

BEFORE THE HEARING BOARD OF THE
ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

FILED

MAY 27 2015

In the Matter of:)
)
JOHN PATRICK MESSINA,)
Attorney-Respondent) No. 2014-PR-00002
No. 1892622)
)

**ATTY REG & DISC COMM
CHICAGO**

**RESPONSE TO ADMINISTRATOR'S REPORT
AND ARGUMENT REGARDING PRIOR DISCIPLINE**

Respondent, John P. Messina, for his response to the Administrator's *Report and Argument Regarding Prior Discipline* ("Report"), states as follows:

1. Citing a 1998 order imposing discipline on consent, the Administrator alleges that Mr. Messina "is a recidivist, who has engaged in a pattern of misconduct and has shown no remorse," and that he "poses a risk to both the court system and the public."

2. Respectfully, the Administrator's investigation of the facts underlying his *Report* was lax. *See Motion to Dismiss All Charges*, ¶¶3-9. As a result, the Administrator is unaware of, and therefore has failed to disclose a number of important facts:

The violation underlying the 1998 suspension was a technical violation of the rules on segregated accounts that took place five years earlier, in 1993, and (a) caused no injury, (b) lasted a total of six days, (c) was corrected by Mr. Messina, on his own, without any prompting, immediately after he discovered his mistake.

3. The Administrator's attorney also neglects to mention that the disbursement that triggered Mr. Messina's technical violation of the rules on segregated accounts was a \$5,000 retainer he paid to a distinguished legal scholar to opine on the ethical propriety of the Legal Services and Consulting Agreement Mr. Messina was required to execute as a condition of settlement in the Grove Fresh litigation. (*Declaration* ¶¶9-14).

4. In 1993-94, when Mr. Messina first challenged the ethical propriety of the Consulting Agreement, no court in Illinois or elsewhere had considered the issue. Since then, courts in Oregon, Florida, and the District of Columbia have considered the issue and ruled that a consulting agreement executed in connection with a settlement violates Rule 5.6(b). *See In re Brand*, 331 Ore. 113, 10 P.3d 906 (2000) (enforcing the predecessor to Rule 5.6(b)); *The Florida Bar v. St. Louis*, 967 So. 2d 108 (2007); *The Florida Bar v. Rodriguez*, 959 So. 2d 150 (2007); *In re Hagar*, 812 A.2d 904 (D.C. 2002).

5. Reopening the record, and hearing further argument, can only help this Hearing Panel arrive at a fair and just result.

WHEREFORE, Mr. Messina prays for an order reopening the record to receive evidence and hear argument regarding the Administrator's allegation that Mr. Messina is a "recidivist" who "poses a risk to both the court system and the public."



John P. Messina
Law Office of John P. Messina
541 North Cuyler Avenue
Oak Park, IL 60302-2306
(708) 228-4507

Proof of Service

I, John P. Messina, an attorney, certify that before 5:00 pm on May 27, 2015, he served a copy of his **RESPONSE TO ADMINISTRATOR'S REPORT AND ARGUMENT REGARDING PRIOR DISCIPLINE** by delivering a copy to the office of Meriel Coleman, the Administrator's attorney, at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601.



John P. Messina