

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

In the Matter of:

Jeffrey R. Bivens,

Respondent

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Proceeding No. D2012-08

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24(d), the exclusion of Jeffrey R. Bivens (Respondent) from the practice of trademark and other non-patent law before the United States Patent and Trademark Office (USPTO or Office) is hereby ordered for violation of the ethical standard set out in 37 C.F.R. § 10.23(b)(6) via 37 C.F.R. § 10.23(c)(5)(i).¹

On March 7, 2012, a “Notice and Order Pursuant to 37 C.F.R. § 11.24” (Notice and Order) was mailed by certified mail (receipt no. 70111150000146353011) to the Respondent at the last address known (in Washougal, WA) to the Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline (OED Director). The Notice and Order informed Respondent that the OED Director had filed a “Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24” (Complaint) requesting that the USPTO Director impose discipline upon Respondent identical to discipline imposed in the Notice of Resignation In Lieu of Disbarment filed before the Disciplinary Board of the Washington State Bar Association in *In re Jeffrey Randall Bivens*, Review No. 10#00099 (January 7, 2011). The Notice and Order provided Respondent an opportunity to file, within forty days, a response opposing, based on one or more of the

¹ Respondent is not a registered patent practitioner and is not authorized to practice patent law before this Office.

reasons provided in 37 C.F.R. § 11.24(d)(1), the imposition of reciprocal discipline based on the Notice of Resignation In Lieu of Disbarment filed before the Disciplinary Board of the Washington State Bar Association in *In re Jeffrey Randall Bivens*, Review No. 10#00099 (January 7, 2011). On March 28, 2012, the Notice and Order was returned as undeliverable with the explanation that it was “unclaimed.”

Due to the inability to serve Respondent at his last known address, Respondent was served by publication, pursuant to 37 C.F.R. § 11.24, in the *Official Gazette* on April 24, 2012 and May 1, 2012. The service in the *Official Gazette* informed Respondent that, on March 7, 2012, the Director of the USPTO issued a Notice and Order pursuant to 37 C.F.R. § 11.24(b). The notice in the *Official Gazette* also informed Respondent that, on March 28, 2012, the Notice and Order that had been issued and mailed to his last known address, was returned as unclaimed. The notice in the *Official Gazette* further provided directions on how Respondent could request a copy of the Notice and Order and the supporting documents that had been sent to him at his last known address. It has been more than forty days since the second notice was published in the *Official Gazette* (May 1, 2012), yet Respondent has not requested a copy of the Notice and Order and the supporting documents or filed a response to the Notice and Order.

Analysis

In light of Respondent’s failure to file a response, it is hereby determined that: (1) there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and (2) the exclusion of Respondent from practice before the USPTO is appropriate.

ACCORDINGLY, it is hereby **ORDERED** that:

A. Respondent is excluded from the practice of trademark and other non-patent

law before the USPTO effective the date of this Final Order;

B. The OED Director publish the following Notice in the Official Gazette:

NOTICE OF EXCLUSION

This notice concerns Jeffrey Randall Bivens, an attorney who had been admitted to practice law in the State of Washington, who is not a registered patent practitioner, and who is not authorized to practice patent law before the United States Patent and Trademark Office (“USPTO”). In a reciprocal disciplinary proceeding, the USPTO Director has ordered Mr. Bivens be excluded from the practice of trademark and non-patent law before the USPTO for violating 37 C.F.R. § 10.23(b)(6) via 37 C.F.R. § 10.23(c)(5)(i) by being disbarred on ethical grounds from the practice of law in the State of Washington.

The Disciplinary Board of the Washington State Bar Association issued a Statement of Alleged Misconduct under Rule 9.3(b)(1) of the Rules for Enforcement of Lawyer Conduct (ELC). The Statement of Alleged Misconduct details Mr. Biven’s actions with respect to material misrepresentations made to a bank and the United States Small Business Association during his representation of the owner/seller of a company. The Statement of Alleged Misconduct states that on October 14, 2010, a Felony Information was filed in the U.S. District Court for the Western District of Washington (*United States v. Jeffrey Bivens*, No. 3:10-cr-05677-BHS). It further states that on October 20, 2010, Mr. Bivens entered a guilty plea to the charge of False Statements, in violation of 18 U.S.C. § 1001, a felony. The Statement of Alleged Misconduct concluded that by committing the crime of False Statements, Respondent violated RPC 8.4(b) and/or RPC 8.4(c). RPC 8.4(b) provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects. RPC 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Mr. Bivens submitted to the Disciplinary Board of the Washington State Bar Association an “Affidavit of Jeffrey Randal Bivens Resigning from Membership in Washington State Bar Association (ELD 9.3(b))” (Affidavit of Resignation). The Statement of Alleged Misconduct was attached to the Affidavit of Resignation, filed January 6, 2011 by the Disciplinary Board. In the Affidavit of Resignation, Mr. Bivens stated, “I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Disbarment under Rule for Enforcement of Lawyer Conduct (ELC) 9.3.” Based on the Affidavit of Resignation, the Disciplinary Board of the Washington State Bar Association issued a Notice of Resignation in Lieu of Disbarment, filed January 7, 2011. 37 C.F.R. § 11.24 provides, “A practitioner is deemed to be disbarred if he or she is disbarred, excluded on consent, or has resigned in lieu of a disciplinary proceeding.”


This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.24 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>.

- C. The OED Director give notice pursuant to 37 C.F.R. § 11.59 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
- D. Direct such other and further relief as the nature of this cause shall require.

Respectfully Submitted,

JUN 13 2012

Date


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

on behalf of

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