

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

In the Matter of:)
)
Les A. Boegemann,) Proceeding No. D2011-24
)
Respondent)
_____)

FINAL ORDER

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Les A. Boegemann (“Respondent”) have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and USPTO Director 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 the disciplinary action by the USPTO 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

At all times relevant hereto, Respondent of Benson, Arizona, has been an attorney registered to practice before the USPTO and is subject to the Disciplinary Rules of the USPTO Code of Professional Responsibility set forth at 37 CFR § 10.20 *et seq.* The USPTO Director has jurisdiction over this matter and the authority to approve the Proposed Settlement Agreement pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 37 C.F.R. §§ 11.20, 11.24, and 11.26.

Stipulated Facts

1. At all times relevant hereto, Respondent of Benson, Arizona, has been registered as an attorney to practice before the Office and is subject to the Disciplinary Rules of the USPTO Code of Professional Responsibility set forth at 37 CFR § 10.20 *et seq.* Respondent’s registration number is 50,121.

2. Respondent has been admitted to practice as an attorney in the State of Arizona since April 22, 2005, (Bar Number 023107).

3. On November 18, 2009, a formal complaint was filed against Respondent by the State Bar of Arizona (File No. 09-0342) charging that Respondent, in the course of making changes to an estate plan of a one hundred (100) year old client, took a \$50,000 "bonus" he characterized as a gift. Respondent was charged to have done so without advising the client of the desirability of seeking, and giving the client a reasonable opportunity to seek, the advice of independent legal counsel on the transaction, and by failing to obtain written informed consent of the terms of the transaction. After a Case Management Conference on December 29, 2009, a final hearing was set for March 17, 2010. On March 4, 2010, the parties advised that a settlement was arrived at and the court date set for the final hearing was used as a hearing on the Agreement.

4. A Hearing Officer of the Supreme Court of Arizona conducted the hearing and submitted an extensive report on April 27, 2010, and recommended that a Censure be imposed upon the Respondent.

5. The Report went before the Disciplinary Commission of the Supreme Court of Arizona on June 12, 2010, and the Commission unanimously recommended adoption of the Hearing Officer's Report and incorporated the facts, conclusions of law¹, and recommendation for censure and costs.

6. By Judgment and Order filed on July 30, 2010, the Supreme Court of Arizona censured Les A. Boegemann for "conduct in violation of his duties and obligations as a lawyer, as disclosed in the Disciplinary Commission Report," and imposed costs and expenses in the amount of \$2,182.50 against the Respondent.

¹ The finding made was that there was clear and convincing evidence to conclude that "Respondent violated Rule 42, Ariz. R. Sup. Ct., specifically, ER 1.8(a)." Rule 1.8(a) states:

ER 1.8. Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Legal Conclusion

7. Based on the foregoing stipulated facts, Respondent acknowledges that his conduct violated 37 C.F.R. § 10.23(b)(1), which proscribes violating a disciplinary rule, and 37 C.F.R. § 10.23(b)(6), which proscribes engaging in conduct that adversely reflects upon a practitioner's fitness to practice before the Office, by being censured on ethical grounds by the Supreme Court of Arizona, a duly constituted authority of the State of Arizona.

Sanctions

8. Respondent agreed, and it is ORDERED that:
- a. Respondent be, and hereby is, publicly reprimanded;
 - b. 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>;
 - c. The OED Director shall publish the following Notice of Reprimand in the *Official Gazette*:

Notice of Reprimand

Les A. Boegemann of Benson, Arizona, is a registered patent attorney, (Registration Number 50,121). The United States Patent and Trademark Office has reprimanded Mr. Boegemann for violating 37 C.F.R. §§ 10.23(b)(1) by violating a Disciplinary Rule and 10.23(b)(6) by engaging in conduct that adversely reflects upon Respondent's fitness to practice before the Office.

The violations are predicated upon the July 30, 2010, order of the Supreme Court of Arizona, No. SB-10-0077-D, that adopted the finding in Disciplinary Commission No. 09-0342 concluding that Respondent, in the course of making changes to an estate plan of his one hundred (100) year old client, took a \$50,000 "bonus" he characterized as a gift without advising the client of the desirability of seeking, and giving the client a reasonable opportunity to seek, the advice of independent legal counsel on the transaction, and by failing to obtain written informed consent of the terms of the transaction.

This action is the result of a settlement between Mr. Boegemann and the OED Director pursuant to the provisions of 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.20,

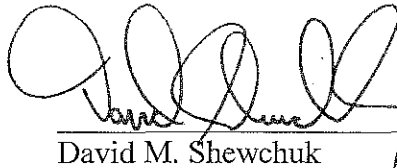
11.26, and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline's Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- d. Pursuant to 37 C.F.R. § 11.59, the OED Director shall give notice of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public; and
- e. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this agreement.

9. Nothing in the Proposed Settlement Agreement or this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including the Final Order, (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 (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or (ii) to rebut any statement or representation by or on Respondent's behalf.

APR 27 2011

Date



David M. Shewchuk
Acting Deputy General Counsel for General Law
Office of General Counsel Law
United States Patent and Trademark Office

on behalf of

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

cc:

Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

Les A. Boegemann
3256 W. Burro Lane
Benson, Arizona 85602

Notice of Reprimand

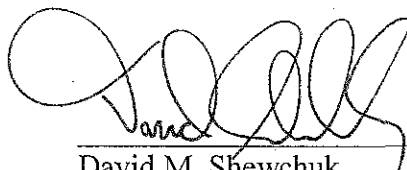
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David M. Shewchuk
Acting Deputy General Counsel for General Law
Office of General Counsel
United States Patent and Trademark Office

on behalf of

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