

**UNITED STATES DEPARTMENT OF COMMERCE  
OFFICE OF ADMINISTRATIVE LAW JUDGE**

<b>HARRY I. MOATZ</b>	)	
<b>Director, Office of</b>	)	
<b>Enrollment and Discipline</b>	)	
	)	
v.	)	<b>Proceeding No. D2000-02</b>
	)	
<b>JOHN B. FREASE,</b>	)	
<b>Respondent</b>	)	

**INITIAL DECISION ON DEFAULT**

**PRELIMINARY STATEMENT**

This disciplinary proceeding was initiated under 35 U.S.C. § 32 and the regulations promulgated thereunder, 37 C.F.R. part 10, by issuance of a Complaint, dated April 11, 2000, against John B. Frease (Respondent), an attorney registered to practice before the United States Patent and Trademark Office (PTO), Registration No. 27,785. The Complaint was issued by Harry I. Moatz, Director of the PTO's Office of Enrollment and Discipline (Director). The Complaint charges Respondent with three counts of violating Patent and Trademark Office Disciplinary Rules. Specifically, Count I of the Complaint alleges that Respondent was indefinitely suspended from practice as an attorney by the Supreme Court of Ohio for violating its ethical rules of conduct, in violation of 37 C.F.R. §§ 10.23(b)(1), (b)(6) and (c)(5). Count II alleges that Respondent knowingly failed to advise the Director of Respondent's suspension by the Supreme Court of Ohio, in violation of 37 C.F.R. § 10.23(c)(14). Count III alleges that Respondent willfully failed to reveal or report knowledge or evidence to the Director in connection with investigations under 37 C.F.R. § 10.131(a),<sup>1</sup> in violation of 37 C.F.R. §10.23(c)(16) and 10.131(b). For those violations, the Complaint requests an entry of any Order indefinitely suspending Respondent from practice before the PTO or excluding Respondent from practice before the PTO.

The Complaint was served on the Respondent in person on May 17, 2000, according to an Affidavit of Service filed by the Director.<sup>2</sup> The Respondent was notified in the Complaint

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<sup>1</sup> Rule 10.131(a) authorizes the Director to investigate possible violations of Disciplinary Rules by practitioners.

<sup>2</sup> Rule 10.135(a) 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

(continued...)

that he was required to file an answer to the Complaint within 30 days "from the date of this notice," under 37 C.F.R. § 10.134(a)(3), and that a decision by default may be entered against Respondent if an answer is not timely filed, under 37 C.F.R. § 10.134(a)(4).

Respondent has not filed an answer or otherwise responded to the Complaint. The PTO's regulations governing disciplinary proceedings 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 filed and served on Respondent a Motion for Default Judgment on June 22, 2000. Therein, counsel for the Director states that he telephoned Respondent on June 20, 2000, to confer with him in a good faith effort to resolve by agreement the issues raised by the motion, pursuant to 37 C.F.R. § 10.143, although the Director believes that the provision may be inapplicable to motions for default. Counsel states further that only Respondent's answering machine was reached, that he left a message asking for a return call, and that Respondent has not returned the call.

By Order dated June 28, 2000, an Order was issued and sent to Respondent both by certified mail and by regular mail, allowing Respondent until July 24, 2000, to file a response to the Motion for Default Judgment. To date, Respondent has not filed an answer, a response to the Motion for Default Judgment, or any other document in this proceeding.

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. The following Findings of Fact are based upon the Complaint.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### **Count I:**

1. On February 28, 1996, the Supreme Court of Ohio suspended Respondent indefinitely from the practice of law in Ohio for violating its ethical rules of conduct, namely, DR 1-102(A)(4) (conduct involving misrepresentation), DR 1-102(A)(6) (conduct adversely reflecting on fitness to practice law), DR 6-101(A)(3) (neglect of a legal matter entrusted to him), DR 7-101(A)(2) (failure to carry out a contract of employment), and DR 9-102(A) (failure to preserve the identity of the funds of a client in an identifiable bank account).

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(...continued)

a copy of the complaint by 'Express Mail' or first-class mail" or (3) by any other mutually agreeable method.

2. The Supreme Court of Ohio further ruled that prior to Respondent being reinstated to practice law in Ohio, he must make full restitution including interest to the clients identified in the Court's ruling.

3. Respondent has not been reinstated by the Supreme Court of Ohio to practice law in Ohio.

4. Respondent stands suspended indefinitely by the Supreme Court of Ohio on ethical grounds from practice as an attorney in Ohio.

5. PTO's Disciplinary Rules provide at 37 C.F.R. § 10.23(b)(1), (b)(6) and (c)(5) as follows, in regard to misconduct:

(b) A practitioner shall not:

(1) Violate a Disciplinary Rule.

\* \* \* \*

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

(c) Conduct which constitutes a violation of paragraphs (a) and (b) of this section includes, but is not limited to:

\* \* \* \*

(5) Suspension or disbarment from practice as an attorney or agent on ethical grounds by any duly constituted authority of a State or the United States . . . .

6. By being indefinitely suspended by the Supreme Court of Ohio on ethical grounds from practice as an attorney, Respondent violated 37 C.F.R. §§ 10.23(b)(1), (b)(6) and (c)(5).

**Count II:**

7. Respondent knowingly failed to advise the Director in writing that on February 28, 1996, the Supreme Court of Ohio suspended Respondent indefinitely on ethical grounds from the practice of law in Ohio.

8. PTO's Disciplinary Rules provide at 37 C.F.R. § 10.23(c)(14) in regard to misconduct as follows:

(c) Conduct which constitutes a violation of paragraphs (a) and (b) of this section includes, but is not limited to:

\* \* \* \*

(14) Knowingly failing to advise the Director in writing of any change which would preclude continued registration under 37 C.F.R. § 10.6.

9. By knowingly failing to advise the Director in writing of his indefinite suspension by the Supreme Court of Ohio on ethical grounds from practice as an attorney in Ohio, Respondent violated 37 C.F.R. § 10.23(c)(14).

**Count III:**

10. On March 15, 1996, a staff attorney in the PTO's Office of Enrollment and Discipline (OED) requested Respondent to respond to an investigation under 37 C.F.R. § 10.131(a) regarding Respondent's conduct.

11. The OED staff attorney's March 15, 1996 request to Respondent for a response included the following statement:

You are reminded of your duty to cooperate in any investigation under 37 C.F.R. § 10.131(b) and 10.23(c)(16). Failure to timely respond to this Second Request for Comments will be considered a failure to cooperate with the investigation and will result in presenting this matter to the Committee on Discipline.

12. Respondent failed to respond to the OED staff attorney's March 15, 1996 request for a response.

13. On September 27, 1999, an OED staff attorney requested Respondent to respond to an investigation under 37 C.F.R. § 10.131(a) regarding Respondent's indefinite suspension by the Supreme Court of Ohio on ethical grounds from the practice of law in Ohio.

14. The OED staff attorney's September 27, 1999 request to Respondent for a response included the following statement:

Please note that 37 CFR § 10.131(b) and 10.23(c)(16) impose upon practitioners a duty to cooperate with the Director in connection with any authorized investigation relating to possible violations of Disciplinary Rules by practitioners. Failure to respond will be construed as failure to cooperate, and will result in presenting this matter to the Committee on Discipline for appropriate action.

15. Respondent failed to respond to the OED staff attorney's September 27, 1999 request for a response.

16. The PTO's regulations provide at 37 C.F.R. §§ 10.23(c)(16) and 10.131(b) as follows:

§ 10.23 Misconduct.

\* \* \* \*

(c) Conduct which constitutes a violation of paragraphs (a) and (b) of this section includes, but is not limited to:

\* \* \* \*

Willfully refusing to reveal or report knowledge or evidence to the Director contrary to § 10.24 or paragraph (b) of § 10.131.

\* \* \* \*

§ 10.131 Investigations.

\* \* \* \*

(b) Practitioners shall report and reveal to the Director any knowledge or evidence required by § 10.24. A practitioner shall cooperate with any investigation under paragraph (a) of this section and with officials of the Office in connection with any disciplinary proceeding instituted under § 10.132(b).

17. By willfully refusing to reveal or report knowledge or evidence to the Director in connection with an investigation under 37 C.F.R. § 10.131(a), Respondent violated 37 C.F.R. §§ 10.23(c)(16) and 10.131(b).

CONCLUSIONS AS TO SANCTION

(a) Respondent's conduct set forth above and in the Complaint with regard to Count I constitutes professional misconduct justifying suspension or exclusion from practice before the PTO under 37 C.F.R. §§ 10.23(b)(1), (b)(6) and (c)(5).

(b) Respondent's conduct set forth above and in the Complaint with regard to Count II constitutes professional misconduct justifying suspension or exclusion from practice before the PTO under 37 C.F.R. § 10.23(c)(14).

(c) Respondent's conduct set forth above and in the Complaint with regard to Count III constitutes professional misconduct justifying suspension or exclusion from practice before the PTO under 37 C.F.R. §§ 10.23(c)(16) and 10.131(b).

(d) For these violations, an indeterminate suspension is appropriate. There record has not been 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.

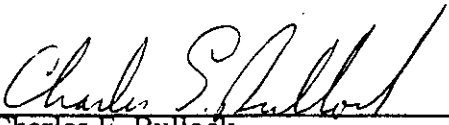
**ORDER**

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, **John R. Frease**,  
PTO Registration No. 27,785, **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.

  
\_\_\_\_\_  
Charles E. Bullock  
Administrative Law Judge<sup>3</sup>

Dated: August 22, 2000  
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, Washington, D.C. 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.**

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<sup>3</sup>This decision is issued by an 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 HARRY I. MOATZ v. JOHN B. FREASE, Respondent  
Proceeding No. D2000-02

Certificate of Service

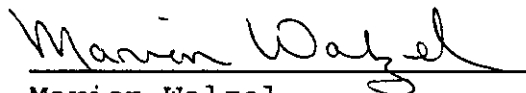
I certify that one copy of the foregoing INITIAL DECISION AND DEFAULT ORDER, dated August 22, 2000, was sent this day in the following manner to the below addressees.

Copy by First Class Regular Mail to:

Joseph G. Piccolo, Associate Solicitor  
William LaMarca, Associate Solicitor  
Office of Enrollment & Discipline  
U.S. Patent & Trademark Office  
P.O. Box 16116  
Arlington, VA 22214

Copy by Certified Mail, Return  
Receipt Requested and by  
Regular Mail to:

John B. Frease

  
Marion Walzel  
Legal Staff Assistant

Dated: August 22, 2000