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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE
DEPARTMENT OF COMMERCE

SOLICITOR
JUN 14 2000

HARRY I. MOATZ,)
Director, Office of)
Enrollment and Discipline)
v.)
JUDITH E. GARMON,)
Respondent)

Proceeding No. 99-05

U.S. PATENT & TRADEMARK OFFICE

DEFAULT ORDER AND INITIAL DECISION

Syllabus

Disciplinary proceeding initiated against Judith E. Garmon. In a proceeding by default, exclusion from practice as an attorney before the Patent and Trademark Office ordered.

Marshall S. Honeyman, Esq., Arlington, Virginia, for the Director.

Judith E. Garmon, Matthews, North Carolina, *pro se*, for the Respondent.

By: Andrew S. Pearlstein, Administrative Law Judge.
June 9, 2000.

Preliminary Statement

The Director of the Office of Enrollment and Discipline of the United States Patent and Trademark Office (the "Director" of the "PTO") initiated this disciplinary proceeding, pursuant to 35 U.S.C. §32 and 37 CFR Part 10, against Judith E. Garmon, the Respondent, an attorney registered to practice before the PTO (Registration No. 28,670). In a Complaint dated November 24, 1999, the Director charged the Respondent with six counts of violations of the disciplinary rules. The charges, specifically enumerated below in the Findings section of this decision, concern the Respondent's disbarment by the North Carolina State Bar on ethical grounds, the neglect of legal matters entrusted to her, and the failure to cooperate with the Director in an investigation of the Respondent's professional conduct.

The Director's initial attempted service of the Complaint on

the Respondent failed as the Respondent had moved from her last known address. Through further investigation, counsel for the Director ascertained the Respondent's current address and accomplished service of the Complaint on the Respondent on or about February 15, 2000. Counsel for the Director also telephoned Respondent and confirmed her receipt of the Complaint. The Respondent has not filed an answer to the Complaint as of the date of this decision and order.

The Director filed a motion for a default judgment against Respondent on May 10, 2000. The Respondent has not responded to that motion to date. The Complaint and motion seek exclusion of Respondent from practice before the PTO.

Discussion

As provided in 37 CFR §10.136(a), the Complaint required the Respondent to file her answer within 30 days of the Respondent's notice of the Complaint. The answer would thus have been due on or about March 15, 2000. The Respondent has defaulted by failing to file any answer to date. Thus, pursuant to 37 CFR §10.136(d), the Respondent's failure to file an answer constitutes an admission to the allegations in the Complaint.

The Findings of Fact and Conclusions of Law below therefore follow the allegations in the Complaint, which are admitted due to Respondent's default. Each count of the Complaint charges the Respondent with a violation of the PTO Code of Professional Responsibility, found in 37 CFR Part 10. The allegations of the Complaint are sufficient to find that the Respondent committed five of the six violations of the Disciplinary Rules alleged. As discussed below, the allegations in Count 6, although admitted by Respondent's default, do not establish that Respondent committed the violation alleged in that count.

Findings of Fact and Conclusions of Law

Count 1: On April 4, 1997, the Council of the North Carolina State Bar issued an Order of Disbarment on ethical grounds against the Respondent. In being disbarred from practice on ethical grounds by the North Carolina State Bar, the Respondent engaged in disreputable or gross misconduct, that adversely reflects on her fitness to practice before the PTO, as defined in 37 CFR §10.23(c)(5) and prohibited by 37 CFR §10.23(a) and (b).

Count 2: The Respondent did not report her disbarment to the Director in a timely manner. The Director was later notified by a third party. In failing to report her disbarment by the North Carolina State Bar on ethical grounds to the Director, the Respondent violated the disclosure requirement set forth in 37 CFR §10.24(a).

Count 3: In the course of her representation of World Fibers, Inc., in a patent infringement matter, the Respondent failed to file an appellate brief with the United States Court of Appeals for the Federal Circuit in 1995 as instructed to do so by her client. This constituted the neglect of a legal matter entrusted to the Respondent, in violation of 37 CFR §10.77(c).

Count 4: On several occasions after the World Fibers appeal had been dismissed, Respondent either knowingly or recklessly falsely assured representatives of her client that an appeal brief had been timely and properly filed. This constituted misconduct prohibited by 37 CFR §10.23(a) and (b), as defined in 37 CFR §10.23(c)(2)(i) and (d).

Count 5: In December 1996, Respondent was retained by Erin K. Fountain to file a patent application for an invention. Although Respondent collected over \$5000 in fees from her client, Respondent failed to appear at a scheduled meeting with Ms. Fountain and could not be reached by her client to determine the status of her application. Respondent then never filed the Fountain patent application. This constituted neglect of a legal matter entrusted to her in violation of 37 CFR §10.77(c).

Count 6: In December 1995 and August 1996 the Director sent Respondent two requests for comments regarding Respondent's representation of Martin Clive-Smith, a former client. The requests were sent to Respondent's former address in Charlotte, North Carolina. The return receipts were signed by persons other than Respondent, and one gave a forwarding address. The Respondent did not respond to either request. However, the allegations in the Complaint do not establish that the Respondent ever received notice of these requests. If Respondent did not receive notice of the investigation, she cannot be said to have failed to cooperate with the investigation by the Director in violation of 37 CFR §10.131(b), as alleged in Count 6. This count is therefore dismissed without prejudice.

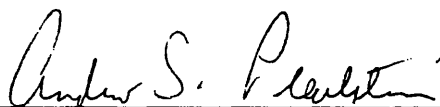
Conclusion

The five violations of the Disciplinary Rules established by the Complaint are extremely serious. Respondent has been disbarred in North Carolina on ethical grounds and has neglected legal matters entrusted to her. Respondent's actions have damaged the integrity of the legal profession. Her continuance in practice before the PTO would be contrary to the public interest. Respondent's actions constitute gross misconduct prohibited by the Disciplinary Rules, and comprise ample grounds for exclusion from practice before the PTO pursuant to 37 CFR §10.130(a).

Order

It is ordered that the Respondent, Judith E. Garmon, 401 Garmon Drive, Matthews, North Carolina 28104, PTO Reg. No. 28,670, be excluded from practice as an attorney before the Patent and Trademark Office.

This Initial Decision is rendered pursuant to 35 U.S.C. §32 and 37 CFR §10.154. The facts and circumstances of this proceeding shall be published in the official publication of the Patent and Trademark Office. Pursuant to 37 CFR §10.155, either party may appeal this decision to the Commissioner of Patents and Trademarks within 30 days of this date.



Andrew S. Pearlstein
Administrative Law Judge

Dated: June 9, 2000
Washington, D.C.

IN THE MATTER OF HARRY I. MOATZ v. JUDITH E. GARMON, Respondent
Proceeding No. 99-05

Certificate of Service

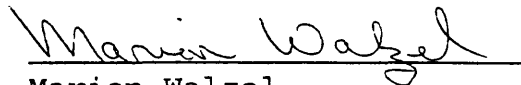
I certify that one copy of the foregoing DEFAULT ORDER AND INITIAL DECISION, dated June 9, 2000, was sent this day in the following manner to the below addressees.

Certified Mail, Return Receipt Requested:

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Judith E. Garmon
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Matthews, NC 28104


Marion Walzel
Legal Staff Assistant

Dated: June 9, 2000