

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

In the Matter of)	
)	
Heath J. Briggs,)	Proceeding No. D2011-60
)	
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 Heath J. Briggs (“Respondent”) have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and USPTO Director for approval.

The Proposed Settlement Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below, is hereby approved. This Final Order sets forth the parties’ stipulated facts, legal conclusions, mitigating factors, and sanctions set forth in the parties’ Proposed Settlement Agreement in order to resolve voluntarily the disciplinary complaint against Respondent.

Jurisdiction

1. At all times relevant hereto, Respondent of Denver, Colorado, 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 C.F.R. § 10.20 *et seq.* Respondent’s registration number is 54,919.

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

Stipulated Facts

3. Respondent of Denver, Colorado, is registered to practice before the USPTO as an attorney (Registration No. 54,919), is authorized to engage in the prosecution of patent applications, and is subject to the USPTO Disciplinary Rules.

4. Respondent was admitted to the State Bar of Colorado on October 20, 2003 (member number 34873) and held himself out to be available to practice in the area of intellectual property matters.

5. Respondent entered into a Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct on the 25th day of March 2011, which admitted that:

a) On October 12, 2010, Respondent self-reported that he pled guilty to a class one misdemeanor pursuant to Colorado Revised Statutes ("C.R.S.") § 18-6-401(1)(a) and (7)(a)(V), ("child abuse"), in Grand County Court Case Number 10M264 on October 5, 2010;

b) Respondent agreed to a two-year deferred judgment and sentence with the primary conditions being that Respondent undergo anger management evaluation and follow the evaluator's recommendations, if any; complete 50 hours of community services; and not commit any criminal offenses other than traffic offenses of four points or less;

c) Respondent's conviction arose out of an incident on July 5, 2010, involving his ten-year old daughter, who had been diagnosed with ADHD. On the evening in question she was yelling and arguing with her stepbrother and stepmother because she wanted to sleep in the bathroom. Respondent became angry and tried to get his daughter to go to bed and used physical force to stop her from struggling. Respondent's daughter continued to resist his efforts, and he hit her two times with a closed fist on her back leaving two bruises;

d) Respondent's admitted misconduct was in violation of Colorado Rules of Professional Conduct ("RPC") 8.4(b), and he agreed to a term of sixty days suspension, all stayed for a probationary period of two years upon conditions. (A copy of the Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct is attached hereto and incorporated by reference as if fully restated herein);

e) The conditions agreed to by Respondent are that Respondent comply with the terms of his criminal sentence; not engage in any further violations of the Colorado Rules of Professional Conduct; attend, pay for, and successfully pass the one-day ethics school offered by the Office of Attorney Regulation Counsel within one year of the date the stipulation was approved; and obtain an independent mental health examination from a provider approved by the Office of Attorney Regulation Counsel ("OARC") within thirty days from the date the OARC approves the provider, but no longer than ninety days from the date the stipulation is approved and shall follow the recommendations of the provider and provide proof of compliance as necessary on a quarterly basis after providing appropriate releases for such information from the provider;

f) Respondent agreed that if OARC received any information that any condition may have been violated, the Regulation Counsel may file a motion seeking an order that Respondent show cause why the stay not be lifted and the sanction be immediately activated with the filing of the motion tolling any period of suspension and probation until the final action; and

g) Respondent agreed that within thirty days and no less than fifteen days prior to expiration of the period of probation Respondent shall file an affidavit of his compliance with the terms of his probation.

6. By Order dated March 31, 2011, the Stipulation was accepted and approved in Case Number 11PDJ027 and the Respondent was suspended for a period of sixty days, all stayed upon completion of a two-year term of probation from the date of March 31, 2011, under the stated conditions as set forth in subparagraphs e., f., and g. above, and to pay costs of \$91.00 to the Colorado Supreme Court Attorney Regulation Offices.

Legal Conclusions

7. Based on the information contained in paragraphs 3 through 6, above, Respondent acknowledges that his conduct violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility as outlined in Part 10 of Title 37, Code of Federal Regulations: Rule 10.23(b)(5) by engaging in conduct that is prejudicial to the administration of justice; Rule 10.23(b)(6) by engaging in conduct that adversely reflects on Respondent's fitness to practice before the Office; and Rules 10.23(a) and 10.23(b)(5) and (6) via 10.23(c)(5).

Mitigating Factors

8. As of the date Respondent signed the proposed settlement agreement: Respondent was in compliance with the sentence in his criminal case, had completed the anger management evaluation, had completed the parenting class, and was scheduling the community services hours.

9. Respondent has voluntarily seen his therapist on a more frequent basis for several weeks following the underlying event.

10. Respondent expressed remorse to all parties and was remorseful throughout the investigation of his conduct.

11. Parenting time with his daughter was not changed at any point in time.

12. Respondent has not heretofore been the subject of any disciplinary history.

Agree Upon Sanction

13. Respondent agreed, and it is ORDERED that:

a. Respondent be, and hereby is, suspended from practicing patent, trademark and other non-patent law before the USPTO for sixty (60) days commencing on the date this Final Order is signed and the execution of the term of suspension shall be immediately stayed so long as the Respondent serves and successfully completes a twenty-four month probationary period commencing on the date this Final Order is signed, under the following conditions:

(1) Respondent comply with the terms of his criminal sentence;

(2) Respondent, during the period of his probation, not conduct himself in any fashion that would constitute misconduct in violation of the USPTO Code of

Professional Responsibility;

- (3) Respondent attend, pay for, and successfully pass the one-day ethics school offered by the Office of Attorney Regulation Counsel within the time prescribed by the March 31, 2011, order accepting and approving the March 25, 2011, Stipulation; and
 - (4) Respondent obtain an independent mental health examination from a provider approved by the OARC within thirty days from the date the OARC approves the provider, but no longer than ninety days from the date the stipulation is approved and follow the recommendations of the provider and provide proof of compliance as necessary on a quarterly basis after providing appropriate releases for such information from the provider and timely provide such and all reports to the Director of the Office of Enrollment and Discipline;
- b. Respondent is 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;
- c. In the event that the OED Director is of the opinion that Respondent, during the probationary period, failed to comply with any provision of this Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:
- (1) issue to Respondent an Order to Show Cause why the USPTO Director should not order that the stay of the suspension be lifted and Respondent be immediately suspended for up to sixty days for the violations set forth in paragraph 7, above; and
 - (2) 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
 - (3) grant Respondent fifteen (15) days to respond to the Order to Show Cause;

and

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 twenty-four month probationary period, failed to comply with any provision of this Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

- (1) deliver to the USPTO Director: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, and (iii) evidence and argument causing the OED Director to be of the

opinion that Respondent failed to comply with any provision of this Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility during the probationary period; and

- (2) request that the USPTO Director immediately lift the stay of the suspension and suspend Respondent for up to sixty days for the violations set forth in paragraph 7, above;
- d. If, Respondent is suspended pursuant to the provisions of subparagraph c, above:
- (1) the USPTO shall promptly dissociate Respondent's name from all USPTO customer numbers and Public Key Infrastructure ("PKI") certificates;
 - (2) Respondent shall not to use any USPTO customer number or PKI certificate unless and until he is reinstated to practice before the USPTO; and
 - (3) Respondent may not obtain a USPTO customer number or a PKI certificate unless and until he is reinstated to practice before the USPTO;
- e. In the event that the USPTO Director 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;
- f. Nothing in the proposed Settlement Agreement or this 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;
- g. 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>;
- h. The OED Director shall publish a notice the *Official Gazette* materially consistent with the following:

Notice of Stayed Suspension and Probation

Heath J. Briggs of Denver, Colorado, a registered patent attorney, (Registration Number 54,919). In settlement of a disciplinary proceeding, the Director of the United States Patent and Trademark Office has ordered Mr. Briggs be: (a) placed on suspension for a period of sixty days, for committing a misdemeanor criminal offense which was the underlying basis for discipline imposed by the Office of Regulation Counsel in Denver, Colorado, with all of the suspension stayed and (b) placed on probation for a period of two years, the conditions of which include that Respondent comply

with the terms of his criminal sentence; not engage in any further violations of the USPTO Code of Professional Responsibility; attend, pay for, and successfully pass the one-day ethics school offered by the Office of Attorney Regulation Counsel within the time prescribed; obtain an independent mental health examination from a provider approved by the Office of Regulatory Counsel ("OARC") within thirty days from the date the OARC approves the provider, but no longer than ninety days from the date the stipulation was approved; follow the recommendations of the provider and provide proof of compliance as necessary on a quarterly basis after providing appropriate releases for such information from the provider; and timely provide such and all reports to the Director of the Office of Enrollment and Discipline. The discipline imposed by the Office of Regulation Counsel in Denver, Colorado, was predicated upon Respondent having pled guilty to misdemeanor charges of child abuse against his juvenile daughter.

This action is the result of a settlement agreement between Mr. Briggs and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20, 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>.

- i. 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;
- j. Nothing in the proposed Settlement Agreement or this 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 USPTO Director to suspend Respondent pursuant to subparagraph c., above;
- k. Nothing in the Proposed Settlement Agreement or this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including this 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 (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

cc:

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

Heath J. Briggs
1707 Daisy Court
Broomfield, CO 80020

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OCT 14 2011

Date



A. WADE NORMAN

Acting Deputy General Counsel for General 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