

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

In the Matter of)	
)	
Ralph M. Martin,)	Proceeding No. D2010-39
)	
Respondent)	

Final Order

Enrollment and Discipline Director Harry I. Moatz (“OED Director”) and Ralph M. Martin, (“Respondent”) have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“USPTO Director”) or his designee for approval.

The OED Director and Respondent’s Proposed Settlement Agreement sets forth certain stipulated facts, legal conclusions, and sanctions to which the OED Director and Respondent have agreed in order to voluntarily resolve a disciplinary complaint against Respondent. The Proposed Settlement Agreement, which satisfies the requirements of 37 C.F.R. § 11.26, resolves all disciplinary action by the United States Patent and Trademark Office (“USPTO” or “Office”) arising from the stipulated facts set forth below.

Pursuant to such Proposed Settlement Agreement, this Final Order sets forth the parties’ stipulated facts, legal conclusions, and agreed upon discipline.

Jurisdiction

1. At all times relevant hereto, Respondent of Longmont, Colorado, has been a member of the Colorado and Florida bars and an attorney registered to practice before the Office (Registration No. 32,267) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq.*

2. The USPTO Director has jurisdiction over this matter and the authority to approve the proposed settlement agreement pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20 and 11.26.

Stipulated Facts

3. Respondent of Longmont, Colorado, is an attorney registered to practice patent law before the Office (Registration Number 32,267) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq.*

4. At all relevant times, Respondent maintained a client trust account ("Coltaf") for his client funds and a separate operating account ("operating account") for the business/operating transactions of his law practice.

5. Respondent paid USPTO fees with electronic funds transfers ("EFTs") drawn from the operating account.

6. Respondent moved his Coltaf account and the operating account to a new bank in September 2008, and the old bank froze the former operating account.

7. On four occasions from September 2008 to April 2009, Respondent permitted his staff to pay USPTO fees with EFTs drawn from the frozen operating account at the old bank.

8. Respondent asserts that from September 2008 to January 2009 his staff included another registered practitioner who, in addition to her practice before the USPTO, was responsible for managing Respondent's office, bank accounts, and for training staff.

9. Respondent also asserts that he was unaware that the other registered practitioner had failed to advise the staff of the September 2008 transfer of funds to the new bank, and that when the staff was instructed to pay USPTO fees with EFTs, it attempted to pay the fees with EFTs drawn from the frozen operating account at the old bank.

10. Respondent further asserts that the other registered practitioner abruptly left Respondent's employment in January 2009 without adequately advising or training the staff in the management of the bank accounts that she had managed for ten years.

11. Since the frozen operating account at the old bank did not have sufficient funds, the four EFTs were dishonored.

12. The four EFTs included amounts of four hundred sixty-five dollars (\$465), four hundred sixty-two dollars (\$462), five hundred fifty-five dollars (\$555) and four hundred sixty-two dollars (\$462).

13. The four dishonored EFTs totaled one thousand, nine-hundred and forty-four dollars (\$1,944.00).

14. After receiving notice from the USPTO that the EFTs had been dishonored, Respondent paid the USPTO fees corresponding to the dishonored EFTs and offered to pay the fees arising from the untimely payment of those fees from Respondent's deposit account at the USPTO.

15. Since the events at issue, Respondent has taken the following steps to improve the management of his law practice:

- a. Respondent's staff has been trained in the proper procedures for making an EFT.
- b. Respondent has conducted an audit of the client accounts related to the dishonored EFTs.

- c. Respondent has established an EFT capability for the Coltaf trust account at Respondent's new bank.

Legal Conclusions

16. Based on the information contained in paragraphs 3 through 15, above, Respondent acknowledges that his conduct violated 37 C.F.R. § 10.23(b)(4) by engaging in conduct involving misrepresentation by submitting EFTs to the USPTO that were dishonored for insufficient funds and 37 C.F.R. § 10.23(b)(6) by engaging in conduct that adversely reflects on his fitness to practice law by failing to adequately supervise his staff and permitting submission of EFTs to the USPTO that were dishonored for insufficient funds.

Sanctions

17. Respondent agreed, and it is ORDERED that:

- a. Respondent be, and hereby is, suspended for a period of twenty-four (24) months from the practice of patent, trademark, and non-patent law before the USPTO commencing on the date the Final Order is signed and (ii) the suspension be, and hereby is, immediately stayed as of the date the Final Order is signed and that the stay remain in effect until further order of the USPTO Director or his designee;
- b. Respondent serve a twenty-four month probationary period commencing on the date the Final Order is signed;
- c. Respondent is permitted to practice patent, trademark, and non-patent law before the USPTO during his probationary period unless the stay of the suspension is lifted by order of the USPTO Director or his designee;
- d. If the stay of the suspension is not lifted by order of the USPTO or his designee by the end of the probationary period, Respondent is not required to serve the suspension;
- e. Respondent, within ninety (90) days from the date the Final Order is signed, is to enroll in and complete a three-hour continuing legal education class(es) approved by the Colorado Bar Association on the subject of law office management for the solo and small practitioner that includes specific information on financial book keeping and ethics;
- f. Respondent, within one hundred and twenty (120) days from the date the Final Order is signed, is to provide the OED Director an affidavit attesting to his enrollment and completion of the continuing legal education class(es) described in the preceding subparagraph along with documentation corroborating his attendance (e.g., evidence of continuing legal education credit for the course);

- g. (1) in the event that the OED Director is of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) issue to Respondent an Order to Show Cause why the USPTO Director or his designee should not order that the stay of the suspension be lifted and Respondent be immediately suspended for up to twenty-four (24) months for the violations set forth in paragraph 16, above;

(B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11(a); and

(C) grant Respondent fifteen (15) days to respond to the Order to Show Cause;

and

- (2) in the event after the 15-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) deliver to the USPTO Director or his designee: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) evidence causing the OED Director to be of the opinion that Respondent failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility during the probationary period, and

(B) request that the USPTO Director or his designee immediately lift the stay of the suspension and suspend Respondent for up to twenty-four (24) months for the violations set forth in paragraph 16, above;

- h. if Respondent is suspended pursuant to the provisions of subparagraph g., above:

(1) Respondent shall comply with 37 C.F.R. § 11.58;

(2) the OED Director shall disseminate information in accordance with 37 C.F.R. § 11.59;

(3) the USPTO shall promptly dissociate Respondent's name from all USPTO customer numbers and PKI certificates;

(4) Respondent shall not to use any USPTO customer number or PKI certificate unless and until he is reinstated to practice before the USPTO;

and

(5) Respondent may not obtain a USPTO customer number or a PKI certificate unless and until he is reinstated to practice before the USPTO;

- i. in the event that the USPTO Director or his designee enters an order lifting the stay of the suspension, and Respondent seeks a review of the USPTO Director's action, any such review shall not operate to postpone or otherwise hold in abeyance the Director's order;
- j. the OED Director publish the Final Order at the Office of Enrollment and Discipline's Reading Room electronically located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp> except that the application numbers and the names of persons other than Respondent be redacted;
- k. the OED Director publish the following Notice of Suspension in the *Official Gazette*:

Notice of Stayed Suspension

Ralph M. Martin of Longmont, Colorado, registered patent attorney (Registration Number 32,267). The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Martin for twenty-four months, with the entirety of the suspension stayed, and placed him on a twenty-four (24) month probation for violating 37 C.F.R. § 10.23(b)(4) by engaging in conduct involving misrepresentation by submitting electronic funds transfers to the USPTO that were dishonored for insufficient funds and 37 C.F.R. § 10.23(b)(6) by engaging in conduct that adversely reflects on his fitness to practice law by failing to adequately supervise his staff and permitting submission of EFTs to the USPTO that were dishonored for insufficient funds. Mr. Martin is permitted to practice before the Office during his probation unless the stay of the suspension is lifted.

Mr. Martin maintained a client trust account and a separate operating account for the business/operating transactions of his law practice. In September 2008, Mr. Martin transferred his client trust account and his operating account to a new bank. From September 2008 to April 2009, Mr. Martin permitted his staff to make electronic funds transfers from his operating account at his old bank. The electronic funds transfers were dishonored because there were insufficient funds in the frozen operating account at his old bank. The dishonored electronic funds transfers totaled one

thousand, nine hundred and forty-four dollars (\$1,944.00). Mr. Martin has made good on all the dishonored electronic funds transfers, has an electronic funds transfer capability on his new Coltaf trust account, has had his staff trained in electronic funds transfers, and has taken steps to ensure that the manner in which he and his staff handle electronic funds transfers comply with USPTO Disciplinary Rules.

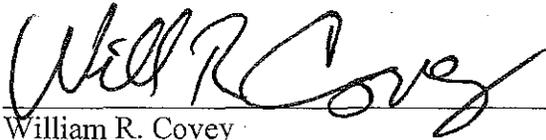
This action is the result of a settlement agreement between Mr. Martin and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.20, 11.26 and 11.59. Disciplinary decisions involving practitioners are posted at the Office of Enrollment and Discipline's Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- l. pursuant to 37 C.F.R. § 11.59, the OED Director give notice of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;
- m. nothing in the Proposed Settlement Agreement or the Final Order shall prevent the Office from seeking discipline against Respondent in accordance with the provisions of 37 C.F.R. §§ 11.34 through 11.57 for the misconduct upon which an Order to Show Cause is issued by the OED Director under subparagraph g., above;
- n. the record of this disciplinary proceeding, including the Final Order, be considered (1) when addressing any further complaint or evidence of the same or similar misconduct brought to the attention of the Office, and/or (2) in any future disciplinary proceeding (a) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or (b) to rebut any statement or representation by or on Respondent's behalf; and

- o. the OED Director and Respondent bear their own costs incurred to date and in carrying out the terms of this agreement.

OCT 26 2010

Date



William R. Covey
Deputy General Counsel for General Law

on behalf of

David J. Kappos
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

cc:

Harry I. Moatz
Director Office of Enrollment and Discipline
U.S. Patent and Trademark Office
Mail Stop OED
P.O. Box 1450
Alexandria, Virginia 22313-1450

Ralph M. Martin
Patent Law Office of Rick Martin, P.C.
P.O. Box 1839
Longmont, CO 80502

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