

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

FILED

JUN 15 2015

ATTY REG & DISC COMM
CHICAGO

In the Matter of:)
)
JOHN PATRICK MESSINA,)
) Commission No. 2014PR00002
Attorney-Respondent,)
)
No. 1802622.)

ADMINISTRATOR'S MOTION TO STRIKE

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Meriel Coleman, as his Motion to Strike, states as follows:

1. On January 7, 2014, the Administrator filed his one-count amended complaint, alleging misconduct that included the filing of frivolous appeals. On February 28, 2014, the Administrator filed his First Amended Complaint to correct scrivener's errors.

2. Between February 5, 2015 and March 5, 2015, a two and a half day hearing was held in which Respondent had the opportunity to present testimony, witnesses, and argument in his defense of the Administrator's charges of misconduct. The Hearing Board entertained extensive testimony and exhibits presented by Respondent.

3. On May 10, 2015, pursuant to Commission Rule 277, the Hearing Chair entered an order finding that the Administrator had established that Respondent engaged in misconduct and directing that the Administrator file copies of any orders and reports of prior discipline against Respondent. The Hearing Board also authorized the Administrator to file written argument not to exceed five pages on the weight that Respondent's prior discipline should be given in these current proceedings. The order further provided that Respondent had seven days

from the date that the Administrator's report of prior misconduct was filed to file a responsive argument that was not to exceed five pages. On May 15, 2015, the Administrator's counsel filed a report documenting Respondent's prior misconduct.

4 On May 27, 2015, Respondent filed a "Motion to Dismiss All Charges", "Response to the Administrator's Report and Argument Regarding Prior Misconduct", and "Declaration of John P. Messina". Respondent's filings are currently the subject of a pending motion to strike filed by the Administrator.

5. On June 9, 2015, Respondent continued his pattern of filing frivolous pleadings by filing a motion for a rule to show cause why the Administrator and his attorney should not be sanctioned. Respondent seeks to have the Administrator's report and argument of prior misconduct stricken; seeks a finding that, certain witnesses that the Administrator did not call to testify would have testified adverse to the Administrator's claims against Respondent; dismissal of the Administrator's complaint.

6. Respondent's motion for a rule to show cause should be stricken. Respondent's motion is largely based on his belief that the Administrator's counsel did not adequately investigate information that Respondent provided. This information was largely Respondent's claim that the Honorable James Zagel and other attorneys involved in the underlying litigation had engaged in inappropriate behavior.

7. While the Administrator's counsel cannot recall every conversation had with Respondent in this matter, Administrator's counsel repeatedly reminded Respondent that these disciplinary proceedings were about Respondent's misconduct and not about Respondent's allegations against others involved in the underlying litigation. Therefore the vast majority of

the information that Respondent claims the Administrator's counsel did not adequately investigate was not as relevant in these proceedings as Respondent tends to believe.

8. Furthermore, the Hearing Board conducted a hearing over a two and a half day period. During that hearing both Respondent and Administrator's counsel had an opportunity to present evidence for the Hearing Board's consideration. Respondent was afforded wide latitude during those proceedings to submit evidence and made many of the same claims in defending himself against the Administrator's allegations of misconduct. The Hearing Board ultimately determined that the Administrator had proven that Respondent engaged in misconduct.

9. Respondent is now asking this Hearing Board to ignore the fact that it has determined that Respondent engaged in misconduct and instead dismiss the complaint without recommending any disciplinary sanction be imposed on him because Respondent does not believe that the Administrator's counsel investigated all of Respondent's allegations about others. Respondent has provided no precedent that supports the relief that he is seeking. Furthermore, such action would be inconsistent with the Commission's duty to protect the public.

10. With respect to the Administrator's report and argument regarding Respondent's prior misconduct, there is no precedent that requires the Administrator or his attorney to go beyond what is contained in a consent petition or a disciplinary report when making an argument as to the weight that Respondent's prior discipline should be given. Respondent was afforded an opportunity to respond to the Administrator's argument, but failed to do so properly do so.

11. Respondent's argument that the Administrator's counsel violated Supreme Court Rule 137(a), by not calling certain witnesses who Respondent believes would have corroborated certain claims that he had made is without merit.

12. Respondent argues that these witnesses, as licensed Illinois attorney are “under the control of the Administrator” and were not equally available to Respondent as they would have been hostile towards him. Respondent raised this same argument during his closing argument at the disciplinary hearing.

13. Respondent had the same subpoena power as the Administrator and could have subpoenaed any witnesses, including attorneys, that he believed could provide favorable or corroborating testimony. Respondent’s belief that these witnesses would have been hostile to him does not shift the burden to the Administrator’s counsel to present the witnesses for Respondent. Respondent should not be allowed after having made no effort to call these witnesses, to now request that this Hearing Board make assumptions about what the content of the witnesses’ testimony would have been.

14. Respondent’s latest motion is wholly without merit and is improper. Furthermore, it appears to have been filed by Respondent as a result of his realization that this Hearing Board has found that he engaged in misconduct. Respondent’s motion should be stricken without further consideration.

15. Because Respondent’s actions clearly show his inability to conform his conduct to the rules and not engage in frivolous filings, the Administrator requests that an order be entered prohibiting Respondent from filing any further motions in these proceedings until such time as the Hearing Board issues its report and recommendation, without prior approval of the Hearing Chair.

WHEREFORE, the Administrator respectfully requests the entry of an order striking of Respondent's motion to for a rule to show cause along with any other relief deemed appropriate.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: 

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