

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

**FILED**

SEP - 2 2014

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

**ATTY REG & DISC COMM  
CHICAGO**

**MR. MESSINA'S RESPONSE TO THE ADMINISTRATOR'S MOTION TO STRIKE  
CERTAIN PARAGRAPHS OF RESPONDENT'S ANSWER, AFFIRMATIVE  
DEFENSES, COUNTERCLAIMS AND EXHIBITS**

Respondent, John P. Messina, hereby responds to the *Administrator's Motion to Strike Certain Paragraphs of Respondent's Answer, Affirmative Defenses, Counterclaims and Exhibits ("Motion")*.

**A. Procedural History of this disciplinary case.**

This disciplinary case arises out of a Seventh Circuit order ("Order") striking Mr. Messina's name from the roll of attorneys. The Seventh Circuit issued the Order on October 31, 2011, at the conclusion of an unsuccessful *pro se* appeal from a bankruptcy case.

The Administrator opened an inquiry into the Order on November 3, 2011. Mr. Messina completed his response to the inquiry on March 21, 2012.

Sixteen months passed before the Administrator, in July 2013, served notice that he would be referring the Order to the Inquiry Board. Pursuant to ARDC Rule 55, Mr. Messina submitted a written request to address the Inquiry Board. His request was denied.

On or about July 18, 2013, the Inquiry Panel authorized the Administrator to file a complaint against Mr. Messina. The Administrator filed the complaint six months later. Then, on February 28, 2014, he filed a First Amended Complaint ("*Complaint*") to correct scrivener's errors.

On July 23, 2014, Mr. Messina filed his *Amended Answer, Counterclaims and Affirmative Defense to the First Amended Complaint*. (The various parts of the July 23<sup>rd</sup> pleading are referred to herein as *Amended Answer* ¶ \_\_, or *Counterclaims* ¶ \_\_, or *Affirmative Defense* ¶ \_\_.)

Mr. Messina's pleading includes 11 counterclaims for declaratory judgments. Due to a scrivener's error the *Eleventh Counterclaim* was mislabeled as the *Thirteenth Counterclaim*. The pleading also incorporates by reference the 17

exhibits that were attached to his original answer to the *Complaint*. (For convenient reference, a table of the exhibits is attached hereto.)

**1. The charges in the *Complaint*.**

The *Complaint* charges Mr. Messina with the following acts of alleged misconduct:

- (a) On October 22, 1993, Mr. Messina allegedly violated certain secrecy orders by filing a motion in the Seventh Circuit that disclosed “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.” (*Complaint* ¶17.)
- (b) In or about February 2000, he allegedly violated the secrecy orders when he “filed an affidavit in bankruptcy [court] disclosing...the name of a witness who had asserted the Fifth Amendment.” (*Complaint* ¶28.)
- (c) On July 9, 2001, September 17, 2009, and September 24, 2010, he filed appeals “without a basis in law or fact, and therefore, frivolous.” (*Complaint* ¶¶44-45.)

**2. The Administrator’s *Motion*.**

The Administrator’s *Motion* makes several requests for relief. If the *Motion* were to be granted in its entirety, Mr. Messina’s answers to 27 of the 45 paragraphs in the *Complaint* would be stricken, as would the entirety of his affirmative defense and counterclaims. This case would then proceed to trial without the Hearing Board panel having any notion of Mr. Messina’s defense to the charges against him.

In support of these extraordinary requests for relief the Administrator makes five contentions, but he does not support his contentions with any analysis and he cites not a single case from an Illinois state court:

- (a) The Administrator moves to strike Mr. Messina's answers to 27 of the 45 paragraphs in the *Complaint*. He cites two separate grounds for striking these answers, but without specifying which ground applies to which paragraph. Moreover, he offers no analysis and cites no legal authorities. There is nothing for Mr. Messina to respond to.
- (b) The Administrator moves to “dismiss” the 19 exhibits attached to, or incorporated by reference into Mr. Messina’s pleading. (*Motion* ¶ 15.) He alleges that the Illinois rules do not authorize the attachment of exhibits to responsive pleadings, but he cites no authority for this proposition. None exists. Attaching exhibits to pleadings, whether a complaint, an answer or an affirmative defense, is a routine practice in Illinois courts. *See, e.g., Pleading*; ILL. LAW & PRACTICE §§69-71 (2010).

- (c) The Administrator alleges that one or more of Mr. Messina's affirmative defenses "is inconsistent with" the *Complaint's* allegations," or "contradict the allegations pled in the Administrator's complaint," but he does not specify which of the counterclaims allegedly fits these descriptions. (*Motion* ¶9, 11.) This lack of specificity leaves nothing for Mr. Messina to respond to.
- (d) The Administrator moves to strike all of the counterclaims for declaratory judgment, alleging that "they are not counterclaims, but instead are simply Respondent's continued attempt to provide narrative denials of the allegations in the Administrator's complaint." (*Motion* ¶12.) In support of this contention the Administrator offers no analysis and no legal authorities. There is nothing for Mr. Messina to respond to.
- (e) The Administrator moves to strike all of the counterclaims, alleging that "the Hearing Board does not have the authority to grant any of the relief sought by Respondent in his counterclaims." (*Motion* ¶13.) Again, he offers no analysis and no legal authorities. There is nothing for Mr. Messina to respond to.

**B. The adjudicative standards require that the *Motion* be denied.**

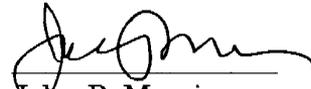
The standards for adjudicating the Administrator's motion to strike are well-settled. His motion "admits all well-pleaded facts constituting the defense, along with all reasonable inferences which may be drawn therefrom." *In re Estate of Davis*, 225 Ill. App. 3d 998, 589 N.E.2d 154, 158 (2d Dist. 1992).

The Administrator's admissions extend to the facts stated in the exhibits attached to Mr. Messina's Affirmative Defense and Counterclaims because those exhibits "constitute[...] a part of the pleading for all purposes." *Pleading*, ILL. LAW & PRACTICE §71, p. 135 (2010). The facts recited in the exhibits "must be regarded the same as though they were stated in the pleading, and...[are] properly considered in determining the sufficiency of the pleading." *Id.*

Mr. Messina's affirmative defense is in the nature of a fraud claim. The Administrator has failed to make any particularized showing as to why the affirmative defense should be denied.

**Conclusion**

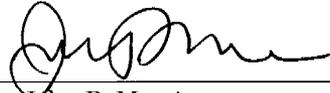
For the reasons stated above, the Administrator's Motion should be denied.



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**Proof of Service**

I, John P. Messina, an attorney, certify that before 5:00 pm on September 2, 2014, I served a copy of **MR. MESSINA'S RESPONSE TO THE ADMINISTRATOR'S MOTION TO STRIKE CERTAIN PARAGRAPHS OF RESPONDENT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS AND EXHIBITS** by personally delivering copies to the office of Meriel Coleman, the Administrator's attorney, at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601.



John P. Messina

<i>Exhibit No.</i>	<i>Description</i>
Ex. 1.	Everfresh's Emergency Motion to Require Plaintiff to File its Proposed New Complaint Under Seal (August 24, 1990) [without attachments]
Ex. 2.	Tr. of Proceedings (August 24, 1990)
Ex. 3.	Minute Order sealing the 90c5009 case (August 28, 1990)
Ex. 4.	Memorandum Opinion Denying Motion to Dismiss 90 CV 5009 complaint (March 20, 1991)
Ex. 5.	Memorandum Order denying Journalists' Access Claims (November 20, 1992)
Ex. 6.	Letter from Mr. Messina to the ARDC (August 5, 1993)
Ex. 7.	Letter from Mr. Messina to the ARDC (August 16, 1994)
Ex. 8.	Affidavit of Avidan J. Stern (September 18, 1998)
Ex. 9.	Affidavit of John P. Messina (November 13, 1998)
Ex. 10.	Respondent's First Motion to Dismiss (November 13, 1998)
Ex. 11.	Respondent's Second Motion to Dismiss All Charges (November 13, 1998)
Ex. 12.	Respondent's Memorandum in Support of Motions to Dismiss All Charges (November 13, 1998)
Ex. 13.	Motion to Vacate Order on Sanctions, and For Other Relief (November 14, 2011)
Ex. 14.	Declaration Under Penalty of Perjury (November 14, 2011)
Ex. 15.	Letter from Mr. Messina to the ARDC (December 7, 2011, as corrected and revised January 18, 2012)
Ex. 16.	Letter from Mr. Messina to the ARDC (January 31, 2012)
Ex. 17.	Fed. App. Civ. P. 46(c) Motion for a Hearing, Affidavit of John P. Messina (October 22, 1993)