

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE**

In the Matter of:)
)
EDWARD L. TEZAK,) Proceeding No. D06-05
)
Respondent)

INITIAL DECISION ON DEFAULT

On January 24, 2007, Harry I. Moatz, Director, Office of Enrollment and Discipline (OED) of the United States Patent and Trademark Office (PTO), instituted this disciplinary proceeding under 35 U.S.C. § 32 and the regulations promulgated thereunder at 37 C.F.R. Part 10 (PTO Rules), against Edward L. Tezak (Respondent), an attorney registered to practice before the PTO (Registration No. 35,712). The Complaint charges Respondent in two Counts with violating subsections (1) and (5) of PTO Disciplinary Rule 10.23(c) (37 C.F.R. §10.23(c)(1) and (5)), respectively, on the basis that he was convicted of criminal offenses involving moral turpitude, dishonesty or breach of trust (Count 1) and disbarred from practice as an attorney on ethical grounds by a duly constituted state authority (Count 2). For these violations, the Complaint seeks entry of an order excluding Respondent from practice before the PTO pursuant to PTO Rule 10.154 (37 C.F.R. §10.154). No Answer to the Complaint having been received from the Respondent, on October 5, 2007, the Director filed a Motion for Default Judgment.

A. Service

PTO Rule 10.135 provides in pertinent part that -

(a) A complaint may be served on a respondent in any of the following methods:

(1) By handing a copy of the complaint personally to the respondent

(2) By mailing a copy of the complaint by "Express Mail" or first-class mail to:

(i) A registered practitioner at the address for which separate notice was last received by the Director

* * *

(b) If a complaint served by mail under paragraph (a)(2) of this section is returned by the U.S. Postal Service, the Director shall mail a second copy of the complaint to the respondent. If the second copy of the complaint is also returned by the U.S. Postal Service, the Director shall serve the respondent by publishing an appropriate notice in the Official Gazette for four consecutive weeks, in which case the time for answer shall be at least thirty days from the fourth publication of the notice.

37 C.F.R. §10.135.

In the Motion for Default, the Director indicates that on January 24, 2007 he attempted to serve Respondent with the Complaint by sending it certified mail to Respondent at two different addresses - the first being the address Respondent provided upon registering as a patent attorney in November 1998 and the second being an address retrieved by the Director in September 2004 from the websites of the D.C. [District of Columbia] Bar and the Washington State Bar Association. *See*, Motion for Default at 1 and Exhibits A and B thereto. In February 2007, the U.S. Postal Service returned to the Director both envelopes containing the Complaint sent to Respondent marked respectively as "NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD" and "Unclaimed." *See*, Exhibits C and D to Motion for Default. As a result, on March 1, 2007, the Director mailed a second set of copies of the Complaint to Respondent at the same two addresses previously used pursuant to 37 C.F.R. §10.135(b). The Director states that in March 2007, the U.S. Postal Service again returned the envelopes sent to Respondent containing the Complaint marked as before. *See*, Exhibits E and F to Motion for Default. As a result, for four consecutive weeks, specifically on July 17th, July 24th, July 31st, and August 7, 2007, the Director published an appropriate notice of the pending Complaint in the Official Gazette. *See*, Exhibits G-J to Motion for Default.

On the basis of the foregoing, and 37 C.F.R. §10.135, I find that adequate service of process of the Complaint upon Respondent has been made.¹

¹ It is noted that the Director does not explicitly allege in his Motion that the address used for service drawn from the document Respondent submitted to register as a patent attorney in November 1998 was "the address for which separate notice was last received by the Director," as required by 37 C.F.R. §10.135(a)(2). However, the Motion implies this to be the case noting that Respondent has been "administratively suspended" since 2003 for failing to respond to a registration survey, and in light of the other efforts the Director took thereafter to secure a current address for Respondent this omission is not deemed fatal to service.

B. Default

In accordance with PTO Rule 10.135 (37 C.F.R. §10.135), the time for Respondent to file an Answer to the Complaint was 30 days from the fourth publication of the notice, or until September 6, 2007. The Motion for Default indicates that Respondent has not served the Director with an Answer to the Complaint. To date, this Tribunal has not received an Answer from Respondent nor a response to the Motion for Default which the Director sent on October 5, 2007 to Respondent at the two addresses previously used for service of the Complaint.

It is noted that the regulations provide at 37 C.F.R. § 10.143 that “[t]he administrative law judge will determine on a case-by-case basis the time period for a response to a motion....” However, in the context of a motion for default, where the respondent has not answered the complaint or otherwise appeared in the proceeding, it is not necessary to allow extended time for a response to the motion. The regulations provide at 37 C.F.R. § 10.136(d) that failure to file timely an answer “will constitute and admission of the allegations in the complaint” (emphasis added), and do not provide a requirement for a motion for default or a response thereto. *See*, Federal Rule of Civil Procedure 55(b)(1) (allowing entry of judgment on default upon request of plaintiff, for failure of defendant to appear).

Therefore, for his failure to file a timely Answer, Respondent is hereby found in default, and is deemed to have admitted all of the allegations in the Complaint.

C. Charges and Findings

The Complaint charges Respondent in two counts. Count 1 alleges that “[o]n June 17, 2005, Respondent was convicted in the United States District Court for the Western District of Washington, following entry of a plea of guilty to one count of wire fraud in violation of 18 U.S.C. § 1343, and one count of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B).” It further alleges that these crimes involve “moral turpitude, dishonesty, or breach of trust, and as such Respondent’s conviction of these crimes constitutes a violation of PTO Rule 10.23(c)(1).

Count 2 of the Complaint alleges that, as a result of his conviction for wire fraud, Respondent was disbarred from the practice of law by the District of Columbia Court of Appeals on May 4, 2006 citing *In re Tezek*, 898 A.2d 383 (D.C. 2006). It further alleges that such disbarment was on “ethical grounds” and violated Rule 10.23(c)(5) in that the District of Columbia Court found that a specific “intent to defraud” is an essential element of the crime of wire fraud and as such wire fraud is a crime involving moral turpitude.

Preliminarily, it is noted that while the Director seeks Respondent’s disbarment based upon Section (c) of Rule 10.23 (37 C.F.R. §10.23(c)), that section merely provides that “[c]onduct which constitutes a violation of paragraphs (a) and (b) of this section [10.23] includes, but is not limited to: (1) Conviction of a criminal offense involving moral turpitude,

dishonesty, or breach of trust . . . (5) Suspension or disbarment from practice as an attorney . . . on ethical grounds by any duly constituted authority of a State or the United States. . . .” **Thus, it is actually subsections (a) or (b) of Rule 10.23 (37 C.F.R. §10.23(a) and (b)), as more particularly described by Rule 10.23(c)(1) and (5), of which Respondent is accused of being in violation.**² Subsections (a) and (b) provide as follows:

(a) A practitioner shall not engage in disreputable or gross misconduct.

(b) A practitioner shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

37 C.F.R. §10.23(a) and (b).

Based upon Respondent engaging in that conduct warranting his convictions for wire fraud and money laundering as well as his disbarment by the District of Columbia Court of Appeals, as alleged in the Complaint, I find Respondent to have “engage[d] in illegal conduct involving moral turpitude” and/or “conduct involving dishonesty, fraud, deceit, or misrepresentation” as prohibited under 37 C.F.R. § 10.23.

D. Penalty

As to penalty, the Director requests an entry of an Order pursuant to 37 C.F.R. §10.154 excluding Respondent from practice as an attorney before the U.S. Patent and Trademark Office. Rule 10.154(b) provides that in determining any penalty the following factors be taken into consideration:

² PTO Rule 10.134(b) (37 C.F.R. §10.134(b)) provides that a complaint is sufficient if it fairly informs the respondent of the violation which is the basis of the disciplinary proceeding. The Complaint in this proceeding meets this standard.

- (1) The public interest;
- (2) The seriousness of the violation of the Disciplinary Rule;
- (3) The deterrent effects deemed necessary;
- (4) The integrity of the legal profession; and
- (5) Any extenuating circumstances.

37 C.F.R. § 10.154.

In this case, exclusion is appropriate because it appears that Respondent no longer holds a valid license to practice law in the District of Columbia, and based upon his criminal convictions is unlikely to hold such a valid license elsewhere either. Moreover, a record has not been developed indicating the circumstances surrounding the Respondent's conduct which would might otherwise warrant mitigation of the penalty because Respondent's default has prevented such an inquiry. Respondent may show cause in the future as to why he failed to respond and may provide some explanation for the misconduct set forth and found herein and why a penalty other than exclusion effective this date may be more appropriate. Until he does so, however, his name should be removed from the rolls.

ORDER

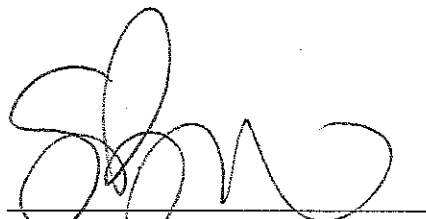
After careful and deliberate consideration of the above facts and conclusions as well as the factors identified in 37 C.F.R. § 10.154(b),

IT IS HEREBY ORDERED, that Respondent, **Edward L. Tezak**, of Amsa Center Building, C-84, 9724 32nd Drive, Southwest, Everett, WA 98204 and/or P.O. Box 1629, Mukilteo, WA 98275, PTO Registration No. 35, 712, **be excluded from practice as an attorney before the Patent and Trademark Office.**

The Respondent's attention is directed to 37 C.F.R. § 10.158 regarding responsibilities in the case of exclusion, and 37 C.F.R. § 10.160 concerning petition for reinstatement.

The facts and circumstances of this proceeding shall be fully published in the Patent and Trademark Office's official publication.

DATE: October 9, 2007



Susan L. Biro
Chief Administrative Law Judge³

Pursuant to 37 C.F.R. § 10.155, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 10.154, must be filed in duplicate with the Director, Office of Enrollment and Discipline, U.S. Patent and Trademark Office, P.O. Box 16116, Arlington, Va. 22215, within 30 days of the date of this Decision. Such appeal must include exception to the Administrative Law Judge's Decision. Failure to file such an appeal in accordance with § 10.155, above, will be deemed to be both an acceptance by the Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

³ This decision is issued by the Chief Administrative Law Judge of the United States Environmental Protection Agency. The Administrative Law Judges of the Environmental Protection Agency are authorized to hear cases pending before the United States Department of Commerce, Patent and Trademark Office, pursuant to an Interagency Agreement effective for a period beginning March 22, 1999.



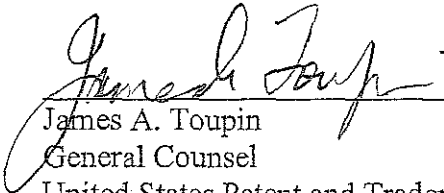
UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF ENROLLMENT AND DISCIPLINE

Notice of Exclusion

Edward L. Tezak of Everett, Washington and Mukilteo, Washington, Registration Number 35,712. An Administrative Law Judge entered an initial decision dated October 9, 2007, ordering Tezak be excluded. No appeal has been filed. Failure to appeal is deemed to be both acceptance by Tezak of the initial decision and waiver of the right to further administrative review. 37 CFR 10.155(d). Tezak has been excluded, as of Thursday, November 8, 2007, from practice before the United States Patent and Trademark Office in patent, trademark, and other non-patent law. This action is taken pursuant to 35 U.S.C. 32, and 37 CFR 10.144(b), 10.155(d), and 10.159(b).

12/27/07
Date


James A. Toupin
General Counsel
United States Patent and Trademark Office
on behalf of

Jon W. Dudas
Under Secretary of Commerce For Intellectual Property and
Director of the United States Patent and Trademark Office