

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

FILED

MAY 15 2015

ATTY REG & DISC COMM
CHICAGO

In the Matter of:

JOHN PATRICK MESSINA,

Attorney-Respondent,

No. 1892622.

Commission No. 2014PR00002

ADMINISTRATOR'S REPORT AND ARGUMENT REGARDING PRIOR DISCIPLINE

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Meriel Coleman, pursuant to the Chair's order of May 8, 2015, and Commission Rule 277, reports that on March 23, 1998, the Illinois Supreme Court suspended Respondent from the practice of law for 30 days. The Administrator requests that the Panel consider this prior discipline in aggravation of the proven misconduct in the instant case.

I. *In Re Messina*, M.R. 14450, 96 CH 611

1. On March 23, 1998, the Illinois Supreme Court entered an order suspending Respondent for 30 days, pursuant to a petition to impose discipline on consent. A copy of the Petition to Impose Discipline on Consent is attached as Exhibit One and a copy of the Court's order is attached as Exhibit Two. In those prior proceedings, Respondent acknowledged that he commingled approximately \$17,000 in funds in which he and a client claimed an interest when he deposited the funds into an account that was not a separate identifiable client fund account. Respondent converted approximately \$2,800 of those funds. Respondent acknowledged that he engaged in conversion, failure to deposit client funds into a separate, identifiable trust account, in violation of Rule 1.15(a) of the 1990 Illinois Rules of Professional Conduct, and failure to keep property in which he and his client both claimed an interest separate from his own property, in violation of Rule 1.15(c) of the 1990 Illinois Rules of Professional Conduct.

II. DISCUSSION

2. The Court has long considered an attorney's prior misconduct as aggravation in disciplinary proceedings. For instance, in *In re Gomric*, M.R. 14271, 96 SH 216 (January 29, 1998), the Court approved the Hearing Board's report and recommendation and entered an order suspending the attorney for 18 months and until further order of the Court for misconduct that included neglect and misrepresentations. The Hearing Board considered that the attorney's three previous disciplinary actions showed a long-term pattern of misconduct on his part. The attorney in *Gomric* had previously been reprimanded, censured, and suspended for two years and until further order of the Court. Also, in *In re Teichner*, 104 Ill.2d 150, 470 N.E.2d 972 (1984), the Court disbarred the attorney for charging an excessive fee and commingling and converting client funds. The attorney had previously been disciplined for improper solicitation.

3. Generally, prior discipline has been given less weight in disciplinary cases when a significant period of time has passed between the prior discipline and the misconduct giving rise to the current disciplinary proceedings.

4. However, the conduct that gave rise to Respondent's current disciplinary proceedings started between December, 1999 and May, 2000, when Respondent, for a second time, violated a protective order entered by the Honorable Judge Zagal, resulting in a second contempt order being entered against Respondent. Respondent then continued with a pattern of misconduct, whereby, between 2001 and 2010, he filed three separate appeals that were frivolous or largely frivolous. Respondent's conduct resulted in him being heavily sanctioned and his name being stricken from the roll of attorneys authorized to practice before the 7th Circuit Court of Appeals.

5. Respondent has expressed no remorse for his conduct and instead has continued to defend his actions by attempting to re-litigate issues long since resolved by the federal courts,

asking this Hearing Board to ignore the rulings of at least six federal judges.

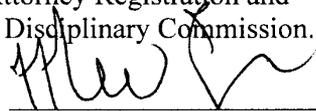
6. Because Respondent is a recidivist, who has engaged in a pattern of misconduct and has shown no remorse, Respondent poses a risk to both the court system and the public. Respondent should therefore be suspended for six-months and until further order of the Court.

WHEREFORE, the Administrator requests that the Hearing Board consider Respondent's prior misconduct in aggravation of his current misconduct 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:



Meriel Coleman

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Exhibit 1

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DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH***Petition Allowed by the Illinois Supreme Court
and Imposing Discipline on Consent***

Allowed March 23, 1998

IN THE SUPREME COURT OF ILLINOIS

In the Matter of:

JOHN PATRICK MESSINA,

Supreme Court No. M.R. 14450

Attorney-Respondent,

Commission No. 96 CH 611

No. 1892622.

**PETITION TO IMPOSE DISCIPLINE ON CONSENT
PURSUANT TO SUPREME COURT RULE 762(b)**

Mary Robinson, Administrator of the Attorney Registration and Disciplinary Commission, by her attorney, Scott Renfroe, with the consent of Respondent John Patrick Messina and the approval of a panel of the Commission's Hearing Board, petitions the Court to enter an order suspending Respondent from the practice of law in Illinois for a period of 30 days. Respondent's affidavit in regard to this petition is attached as Exhibit One. In support, the Administrator states:

I. SUMMARY OF PETITION

1. Respondent was licensed to practice law in Illinois on November 6, 1976. He is currently a sole practitioner with an office in his home in Oak Park. In 1993, Respondent commingled approximately \$17,000 in funds in which he and his client both claimed an interest when he deposited those funds into an account which was not a separate, identifiable client fund account. Respondent converted approximately \$2,800 of those funds when the balance in that account fell below the amount in dispute for six days. A detailed description of Respondent's misconduct is contained in section II of this petition, at pages 2 through 4, *infra*.
2. Respondent has not previously been disciplined by the Court or by a Board of the Commission. Respondent has admitted all material allegations against him, has cooperated in the Administrator's investigation of those allegations, and has expressed remorse for that conduct. He has made full restitution to his client, and has demonstrated that at the time of the conversion he had substantial assets available to him in another account. In addition, attorneys who are familiar with Respondent's reputation for truthfulness and veracity would testify that his reputation for those attributes is excellent. Additional details about Respondent's mitigation evidence are contained in section III of this petition, at pages 4 and 5.
3. Respondent's suspension for 30 days is consistent with the Court's precedent. In *In re Van Beek*, M. R. 10242 (June 23, 1994), and *In re Zaslavsky*, M.R. 12904 (November 26, 1996), the Court suspended attorneys for 28 and 30 days, respectively, for commingling and converting client funds where comparable mitigating factors were present.
4. At the time this petition was prepared, a one-count complaint was pending against Respondent before the Hearing Board. The members of the Board assigned to consider that matter have, as required by Supreme Court Rule 762(b)(1)(b), approved the submission of this matter to the Court as an agreed matter. A copy of the order approving its submission to the Court is attached as Exhibit Two. A copy of the transcript of proceedings before the Board on December 12, 1997 is attached as Exhibit Three.

II. DETAILED DESCRIPTION OF MISCONDUCT

5. In September 1991 Respondent agreed to represent That's Entertainment, Inc. ("TEI"), a corporation which was engaged in the business of sublicensing pay-per-view telecasts of professional boxing matches, in a series of claims against taverns in the

Chicago area which had allegedly made unauthorized broadcasts of matches to which TEI had the exclusive commercial rights. Respondent and Marcus Corwin, TEI's president and a member of the Maryland bar, agreed that Respondent would receive a contingent fee of 25% of the amounts he collected, plus costs and expenses.

6. In April 1992 Respondent filed suit on TEI's claims in the federal district court in Chicago. Shortly thereafter, he discovered that some of the eyewitness affidavits he had received from TEI contained errors which affected his ability to pursue the company's claims. Respondent and Corwin later agreed that Respondent would receive additional compensation on an hourly basis, up to \$500, for time spent correcting the errors.

7. Between May 22, 1992, and June 3, 1993, Respondent settled many of TEI's claims, as a result of which he provided TEI with periodic accountings for the monies he collected and made disbursements of the funds due TEI. In June 1993 Respondent determined to wind down his practice as a sole practitioner, and on June 22, 1993, Respondent notified Corwin that he was resigning from further representation of TEI. On June 29, 1993, Respondent provided Corwin with the accounting relating to the settlement funds he had received to that point. On July 5, 1993, Respondent sent TEI its share of those proceeds.

8. After July 5, 1993, Respondent and Corwin discussed whether, and under what circumstances, they would continue their professional relationship. Among the issues on which Respondent and Corwin disagreed was whether Respondent was entitled to additional compensation, beyond the contingent fee agreement, for his past work for TEI. During the period of these discussions with Corwin, Respondent received \$23,000 in settlements relating to TEI's claims. Because TEI was the only client on whose behalf he was receiving funds, and because he had previously closed his client fund account, Respondent deposited those funds into a business checking account.

9. In light of the contingent fee agreement between Respondent and TEI, and taking into account the reimbursement for expenses due Respondent, the maximum amount of settlement funds which would be due TEI was \$16,975. On December 24, 1993, while Respondent's claim to additional fees had not been resolved, the balance in Respondent's business checking account fell to \$14,144.34, an amount which was \$2,830.66 less than TEI's claimed share of the settlement funds. On December 30, 1993, before receiving any notice of TEI's complaint with the Attorney Registration and Disciplinary Commission, Respondent deposited additional funds into the account which brought the balance above the amount TEI claimed.

10. From some time before he resigned from representing TEI through the period when the balance in the account fell below the amount of funds TEI claimed, Respondent maintained an investment account which had a balance in excess of \$200,000. In January 1994 Respondent segregated the disputed funds in a separate trust account. Respondent and TEI later settled their dispute, and Respondent paid TEI the entire amount it had claimed as its share of the settlement funds.

11. By reason of the conduct described above, Respondent has engaged in: conversion; failure to deposit client funds into a separate, identifiable trust account, in violation of Rule 1.15(a) of the Rules of Professional Conduct; and failure to keep property in which he and his client both claimed an interest separate from his own property, in violation of Rule 1.15(c).

III. DESCRIPTION OF RESPONDENT'S MITIGATION EVIDENCE

12. Respondent was admitted to practice law in Illinois in 1976 and has not previously been disciplined by the Court or by a Board of the Commission. Respondent has admitted all material allegations against him, has cooperated in the Administrator's investigation of those allegations, and has expressed remorse for that conduct. As noted above, he has made full restitution to his client, and has demonstrated that at the time of the conversion he had substantial assets available to him in another account. In addition, attorneys who are familiar with Respondent's reputation for truthfulness and veracity would testify that his reputation for those attributes is excellent. Those attorneys include a federal district court judge, an Assistant United States Attorney, a Deputy Corporation Counsel for the City of Chicago, and a professor of constitutional law at Boston College Law School.

IV. DISCUSSION OF PRECEDENT

13. The evidence outlined above establishes that while he was involved in a dispute about his fee with his client, TEI, Respondent commingled client and personal funds and converted a portion of the TEI settlement funds by allowing the balance in his operating account to fall below the amount claimed by his client. In cases involving facts which are similar to those presented in this matter, the Court has imposed suspensions of 28 or 30 days.

14. In *In re Van Beek*, M.R. 10242 (Hearing Board report approved and confirmed on June 23, 1994), the respondent was suspended for 28 days for converting \$5,000 in earnest money. Like Respondent in this matter, the respondent in *Van Beek* maintained a balance in another account which exceeded the amount he converted. He also presented evidence that he had a good reputation for truthfulness and veracity, had a previously-unblemished record, and had engaged in pro bono work.

Noting that his commingling and conversion of client funds was "particularly troubling in light of the Supreme Court's admonition in *In re Clayter*, 78 Ill.2d 276, 399 N.E.2d 1318 (1980)," the Hearing Board rejected the parties' request for a lesser sanction and recommended the 28-day suspension which was approved by this Court. Similarly, in *In re Zaslavsky*, M.R. 12904 (petition for discipline on consent allowed on November 26, 1996), the Court suspended an attorney for 30 days for commingling and converting \$5,500 of a bond refund. As was true in *Van Beek*, supra, the respondent demonstrated that he had assets in another account which were in excess of the amount he converted. He also had made restitution, and had a history of providing pro bono representation in first degree murder cases.

V. CONCLUSION

15. As was the case in both *Van Beek* and *Zaslavsky*, supra, Respondent commingled and converted client funds at a time when he had assets, in excess of the amount converted, available in another account. Like those respondents, he has made restitution to the affected client, and presented other evidence in mitigation. Consistent with the results in those cases, Respondent should be suspended for a period of 30 days.

WHEREFORE, the Administrator, with the consent of Respondent John Patrick Messina and the approval of a panel of the Hearing Board, requests that the Court enter an order suspending Respondent from the practice of law for 30 days.

Respectfully
submitted,

Mary
Robinson,
Administrator
Attorney
Registration
and

Disciplinary
Commission

By: Scott
Renfroe

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Exhibit 2

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DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

M.R. 14450 - In re: John Patrick Messina (March 23, 1998)

Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed, and respondent John Patrick Messina is suspended from the practice of law for thirty (30) days.

Respondent John Patrick Messina shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.