

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

In the Matter of)	
)	
Zachary Hamilton,)	Proceeding No. D2009-49
)	
Respondent)	
_____)	

Final Order

Office of Enrollment and Discipline Director Harry I. Moatz (“OED Director”) and Zachary Hamilton (“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 designate 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

The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 CFR §§ 11.20(a)(2), 11.20(a)(4), and 11.26.

Stipulated Facts

1. Respondent of South Holland, Illinois, is an attorney registered to practice patent law before the Office (Registration Number 39,212) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq.*
2. At all relevant times, Respondent maintained a client trust account, but he did not have a separate account for the business/operating transactions of his law practice.
3. Respondent deposited the business/operating funds of his law practice into a client trust account.
4. Respondent did not keep formal accounting records for client funds he received.

5. From May 2006 through August 2008, Respondent signed and submitted to the Office three (3) checks drawn on his Client Trust account that were returned for insufficient funds. The returned checks totaled seven hundred and twenty dollars (\$720.00).

6. After receiving notice from the USPTO that the checks he had presented had been drawn on a bank account having insufficient funds, Respondent paid the patent application fees for which the checks were originally presented, as well as fees arising from the untimely payment of those fees.

7. Since the events at issue, Respondent has taken the following steps to improve the management of his law practice:

a. Respondent has established a client trust account into which he deposits only client funds, including monies received as payment in advance for patent law services to be provided, and a separate account for the business/operating transactions of his law practice.

b. Respondent has established and uses a manual ledger for recording fiduciary transactions.

c. Respondent has purchased and is incorporating into his practice new financial software and practice management software. Respondent's new software is capable of performing the ledger functions for both the client trust account and his business's operating account.

d. Respondent utilizes a new fee/engagement and closing letters that have been reviewed by a consultant and attorneys licensed in the State of Illinois where Respondent is also a licensed attorney.

e. Respondent has set up checklists for both financial reporting and USPTO transactional procedures. Specifically, the checklists he has instituted require Respondent to reconcile his trust and operating accounts on a monthly basis.

Legal Conclusion

8. Based on the information contained in paragraphs 1 through 7, above, Respondent acknowledges that his conduct violated: 37 C.F.R. §§ 10.112 (a) and (b) by not maintaining separate accounts for client funds and business/operating expenses and for commingling client and business funds; 37 C.F.R. § 10.112(c)(3) by not maintaining complete records of client funds; 37 C.F.R. § 10.23(b)(4) by engaging in conduct involving misrepresentation by submitting checks to the USPTO that were drawn on insufficient funds; and 37 C.F.R. § 10.23(b)(6) by engaging in conduct that adversely reflects on his fitness to practice law by submitting checks that were returned for insufficient funds.

Sanctions

9. Respondent agreed, and it is ORDERED that:

- a. Respondent be, and hereby is, suspended for a period of twenty-four (24) months from the practice of patent, trademark, and non-patent law before the USPTO commencing on the date of this Final Order;
- b. The entirety of Respondent's suspension be, and hereby is, immediately stayed as of the date of this Final Order and that the stay shall remain in effect until further order of the USPTO Director or his designate;
- c. Respondent shall serve a twenty-four (24) month probationary period commencing on the date the Final Order is signed;
- d. Respondent shall be permitted to practice patent, trademark, and non-patent law before the USPTO during his probationary period unless the stay of the suspension is lifted by order of the USPTO Director or his designate;
- e. If the stay of the suspension is not lifted by order of the USPTO Director or his designate by the end of the probationary period, Respondent is not required to serve the suspension;
- f. Respondent, within 90 days from the date the Final Order is signed, shall purchase and complete the online continuing legal education class entitled "IOLTA Accounts and Retainer Agreements" approved by the Illinois State Bar Association for continuing legal education credit;
- g. Respondent, within 120 days from the date the Final Order is signed, shall provide the OED Director an affidavit attesting to Respondent's completion of the continuing legal education class described in the preceding subparagraph along with documentation evidencing his receipt of continuing legal education credit for the course;
- h. (1) In the event that the OED Director is of the opinion that Respondent, during the 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 designate should not order that the stay of the suspension be lifted and Respondent be immediately suspended for up to twenty-four (24) months for the violations set forth in paragraph 8, above;

(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 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 designate: (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 failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility during the probationary period, and

(B) request that the USPTO Director or his designate immediately lift the stay of the suspension and suspend Respondent for up to twenty-four (24) months for the violations set forth in paragraph 8, above;

- i. 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>;
- j. The OED Director shall publish the following Notice of Stayed Suspension in the *Official Gazette*:

Notice of Stayed Suspension

Zachary Hamilton of South Holland, Illinois, registered patent attorney (Registration Number 39,212). The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Hamilton for twenty-four months, with the entirety of the suspension stayed, and placed him on a twenty-four (24) month probation for violating 37 C.F.R. §§ 10.112 (a) and (b) by not maintaining separate accounts for client funds and business/ operating expenses and for commingling client and business funds; 37 C.F.R. § 10.112(c)(3) by not maintaining complete records of client funds; 37 C.F.R. § 10.23(b)(4) by engaging in conduct involving misrepresentation by submitting checks to the USPTO that were drawn on insufficient funds; and 37 C.F.R. § 10.23(b)(6) by engaging in conduct that adversely reflects on his fitness to practice law by submitting checks that were returned for insufficient funds. Mr. Hamilton is permitted to practice before the Office during his probation unless the stay of

the suspension is lifted.

Mr. Hamilton maintained a client trust account, but he did not have a separate account for the business/operating transactions of his law practice. He deposited all business/operating funds into his client trust account. Mr. Hamilton did not keep formal accounting records for client funds he received. Additionally, from May 2006 through August 2008, Mr. Hamilton signed and submitted to the Office three (3) checks that were returned due to insufficient funds. The returned checks totaled seven hundred and twenty dollars (\$720.00). Mr. Hamilton has made good on all outstanding checks and returned check fees, now has a client trust account, and has taken steps to ensure that the manner in which he handles client funds and his financial bookkeeping comply with USPTO Disciplinary Rules.

This action is the result of a settlement agreement between Mr. Hamilton and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.26 and 11.59. Disciplinary decisions involving practitioners are posted at the Office of Enrollment and Discipline's Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.


- k. The OED Director shall give notice of the public discipline and the reasons for the discipline pursuant to 37 C.F.R. § 11.59;
- l. In the event that the USPTO Director or his designate lifts the stay of the suspension and Respondent seeks a review of the USPTO Director's decision to lift the stay, any such review shall not operate to postpone or otherwise hold in abeyance the immediate suspension of Respondent;
- m. 37 C.F.R. §§ 11.58 and 11.60 do not apply unless the stay of the suspension is lifted;
- n. If the stay of the suspension is lifted, the OED Director shall give notice of the suspension and the reasons therefor pursuant to 37 C.F.R. § 11.59;
- o. 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 that caused the stay of the suspension to be lifted;
- p. The record of this disciplinary proceeding, including the Final Order, 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

- q. The OED Director and Respondent shall bear their own costs incurred to date and in carrying out the terms of this agreement.

JUL 21 2010

Date


William R. Covey
Deputy 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

cc:

Harry I. Moatz
Director Office of Enrollment and Discipline
U.S. Patent and Trademark Office
Mail Stop OED
P.O. Box 1450
Alexandria, Virginia 22313-1450

Zachary Hamilton
Law Office of Zachary Hamilton
15475 South Park Avenue
Suite 111
South Holland, IL 60473

Notice of Stayed Suspension

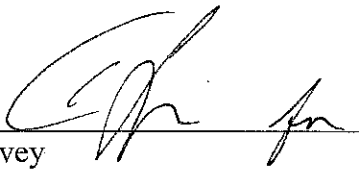
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William R. Covey
Deputy General Counsel
United States Patent and Trademark Office

on behalf of

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