

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

In the Matter of)	
Frank C. Eymard,)	Proceeding No. D2011-05
)	
Respondent)	
_____)	

Final Order

Office of Enrollment and Discipline Director Harry I. Moatz ("OED Director") and Frank C. Eymard ("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 resolve voluntarily 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

At all times relevant hereto, Respondent, Frank C. Eymard, of Houston, Texas, has been an attorney registered to practice before the United States Patent and Trademark Office (Office or USPTO), authorized to engage in the prosecution of patent applications and subject to the Disciplinary Rules of the USPTO Code of Professional Responsibility set forth at 37 C.F.R. § 10.20 *et seq.*

The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20 and 11.26.

Stipulated Facts

1. Respondent of Houston, Texas, has been registered to practice before the United States Patent and Trademark Office (Office or USPTO) as an attorney (Registration No. 51,660), authorized to engage in the prosecution of patent applications, and subject to the USPTO Disciplinary Rules. Respondent was also admitted to the State Bar of Louisiana on April 20, 2000 (Bar Number 26635).

2. Respondent, personally and through his counsel, together with the Louisiana Office of the Disciplinary Counsel (ODC) agreed to and filed a Joint Memorandum in Support of Consent Discipline, a Joint Stipulation of Facts, and a Joint Petition for Consent Discipline ("Joint Pleadings") with the Supreme Court of the State of Louisiana pursuant to Rule XIX, Section 20 of the Louisiana Supreme Court Rules.

3. The Joint Pleadings set forth Respondent's conduct as having violated Rules 1.5 (collecting an unreasonable fee) and 8.4(c) (engaging in conduct involving fraud, dishonesty, deceit or misrepresentation) of the Rules of Professional Conduct applicable to attorneys licensed to practice in Louisiana.

4. Respondent, both individually and through his counsel, accepted the consent discipline in lieu of formal hearings in the underlying disciplinary matter.

5. On June 18, 2010, the Supreme Court of the State of Louisiana accepted the joint petition for consent discipline in *In Re: Frank Christopher Eymard*, Docket No. 2010-B-1048.

6. It is the understanding of Respondent and the OED Director that the terms of the consent discipline Respondent accepted in *In Re: Frank Christopher Eymard*, Docket No. 2010-B-1048 are to be equally agreed to herein and binding upon Respondent in the entirety of those terms and conditions, except Respondent shall not undertake payment of costs and expenses for OED's investigation to this point in time. The Terms and Conditions imposed upon Respondent by the order of the Supreme Court of the State of Louisiana were as follows:

- (a) Respondent is suspended from the practice of law for one year, with all but six (6) months stayed;
- (b) Respondent is placed on probation for a period of two (2) years to commence from the date Respondent and the ODC execute a formal probation plan;
- (c) Respondent is required to relinquish his entire fee collected in the underlying matter and make full restitution, with interest to the complainants;
- (d) During the probationary period, Respondent is required to provide ODC with copies of his personal tax returns with all appropriate schedules to ensure compliance with the relevant tax filing requirements;
- (e) Respondent is required to undertake payment of all costs and expenses of the disciplinary investigation and proceedings; and
- (f) Any failure by Respondent to comply with the conditions of probation, or any misconduct by Respondent during the probationary period may be

grounds for making the stayed portion of the suspension executory, or imposing additional discipline, as appropriate.

7. The court Order sets forth the terms of the suspension and probationary period and the Joint Petition for Consent Discipline addresses the special conditions to be satisfied by Respondent. Under the terms and conditions as set forth in the court Order and the Joint Pleadings, all requirements are to be imposed by the OED Director with equal effect for failure of any term, condition or requirement to be suffered under the parties' proposed settlement agreement.

8. By executing the Proposed Settlement Agreement, Respondent represents that Respondent has read and understands the Proposed Settlement and the terms of Respondent's participation in this suspension and probation.

Legal Conclusion

9. Based upon the foregoing court Order and stipulated facts, including those contained in the exhibits incorporated by reference, Respondent acknowledges that his conduct violated the following USPTO Disciplinary Rules of Professional Conduct as outlined in Section 10 of Title 37, Code of Federal Regulations:

- a. Rule 10.23(b)(1) by violating a Disciplinary Rule;
- b. Rule 10.23(b)(4) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;
- c. Rule 10.23(b)(5) by engaging in conduct that is prejudicial to the administration of justice;
- d. Rule 10.23(b)(6) by engaging in conduct that adversely reflects on Respondent's fitness to practice before the Office; and
- e. Rule 10.23(c)(5) by being suspended from practice as an attorney on ethical grounds by any duly constituted authority of a State.

Sanctions

10. Respondent agreed, and it is ORDERED that:

- a. Respondent be, and hereby is, suspended for a period of twelve (12) months from the practice of patent, trademark, and non-patent law before the USPTO commencing thirty days from the date the Final Order is signed;

- b. Respondent be, and hereby is, granted limited recognition to practice before the Office beginning on the date the Final Order is signed and expiring thirty (30) days after the date the Final Order is signed with the limited recognition being granted for the sole purpose of facilitating Respondent's compliance with the provisions of 37 C.F.R. § 11.58(b);
- c. Respondent shall comply with 37 C.F.R. § 11.58;
- d. the USPTO shall promptly dissociate Respondent's name from all USPTO customer numbers and public key infrastructure ("PKI") certificates;
- e. Respondent shall not use any USPTO customer number or PKI certificate unless and until he is reinstated to practice before the USPTO;
- f. Respondent shall not obtain a USPTO customer number or a PKI certificate unless and until he is reinstated to practice before the USPTO;
- g. Respondent shall remain suspended from the practice of patent, trademark, and non-patent law before the USPTO until the OED Director grants a petition requesting Respondent's reinstatement based upon Respondent showing proof to the satisfaction of the OED Director, as required under 37 C.F.R. § 11.60(c), that: (1) Respondent has the good moral character and reputation, competency, and learning in law required under 37 C.F.R. § 11.7 for admission, (2) the resumption of Respondent's practice before the Office will not be detrimental to the administration of justice or subversive to the public interest; (3) Respondent has fully complied with the provisions of the Final Order; and (4) Respondent has fully complied with the provisions of 37 C.F.R. § 11.58;
- h. at any time after seven (7) months from the date the Final Order is signed, Respondent may file a petition for reinstatement under 37 C.F.R. § 11.60 requesting reinstatement effective prior to the expiration of the 12-month period of suspension set forth in subparagraph a., above;
- i. the OED Director shall stay any remaining period of suspension if the OED Director grants a petition requesting Respondent's immediate reinstatement and reinstates Respondent;

- j. (1) "remaining period of suspension" means Respondent's initial twelve (12) month suspension minus the period of time from thirty days after the date the Final Order is signed until Respondent is reinstated;

and

(2) in the event that the Respondent is not reinstated after twelve (12) months from the date the Final Order is signed, there is no "remaining period of suspension";

- k. upon reinstatement, Respondent shall serve a twenty-four (24) month probationary period, which begins upon Respondent's reinstatement, during which Respondent shall be permitted to practice patent, trademark, and non-patent law before the USPTO unless the stay of the suspension is lifted by order of the USPTO Director or his designee;

- l. (1) if the OED Director is of the opinion that Respondent, during the 24-month 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 enter an order lifting the stay of all or part of the remaining period of suspension and immediately suspend Respondent for all or part of the remaining period of suspension;

- (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 24-month 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, within the 24-month probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, and

(B) request that the USPTO Director or his designee enter an order lifting the stay of all or part of the remaining period of suspension and immediately suspend Respondent for all or part of the remaining period of suspension;

m. if Respondent is suspended pursuant to the provisions of subparagraph l., 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 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;

- n. in the event that the USPTO Director or his designee enters an order lifting the stay of all or part of the remaining period of suspension and immediately suspending Respondent for all or part of the remaining period of 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;
- o. if Respondent is not suspended pursuant to the provisions of subparagraph l., above, for acts and/or omissions occurring during the 24-month probationary period, then Respondent is not required to serve the remaining period of suspension or any residual portion thereof;
- p. the OED Director shall publish the Final Order at the Office of Enrollment and Discipline's Reading Room electronically located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>;
- q. the OED Director shall publish the following Notice of Suspension in the *Official Gazette*:

Notice of Suspension

Frank C. Eymard of Houston, Texas, a registered patent attorney, Registration No. 51,660. In settlement of a disciplinary proceeding, the Director of the United States Patent and Trademark Office and Mr. Eymard have agreed that he will be suspended for twelve (12) months but will be eligible to request reinstatement after serving six (6) months of his 12-month suspension. Additionally, Mr. Eymard will be required to serve a twenty-four (24) month probation upon being reinstated to the USPTO roster of active registered practitioners. While on probation, Mr. Eymard will be permitted to practice before the Office unless the stay of any remaining portion of his suspension is subsequently lifted.

Mr. Eymard violated 37 C.F.R. §§ 10.23(b)(1) by violating a Disciplinary Rule; 10.23(b)(4) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 10.23(b)(5) by engaging in conduct that is prejudicial to the administration of justice; 10.23(b)(6) by engaging in conduct that adversely reflects on Respondent's fitness to practice before the Office; and 10.23(c)(5) by being suspended from practice as an attorney on ethical grounds by any duly

constituted authority of a State. The violations are predicated upon the June 18, 2010, order of the Supreme Court of the State of Louisiana accepting a joint petition for consent discipline in *In Re: Frank Christopher Eymard*, Docket No. 2010-B-1048. That matter involved Mr. Eymard's representation of a client in Nevada, where he was not licensed to practice law. Mr. Eymard agreed to a contingency fee and then arranged for a Nevada attorney to handle the matter. After paying the Nevada attorney's court approved fees and costs of \$40,471.66, Mr. Eymard's net fee amounted to \$76,640 – an amount of almost twice that received by the Nevada attorney who performed all the legal work. Also, Mr. Eymard failed to declare the fee on his Federal and State income tax returns. The agreed upon discipline imposed by the USPTO mirrors the discipline imposed by the Supreme Court of the State of Louisiana.

This action is taken pursuant to a settlement agreement between Mr. Eymard and the USPTO pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20(a)(4), 11.26 and 11.59.

Disciplinary decisions regarding practitioners are posted at the Office of Enrollment and Discipline's Reading Room electronically located at:

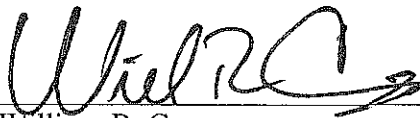
<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- r. pursuant to 37 C.F.R. § 11.59, the OED Director shall 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;
- s. Respondent's obligations under 37 C.F.R. § 11.58 regarding client notification set forth in subparagraph c., above, satisfy the notification provisions set forth in 37 C.F.R. § 11.20(a)(4);
- t. Respondent shall comply with the relinquishment and restitution obligations set forth in the June 18, 2010, order of the Supreme Court of the State of Louisiana accepting a joint petition for consent discipline in *In Re: Frank Christopher Eymard*, Docket No. 2010-B-1048 and related documents;

- u. Respondent, upon requesting reinstatement, shall provide the OED Director with corroborating evidence that he complied with the relinquishment and restitution obligations set forth in the June 18, 2010, order of the Supreme Court of the State of Louisiana accepting a joint petition for consent discipline in *In Re: Frank Christopher Eymard*, Docket No. 2010-B-1048 and related documents;
- v. Respondent, upon requesting reinstatement, shall provide the OED Director with corroborating evidence that he complied with the requirements to provide the Louisiana Office of the Disciplinary Counsel with copies of his personal tax returns, including all appropriate schedules to ensure compliance with the relevant tax filing requirements;
- w. 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 l., above;
- x. the record of this disciplinary proceeding, including the Final Order, shall 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
- y. the OED Director and Respondent shall bear their own costs incurred to date and in carrying out the terms of this agreement.

DEC 22 2010

Date



William R. Covey
Deputy General Counsel
United States Patent and Trademark Office

on behalf of

David Kappos
Undersecretary 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, Box 1450
Alexandria, VA

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William R. Covey
Deputy General Counsel
United States Patent and Trademark Office

on behalf of

David Kappos
Undersecretary of Commerce for Intellectual Property and
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