

UNITED STATES DEPARTMENT OF COMMERCE
OFFICE OF ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF:)
)
CHARLES C. CORBIN,) Proceeding No. D2001-14
)
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 (USPTO) (Registration No. 28,364). The Complaint and Notice of Proceedings Under 35 U.S.C. § 32 (Complaint), issued by Harry I. Moatz, Director, Office of Enrollment and Discipline, was filed on November 6, 2001 and served upon the Respondent on May 28, 2002.¹ Count 1 of the

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 two occasions (November 6, 2001 and January 30, 2002), the Director sent the Complaint to Respondent by first class mail at the address for him for which separate notice was last received by the Director of 777 Grant Street, Denver, Colorado 80203. *See*, Certificate of Service attached to the Complaint and the Director's Motion for Default Judgment and attachments thereto. The two mailings were both returned to the Director by the U.S. Postal Service. *See*, Director's Motion for Default Judgment and attachments 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 May 28, 2002. *See*, Notice of Answer Due and attachments thereto. In addition, on July 2, 2002, prior to filing for default judgment, counsel for the Director attempted to telephone Respondent at the two telephone numbers listed at his last two known addresses to confer with him regarding the motion, but there was no telephone service at either of these two telephone numbers. *See*, Director's Motion for Default Judgment. I further note that while the counts in this Complaint relate to Respondent's practice in trademark cases, Respondent was a registered patent attorney, and thus had an obligation to notify the Director of any change of address. *See*, 37 C.F.R. § 10.11(a). Thus, I find that Respondent was properly served.

Complaint charges Respondent with violating disciplinary rules by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, engaging in conduct prejudicial to the administration of justice, and engaging in conduct that adversely affects his fitness to practice by practicing before the USPTO in trademark cases while not being a licensed attorney. Count 2 of the Complaint charges Respondent with violating disciplinary rules by neglecting a client matter entrusted to him: intentionally failing to seek the lawful objectives of a client through reasonably available means, and intentionally prejudicing or damaging a client during the course of a professional relationship. For those violations, the Complaint requests entry of an Order excluding Respondent from practice before the USPTO.

The Respondent was notified in the Notice of Complaint published in the *Official Gazette* 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 June 27, 2002, and that a default decision may be entered against him 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 or Notice. 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 decision by default may be entered against the respondent if an answer is not timely filed.” 37 C.F.R. § 10.134(a)(4).

Approximately one month ago, on July 3, 2002, the Director filed a Motion for Default Judgment and served the same on Respondent by first class mail.² See, Certificate of Service accompanying the Director’s Motion for Default Judgment. To date, the undersigned has not received from Respondent any reply to that motion. 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. Cf. Federal Rule of Civil Procedure 55(b)(1) (allowing entry of judgment on default upon request of plaintiff, for failure of defendant to appear).

² In addition to requesting entry of an order of exclusion based upon default, in the Motion for Default Judgment, the Director also requests entry of an Order requiring Respondent to pay the costs for this proceeding as a condition for any reinstatement to practice before the USPTO at a later date pursuant to 37 C.F.R. § 10.160(c)(2). See, Director’s Motion for Default Judgment at 3. Section 10.160(c)(2), 37 C.F.R. provides in pertinent part that that “[a]s a condition for reinstatement, the *Director* may require the individual to: . . . (2) Pay all or a portion of the costs and expenses, not to exceed \$1,500, of the disciplinary proceeding which led to suspension or exclusion. . . .” 37 C.F.R. §10.160(c)(2) (italics added). Thus, the decision as to whether to impose such costs on a petitioner for reinstatement is a decision left to the discretion of the Director which is to be made at the time of reinstatement. Therefore, granting such relief does not fall within the authority of the undersigned.

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 two counts with violating the Disciplinary Rules of Professional Conduct as found in 37 C.F.R. § 10. Count 1 of the Complaint charges that Respondent violated Rule 10.23(b)(4) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by practicing before the USPTO in trademark cases while not being a licensed attorney; violated Rule 10.23(b)(5) by engaging in conduct prejudicial to the administration of justice by practicing before the USPTO in trademark cases while not being a licensed attorney; and violated Rule 10.23(b)(6) by engaging in conduct that adversely affects his fitness to practice by practicing before the USPTO in trademark cases while not being a licensed attorney. Count 2 of the Complaint charges that Respondent violated Rule 10.77(c) by neglecting a client matter entrusted to him; violated Rule 10.84(a)(1) by intentionally failing to seek the lawful objectives of a client through reasonably available means; and violated Rule 10.84(a)(3) by intentionally prejudicing or damaging a client during the course of a professional relationship.

FINDINGS

COUNT 1

Practicing while not a member in good standing of any bar of the United States

1. On September 18, 1997, the Colorado Supreme Court suspended Respondent from practicing law in Colorado until further order by that Court.
2. On February 10, 1998, the Ohio Supreme Court suspended Respondent from practicing law in Ohio until he is reinstated by the Colorado Supreme Court to practice law in Colorado.
3. Since February 10, 1998, Respondent has not been admitted to practice law in any State.
4. On or around April 2, 1998, Respondent signed and filed a change of correspondence address with the USPTO in trademark registration applications 75/290,909, 75/290,910, and 75/290,911.
5. On or around November 15, 1999, Respondent represented the trademark registration applicant in application 75/367,346 during a telephone conversation with the USPTO official assigned to the application.
6. On or around November 23, 1999, Respondent signed and filed an express abandonment with the USPTO in trademark registration application 75/290,909.

7. On or around September 21, 2000, Respondent signed and filed a request for reconsideration with the USPTO in trademark registration application 75/840.668.
8. On or around November 18, 2000, Respondent signed and filed a motion to set aside default judgment and answer to opposition with the USPTO in trademark opposition proceeding 119.053.
9. From February 10, 1998 through November 18, 2000 and subsequently, Respondent was not "an individual who is a member in good standing of the bar of any United States court or the highest court of any State." As such, Respondent was not an "attorney" as defined by 37 C.F.R. § 10.1(c).
10. From February 10, 1998 through November 18, 2000 and subsequently, Respondent was not permitted to practice before the USPTO in trademark cases. Permission to practice before the USPTO in trademark cases is limited to attorneys and other individuals specified in 37 C.F.R. § 10.14.³

COUNT 2

Neglecting client matter, failure to seek lawful objectives, and intentionally damaging client

11. During 2000, Respondent was the attorney of record in USPTO trademark opposition proceeding 119,053 for the applicant, Space Research Corporation.
12. While Respondent was the attorney of record for USPTO trademark opposition proceeding 119,053, he failed to inform Space Research of pertinent events and papers filed in the proceeding.
13. While Respondent was attorney of record, the USPTO entered default judgment in trademark opposition proceeding 119,053 against Space Research.
14. To assert its rights in USPTO trademark opposition proceeding 119,053, Space Research had to retain new counsel in order to set aside the default judgment entered against it and to participate in the proceeding.

³ The other non-attorney individuals allowed to practice before the USPTO are those grandfathered in based upon their recognition to practice by the USPTO prior to January 1, 1957 and certain foreign attorneys and agents recognized by the USPTO. 37 C.F.R. §10.14. There is no evidence in the record that either of these alternative grounds for representation apply to Respondent.

CONCLUSIONS

(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)(4), (b)(5), and (b)(6).

(b) Respondent's conduct set forth above and in the Complaint with regard to Count 2 constitutes failure to act competently and failure to represent a client zealously, justifying suspension or exclusion under 37 C.F.R. §§ 10.77(c), 10.84(a)(1), and 10.84(a)(3).

(c) Exclusion is appropriate because Respondent was previously suspended from practice before the USPTO for an indeterminate period on five other counts by an Initial Decision on Default dated August 14, 2001.

(d) The Director, when deciding whether to grant a petition for reinstatement, may require Respondent to pay all or a portion of the costs and expenses of this proceeding as a condition to reinstatement pursuant to 37 C.F.R. § 10.160(c)(2).

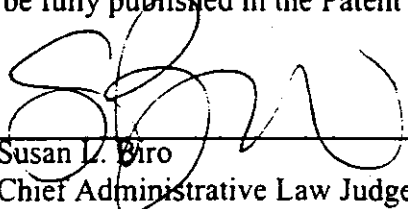
ORDER

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**,
USPTO Registration No. 28,364, be excluded from practice before
the United States 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 L. Biro
Chief Administrative Law Judge⁴

DATE: August 1, 2002
Washington, D.C.

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.

⁴ 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.