

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

In the Matter of)
)
Chrispin M. Rivera)
)
Respondent)
_____)

Proceeding No.: 02-06

FINAL ORDER

The Director of Enrollment and Discipline (OED Director) of the United States Patent and Trademark Office (USPTO) and Chrispin M. Rivera, Respondent, USPTO registration number 33,446, have submitted a settlement agreement in the above proceeding that meets the requirements of 37 C.F.R. § 10.133(g).

In order to resolve the case without the necessity of a hearing, Respondent and the OED Director agreed to certain stipulated facts, legal conclusions and a stipulated term of suspension. Pursuant to that agreement this final order sets forth the following stipulated facts, agreed upon legal conclusions and suspension order.

STIPULATED FACTS

1. On or about September 26, 1988, Respondent was admitted to the practice of law in the State of Nevada.
2. Susan Scarbro retained Respondent, as evidenced by a contingency fee retainer agreement dated February 3, 1992, to proceed with a personal injury case.
3. On or about December 29, 1994, Respondent received a medical payment check in the amount of \$3,180.49 paid to the order of Scarbro. Upon receipt of this check, Respondent

failed to adequately inform Scarbro of its existence and deposited it into his client trust account by endorsing the back of the check "Susan Scarbro by her attorney, Chrispin M. Rivera." The negotiation of the check was done by Respondent without Scarbro's knowledge or authorization.

4. The personal injury case was settled by way of a Notice of Acceptance of Offer of Judgment on January 3, 1995. A release of claims was signed by Scarbro in regard to this settlement on January 17, 1995.
5. On or about January 5, 1995, Respondent received a bodily injury settlement check, in Scarbro's case, in the amount of \$60,000.00. Upon receipt of this check Respondent failed to adequately inform Scarbro of its existence. On or about January 20, 1995, Respondent deposited this \$60,000.00 into his client trust account. In doing so, Respondent endorsed the check "Susan Scarbro by her attorney, Chrispin M. Rivera." The negotiation of the check was done without Scarbro's knowledge or authorization.
6. In regard to the \$3,180.49 medical payment monies deposited into Respondent's trust account and the \$60,000.00 bodily injury settlement amount deposited into his trust account, those monies over time were not properly kept safe in Respondent's trust account. Instead, over time, Respondent improperly utilized those funds for personal and business expenses without the knowledge or authority of his client Scarbro.
7. On or about July 3, 1995, business partners Dennis Naganuma, F. Wayne Pirtle and Michael W. Pirtle retained the services of Respondent for the purpose of completing two contract agreements and one waiver and a corporate document. From July 3, 1995, through

approximately September, 1995, the partners made eight (8) telephone calls to Respondent's office attempting to determine Respondent's progress.

8. Respondent failed to adequately update the partners as to his progress on creation of the documents.
9. On or about September 8, 1995, Respondent received a demand letter from one of the partners. The demand letter requested Respondent to produce any work product he had completed on creation of the documents and further requested an itemized billing reflecting time spent by Respondent in this matter. Pursuant to the demand letter, Respondent was given five (5) days to respond.
10. Respondent failed to adequately respond to the demand letter and failed to render the requested itemized accounting.
11. On or about November 20, 1995, partner Naganuma telephoned Respondent's office to request a refund of the \$1,600.00 retainer fee paid to Respondent. (Naganuma paid Respondent a total of \$1,810.00).
12. Though Naganuma left a message with Respondent's office, Respondent failed to adequately respond to this request.
13. On or about April 23, 1997, Respondent entered into a "Conditional Guilty Plea In Exchange For A Stated Form Of Discipline" (hereinafter "Conditional Plea").
14. Respondent admitted that the facts in the Conditional Plea regarding Scarbro constituted violations of Nevada Supreme Court Rule 151 (competence), 153 (diligence), 154 (communication), 165 (safekeeping property), and 203(3) (engaging in conduct involving

dishonesty, fraud, deceit or misrepresentation).

15. Respondent admitted that the facts in the Conditional Plea regarding Naganuma constitute violations of Nevada Supreme Court Rule 153 (diligence), 154 (communication), and 165 (safekeeping property-rendering of an accounting).
16. In addition to the above, which represents the facts and circumstances concerning the present, pending formal complaint in that matter, the Nevada State Bar and Respondent agreed to address all then pending matters concerning Respondent at that time.
 - a. In November 1995, Rainbow Medical Centers, through its medical director Anthony L. Pollard, D.O., retained the services of Respondent to represent the corporation in a trade name infringement action. A retainer was paid to Respondent in the amount of \$1,600.00. Thereafter, on November 29, 1995, the corporation paid Respondent an additional \$7,600.00. Pollard stated that Respondent had received both written and verbal requests on numerous occasions to pursue the cases immediately but failed to do so. In addition, Pollard stated repeated requests for an accounting have not been received from Respondent. Pollard felt that Respondent failed to timely pursue the matter and based on this, on April 30, 1996, Pollard terminated the services of Respondent. At the time of termination of Respondent, Pollard specifically requested an accounting from Respondent of the \$9,200.00 which had been paid as a retainer in the matter together with a check returning the unearned balance. As of the date of the Conditional Plea, Respondent failed to refund any of the amount paid to him in this matter.

- b. Donald Laughlin retained Respondent to do legal work of a proprietary nature. Respondent was paid a retainer of \$5,000.00 to accomplish this work. Respondent failed to complete the work he was retained to provide in this matter.
 - c. Bill Petracek stated he paid Respondent \$140.00 for the initial consultation, and thereafter paid an additional \$500.00 as a retainer fee. Petracek stated that specifically, he retained Respondent to render an opinion regarding a patent infringement. Petracek stated he never received such an opinion.
 - d. Steven DeStout stated that on February 29, 1996, he turned over his trademark files to Respondent for Respondent's review. Respondent received payment in advance for these services in the amount of \$400.00. DeStout said that he and his attorneys attempted to contact Respondent by phone and letter and left notes on Respondent's office door in an attempt to retrieve his files and terminate the services of Respondent.
 - e. Sandra Simms stated that Respondent agreed to represent her and her children in two accident cases that occurred in January 1994 and February 1994. Simms stated that in May, 1996, Respondent received two checks in the amount of \$15,000.00 and \$5,250.00 representing partial settlement from the second accident. As of the date of the Conditional Plea, Simms stated that the only money given by Respondent to her or her daughters was a \$2,000.00 "advance."
17. In the Conditional Plea, Respondent agreed to the imposition of discipline including being suspended from the practice of law in Nevada for a period of two (2) years, commencing June 1, 1997, and shall be in effect for a period of two (2) years - until May 31, 1999.

18. In the Conditional Plea, Respondent agreed to the imposition of discipline including paying restitution to the various individuals harmed by his misconduct. Specifically, as to the restitutionary provision, Respondent agreed to pay Susan Scarbro, \$28,180.49; Dennis Naganuma, \$1,810.00; Anthony Pollard, \$9,200.00; Donald Laughlin, \$5,000.00; Bill Petracek, \$640.00; Steven DeStout, \$400.00; and Sandra Sims \$11,500.00.
19. In the Conditional Plea, Respondent agreed to the imposition of discipline including restitution as a condition precedent to filing any application for reinstatement to practice law in Nevada.
20. As of the date of this Agreement, Respondent remains suspended from the practice of law in Nevada, and was suspended from the practice of law in the State of Arizona on February 11, 1997, for failure to comply with mandatory legal education.
21. Respondent mishandled other client applications as set forth in the USPTO's files regarding this proceeding.

LEGAL CONCLUSIONS

22. Based upon the foregoing stipulated facts, Respondent acknowledges that his conduct violated the following Disciplinary Rules of the Code of Professional Responsibility as outlined in 37 C.F.R § 10.23(c)(5) in that Respondent was suspended by the State Bar of Nevada on ethical grounds.

SUSPENSION ORDER

23. Based upon the foregoing, it is:
 - a. ORDERED that Respondent be suspended for two years from practice of patent, trademark, and other non-patent law before the USPTO, from April 9, 2002 until April

8, 2004.

- b. ORDERED that the OED Director will publish:
- i. The forgoing stipulated facts and legal conclusion, and
 - ii. the following Notice in the Official Gazette:

Notice of Suspension

Chrispin M. Rivera, of Las Vegas, NV, a patent attorney, registration number 33,446. In settlement of a reciprocal matter from the Supreme Court of Nevada, the Director has suspended Rivera for two years from practice before the United States Patent and Trademark Office in patent, trademark, and other non-patent law cases. Per the Conditional Guilty Plea In Exchange For A Stated Form Of Discipline, the Nevada Supreme Court suspended Rivera for two years for violating ethical rules involving competence, diligence, communication, safekeeping property, and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and Mr. Rivera agreed to pay restitution to his clients in the amount of \$56,730.49. The suspension imposed by the Director begins April 9, 2002 and ends April 8, 2004. This action by the Director is taken pursuant to the provisions of 35 U.S.C. § 32, and 37 C.F.R. § 10.133(g).

- c. ORDERED that while suspended, Respondent shall not engage in the unauthorized practice of patent, trademark and other non-patent law before the USPTO. 37 C.F.R. § 10.158(a).
- d. ORDERED that within 30 days of the execution of the Final Order, Respondent shall notify all bars of which he is a member and all clients having immediate or prospective business before the Office in separate written communications of the suspension, and that Respondent shall file a copy of each written communication with the OED Director within the same 30 day period. 37 C.F.R. § 1.158(b)(1).

- e. ORDERED that within 30 days of the execution of the Final Order, Respondent shall surrender each client's active USPTO case file(s) to (1) each client or (2) another practitioner designated by each client, and shall file proof thereof with the OED Director within the same 30 day period. 37 C.F.R. § 10.158(b)(2).
- f. ORDERED that during the period Respondent is suspended any communication relating to a client matter that is addressed to Respondent and/or received by him shall be immediately forwarded to the client or the practitioner designated by the client, and that Respondent will take no other legal action in the matter, enter any appearance, or provide any legal advice concerning the matter that is the subject of the communication. 37 C.F.R. §§ 10.158(a), (b)(2), (b)(6).
- g. ORDERED that within 30 days of the execution of the Final Order, Respondent shall return to any client having immediate or prospective business before the Office any unearned legal funds, including any unearned retainer fee, and any securities and property of the client, and shall file a proof thereof with the OED Director no later than filing his petition for reinstatement. 37 C.F.R. §§ 10.158(b)(8), 10.160(d).
- h. ORDERED that upon the execution of the Final Order, Respondent shall promptly take steps to comply with the provisions of 37 C.F.R. § 10.158(b)(3), (b)(4), (b)(5), (b)(6), and (b)(7), and further directing that within 30 days of taking steps to comply with § 10.158(b)(4) Respondent shall file with the OED Director an affidavit describing the precise nature of the steps taken, and still further directing that Respondent shall submit

proof of compliance with §§ 10.158(b)(3), (b)(5), (b)(6), and (b)(7) with the OED Director upon filing a petition for reinstatement under 37 C.F.R. § 10.160;

- i. ORDERED that upon the execution of the Final Order, Respondent shall promptly take steps to comply with the provisions of 37 C.F.R. §§ 10.158(c) and (d), except that with respect to the other practitioner's clients having immediate or prospective business before the Office, Respondent is not required to be a salaried employee, but may be a contract para-legal, *provided* that with respect to patent cases, the other practitioner is a registered practitioner, and *further provided* that with the other practitioner's knowledge, (a) Respondent may directly communicate with the client of the other practitioner, (b) Respondent may convey the other practitioner's legal advice or legal services to a client of the other practitioner; (c) Respondent may meet in person or in the presence of the other practitioner with, the other practitioner's client, or any witness or potential witness which may or is intended to call as a witness in any proceeding before the Office; *provided further* that Respondent shall not communicate with any employee or officer of the Office regarding either applicants or other persons having immediate or prospective business before the Office or the presentation or prosecution of their applications or other business before the Office, and *still further provided*, that if and when Respondent assumes any position as a salaried employee or contract paralegal of another practitioner, he shall submit proof thereof with the OED Director upon filing a petition for reinstatement under 37 C.F.R. §§ 10.160;

- j. ORDERED that Respondent shall notify the OED Director if Respondent is suspended or disbarred from practicing law in another jurisdiction for conduct involving matters not disclosed in this proceeding while he is suspended from practice before the USPTO, and that Respondent shall submit said notification to the OED Director within 10 business days of being suspended or disbarred. 37 C.F.R. §§ 10.23(c)(5), 10.133(g);
- k. ORDERED that within 30 days of the USPTO Director signing the Final Order, Respondent will file a statement verifying that since April 9, 2002, Respondent had no clients having immediate, prospective, or pending business before the Office and if Respondent did have a client, he returned to said client unearned funds, including any unearned retainer fee, and any securities and property of the client, including the client's files.

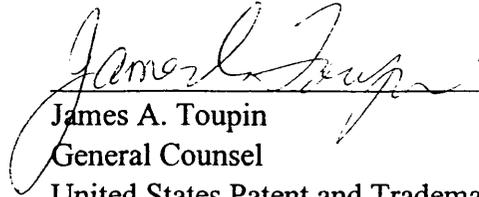
REINSTATEMENT ORDER

24. Following the suspension for two years in compliance with the foregoing provisions, it is ORDERED that Respondent may petition for reinstatement after April 8, 2004 upon the following conditions:
- a. Respondent must demonstrate compliance with 37 C.F.R. § 10.158, subject to the exceptions as set forth in paragraph 10(i);
 - b. Respondent must demonstrate that he has attended at least 2 hours of continuing legal education focused on legal accounting, or client trust funds;
 - c. During the preceding suspension, Respondent must not violate any of the USPTO disciplinary rules; and

- d. Respondent must provide proof of restitution to the clients in Nevada case
Nos. 95-190-0876; 95-105-0876.

25. It is FURTHER ORDERED Respondent shall not be entitled to reinstatement until he satisfies
the provisions of 29(a), (b), (c), and (d) above and 37 C.F.R. § 10.160.

February 4, 2003
Date


James A. Toupin
General Counsel
United States Patent and Trademark Office
on behalf of
James E. Rogan
Under Secretary of Commerce For Intellectual
Property and Director of the United States
Patent and Trademark Office

cc: Harry I. Moatz
Office of Enrollment and Discipline
USPTO

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