

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

In the Matter of:)

Jasper C. Rowe,)

Respondent)

Proceeding No. D2009-54

FINAL ORDER UNDER 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24(d), Jasper C. Rowe (Respondent) is hereby ordered to be excluded from the practice of patent, trademark, and other non-patent law before the United States Patent and Trademark Office (USPTO) for violation of the ethical standards set out in 37 C.F.R. § 10.23(b), as further identified under 37 C.F.R. § 10.23(c)(5).

I. BACKGROUND AND PROCEDURAL HISTORY

At all relevant times, Respondent was a member of the State Bar of Texas. Respondent became registered as a patent attorney with the USPTO on June 23, 1980.

On June 8, 2008, the State Bar of Texas, District 06A Grievance Committee, Evidentiary Panel 06A-B2 (State Bar of Texas), issued a Judgment of Disbarment, which disbarred Respondent from the practice of law in Texas, effective May 8, 2008. The State Bar of Texas found that Respondent violated Texas Disciplinary Rules of Professional Conduct, Rules 1.01(b)(1), 1.04(a), 1.06(b)(2), 8.04(a)(3), and 8.04(a)(11), (Texas Disciplinary Rules) based upon the following:

1. Respondent, after being appointed as the Independent Executor for a decedent's estate, hired himself as attorney to represent the estate even though Respondent was administratively suspended from the practice of law.
2. Respondent hired himself as attorney to represent the estate under an agreement giving himself a legal fee of one-third the estate value as a flat fee for legal services.

3. Respondent, as attorney for the Independent Executor, failed to file an Inventory and Appraisal for the estate until after the probate court entered an order to show cause.
4. Based on Respondent's advice, the estate invested funds with another client of Respondent. The client, who received the investment funds, owed Respondent legal fees of two hundred thousand dollars (\$200,000). Respondent refused to disclose the terms of the investment.
5. The interests of the Independent Executor and the client who received the investment funds are adverse to each other and adverse to the interests of the Respondent.
6. Respondent, as Independent Executor, admitted that he had paid himself a ninety-six thousand dollar (\$96,000) fee, which was determined to be unconscionable and grossly excessive by the tribunal that removed Respondent as Independent Executor.

Respondent appealed the June 2, 2008, Judgment of Disbarment and, on August 14, 2009, filed an appellate brief with the Board of Disciplinary Appeals for the State Bar of Texas (Appellate Brief). The Judgment of Disbarment was not superseded or stayed, per the Texas Rules of Disciplinary Procedure 2.25.¹

Based on the Judgment of Disbarment from the State Bar of Texas, on September 23, 2009, the Director of Enrollment and Discipline (OED Director) of the USPTO filed a Request for Notice and Order Under 37 C.F.R. § 11.24, requesting that the USPTO Director issue a Notice and Order to Respondent in accordance with 37 C.F.R. § 11.24(b). In support of the request, the OED Director attached a Complaint for Reciprocal Discipline Under 37 C.F.R. § 11.24, a

¹ Texas Rule of Disciplinary Procedure 2.25 states:

No Supersedeas: An Evidentiary Panel's order of disbarment cannot be superseded or stayed. The Respondent may within thirty days from entry of judgment petition the Evidentiary Panel to stay a judgment of suspension. The Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public. An order of suspension must be stayed during the pendency of any appeals therefrom if the Evidentiary Panel finds that the Respondent has met the burden of proof. An Evidentiary Panel may condition its stay upon reasonable terms, which may include, but are not limited to, the cessation of any practice found to constitute Professional Misconduct, or it may impose a requirement of an affirmative act such as an audit of a Respondent's client trust account.

certified copy of the Judgment of Disbarment from the State Bar of Texas, and a proposed Notice and Order Under 37 C.F.R. § 11.24. The OED Director claimed that Respondent violated 37 C.F.R. § 10.23(b)(6) via 37 C.F.R. § 10.23(c)(5) by being disciplined on ethical grounds by a duly constituted authority of a State.

On October 8, 2009, the USPTO Director issued a Notice and Order Under 37 C.F.R. § 11.24 to Respondent to file, within forty (40) days of the date of the Notice and Order with the USPTO General Counsel, any response to his exclusion from the practice of patent, trademark, and other non-patent law before the USPTO pursuant to 37 C.F.R. § 11.24(d). Respondent was ordered to file all information that Respondent believed sufficient to establish a genuine issue of material fact that the imposition of discipline identical to that imposed by the State Bar of Texas would be unwarranted based upon any of the following grounds permissible under

37 C.F.R. §§ 11.24(d)(1)(i)-(iv):

1. The procedure culminating in the June 2, 2008, Judgment of Disbarment of the State Bar of Texas, disbaring Respondent from the practice of law in Texas, was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
2. There was such infirmity of proof establishing the conduct leading to the June 2, 2008, Judgment of Disbarment of the State Bar of Texas, disbaring Respondent from the practice of law in Texas, as to give rise to the clear conviction that the USPTO could not, consistently with its duty, accept as final the conclusion on that subject;
3. The imposition of the same disciplinary sanction by the Office as was imposed by the June 2, 2008, Judgment of Disbarment of the State Bar of Texas, disbaring Respondent from the practice of law in Texas, would result in grave injustice; and/or
4. Respondent was not the person disciplined as set forth in June 2, 2008, Judgment of Disbarment of the State Bar of Texas.

On November 19, 2009, the USPTO General Counsel received Respondent's Response Contesting USPTO Notice and Order Under 37 C.F.R. § 11.24 and Motion for Stay or Dismissal

of Proceedings Pending Final Decision of State Bar of Texas on Status of Respondent (Response). In his Response, Respondent generally contests his exclusion to practice before the USPTO under 37 C.F.R. §§ 11.24(d)(1)(i), (ii), and (iii). Respondent also challenges the USPTO's action as not supported by the facts, attaching the appellate brief he filed with the Board of Disciplinary Appeals of the State Bar of Texas. Respondent further requests a stay or dismissal on the USPTO's action as premature on the grounds that the USPTO should issue a stay in order to prevent a manifest injustice to Respondent and to prevent a denial of due process as contemplated under 37 C.F.R. §§ 11.24(d)(1)(i), (iii) and under the 14th Amendment of the U.S. Constitution.

On August 14, 2009, the Board of Disciplinary Appeals for the State Bar of Texas received Respondent's appellate brief and scheduled a hearing for January 15, 2010. On January 17, 2010, after hearing arguments and considering the record and appellate brief of Respondent, the Board of Disciplinary Appeals for the State Bar of Texas issued Judgment Affirming Judgment of Disbarment against Respondent, disbarring Respondent from the practice of law in the State of Texas.

II. LEGAL STANDARD

Under 37 C.F.R. § 11.24(e), the USPTO has codified standards for imposing reciprocal discipline based on the state's disciplinary adjudication that were set forth early in the last century in *Selling v. Radford*, 243 U.S. 46 (1917). Under *Selling*, state disbarment creates a federal level presumption that imposition of reciprocal discipline is proper unless an independent review of the record reveals 1) a want of due process, 2) an infirmity of proof of the misconduct, or 3) that grave injustice would result from the imposition of reciprocal discipline. *Id.* at 51. Federal courts have generally "concluded that in reciprocal discipline cases, it is the respondent's

burden to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline.” *In re Kramer*, 282 F.3d 721 (9th Cir. Cal. 2002).

Specifically, 37 C.F.R. § 11.24(e) states, in relevant part:

... a final adjudication in another jurisdiction . . . or program that a practitioner . . . has been guilty of misconduct shall establish a prima facie case by clear and convincing evidence that the practitioner violated 37 C.F.R. 10.23, as further identified under 37 CFR 10.23 (c)(5)

Further, 37 C.F.R. § 11.24(d) states, in relevant part:

... the USPTO Director shall consider any timely filed response and shall impose the identical . . . disbarment . . . unless the practitioner clearly and convincingly demonstrates, and the USPTO Director finds there is a genuine issue of material fact that:

- (i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;
- (iii) The imposition of the same . . . disbarment . . . by the Office would result in grave injustice; or
- (iv) Any argument that the practitioner was not . . . disbarred

III. ANALYSIS

In his Response received by the USPTO General Counsel on November 19, 2009, Respondent contests the imposition by the USPTO of the same disbarment imposed by the State Bar of Texas. Respondent generally contests his exclusion to practice before the USPTO under 37 C.F.R. §§ 11.24(d)(1)(i), (ii), and (iii), requesting that the USPTO proffer “strict proof” to him of all allegations against him. Respondent also challenges the USPTO’s action as not supported by the facts, attaching the appeal brief he filed with the Board of Disciplinary Appeals of the State Bar of Texas.

First, because it is Respondent’s burden to demonstrate, by clear and convincing

evidence, that the USPTO is precluded from imposing reciprocal discipline against him, Respondent has not met this burden. Respondent presents insufficient evidence that 1) the procedure culminating in the June 2, 2008, Judgment of Disbarment of the State Bar of Texas, disbarring Respondent from the practice of law in Texas, was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; 2) there was such infirmity of proof establishing the conduct leading to Judgment of Disbarment of the State Bar of Texas as to give rise to the clear conviction that the USPTO could not, consistently with its duty, accept as final their conclusion on that subject; and/or 3) imposition of the same disciplinary sanction by the Office as was imposed by the Judgment of Disbarment of the State Bar of Texas would result in grave injustice.

Second, on January 17, 2010, after hearing argument and considering the record and appellate brief of Respondent, the Board of Disciplinary Appeals for the State Bar of Texas issued Judgment Affirming Judgment of Disbarment against Respondent, disbarring Respondent from the practice of law in the State of Texas. The Judgment Affirming Judgment of Disbarment against Respondent is deemed a final adjudication in accordance with 37 C.F.R. § 11.24(e). Such final adjudication establishes a *prima facie* case by clear and convincing evidence that the practitioner violated 37 C.F.R. 10.23, as further identified under 37 C.F.R. § 10.23(c)(5).

A. Infirmity of Proof and Due Process

Respondent seeks to have the USPTO consider his appellate brief to the Board of Disciplinary Appeals for the State Bar of Texas as establishing an infirmity of proof under 37 C.F.R. § 11.24(d)(1)(ii). The majority of Respondent's arguments in his appellate brief (i.e., Arguments 1, 3, 4, 6-7) address his issues with the process of his May 8, 2008,

hearing before the State Bar of Texas, District 06A Grievance Committee, Evidentiary Panel 06A-B2, which he claims led to a deprivation of his due process. An alleged deprivation of due process does not establish that there was an infirmity of proof under 37 C.F.R. § 11.24(d)(ii). To the extent that Respondent argues that he was deprived of due process under 37 C.F.R. § 11.24(d)(i), the record establishes that Respondent was given both notice and an opportunity to be heard before both the State Bar of Texas, District 06A Grievance Committee, Evidentiary Panel 06A-B2 and the Board of Disciplinary Appeals of the State Bar of Texas. Therefore, the appellate brief's arguments concerning the State Bar of Texas's process does not establish a violation of either 37 C.F.R. §§ 11.24(d)(i) or (ii).

In addition, Arguments 2 and 5 in Respondent's appellate brief do not establish an infirmity of proof under 37 C.F.R. § 11.24(d)(ii). Respondent argues in Argument 2 that he was represented *pro se* in his capacity as Independent Executor of a decedent's estate, which he claims shows that he was not practicing law while administratively suspended from the practice of law. The State Bar of Texas specifically found that he hired himself "as attorney to represent the Miller Estate" and acted "as attorney for the Independent Executor." Judgment of Disbarment of the State Bar of Texas, Findings of Fact, ¶ 5. Respondent's Tab 4 to his appellate brief supports the State Bar of Texas's findings, because it contains a letter on his law practice's letterhead signed by Respondent showing that he was actively engaged in the practice of law, and not represented *pro se*, in that he charged himself fees, costs, and other expenses for legal services to himself as Independent Executor of the decedent's estate. Finally, Respondent argues in Argument 5

that his “arguments concerning extenuation and mitigation,”² including his previous 35 years of legal practice and state and local bar association activities and grave illness of his wife, “were completely disregarded and that if the record is evaluated in its entirety, it is clear that the findings are not supported by the evidence, and do not support the sanction of disbarment.”³ Respondent appears to argue that an infirmity of proof stems from these claims. However, the State Bar of Texas in the Judgment of Disbarment stated separated that the State Bar of Texas heard and considered “additional evidence regarding the appropriate sanction to be imposed.” Judgment of Disbarment at 3. There is no basis in this record to conclude that Respondent’s proffers on extenuation and mitigation were not considered. Respondent has not demonstrated by clear and convincing evidence that there was such an infirmity of proof leading to the final decision by the Board of Appeals for the State Bar of Texas, based on these alleged facts, as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion that Respondent should be disbarred.

B. Grave Injustice

Respondent asserts that imposition of reciprocal discipline upon Respondent, namely – exclusion from the practice of patent, trademark, and other non-patent law before the Office – would result in grave injustice. For the following reasons, Respondent’s assertions are not persuasive.

1. Request for Continuance

Respondent argues that the State Bar of Texas erred when it denied Respondent a

² Appellate Brief at 28.

³ Appellate Brief at 28.

continuance of the May 8, 2008, hearing date.⁴ However, Respondent does not assert that there are any additional arguments or evidence that he was unable to present as a result of being denied the continuance. Further, Respondent does not assert that the State Bar of Texas would have come to a different conclusion – and not ordered the disbarment of Respondent – if his request for continuance had been granted. Any error in the State Bar of Texas’s treatment of the Respondent’s request for continuance, if there were error, would thus be immaterial to the question now before the USPTO.

2. Application of Texas Disciplinary Rules

Respondent asserts that the State Bar of Texas erred in applying the Texas Disciplinary Rules in this matter wherein Respondent was *pro se* as Independent Executor.⁵ As stated above, however, the State Bar of Texas reasonably found that he was acting as an attorney for the estate. Thus, his legal arguments that the State Bar of Texas’s ethics rules should not reach his activities are unavailing.

3. Exclusion of Respondent’s Testimony

Respondent asserts that the State Bar of Texas erred when it excluded, as a violation of the Dead Man’s Statute or as hearsay, Respondent’s testimony related to Respondent’s assertion that the testator advised him in writing to accept one third of the value of his estate for handling the administration of his estate as an attorney or Independent Executor.⁶ Respondent cites Rule 1004(a) and (b) of the *Texas Rules of Evidence* in support of his assertion that his “testimony should have been permitted since it went to prove that the testator had agreed before his death to the fees, set forth by the Respondent in written contracts, taken by the attorney and executor, and

⁴ Appellate Brief at 19.

⁵ Appellate Brief at 21.

⁶ Appellate Brief at 24-26.

thus they were not excessive.”⁷ *Texas Rules of Evidence*, Rule 1004 states, in part:

The original is not required and other evidence of the contents of a writing, recording, or photograph is admissible if:

(a) Originals Lost or Destroyed. All original are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;

(b) Original Not Obtainable. No original can be obtained by any available judicial process or procedure;

* * * * *

However, the “Hearsay Rule”, codified in *Texas Rules of Evidence*, Rule 802, states, in part,

“Hearsay is not admissible except as provided by statute or these rules or by other rules prescribed

pursuant to statutory authority.” *Texas Rules of Evidence*, Rule 801(d) defines hearsay as, “a

statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence

to prove the truth of the matter asserted.” The “Dead Man Rule,” codified in *Texas Rules of*

Evidence, Rule 601(b), states, in part:

In Civil actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any oral statement by the testator, intestate or ward, unless that testimony to the oral statement is corroborated or unless the witness is called at the trial to testify thereto by the opposite party; and the provisions of this article shall extend to and include all actions by or against the heirs or legal representative of a decedent based in whole or in part on such oral statement.

* * * * *

Accordingly, Respondent’s reliance on Rule 1004(a) and (b) is unavailing, because the Dead Man Rule provides an exception that the State Bar of Texas could reasonably apply to exclude the testimony he sought to offer. Therefore, Respondent has not clearly and convincingly demonstrated that testimony related to the contents of “written instructions, which were later lost or destroyed, stating that [Respondent] was to take one third of the estate in payment for his activities as executor and attorney for the estate”⁸ was

⁷ Appellate Brief at 25.

⁸ Appellate Brief at 25.

improperly excluded under Rule 1004 of the *Texas Rules of Evidence* or otherwise.

4. *Exclusion of Testimony of Corroborating Witness*

Respondent asserts that the testimony of his corroborating witness “concerning the content of written instructions prepared by the testator, prior to his death, which set out the testator’s intent for the administration of his estate after his death” was improperly excluded by the State Bar of Texas after objections were made on the basis of hearsay, the Statute of Frauds, and the “Dead Man Rule.”⁹

Respondent asserts that the “Dead Man Rule” had “been waived as to testimony concerning transactions involving the testator’s intent and instructions, prior to his death, for the handling of his estate after his death.”¹⁰ Respondent cites the Texas Supreme Court decision of *Seaman v. Seaman*, 425 S.W. 2d 339 (Tex. 1968), in support of his assertion regarding waiver of the “Dead Man Rule.” However, the facts in *Seaman* are distinguishable from the facts in Respondent’s State Bar of Texas proceeding. In *Seaman*, the defendant’s objection under the “Dead Man Rule,” to testimony from the plaintiff about her transactions with two deceased persons, was held to have been waived when the defendant subsequently called the plaintiff to testify with respect to related additional facts and events which had occurred between the plaintiff and the deceased persons. There is no evidence that the petitioner (Commission For Lawyer Discipline) in the proceeding before the State Bar of Texas called either Respondent or his corroborating witness to testify concerning the testator’s intent and instructions for handling his estate after his death. Accordingly, the holding of the Texas Supreme Court in *Seaman* regarding waiver of the “Dead Man Rule” does not appear to be applicable to the facts of Respondent’s proceeding before the State Bar of Texas. Thus, Respondent has not clearly and convincingly demonstrated that there

⁹ Appellate Brief at 27.

¹⁰ Appellate Brief at 27.

was a waiver of the “Dead Man Rule” with regard to the testimony of Respondent’s corroborating witness concerning the testator’s intent and instructions for handling his estate after his death.

Respondent also asserts that the testimony of his corroborating witness falls within the exception to the hearsay rule set out in *Texas Rules of Evidence*, Rule 803(3), “as a statement of the deceased declarant’s motive and plan for the administration of his estate after his death” and therefore the testimony “should have been permitted by the court.”¹¹ *Texas Rules of Evidence*, Rule 803(3) states:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * * * *

(3) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will.

* * * * *

Respondent’s assertion with regard to the applicability of the exception to the hearsay rule set out in *Texas Rules of Evidence*, Rule 803(3) does appear to have some merit.

However, the Commission For Lawyer Discipline lodged two other objections to the proffered testimony, and Respondent does not here assert that either of those objections was misplaced apart from his assertion concerning waiver of the Dead Man Rule. Thus, Respondent has not clearly and convincingly demonstrated that the State Bar of Texas erred when it excluded the testimony of Respondent’s corroborating witness as Respondent has not clearly and convincingly demonstrated that the testimony was not properly excluded under either of the other two bases for objection that were made, that is:

¹¹ Appellant Brief at 27.

the Statute of Frauds or the “Dead Man Rule.”

Respondent also cites Rule 1004(a) and (b) of the *Texas Rules of Evidence* in support of his assertion that the testimony of his corroborating witness should have been permitted since it concerned “what the testator told her about how he wanted his estate administered after his death and the content of the testator’s written instructions to the executor for administration of his estate after his death.”¹² However, Respondent has not demonstrated that either the Statute of Frauds or the “Dead Man Statute” provide an exception for testimony “concerning the content of written instructions prepared by the testator, prior to his death, which set out the testator’s intent for administration of his estate after his death”¹³ pursuant to Rule 1004 of the *Texas Rules of Evidence* or otherwise. Accordingly, Respondent has not clearly and convincingly demonstrated that the State Bar of Texas erred when it excluded the testimony of Respondent’s corroboration witness “concerning what the testator told her about how he wanted his estate administered after his death and the content of the testator’s written instructions to the executor for administration of his estate after his death.”¹⁴

5. Findings of State Bar of Texas

Respondent asserts that the record, evaluated in its entirety, does not support the findings of the State Bar of Texas or the sanction of disbarment. Respondent asserts that his arguments concerning extenuation and mitigation, including the fact that he had conducted himself in an exemplary fashion in over 35 years of legal practice, had been active in state and local bar association activities, and had to deal with the grave illness of his wife, were completely disregarded by the State Bar of Texas in its imposition of the sanction of disbarment.

¹² Appellant Brief at 27.

¹³ Appellate Brief at 27.

Respondent presents no evidence, other than the fact that he disagrees with order of the State Bar of Texas imposing the sanction of disbarment, that the mitigating factors he articulates were not considered by the State Bar of Texas. Further, Respondent does not clearly and convincingly demonstrate that the State Bar of Texas failed to consider all evidence that was legally admissible or that its conclusions of law were not supported by the evidence. Further, Respondent has not clearly and convincingly demonstrated that the imposition of the sanction of disbarment was inappropriate.

6. Public Member of Panel/Conflict of Interest

Respondent speculates that the failure of the State Bar of Texas Panel to recuse an alleged “friend” of the State Bar of Texas’s main witness, who was on the Panel as a member of the public, may have denied Respondent a fair trial. Respondent alleges that, because this Panel member was permitted to deliberate with the other members of the State Bar of Texas Panel when they made their decision, that failure to recuse him “could have lead to a tainted resulting decision of the panel.”¹⁵ Respondent presents no evidence, other than that he objected to this person’s being on the Panel, which was overruled by the Chair of the State Bar of Texas Panel, and that he disagrees with such overruling of his objection to support his assertion that the imposition of the sanction of disbarment was inappropriate.

7. Composition of the State Bar of Texas Panel Members

Respondent further alleges that, because there were no “Black or minority members” on the State Bar of Texas Panel, the resulting sanction of disbarment was “tainted by possible racism.”¹⁶ The imposition of the sanction of disbarment when the Texas State Bar Panel lacked such

¹⁴ Appellate Brief at 27.

¹⁵ Appellate Brief at 28-29.

minority, Respondent speculates, would result in grave injustice. However, Respondent presents no evidence that such alleged racism existed among the members of the Panel. Further, Respondent does not clearly and convincingly demonstrate that the State Bar of Texas failed to consider all evidence that was legally admissible or that its conclusions of law were not supported by the evidence.

In view of the above analysis, Respondent has not clearly and convincingly demonstrated that imposition of reciprocal discipline upon Respondent, namely – exclusion from the practice of patent, trademark, and other non-patent law before the Office – would result in grave injustice.

C. Request for Stay

Respondent further requests a stay or dismissal on the USPTO's action as premature on the grounds that the USPTO should issue a stay in order to prevent a manifest injustice to Respondent and to prevent a denial of due process as contemplated under 37 C.F.R. §§ 11.24(d)(1)(i), (iii) and under the 14th Amendment of the U.S. Constitution. On August 14, 2009, Respondent filed his appeal brief with the Board of Disciplinary Appeals of the State Bar of Texas. On January 15, 2010, the Board of Disciplinary Appeals of the State Bar of Texas heard argument in Respondent's appeal. On January 17, 2010, after hearing argument and reviewing briefs, the Board of Disciplinary Appeals of the State Bar of Texas issued Judgment Affirming Judgment of Disbarment against Respondent, disbarring Respondent from the practice of law in the State of Texas. Therefore, the issue is moot as to whether imposition of reciprocal discipline is premature due to the pendency of Respondent's appeal.¹⁷ As a result, Respondent's

¹⁶ Appellate Brief at 29-30.

¹⁷ In any event, it has previously been held that the filing of an appeal "does not, by itself justify a stay of reciprocal discipline proceedings or a finding of a genuine issue of material fact that imposition of disbarment would result in a grave injustice" because "[i]f it did, any practitioner disciplined in such a final adjudication could avoid or delay reciprocal discipline simply by seeking reconsideration." *In re Lilling*, No. D09-21 (October 26, 2009) at 5 (OED Reading Room). *In re Lilling* is accessible at the following web address: http://des.uspto.gov/Foia/ReterivePdf?system=OED&fNm=0572_DIS_2009-10-26

request to stay reciprocal discipline proceedings under 37 C.F.R. § 11.24(d) is denied.

Accordingly, Respondent has not clearly and convincingly demonstrated that there is a genuine issue of material fact that 1) the procedure culminating in the Judgment of Disbarment of the State Bar of Texas was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; 2) there was such infirmity of proof establishing the conduct leading to the Judgment of Disbarment of the State Bar of Texas as to give rise to the clear conviction that the USPTO could not, consistently with its duty, accept as final their conclusion on that subject; and/or 3) imposition of the same disciplinary sanction by the Office as was imposed by the State Bar of Texas Judgment of Disbarment, would result in grave injustice.

IV. CONCLUSION

It is hereby determined that: 1) there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and 2) exclusion of Respondent from practice before the USPTO is appropriate.

ORDER

ACCORDINGLY, it is hereby **ORDERED** that:

(a) Respondent is excluded from the practice of patent, trademark, and other non-patent law before the Office beginning on the date of this Final Order;

(b) Respondent is granted limited recognition to practice before the Office beginning on the date of this Final Order and expiring thirty (30) days after the date of this Final Order;

(c) Respondent is directed, during the time of his limited recognition to wind up all client business before the Office and to withdraw from employment in all pending proceedings in accordance with 37 C.F.R. § 10.40;

(d) Respondent is directed not to accept any new clients having business before the Office during the 30 days of limited recognition afforded by this Final Order;

(e) the OED Director shall publish this Final Order;

(f) the OED Director shall publish the following notice in the Official Gazette:

NOTICE OF EXCLUSION

Jasper C. Rowe of Irving, Texas, a registered patent attorney whose Registration Number is 29,973 has been excluded from the practice of patent, trademark, and non-patent law before the United States Patent and Trademark Office for violating 37 C.F.R. § 10.23(b)(6), via 37 C.F.R. § 10.23(c)(5), by being disbarred from practice as an attorney on ethical grounds by a duly constituted authority of the State of Texas. Mr. Rowe was disbarred for violating Texas Disciplinary Rules of Professional Conduct, Rules 1.01(b)(1), 1.04(a), 1.06(b)(2), 8.04(a)(3), and 8.04(a)(11) predicated upon: (1) after being appointed as the Independent Executor for a decedent's estate, Mr. Rowe hired himself as attorney to represent the estate even though he was administratively suspended from the practice of law; (2) he hired himself as attorney to represent the estate under an agreement giving himself a legal fee of one-third the estate value as a flat fee for legal services; (3) as attorney for the Independent Executor, Mr. Rowe failed to file an Inventory and Appraisement of the estate

until after the probate court entered a rule to show cause; (4) based on Mr. Rowe's advice, the estate invested funds with another of his clients; the client who receive the investment funds owed Mr. Rowe legal fees of two-hundred thousand dollars (\$200,000); and Mr. Rowe refused to disclose the terms of the investment; (5) the interests of the Independent Executor and the client who received the investment funds were adverse to each other and adverse to Mr. Rowe's interests; and (6) Mr. Rowe, as Independent Executor, paid himself a ninety-six thousand dollar (\$96,000) fee, which was determined to be an unconscionable and grossly excessive fee by the tribunal that removed him as Independent Executor. This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. § 11.24. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline's Reading Room located at:
<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

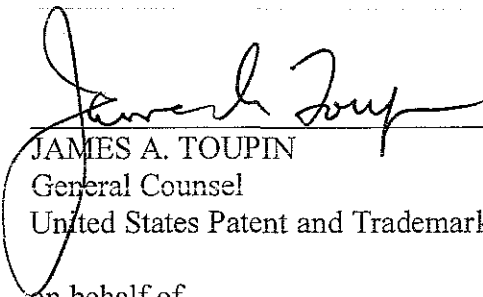
(g) Respondent shall comply fully with 37 C.F.R. § 11.58;

(h) the OED Director, in accordance with 37 C.F.R. § 11.59, shall give notice of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the State where the practitioner is admitted to practice, to courts where the practitioner is known to be admitted, and the public;

(i) Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for reinstatement.

MAR - 8 2010

Date


JAMES A. TOUPIN
General Counsel
United States Patent and Trademark Office

on behalf of

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