

UNITED STATES DEPARTMENT OF COMMERCE
OFFICE OF ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF:)
)
CHARLES C. CORBIN,) Proceeding No. D2000-12
)
Respondent)

INITIAL DECISION ON DEFAULT

PRELIMINARY STATEMENT

This disciplinary proceeding was initiated under 35 U.S.C. §§ 32 and the regulations promulgated thereunder at 37 C.F.R. Part 10, against Charles C. Corbin (Respondent), an attorney registered to practice before the United States Patent and Trademark Office (PTO) (Registration No. 28,364). The Complaint and Notice of Proceedings (Complaint), issued by Harry I. Moatz, Director, Office of Enrollment and Discipline, was filed on January 5, 2001 and served upon the Respondent on June 5, 2001.¹ The Complaint charges Respondent with violating disciplinary rules by engaging in professional misconduct resulting in his being suspended from practicing law in Colorado and Ohio (Counts 1 & 2), failing to cooperate with

¹ Paragraph (a) of Rule 10.135 provides that service of the Complaint on a registered practitioner may be made by either: (1) "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 the address for which separate notice was last received by the Director;" or (3) by any other mutually agreeable method. 37 C.F.R. §10.135(b). Paragraph (b) provides that "[i]f a complainant 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 complainant 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(b). The record indicates that on January 5, 2001, March 3, 2001, and April 17, 2001, the OED Director sent the Complaint to Respondent by first class mail, return receipt requested, at "his address of record" at 777 Grant Street, Denver, Colorado 80203. See, Exhibits 1 and 2 to Complainant's Motion for Default (Motion). The three mailings were all returned to the OED Director by the U.S. Postal Service. See, Exhibit 3 to the Motion. The Director also attempted to locate a more specific address for Respondent and, failing that, employed a professional process server to locate Respondent. These alternative attempts at service also proved unsuccessful. See, Motion and Exhibits 4-7 thereto. Therefore, in accordance with paragraph 10.135(b), the Director published notice of the Complaint in the Official Gazette for four consecutive weeks, with the last publication being on June 5, 2001. See, Motion and Exhibit 8 thereto. Thus, I find that Respondent was properly served.

the PTO's Office of Enrollment and Discipline (OED) (Count 3); mishandling a patent application (Count 4); and failing to advise the PTO of a change of status precluding continued registration (Count 5). For those violations, the Complaint requests an entry of an Order excluding Respondent from practice before the PTO or indefinitely suspending him from practice before the PTO. The Respondent was notified in the Notice of Publication that, pursuant to the regulations, he was required to file an Answer to the Complaint within 30 days from the date of the last published notice, that is, on or before July 5, 2001, and that a default decision would issue if he failed to file his answer in a timely fashion.

To date, Respondent has failed to file an Answer or otherwise respond to the Complaint. The regulations provide that "[f]ailure to timely file an answer will constitute an admission of the allegations in the complaint." 37 C.F.R. § 10.136(d). The regulations provide further that "[a] complaint . . . shall . . . [s]tate that a decision by default may be entered against the respondent if an answer is not timely filed." 37 C.F.R. § 10.134(a)(4).

The Director served a Motion for Default Judgment on August 2, 2001. 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 time for a response to a motion for default. The regulations provide at 37 C.F.R. § 10.136(d) that failure to file timely an answer "*will constitute an admission of the allegations in the complaint*" (emphasis added), and do not provide a requirement for a motion for default or a response thereto. *Compare*, Federal Rule of Civil Procedure 55(b)(1) (allowing entry of judgment on default upon request of plaintiff, for failure of defendant to appear).

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.

CHARGES

The Complaint charges Respondent in five counts. Count 1 alleges that by engaging in conduct resulting in his three year suspension from practice as an attorney on ethical grounds by the Colorado Supreme Court, Respondent violated Rule 10.23(b)(1) and (c)(5) of the Disciplinary Rules of Professional Conduct. Count 2 alleges that by engaging in conduct resulting in his reciprocal suspension from practice as an attorney on ethical grounds by the Ohio Supreme Court, Respondent violated Rule 10.23(b)(1) and (c)(5) of the Disciplinary Rules of Professional Conduct. Count 3 alleges that by failing to cooperate with OED's investigation concerning complaints and allegations therein made against Respondent, he engaged in professional misconduct, in violation of 37 C.F.R. §§ 10.23(c)(16) and 10.131(b). Count 4 alleges that by mishandling a patent application, Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), 10.77(c), 10.84(a)(1), and 10.84(a)(3). Count 5 alleges that by failing to notify the Director of a change of status which would preclude continued registration with the PTO, Respondent violated 37 C.F.R. §§ 10.23(b)(6) and 10.23(c)(14).

FINDINGS

COUNT 1

Colorado suspension

1. Respondent was a member of the bar of the State of Colorado.
2. In view of Respondent's professional misconduct beginning in 1996, Respondent and representative of the Colorado State Bar entered into a stipulation, agreement and conditional admission of misconduct.
3. In view of the agreement, on February 16, 1999, the Colorado Supreme Court suspended Respondent from practicing law in Colorado for three years for violating Colorado Rules of Professional Misconduct 1.3 (neglecting a matter entrusted to the lawyer); 1.4(a) (failing to keep a client reasonably informed); 1.4(b) (failing to explain a legal matter to a client to the extent reasonably necessary for the client to make an informed decision); 1.15(a)(failing to hold client property separate from the lawyer's own property); 1.16(d)(failing to take reasonable steps upon termination of representation to protect a client's interests); and 8.4(c)(engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation).
4. The Colorado Supreme Court further ruled that prior to being reinstated the Respondent must make full restitution to the clients identified in the Court's ruling.
5. Respondent remains suspended from practicing law in Colorado.
6. In view of being suspended from the practice of law by the State of Colorado, Respondent has engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(c)(5) and 10.23(b)(1).

COUNT 2

Ohio suspension

7. Respondent was a member of the bar of the State of Ohio.
8. In view of the suspension imposed on Respondent by the Supreme Court of Colorado, on July 26, 2000, the Ohio Supreme Court ordered Respondent to show cause as to why it should not reciprocally impose the same disciplinary sanction upon him.
9. Respondent filed no response to the show cause order issued by the Ohio Supreme Court.
10. On October 9, 2000, the Ohio Supreme Court suspended Respondent from practicing law in Ohio for three years and until he is reinstated to practice law in the State of Colorado.

11. Respondent remains suspended from practicing law in Ohio.
12. In view of being suspended from the practice of law by the State of Ohio, Respondent has engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(c)(5) and 37 C.F.R. § 10.23(b)(1).

COUNT 3
Failure to cooperate

13. On January 10, 2000 and February 9, 2000, the Director sent to Respondent written requests to respond to an investigation under 37 C.F.R. § 10.131(a) regarding Respondent's professional conduct, reminding Respondent in such requests of his obligation under 37 C.F.R. § 10.131(b) and 10.23(c)(16) to cooperate in such investigations.
14. Respondent did not respond to either of the Director's letters.
15. On March 21, 2000, May 10, 2000 and June 22, 2000, an OED staff attorney sent to Respondent written requests to respond to an investigation under 37 C.F.R. § 10.131(a) regarding Respondent's professional conduct, reminding Respondent in such requests of his obligation under 37 C.F.R. § 10.131(b) and 10.23(c)(16) to cooperate in such investigations.
16. Respondent did not respond to any of the staff attorney's request letters.
17. By failing to cooperate with OED's investigation, Respondent engaged in professional misconduct in violation of both 37 C.F.R. § 10.23(c)(16), by willfully refusing to reveal or report knowledge to the Director, and § 10.131(b), by failing to cooperate with the Director in connection with any investigation under 37 C.F.R. § 10.131(a).

COUNT 4
Mishandling Patent Applications

18. Respondent represented inventor Peggy Archuleta before the PTO in a patent application for a "shower mat." In a notice dated March 22, 1996, the PTO notified Respondent that he was required to file the patent issue fee and formal drawings on the patent within three months.
19. Respondent did not file the patent issue fee or the formal drawings on the patent within three months of March 22, 1996.
20. On June 22, 1996, Ms. Archuleta's patent application went abandoned as a result of Respondent's inaction.

21. On October 2, 1996, the PTO mailed to Respondent a notice of abandonment of Ms. Archuleta's patent application.
22. Respondent did not seek to revive within the PTO the abandoned patent application.
23. By mishandling Ms. Archuleta's patent application, Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), 10.77(c), 10.84(a)(1) and 10.84(a)(3).

COUNT 5

Lack of Notice of Change Precluding Continued Registration

24. Respondent's suspensions by the Supreme Courts of Colorado and Ohio was a change in his status affecting his continued registration as a member of the PTO bar.
25. Respondent knowingly failed to advise the Director in writing of this change in his status that would preclude his continued registration.
26. By failing to notify the Director, Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(b)(6) and 10.23(c)(14).

CONCLUSION

- (a) Respondent's conduct set forth above and in the Complaint with regard to Count 1 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(b)(1) and 10.23(c)(5).
- (b) Respondent's conduct set forth above and in the Complaint with regard to Count 2 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(b)(1) and 10.23(c)(5).
- (c) Respondent's conduct set forth above and in the Complaint with regard to Count 3 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(c)(16) and 10.131(b).
- (d) Respondent's conduct set forth above and in the Complaint with regard to Count 4 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), 10.77(c), 10.84(a)(1) and 10.84(a)(3).
- (e) Respondent's conduct set forth above and in the Complaint with regard to Count 5 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(b)(6) and 10.23(c)(14).

(f) An indeterminate suspension is appropriate because there has not been a record developed respecting all of the circumstances surrounding the professional misconduct. The Respondent's default has prevented such an inquiry. The 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. Until he does so his name should be removed from the rolls.

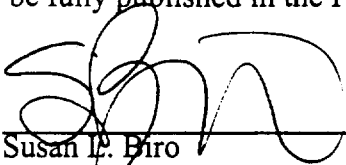
ORDER

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, **Charles C. Corbin**, 777 Grant Street, Denver Colorado 80203, PTO Registration No. 28,364, **be suspended for an indeterminate period 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 suspension or 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.


Susan E. Biro
Chief Administrative Law Judge²

DATE: August 14, 2001

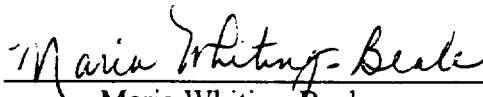
Pursuant to 37 C.F.R. § 10.155, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 10.154, must be filed in duplicate with the Director, Office of Enrollment and Discipline, U.S. Patent and Trademark Office, P.O. Box 16116, Arlington, Va. 22215, within 30 days of the date of this Decision. Such appeal must include exceptions 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.

² 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.

In the Matter of Charles C. Corbin, Respondent
Proceeding No. D2000-12

CERTIFICATE OF SERVICE

I hereby certify that a true copy of **Initial Decision On Default**, dated August 14, 2001 was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Legal Staff Assistant

Dated: August 14, 2001

Certified Mail Return Receipt Requested.

U.S. Patent and Trademark Office
Joseph Piccolo & Sydney O. Johnson, Jr.
P.O. Box 16116
Arlington, VA 22215

Regular Mail and Certified Mail Return Receipt Requested:

Charles C. Corbin
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Denver, CO 80203