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

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

**RESPONDENT'S REPLY TO THE ADMINSITRATOR'S OBJECTIONS TO THE MOTION FOR A RULE TO SHOW CAUSE**

Respondent, John P. Messina, *pro se*, for his reply to the Administrator's Objections ("*Objections*") to Respondent's Motion for a Rule to Show Cause Why the Administrator and his Staff Should Not Be Sanctioned ("*Motion for Sanctions*"), states as follows:

1. The Administrator's *Objections* are a microcosm of the case he presented at trial—replete with personal attacks, but devoid of any testimony from witnesses who have taken an oath. Indeed, in the five years this case has been pending, the Administrator has not brought forth a single witness willing to testify under oath against Respondent. For that reason alone, due process requires that the charges be dismissed.

2. The Administrator does not contest the Board's jurisdiction to adjudicate the *Motion for Sanctions*, which poses the following questions:

- Whether the Administrator, like the lawyers he regulates, is bound by Sup. Ct. Rule 137, which requires every lawyer to conduct an objectively reasonable investigation before he or she files a complaint.
- Whether the Administrator, like the lawyers he regulates, has a duty of candor to the tribunals where he appears.

3. If the Administrator is subject to the same rules as the lawyers he regulates, the unrefuted evidence shows that he breached those rules in these respects: (a) he failed to conduct an objectively reasonable investigation of the allegations in ¶¶2-25 of the *Amended Complaint*; (b) he knew or should have known that the allegations in ¶¶2-25 of the *Amended Complaint*, which are based on the Contempt Order's findings, could not be corroborated; and (c) he breached his duty of candor when he insinuated that an exercise of prosecutorial discretion was the reason for not asking that Respondent be disciplined for any of the actions that the Contempt Order's findings purported to describe (the "*Nolle Prosequi* decision.")

### A. The unrefuted evidence shows that the Administrator failed to conduct an objectively reasonable investigation of the allegations in ¶¶2-25 of the *Amended Complaint.*

4. Name-calling aside, the unrefuted evidence, given under penalty of perjury, shows that the Administrator's investigation of the allegations in ¶¶2-25 of the *Amended Complaint* was grossly inadequate:

- According to the information in the Administrator's non-privileged file, his staff did not interview or depose any witnesses who had knowledge of the events underlying ¶¶2-15. (*First Declaration* ¶¶27-28.) Since the Administrator chose not to interview any knowledgeable witnesses, the narrative he presented in ¶¶2-25 had to have been based on documents alone.
- The narrative in ¶¶2-25 includes references to 11 court orders that were issued between 1989-98. (*First Declaration* ¶¶29(a) through (k).) There at least 204 pleadings, motions, briefs, and transcripts (collectively, "Court Records") that are directly related to the findings in these 11 court orders. (*Id*.)
- The Administrator's non-privileged file includes only 11 of the 204 Court Records All 11 of those Court Records were provided by Respondent before the *Amended Complaint* was filed. (*First Declaration* ¶¶29(a) through (k).)
- The contents of the Administrator's non-privileged file suggests that he made no independent effort to gather any of the pertinent Court Records underlying the allegations in ¶¶2-15 of the *Amended Complaint*.

5. The Illinois Supreme Court requires the Administrator to corroborate judicial findings before he cites such findings as grounds for disciplining an attorney. *See* discussion in *Brief of Respondent-Appellant* 27-29. The unrefuted evidence shows that the Administrator breached this duty by failing to interview knowledgeable witnesses[1] and by failing to gather and review relevant Court Records.

### B. The unrefuted evidence shows that the Administrator knew or should have known that the Contempt Order's findings could not be corroborated.

6. Putting words in Respondent's mouth, the Administrator claims that "Respondent now argues that J. Scott Renfroe…holds certain opinions about the Grove Fresh litigation…and suggests that Renfroe's opinions are favorable to Respondent…" (*Objections* ¶14.) To the

[1] Playing a game of cat-and-mouse, the Administrator argues that "Respondent does not know whether the Administrator's litigation counsel had oral communications with persons other than Respondent (*Objections* ¶10). However, the Administrator does not affirmatively declare, under oath, that his staff interviewed any knowledgeable witnesses, much less does he identify any such witnesses. The Administrator's silence on these points is compelling evidence that he did not conduct any such interviews.

contrary, Respondent does not purport to know Mr. Renfroe's personal opinions, nor has he speculated about what those opinions might be.

7. Based on the unrefuted evidence,[2] however, Respondent does say with confidence that if Mr. Renfroe were to testify under oath about his knowledge of the *Grove Fresh* Litigation, and if he were to testify candidly, the evidence would compel him to make the following admissions:

- In 1997-98 he became the lead investigator in an investigation into the Contempt Order. (*Second Declaration* ¶133.)
- As a prosecutor, he had a duty to determine whether there was any independent evidence to corroborate the Contempt Order's findings. (*Motion for Sanctions* ¶¶77-80.)
- In the course of that investigation Respondent's attorney provided Mr. Renfroe with evidence showing that the Contempt Order's material findings could not be corroborated. (*Second Declaration* ¶¶138-41.)
- In the course of that investigation Respondent himself provided Mr. Renfroe with evidence that the proceedings leading to the entry of the Contempt Order were so lacking in notice and opportunity to be heard as to constitute a deprivation of due process. (*Second Declaration* ¶¶147-53.)
- The Inquiry Board voted against authorizing a complaint. (*Second Declaration* ¶155.)
- As of November 2011, when Ms. Coleman was assigned to investigate this matter, Mr. Renfroe was her supervisor within the meaning of R.P.C. 5.1(b). As such, he had a duty to ensure that Ms. Coleman "conforms to the Rules of Professional Conduct." (*Motion for Sanctions* ¶87.)
- In order to ensure that Ms. Coleman conformed to the Rules of Professional Conduct Mr. Renfroe had a duty to inform her that the Contempt Order's findings could not be corroborated. (*Motion for Sanctions* ¶88.)

8. The evidence recited in the previous paragraph shows that as of the date the Administrator filed the *Amended Complaint*, he knew or should have known that the Contempt Order's findings could not be corroborated.

[2] The parties agree that the official records of the 1995-98 investigation have been expunged in accordance with Illinois Supreme Court policy. However, as Respondent has pointed out, the course of that investigation and its outcome may be established by secondary evidence. (*Motion for Sanctions* ¶¶74-75.) The Administrator does not dispute this point. More to the point, the expungement of the official records did not erase Mr. Renfroe's personal knowledge of the course and outcome of that investigation.

### C. The Administrator's failure to corroborate the Contempt Order's findings disqualified him from opining on the merits of the three appeals for which he seeks to discipline Respondent.

9. The Administrator has charged Respondent with filing three frivolous appeals between 2001-2011. In all three appeals Respondent presented collateral attacks on the veracity of the Contempt Order's findings.

10. By failing to investigate whether the Contempt Order's findings could be corroborated, the Administrator and his staff disqualified themselves from opining on whether the appeals were frivolous.

### D. The Administrator breached his duty of candor regarding the *Nolle Prosequi* decision.

11. If accepted as true—which they are not—the Contempt Order's findings would show that Respondent had violated certain secrecy orders and in doing so, had obstructed the administration of justice. (*Second Declaration* ¶127.) However, the Administrator did not ask that Respondent be disciplined for any of the actions that those findings purported to describe.

12. Throughout these proceedings the Administrator has insinuated that the *Nolle Prosequi* decision was an exercise of prosecutorial discretion. In fact, the Administrator did not file such charges because he knew that he could not provide independent evidence corroborating those findings. The Administrator's insinuations to the contrary breached his duty of candor to the Review Board.

WHEREFORE, Respondent prays for an order overruling the Administrator's *Objections* and requiring the Administrator to show cause why he and his staff should not be sanctioned for prosecuting an appeal that is frivolous in the respects described above and in the *Motion for Sanctions*.

DATED: July 21, 2016

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