL. LAW & PRACTICE, *Civil Conspiracy*, §17. Almost always, a civil conspiracy "must be established from circumstantial evidence and inferences drawn from evidence, coupled with common-sense knowledge of the behavior of persons in similar circumstances." *Id.* Whether or not a conspiracy is proved is usually a question for the jury to decide. *Id.*, §18.

b. The same is true of fraud, which "can seldom be proved by direct testimony and must generally be shown by circumstantial evidence." 19A ILL. LAW & PRACTICE, *Fraud*, §39. Whether fraud has been proved

> "is ordinarily a question of fact for the jury's determination from the circumstances in evidence." *Id.* §41.

73. Rutkoff's response also included personal attacks on me; I rebutted his attacks in my reply. *See* Ex. 20-Q, DX-26, pp. 3-6.

74. Rutkoff's personal attacks on me were irrelevant to the McDermott lawyers' Rule 11 duties, so they need not be discussed here, except to note the unintended irony behind them. His attacks were based on rules to show cause issued by the federal courts for my efforts to have a hearing on the Misconduct Charges. In effect, Rutkoff was attacking me for having attempted to defend myself against the Misconduct Charges.

2. Kowal's untruthful response and tacit admission of Rule 11 violations.

75. Kowal responded *pro se* on March 17, 1994 (Ex. 20-P, DX-14). He did not describe his inquiry into the Misconduct Charges, if indeed he conducted any, nor did he identify any evidence that supported the substance of the Misconduct Charges.

76. Like Rutkoff's silence on these matters, Kowal's silence on whether he had conducted an inquiry or had any evidentiary support for the Misconduct Charges was a tacit admission that had had conducted no inquiry and had no evidence, in violation of Rule 11.

77. Kowal's core defense was based on a falsehood:

> [T]he appellate brief merely restates the basis for the sealing order that was advocated to and adopted by the trial court.…In order to inform the appellate court of the basis for the order of the trial court, these statements had to be included in the appellate brief.

78. To the contrary, the arguments that Kowal and the McDermott lawyers presented in the appellate brief were *not* presented at the emergency hearing on August 24, 1990; they were first presented 14 months later. *See* ¶4, above.

79. In fact, "the basis for the order of the trial court" was a stipulation that I had offered, and that the defendants and Judge Zagel had accepted. Neither Kowal nor the McDermott lawyers everdisclosed this fundamental fact to the Seventh Circuit or to the ARDC.

80. Kowal also made personal attacks on me similar to Rutkoff's. For the reasons discussed above in ¶74, Kowal's personal attacks do not warrant discussion.

3. My reply to Rutkoff's February 24th response.

81. I replied to Rutkoff's response on May 25, 1994: (Ex. 20-Q, DX-26.) My reply came 13 days after the Seventh Circuit had remanded the journalists' appeal

because the three-judge panel found nothing in the record to explain why Judge Zagel had sealed the case. *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.,* 24 F.3d 893 (7th Cir. 1994).

82. My reply reported the Seventh Circuit's decision and then made this argument:

> On remand the district court can keep the seal in place, but only if it first "finds that its records are being used for improper purposes." (Slip Opinion 7) In order for the respondents' clients to qualify for this exception to the general rule of open files, they will have to come forward with objective evidence that I drafted a false complaint in order to extract money from them. If they do not produce such evidence at the hearing on remand—and they will not, because there is no such evidence—the seal will be lifted.
>
> Under the circumstances, the Commission should defer its resolution of this matter until after the district court concludes the hearing on remand from the Seventh Circuit. That hearing will establish, once and for all, that the respondents never had any basis for alleging that I drafted a false complaint to extract money from their clients.

(DX-26, p. 2.) [footnote omitted]

83. My reply also discussed the evidence concerning the conspiracy allegations and the allegation that Labatt had deceived the FDA (Ex. 20-Q, DX-26, pp. 2-3) and rebutted Rutkoff's personal attacks on me. (Ex. 20-Q, DX-26, pp. 3-6.)

4. My reply to Kowal's March 17th response.

84. I replied to Kowal's response on June 16, 1994. (Ex. 20-R, DX-27.) My reply:

a. Discussed the evidence supporting the conspiracy allegations. (Ex. 20-R, DX-27, pp. 1-2.)

b. Rebutted his contention that the appellate brief merely presented arguments that had been presented at the hearing on the emergency motion for a seal. (Ex. 20-R, DX-27, pp. 2-5.)

c. Rebutted his personal attacks on me. (Ex. 20-R, DX-27, p. 5.)

5. The abandonment of the Misconduct Charges.

85. In the proceedings on remand, Labatt and American Citrus had the opportunity to make the seal permanent, but only if they came forward with evidence supporting the Misconduct Charges. They did not come forward with any such evidence, however. Instead, they abandoned the Misconduct Charges. (Ex. 5A, pp. 3-4.) These are the facts:

a. By operation of FRAP 41, the mandate returning the case to Judge Zagel issued on June 2, 1994.

b. Logically speaking, the first order of business after June 2 was for Judge Zagel to comply with the Seventh Circuit's mandate that he "articulate on the record" the reason why, four years earlier, he had sealed 90c5009. Complying with that mandate promptly would have facilitated resolution of the unfinished business on his docket—the contempt petition, and the FRCP 60(b) motion to rescind the settlement.

c. Nevertheless, except for off-the-cuff, *ad hominem*—and non-appealable—remarks uttered on October 27, 1994 (*see* Ex. 4, ¶¶203-04), Judge Zagel ignored this mandate for a full year. His first appealable explanation for the seal order came on June 9, 1995. His explanation came in the very same opinion in which he held me in contempt for having violated the previously unexplained order. (*see* Ex. 4, ¶234.)

d. In the meanwhile, in July 1994 Judge Zagel invited the defendants to designate the items in the 90c5009 case file they wanted to remain sealed. The McDermott lawyers filed their designations on August 1; Kowal filed his the next day.

e. The designations filed by Kowal and the McDermott lawyers differed in some respects, but they all agreed that the journalists could have access to at least 181 of the records in the 90c5009 case file.

f. In support of the designations of items that they wished to remain sealed, the defendants did *not* allege, much less attempt to prove, that the conspiracy allegations were false, or that the fraud claim against Labatt was false.

E. The additional complaints filed on April 28, May 2, and May 5.

86. Rutkoff's February 24th response, and Kowal's March 17th response caused me to conclude that a resolution of the Misconduct Charges would require "a detailed and lengthy explanation of the record and the evidence in the underlying litigation," as I had alleged it might in my initial letter to the ARDC on August 5, 1993. (Ex. 20-C, DX-1).

87. I began that explanation before I replied to their responses, and before the Seventh Circuit remanded the journalists' appeal. My explanation was in the form of three additional complaints I filed on April 28, May 2, and May 5, concerning matters that were circumstantially relevant to the Misconduct Charges, as follows:

a. A complaint against Kowal and Bruce Weitzman, another McDermott lawyer, alleging violations of R.P.C. 5.6(b) in their dealings with Grove Fresh's original lawyer. (DX-19.)

b. A complaint against Stetler and Weitzman, alleging fraud in the settlement of one of the cases filed by Grove Fresh's original lawyer. (DX-21, DX-22.)

c. A complaint against Stetler, Weitzman, and Raynal, alleging unlawful suppression of evidence in another of the cases filed by Grove Fresh's original lawyer. (DX-23, DX-24.)

88. The defense lawyers responded to these additional complaints on the following dates:

a. Rutkoff: October 18, 1994, responding for Stetler and Weitzman regarding DX-21. (DX-34.)

b. Rutkoff: October 18, 1994, responding for Weitzman regarding DX-19. (DX-35.)

c. Kowal: October 26, 1994, responding to DX-19 and the complaint regarding the Consulting Agreement. (DX-37.)

d. Kowal: November 10, 1994 (not available)

89. Because the defense lawyers ultimately abandoned the Misconduct Charges, the circumstantial evidence in the additional complaints, though relevant, does not warrant extended discussion.

F. The factual disputes regarding the Consulting Agreement.

90. Also on April 28, 1994, I filed a complaint against Kowal, Stone, Raynal, and Duffy regarding the Consulting Agreement. I alleged that they had violated R.P.C. 5.6(b) when they demanded that I execute it as a condition of settlement.

91. My complaint was based on the expert opinion of Professor Daniel Coquillette, set forth in a letter dated April 22, 1994, a copy of which is enclosed as Ex. 20-S.

92. As of April 1994 Prof. Coquillette was the dean of Boston College Law School (1985-93) and the Reporter for the Committee on Rules of Practice and Procedure, Judicial Conference of the United States. He was later appointed the J. Donald Monan, S.J. University Professor at Boston College (1997 to present). Currently, he is the Charles Warren Visiting Professor of American Legal History at Harvard Law School.

93. Prof. Coquillette's opinion was based on the facts and assumptions set out in my letter to him dated March 31, 1994, a copy of which is Appendix A to his opinion letter.[3] Based on those facts he concluded as follows:

> The "Consulting" Agreement violates both the Illinois Rules of Professional Conduct (Rule 5.6(b)) and the Rules of Professional Conduct for the United States District Court, Northern District of Illinois (Rule 5.6(b)), which are identical to each other and to the American Bar Association Model Rules of Professional Conduct, Rule 5.6(b). In particular, the "Consulting" Agreement is "an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties" in violation of all of these rules.

94. The defense lawyers responded on the following dates:

a. Duffy: August 15, 1994 (DX-29).

b. Rutkoff: October 18, 1994, responding for Stone and Raynal (Ex. 20-T, DX-33).

c. Kowal: October 26, 1994 (Ex. 20-U, DX-37).

95. Using euphemisms, the McDermott lawyers and Kowal conceded that they had required the Consulting Agreement as a condition of settlement and as an instrument for restricting my practice:

a. The McDermott lawyers said that the Consulting Agreement was intended to "address [their] clients' concern that Mr. Messina would immediately turn around and sue them again. (Ex. 20-T, p. 2.)

b. Kowal said that the Consulting Agreement resolved his clients' concern that a "resolution of [Grove Fresh's claims] would in fact bring peace." (Ex. 20-U, p. 12.)

96. The McDermott lawyers justified the Consulting Agreement with allegations that they had relied on certain representations made by Warren Radler. Radler was the Grove Fresh attorney who attended the conference in chambers on February 19, 1993, at which Judge Zagel brokered the settlement package that required me to execute the Consulting Agreement.

97. According to the defense lawyers, Radler made statements that led them to believe that I myself had proposed the Consulting Agreement.

98. Radler, however, had had no authority to speak for me since November 23, 1992, when I sent him written notice that he had "[no] authority to speak for

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[3] I have not been able to locate a copy of the complaint I filed regarding the Consulting Agreement. The factual basis for the complaint, though is set forth in the letter that is Appendix A to Prof. Coquillette's opinion letter.

If and when I locate a copy of the complaint I will forward it to you.

me on any proposal that would directly or indirectly restrict my right to practice law."

99. After learning about the statements attributed to Radler by the McDermott lawyers and Kowal, I asked Radler to confirm or deny them. He refused to do so.

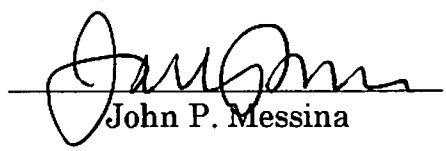
100. In a letter dated December 19, 1994 (Ex. 20-V, DX 43), I advised the ARDC of these and other disputes I had with the defense lawyer's factual allegations.

101. My letter was too late, however. In a letter dated December 16, 1994, but which I didn't receive until December 20, the ARDC closed the inquiries, stating that "the evidence does not warrant further action by this office." (Ex. 20-W, DX-41.)

John P. Messina

Rule 137 Certification

Pursuant to Supreme Court Rule 137, I hereby certify that I have read the this supplemental response and that to the best of my knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.



John P. Messina

Addendum to
Second Revised Exhibit List
(January 31, 2012)

Hard Copy	*Digital Ex. #*	*Description*
Exhibit 19-A		Letter from Steven Kowal (January 19, 1993)
Exhibit 19-B		Legal Services and Consulting Agreement (executed as of March 25, 1993)
Exhibit 19-C		Messina letter to Lee (March 11, 1993
Exhibit 19-D		Letter from David Lee to defense counsel (March 12, 1993)
Exhibit 19-E		Defendants' initial draft of the settlement contract with Grove Fresh, as marked up by RR&K
Exhibit 19-F		Messina memo to Lee (April 12, 1993)
Exhibit 20-A		Messina letter to Labatt and American Citrus (August 5, 1993)
Exhibit 20-B		Messina letter to defense counsel (August 5, 1993)
Exhibit 20-C	DX-1	Messina letter to ARDC (August 5, 1993)
Exhibit 20-D		Kowal letter to Radler (August 12, 1993)
Exhibit 20-E		Kowal letter to Lee (August 12, 1993)
Exhibit 20-F		Stetler letter to Lee (August 17, 1993)
Exhibit 20-G	DX-3	Rutkoff letter to ARDC (September 8, 1993)
Exhibit 20-H	DX-6	Kowal letter to ARDC (September 17, 1993)
Exhibit 20-I	DX-7	Messina letter to ARDC (September 17, 1993)
Exhibit 20-J		Messina Response to Rule 60(b) Motion (September 17, 1993)
Exhibit 20-K		Messina letter proposing stipulation to file in Seventh Circuit under seal (October 1, 1993)
Exhibit 20-L		Messina Motion for a Hearing in the Seventh Circuit (October 22, 1993)
Exhibit 20-M	DX-10, 10A	Messina letter transmitting complaint to ARDC (December 24, 1993)

Exhibit 20-N	DX-11	Messina addendum to complaint (January 5, 1994)
Exhibit 20-O	DX-13	Rutkoff letter to ARDC (February 24, 1994)
Exhibit 20-P	DX-14	Kowal letter to ARDC (March 17, 1994)
Exhibit 20-Q	DX-26	Messina letter to ARDC (May 25, 1994)
Exhibit 20-R	DX-27	Messina letter to ARDC (June 16, 1994)
Exhibit 20-S		Prof. Coquillette's opinion letter (April 22, 1994)
Exhibit 20-T	DX-33	Rutkoff letter to ARDC (October 18, 1994)
Exhibit 20-U	DX-37	Kowal letter to ARDC (October 26, 1994)
Exhibit 20-V	DX-43	Messina letter to ARDC (December 19, 1994)
Exhibit 20-W	DX-41	ARDC letter to Messina (December 16, 1994)
Exhibit 21		Messina Affidavit (December 1, 2009)

Table of Digital Exhibits

Inquiry Nos. 93-CI-3835 through 3838 and 94-CI-3264.

Digital Exhibit No. ("DX-__")	*Hard Copy*	*Date*	*Author*	*Addressee*
DX-1	Ex. 20-C	8/5/93	Messina	ARDC
DX-2		8/23/93	ARDC	Messina
DX-3	Ex. 20-G	9/8/93	Alan Rutkoff	ARDC
DX-4		9/14/93	Duffy	ARDC
DX-5		9/16/93	ARDC	Messina
DX-6	Ex. 20-H	9/17/93	Kowal	ARDC
DX-7	Ex. 20-I	9/17/93	Messina	ARDC
DX-8		9/28/93	ARDC	Messina
DX-9		11/8/93	ARDC	Messina
DX-10 DX-10A	Ex. 20-M	12/24/93	Messina	ARDC
DX-11	Ex. 20-N	1/5/94	Messina	ARDC
DX-12		1/7/94	Messina	ARDC
DX-13	Ex. 20-O	2/24/94	Rutkoff	ARDC
DX-14	Ex. 20-P	3/17/94	Kowal	ARDC
DX-15		3/17 /94	ARDC	Messina
DX-16		3/25/94	ARDC	Messina
DX-17		3/31/94	Messina	ARDC
DX-18		4/18/94	Messina	ARDC
DX-19		4/28/94	Messina	ARDC
DX-20		5/2/94	Messina	ARDC
DX-21		5/2/94	Messina	ARDC
DX-22		5/2/94	Messina	ARDC
DX-23		5/5/94	Messina	ARDC
DX-24		5/5/94	Messina	ARDC
DX-25		5/16/94	Messina	ARDC
DX-26	Ex. 20-Q	5/25/94	Messina	ARDC
DX-27	Ex. 20-R	6/16/94	Messina	ARDC
DX-28		7/6/94	ARDC	Messina
DX-29		8/15/94	Duffy	ARDC
DX-30		8/18/94	ARDC	Messina
DX-31		9/1/94	Messina	ARDC
DX-32		9/9/94	ARDC	Messina
DX-33	Ex. 20-T	10/18/94	Rutkoff	ARDC
DX-34		10/18/94	Rutkoff	ARDC
DX-35		10/18/94	Rutkoff	ARDC
DX-36		10/25/94	ARDC	Messina
DX-37	Ex. 20-U	10/26/94	Kowal	ARDC
DX-38		11/10/94	Messina	ARDC
DX-39		11/10/94	Messina	ARDC

DX-40		11/15/94	ARDC	Messina
DX-41	Ex. 20-W	12/16/94	ARDC	Messina
DX-42		12/19/94	Messina	ARDC
DX-43	Ex. 20-V	12/19/94	Messina	ARDC