

**BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:)
)
JOHN PATRICK MESSINA,)
) Commission No. 2014PR00002
Respondent-Appellant,)
)
No. 1892622.)

**ADMINISTRATOR'S OBJECTION TO RESPONDENT'S MOTION FOR
RULE TO SHOW CAUSE WHY THE ADMINISTRATOR AND HIS
STAFF SHOULD NOT BE SANCTIONED**

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Athena T. Taite, hereby objects to and requests that this Board deny Respondent John Patrick Messina's motion for a rule to show cause as to why the Administrator and his staff should not be sanctioned. In support of this objection, the Administrator states:

1. The Administrator argues in this matter that Respondent has filed three frivolous appeals, in that he has repeatedly attempted to re-litigate a final decision in *Grove Fresh* that the seal and protective orders in *Grove Fresh* were valid and constitutional, that Respondent clearly violated the seal and protective orders, and that Judge Zagel's decisions were sound and reasonable. *See e.g.* Admin. Appellee Brief at 21-22; Admin. Sur-Reply Brief. In light of the final decision, a reasonable attorney could never believe in good faith that the appeals would be successful. *See e.g.* Adm. Exs. 2, 3, 6, 8, 9, 12.

2. The hearing in this matter was held on February 5, February 6 and March 12, 2015. C. 1114. Respondent had an opportunity at hearing to present evidence, and he did

present evidence, most of which delved into Grove Fresh litigation that was extraneous to the Administrator's charges. C. 1116.

3. On May 8, 2015, the Hearing Board ruled that the Administrator established that Respondent had engaged in misconduct. C. 887. The Hearing Board ordered the Administrator to file prior disciplinary orders or opinions imposing discipline on Respondent, and the Hearing Board gave an opportunity to the Administrator and Respondent to file written argument regarding the effect to be given to any prior discipline. C. 887. To that end, the Administrator filed a report and argument regarding Respondent's prior discipline. C. 891-899.

4. On May 27, 2015, Respondent filed a response to the Administrator's report and argument, along with a motion to dismiss and a self-styled "declaration." C. 904-16. His motion to dismiss asked, in the alternative, that the Hearing Board reopen the record to receive additional evidence related to his prior discipline. C. 909. Respondent later filed a motion for a rule to show cause as to why the Administrator and his attorney should not be sanctioned, along with another declaration and an appendix of exhibits. C. 935-1102.

5. On June 23, 2015, the Hearing Board issued an order as to the post-trial pleadings. C. 1110. The Hearing Board denied Respondent's motions and found that, despite the caption of Respondent's motion for a rule to show cause, his motion attempted to re-argue the matters before the Hearing Board. C. 1110. The Hearing Board found that Respondent had "a misguided and excessive reaction to the Administrator's report" of prior discipline and sought to "once again delve into particular aspects of the Grove Fresh litigation." C. 1143 (Hrg. Bd. Report and Recommendation).

6. Respondent and the Administrator filed exceptions to the Hearing Board's report and recommendation. Respondent argued in his reply brief that this Board should deny any

relief to the Administrator, because, in Respondent's opinion, the Administrator did not conduct an objectively reasonable investigation before filing a complaint against Respondent. Resp. Reply Brief at 1. As the Administrator argued in his sur-reply brief, the basis for Respondent's opinion was comprised of two documents that do not demonstrate Respondent's assumptions about the Administrator's investigation. Admin. Sur-Reply Brief at 4-5.

7. The briefing schedule in this matter concluded with the filing of the Administrator's sur-reply brief. On April 8, 2016, this Board heard oral argument in this matter. As of the filing of this objection, the Review Board has not issued its report and recommendation.

8. On July 13, 2016, Respondent filed a motion for a rule to show cause as to why the Administrator and his staff should not be sanctioned. Respondent also filed two self-styled "declarations." The motion and declarations include a substantial discussion of matters outside the record, delve further into the Grove Fresh litigation, and expand Respondent's arguments about the Administrator's investigation and complaint. Respondent's motion is indicative of an almost innate inability to heed criticism to comprehend the meaning of finality. Further, he appears oblivious to rulings and comments that have been crafted to have him respect judicial process. *See Admin. Ex. 9; C. 1143.*

9. Respondent argues in his present motion that the Administrator is prosecuting a frivolous appeal, because the appeal is not well-grounded in fact, the appeal is not warranted by existing law, and the Administrator has an improper purpose for prosecuting the appeal. Resp. Motion at 1. Respondent specifically states that the Administrator did not conduct a reasonably objective investigation, did not prove that Respondent engaged in certain conduct alleged in the complaint, did not show how Respondent's appeals were frivolous, and is prosecuting this matter

because Respondent is a sole practitioner who demonstrated about 20 years ago that he may be “inflexible.” *See e.g.* Resp. Motion at 15-16, 21.

10. As to Respondent’s renewed argument that the Administrator did not conduct a reasonably objective investigation, the Administrator once again suggests that Respondent is engaged in conjecture. *See* Admin. Sur-Reply at 4-5. Respondent does not know whether the Administrator’s litigation counsel had oral communications with persons other than Respondent. Further, the Administrator’s litigation counsel was not required to review or evaluate the Grove Fresh litigation pursuant to Respondent’s direction and control.

11. Regarding the conduct alleged in the Administrator’s complaint, Respondent uses his motion to slightly amend his arguments to this Board. In his appellant’s brief at page 32, Respondent argues that the Administrator did not establish “Seven Acts,” and he describes the Seven Acts. In his motion at page 21, Respondent argues that the Administrator could not establish “Seven Findings.” In his second declaration at page 28, Respondent describes the Seven Findings. His description of the Seven Acts, including the relevant paragraphs of the Administrator’s complaint, does not match his description of the Seven Findings. Nevertheless, federal judicial proceedings long ago addressed the seven acts/findings, and the Administrator’s charges primarily concern Respondent’s filing of frivolous appeals after the final decision regarding Respondent’s conduct.

12. In response to Respondent’s argument that this appeal is not warranted by existing law, the Administrator renews his discussion about *Owens I* and *Owens II*. *See* Admin. Appellee Brief at 18-21. The *Owens* cases show that Respondent was entitled to an opportunity to be heard at an evidentiary hearing. The *Owens* cases do not preclude the consideration of factual

findings and court orders relevant to Respondent's conduct. Further, the Administrator presented documentary evidence at hearing in addition to the orders. *See* Admin. Exs. 3, 6, 8, 12.

13. Respondent cites *In re Mitan*, 119 Ill.2d 229, 518 N.E.2d 1000 (1987), claiming that it provides direction to the Administrator as to disciplinary investigations. *See* Resp. Motion at 2. Respondent's description of *Mitan* overstates the Court's discussion in that case, which addressed the Administrator's failure to make certain documents available to Mitán for inspection during the course of a reinstatement proceeding. In the present matter, unlike *Mitan*, the Administrator did not impose certain conditions on the production of documents to Respondent during the course of discovery.

14. To bolster his argument that the Administrator has an improper purpose for pursuing this appeal, Respondent now argues that J. Scott Renfroe, an Administrator's counsel, holds certain opinions about the Grove Fresh litigation, because Renfroe was assigned in the 1990's to address disciplinary matters from the 1990's concerning Respondent. *See* Resp. Motion at 4-5. Respondent suggests that Renfroe's opinions are favorable to Respondent, because some disciplinary matters concerning the Grove Fresh litigation were closed many years ago. *See e.g.* Resp. Motion at 5.

15. As Respondent knows, closed files from the 1990's have been expunged pursuant to Supreme Court Rule 778(b). Resp. Motion at 17. However, the Administrator notes that investigations may be closed for various reasons, not necessarily due to a lack of independent evidence. *See, In re Thomas*, 2012 IL 113035 at 18, 962 N.E.2d 454 (2012) ("an investigation may be closed for many reasons, only one of which is insufficient evidence of misconduct"). Mr. Renfroe prosecuted charges against Respondent that the Inquiry Board voted to file with the Hearing Board, namely that Respondent wrongly commingled and converted funds. *In re*

Messina, 96 CH 611, *discipline on consent allowed*, M.R. 14450 (March 23, 1998). Also, contrary to Respondent's assumptions, Mr. Renfroe was not the decision-maker in pursuing charges in the present matter. Further, contrary to Respondent's accusations, the Administrator does not avoid pursuing disciplinary action against corporate lawyers.

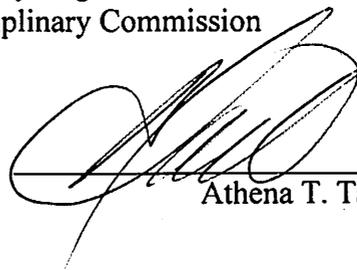
16. Respondent's motion and declarations are another attempt to re-argue issues before this Board. His motion does not demonstrate a justifiable basis for pursuing sanctions against the Administrator or asking the Administrator or his staff to justify why they should not be sanctioned.

WHEREFORE, the Administrator requests that this Board deny Respondent's motion for a rule to show cause and, for the reasons in the Administrator's Appellee and Sur-Reply Briefs, find that Respondent has engaged in the misconduct alleged in the Administrator's complaint and recommend that Respondent be suspended for six months and until further order of the Court.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By:



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