

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

In the Matter of)
)
Kenneth R. Graham,)
)
Respondent) Proceeding No. D2013-09
)
_____)

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.26

The Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Kenneth R. Graham (“Respondent”) have submitted a Proposed Settlement Agreement (“Agreement”) to the Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office (“USPTO Director”) for approval.

The 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, and sanctions found in the Agreement.

Background

At all times relevant hereto, Respondent of Alameda, California, has been a registered patent attorney (Registration No. 46,737) and subject to the USPTO Code of Professional Responsibility set forth at 37 C.F.R. § 10.20 *et seq.* See 37 C.F.R. §§ 11.11 and 11.19. Effective May 3, 2013, the USPTO Rules of Professional Conduct, 37 C.F.R. §§ 11.101 through 11.901, apply to persons who practice before the Office. 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. §§ 11.19 and 11.26.

Stipulated Facts

1. The USPTO registered Respondent as a patent agent on September 12, 2000, and as a patent attorney on July 12, 2002.
2. Respondent’s registration number is 46,737.
3. Respondent operates the Law Offices of Kenneth R. Graham in the State of California.
4. Respondent has not been involved in practice before the Office in patent matters for at least five (5) years. See 37 C.F.R. § 11.5(b)(1).

5. On August 3, 2010, Judge Randall J. Newsome of the United States Bankruptcy Court for the Northern District of California (Oakland Division) ordered Respondent to appear to show cause why he should not be disbarred, suspended, placed on disciplinary probation, or otherwise disciplined as a result of his practice before the United States Bankruptcy Court for the Northern District of California. *See In re Nicolas* (Case No. 10-44176 WJL) (doc. 85).

6. On December 21, 2010, Judge Newsome signed an order (“December 21, 2010 Order”) disbarring Respondent from practice before the United States Bankruptcy Court for the Northern District of California. The order listed numerous violations of local court rules and California law, including “cramdown” loan modifications, excessive fees, and the unauthorized use of cash collateral. *See id.* (doc. 112).

7. On January 5, 2011, Respondent filed a Notice of Appeal of the December 21, 2010 Order.

8. On May 27, 2011, the Clerk of Court for the Bankruptcy Appellate Panel of the Ninth Circuit filed an order referring Respondent’s appeal to mediation.

9. Respondent and the United States Trustee for Region 17 participated in mediations and, in March 2012, executed a Stipulated Settlement Re: Disciplinary Charges (“Proposed Stipulated Settlement”). *See id.* (doc. 151 and 152-1 through 152-10). In part, Respondent stipulated that the United States Bankruptcy Court for the Northern District of California twice denied his employment in two bankruptcy cases, and issued a Memorandum of Decision finding that he was not competent to file cases under Chapter 11.

10. On January 10, 2013, an Order Approving Stipulated Settlement of Disciplinary Matter and Related Appeal (“January 10, 2013 Order”) was entered into *In re Nicolas* (Case No. 10-44176 WJL). The January 10, 2013 Order vacated the December 21, 2010 Order and approved the Proposed Stipulated Settlement between Respondent and the United States Trustee for Region 17.

11. Among other requirements, the January 10, 2013 Order prohibits Respondent from practicing before the United States Bankruptcy Court for the Northern District of California for a period of two years and prohibits him from filing or being of record in Chapter 11 bankruptcy cases for 10 years.

12. On February 11, 2013, Respondent notified the OED Director of the January 10, 2013 Order.

Legal Conclusion

13. Respondent acknowledges that, based on the stipulated facts, he violated the following provisions of the USPTO Code of Professional Responsibility:

- a. 37 C.F.R. § 10.23(b)(6) (proscribing engaging in any other conduct that adversely reflects on a practitioner’s fitness to practice before the Office) via

37 C.F.R. § 10.23(c)(5) by being suspended from the practice of law by the United States Bankruptcy Court for the Northern District of California; and

- b. 37 C.F.R. § 10.77(a) (proscribing handling a matter which the practitioner is not competent to handle) by filing bankruptcy cases under Chapter 11 without possessing the requisite skill to do so.

Sanction

14. Respondent agrees, and it is **ORDERED** that:

- a. Respondent be, and hereby is, suspended from practice before the Office in patent, trademark, and other non-patent matters for two (2) years commencing *nunc pro tunc* from January 10, 2013, the date of the January 10, 2013 Order;
- b. Respondent shall remain suspended from the practice before the Office in patent, trademark, and other non-patent matters until the OED Director grants a petition reinstating Respondent pursuant to 37 C.F.R. § 11.60;
- c. The OED Director's granting of any petition for reinstatement for Respondent to practice before the Office in patent matters is additionally predicated upon Respondent retaking and passing the Examination for Registration to Practice in Patent Cases Before the USPTO pursuant to 37 C.F.R. § 11.60(c)(1);
- d. Respondent comply with 37 C.F.R. § 11.58;
- e. The OED Director comply with 37 C.F.R. § 11.59;
- f. Respondent shall not apply for or obtain a USPTO Customer Number unless and until he is reinstated to practice before the USPTO;
- g. The OED Director electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;
- h. The OED Director publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Suspension

This notice concerns Kenneth R. Graham of Alameda, California, a registered patent attorney (Registration No. 46,737). The Acting Director of the United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Graham from practice before the Office in patent, trademark, and other non-patent matters for two years for violating 37 C.F.R. § 10.23(b)(6) (proscribing engaging in conduct

that adversely reflects on a practitioner's fitness to practice before the Office) via 37 C.F.R. § 10.23(c)(5) (proscribing being suspended from practicing as an attorney by any duly constituted authority of a State or the United States) and for violating 37 C.F.R. § 10.77(a) (proscribing handling a matter which the practitioner is not competent to handle).¹ Mr. Graham is also required to retake and pass the Examination for Registration to Practice in Patent Cases Before the USPTO as a condition to being reinstated to practice before the Office in patent matters.

Mr. Graham acknowledged that the United States Bankruptcy Court for the Northern District of California twice denied his employment in two bankruptcy cases and issued a Memorandum of Decision finding that he was not competent to file cases under Chapter 11. Mr. Graham was suspended for two years from practice before the United States Bankruptcy Court for the Northern District of California.

This action is the result of a settlement agreement between Mr. Graham 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 for public reading at the Office of Enrollment and Discipline Reading Room, available at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

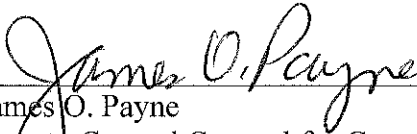
¹ Since the alleged conduct occurred prior to May 3, 2013, the USPTO Code of Professional Responsibility is applicable. As of May 3, 2013, the applicable Rules of Conduct are the USPTO Rules of Professional Conduct. See 37 CFR §§ 11.101 through 11.901.

- i. Nothing in the Agreement or 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 concerning Respondent brought to the attention of the Office;
 - (2) in any future disciplinary proceeding against Respondent (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; and/or
 - (3) in connection with any request for reinstatement submitted by Respondent pursuant to 37 C.F.R. § 11.60; and

j. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of the Agreement and this Final Order.

JUL 17 2013

Date


James O. Payne
Deputy General Counsel for General Law
United States Patent and Trademark Office

on behalf of

Teresa Stanek Rea
Acting Under Secretary of Commerce for Intellectual
Property and Acting Director of the United States Patent
and Trademark Office

cc:

OED Director

Mr. Jerome Fishkin
Fishkin & Slatter
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