

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

**FILED**

FEB 28 2014

ATTY REG & DISC COMM  
CHICAGO

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

FIRST AMENDED COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Meriel Coleman, pursuant to Supreme Court Rule 753(b), complains of Respondent, John Patrick Messina, who was licensed to practice law in the State of Illinois on November 6, 1976, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

*(Filing frivolous appeals)*

1. At all times alleged in this complaint, Respondent owned and operated a sole proprietorship known as "The Law Office of John P. Messina", which was located at 541 North Cuyler Avenue in Oak Park.

2. Beginning in July of 1989, Respondent agreed to serve as local counsel for Grove Fresh Distributors ("Grove Fresh"), a citrus distribution company, in its dispute with several competitors. During the period of time that Respondent represented Grove Fresh, at least two lawsuits were filed and pending on its behalf in the United States District Court, Northern District of Illinois.

3. A lawsuit that had been filed February 10, 1989, alleged unfair competition, and was

captioned as *Grove Fresh Distributors, Inc. v. Everfresh Juice Company, et al.*, docket number 89 CV 01113. On August 24, 1990, the Honorable James B. Zagel entered a protective order in case number 89 CV 01113 that limited Grove Fresh's ability to disclose information obtained from the defendants through the discovery process that the defendants classified as confidential.

4. A second lawsuit, filed on or around August 24, 1990, alleged a conspiracy to sell adulterated juice and to violate RICO by selling mislabeled products. That matter was captioned as *Grove Fresh Distributors, Inc. v. John Labatt Limited, et al.*, docket number 90 CV 5009. Pursuant to an order entered by the Honorable James B. Zagel, case number 90 CV 5009 was filed under seal.

5. On May 1, 1991, Judge Zagel signed a stipulated protective order in case number 90 CV 5009 to protect against disclosure of confidential or proprietary information and to facilitate discovery between the parties. By agreeing to the protective order, Respondent agreed that confidential information would be used for only the preparation of trial in case number 90 CV 5009, and for no other purpose, except as required by the law or court process.

6. On October 9, 1991, journalists seeking to have the seal order lifted in case number 90 CV 5009 filed a motion to vacate the seal. Shortly thereafter, Judge Zagel denied the request to lift the seal.

7. On February 21, 1992, case number 89 CV 01113 was dismissed on the defendants' motion for summary judgment.

8. On January 21, 1993, Grove Fresh terminated Respondent's involvement in their legal matters.

9. On April 29, 1993, case number 90 CV 5009 was dismissed after the parties entered into a confidential settlement agreement. As a condition of the settlement, Respondent signed a

consulting agreement that prohibited Respondent from disclosing information or documents related to the defendants' business.

10. On June 1, 1993, the journalists renewed their motion to vacate the seal in case number 90 CV 5009. After Judge Zagel denied the motion to vacate the seal, the journalist filed an appeal before the United States Court of Appeals, for the Seventh Circuit ("Court of Appeals").

11. On July 14, 1993, attorneys for the defendants in the Grove Fresh litigation filed a brief in opposition of the appeal, referred to in paragraph ten, above.

12. On August 5, 1993, Respondent sent letters to the defendants in the Grove Fresh litigation and their attorneys rescinding the consulting agreement, referred to in paragraph nine, above.

13. On or around August 20, 1993, the defendants in case number 90 CV 5009 filed a motion to enforce the settlement agreement or relief from judgment, referred to in paragraph nine, above.

14. Shortly thereafter, Judge Zagel scheduled the motion referred to in paragraph 13, above, to be heard on September 1, 1993, and ordered Respondent, or Respondent's legal representative to appear before him at that time. Respondent learned of the order requiring him or his legal representative to appear shortly after it had been entered. At the request of Respondent's attorney, the September 1, 1993 court date was vacated and was to be rescheduled at a later date.

15. On October 12, 1993, the attorneys for the defendants re-noticed the motion referred to in paragraph 13, above, to be heard on October 21, 1993. Respondent received a copy of the notice shortly after it had been filed.

16. On October 21, 1993, Respondent did not appear before Judge Zagel. As a result of

Respondent's failure to appear, Judge Zagel issued a rule to show cause why Respondent should not be held in contempt.

17. On October 22, 1993, Respondent filed a motion before the Court of Appeals seeking to respond to allegations of misconduct made against him in the brief referred to in paragraph 11, above. In the motion, Respondent revealed information that had been subject to the seal and protective orders, including the confidential amount paid in the settlement, names of individuals involved who had invoked the Fifth Amendment during questioning, and other confidential information that he acquired through discovery. Respondent also held himself out to be the attorney for Grove Fresh, despite the fact that he had been terminated on January 21, 1993.

18. On November 9, 1993, the Court of Appeals issued an order striking Respondent's motion, referred to in paragraph 17, above, and ordered that Respondent show cause why he should not be sanctioned for filing a frivolous motion. The court dismissed the rule to show cause at a later date.

19. On November 9, 1993, attorneys representing the defendants in case number 90 CV 5009 petitioned the district court for a finding of contempt and sanctions, alleging that Respondent violated the court's seal order by revealing protected information in his motion filed before the Court of Appeals, referred to in paragraph, 17, above.

20. On September 20, 1994, Respondent sent a letter to John Elson, an attorney who was assisting the journalists with efforts to lift the seal orders in the Grove Fresh litigation, regarding the pending litigation.

21. In October, 1994, attorneys representing the defendants filed a supplemental petition in case number 90 CV 5009, requesting that Respondent be held in contempt, alleging that

Respondent's letter, referred to in paragraph 20, above, violated the seal order.

22. On February 3, 1995, Judge Zagel held a hearing and Respondent had an opportunity to respond to the charges of misconduct, including allegations that he had made disclosures that violated the protective order and seal order of in case number 90 CV 5009, held himself out to be Grove Fresh's attorney after he had been terminated, and failed to comply with a court order to appear in court to address a motion filed on behalf of the defendants.

23. On June 9, 1995, Judge Zagel held Respondent in contempt of court in case number 90 CV 5009 for willfully and knowingly violating protective orders by disclosing confidential information, including the information referred to in paragraph 17, above, and for refusing to appear in court, as ordered. Judge Zagel also sanctioned Respondent for holding himself out as counsel for Grove Fresh after he had been discharged; filing a brief even though he was not a party to the action, did not represent a party to the action and lacked an adverse judgment to appeal. Judge Zagel ordered Respondent to pay attorneys' fees and costs totaling \$149,554.45 and to post a \$50,000 bond to protect against what the judge considered to be the "significant risk of repetition of future disclosures."

24. In or around July, 1995, Respondent appealed Judge Zagel's ruling in case number 90 CV 5009, referred to in paragraph 23, above, to the Court of Appeals.

25. On February 5, 1998, the Court of Appeals, in an unpublished opinion, affirmed Judge Zagel's ruling, described to in paragraph 23, above.

26. On September 22, 1999, Respondent, through attorney Stuart D. Cohen, caused to be filed in the United States Bankruptcy Court, Northern District of Illinois, a petition for Chapter 11 bankruptcy protection on behalf of the Law Office of John P. Messina seeking to discharge debt that

included the contempt judgment referred to in paragraph 23, above. The matter was captioned as *In re The Law Office of John P. Messina*, case number 99-29371.

27. On December 23, 1999, attorneys for John Labatt, LTD. and American Citrus Products Corp, defendants in the Grove Fresh litigation, filed an adversary proceeding against Respondent in bankruptcy case number 99-29371, seeking a declaration that the contempt judgment, referred to in paragraph 23, above, was not dischargeable. The adversary proceeding was captioned as *American Citrus Products Corporation et al v. John Messina*, case number 99 A 1573.

28. Shortly thereafter, Respondent filed an affidavit in bankruptcy adversary proceeding case number 99 A 1573 disclosing, in violation of the protective order, the name of a witness who had asserted the Fifth Amendment in case number 90 CV 5009.

29. On May 16, 2000, attorneys for the John Labatt, LTD. and American Citrus Products Corp., defendants in 90 CV 5009, filed a petition in the United States District Court, Northern District of Illinois, in case number 90 CV 5009 asking that Respondent again be held in contempt for disclosure of the witness, as described in paragraph 28, above.

30. On June 8, 2000, Judge Zagel issued a second contempt order against Respondent in case number 90 CV 5009 for disclosing confidential information and fined him \$7,500.

31. In June, 2000, Respondent filed a motion to vacate the June 9, 1995 contempt order, referred to in paragraph 23, above. Respondent also moved for the recusal of Judge Zagel, alleging bias on the part of Judge Zagel. Shortly thereafter, the district court entered an order denying both motions.

32. On or around July 9, 2001, Respondent filed an appeal before the Court of Appeals challenging the orders referred to in paragraph 31, above. The matter was captioned as *Grove Fresh*

*Distributors, Inc., v. John Labatt, LTD. And American Citrus Products., Appeal of John Messina,*  
case numbers 01-2799 and 01-3024.

33. On August 5, 2002, the Court of Appeals entered an order affirming the district court's rulings, referred to in paragraph 31, above. The Court of Appeals also sanctioned Respondent for filing a frivolous appeal and ordered him to pay \$1,500, finding that:

We agree with appellees that this appeal is simply Messina's attempt to repackage his prior appeals. Given that Messina's claims have been unsuccessfully litigated numerous times in both this Court and in the district court, Messina could not have believed in good faith that he might be successful this time around.

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In his previous appeal, we warned that any future abuse of the legal system would result in sanctions. Messina failed to heed this warning. Because we have previously affirmed Judge Zagel's rulings against Messina, his latest attempt to manipulate the legal system can only be characterized as frivolous.

34. On March 27, 2000, Judge Squires entered an order in bankruptcy adversary case number 99 A 1583, finding that the contempt judgment referred to in paragraph 23, above, could not be discharged through bankruptcy.

35. Between March 27, 2000 and December 18, 2008, bankruptcy case number 99-29371 was pending in court. On December 18, 2008, the trustee filed his final report in bankruptcy case number 99-29371. On January 26, 2009, Judge Squires entered an order approving the trustee's final report.

36. On January 26, 2009, Respondent appealed Judge Squires' rulings relating to bankruptcy case number 99-29371, including the decision that the contempt judgment was not dischargeable, and the order approving the trustee's final report to the United States District Court,

for the Northern District of Illinois, Eastern District. The matter was captioned as *John P. Messina, d/b/a The Law Offices of John P. Messina*, case number 09 C 1739.

37. On September 17, 2009, attorneys for the defendants in the Grove Fresh litigation filed a motion for sanctions and for an order to prevent future misconduct by Respondent, alleging that he continued to abuse the litigation process by filing a frivolous appeal of the bankruptcy court's decision that the contempt judgment was not dischargeable.

38. On August 20, 2010, the Honorable Robert W. Gettleman issued a memorandum opinion and order affirming Judge Squires' rulings in case number 99-29371. At that time, Judge Gettleman also granted the motion referred to in paragraph 37, above, finding that Respondent violated Rule 11 of the Federal Rules of Civil Procedure by presenting to the court pleadings for the improper purpose of attempting to re-litigate issues not before the court, causing unnecessary delay, needlessly increasing the cost of litigation, and filing pleadings containing frivolous arguments, and violated 28 U.S.C. section 1927, by unnecessarily protracting litigation. Judge Gettleman ordered Respondent to pay the defendant's attorney's fees and costs incurred in connection with the appeal.

39. On September 24, 2010, Respondent appealed Judge Gettleman's order, described to in paragraph 38, above to the Court of Appeals. The matter was captioned as *In re John P. Messina, doing business as The Law Office of John P. Messina*, case number 10-3240.

40. On December 22, 2010, Respondent filed his brief in case number 10-3240. In his brief, Respondent attacked the contempt orders that had been entered against him in case number 90 CV 5009 by making arguments that included accusations that opposing counsel falsely accused him unethical and criminal conduct. Respondent also contested the validity of the original protective order in the Grove Fresh litigation.

41. On May 24, 2011, the Court of Appeals, entered an opinion affirming the decision referred to in paragraph 38, above and also finding that Respondent's appeal was frivolous. The Court of Appeals issued a rule to show cause to Respondent, stating:

Like the redundant appeal before it, this appeal is patently frivolous. We rejected all of Messina's arguments at least once before, and he could not have believed in good faith that his arguments would be successful this time around. We order Messina to show cause why he should not pay double attorneys' fees and costs associated with this appeal, pursuant to Rule 38 of the Federal Rules of Appellate Procedure. We also order Messina to show cause why he should not be suspended or disbarred pursuant to Rule 46(b) of the Federal Rules of Appellate Procedure. Finally, given Messina's blatant disregard of this court's or the district court's warnings, contempt findings, and sanctions, we caution Messina that another frivolous appeal will warrant an injunction against future litigation between these parties. Messina's litigation crusade must end; whether it ends voluntarily or by order of court is entirely within his control.

42. Pursuant to the court opinion referred to in paragraph 41, above, Respondent's response to the rule to show cause was due by June 24, 2011. At Respondent's request, the court extended Respondent's time to respond to the rule to show cause to July 8, 2011.

43. As of October 28, 2011, Respondent had not responded to the rule to show cause. On October 28, 2011, the Court of Appeals in case number 10-3240 ordered that Respondent pay double attorneys' fees associated with the appeal referred to in paragraph 39, above. The court further ordered Respondent's name stricken from the roll of attorneys admitted to practice before it.

44. By reason of the conduct described above that occurred before January 1, 2010 Respondent has engaged in the following misconduct:

- a. filing appeals on July 9, 2001 and September 17, 2009 in federal court without a basis in law or fact, and therefore, frivolous, in violation of Rule 3.1 of the

Illinois Rules of Professional Conduct (1990); and

- b. engaging in conduct that is prejudicial to the administration of justice by virtue of his violation of the seal and protective orders and his filing of frivolous appeals, in violation of Rule 8.4(5) of the Illinois Rules of Professional Conduct (1990)

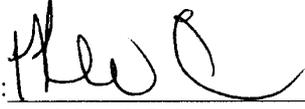
45. By reason of the conduct described above that occurred after January 1, 2010

Respondent has engaged in the following misconduct:

- a. filing an appeal on September 24, 2010 in federal court without a basis in law or fact, and therefore frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct (2010); and
- b. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010)

Respectfully submitted,

Jerome Larkin, Administrator  
Attorney Registration and  
Disciplinary Commission

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