

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

In the Matter of)
)
Michael D. Stewart,)
)
Respondent)
_____)

Proceeding No. D2019-45

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27(b), the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation Pursuant to 37 C.F.R. § 11.27 executed by Michael D. Stewart (“Respondent”) on June 28, 2019.

Respondent submitted the four-page Affidavit of Resignation to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

For the reasons set forth herein, Respondent’s Affidavit of Resignation shall be approved, and Respondent shall be excluded on consent from practice before the Office in trademark and other non-patent matters commencing on the date of this Final Order.

Jurisdiction

Respondent of Miami, Florida is an attorney admitted to practice in Florida and New York. Respondent has practiced before the Office in trademark matters. Respondent is a “practitioner” pursuant to 37 C.F.R. § 11.1. Respondent is subject to the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*

Pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent’s Affidavit of Resignation and to exclude Respondent on consent from the practice of trademark and other non-patent law before the Office.

Respondent's Affidavit of Resignation

Respondent acknowledges in his June 28, 2019 Affidavit of Resignation that:

1. His consent is freely and voluntarily rendered, and he is not being subjected to coercion or duress.
2. He is aware that, pursuant to 37 C.F.R. § 11.22, the OED Director opened several investigations of allegations that he violated the USPTO Rules of Professional Conduct, namely, OED File Nos. [REDACTED] [REDACTED] and [REDACTED]. The investigation delved into and obtained information, *inter alia*, about the following:

During the course of Mr. Stewart's representation of his trademark clients, he did not properly communicate with his clients, he did not properly withdraw from representation, he did not act with fairness to opposing parties and counsel, he did not exercise diligence and competence in his legal representation of clients, he did not pursue his clients' objectives, he did not consult with clients as to the means by which such objectives would be pursued, he did not properly expedite TTAB proceedings, he did not give proper access to evidence to opposing parties, he did not obey TTAB court orders, he did not comply with proper discovery requests, he did not properly supervise his staff, he made misrepresentations to his clients and to the board in TTAB proceedings, and he acted in a manner that adversely reflected on his fitness to practice.

3. He is aware that the OED Director is of the opinion based on this investigation that he violated the following provisions of the USPTO Rules of Professional Conduct:
 - a. 37 C.F.R. § 11.101 (requiring practitioner to provide competent representation);
 - b. 37 C.F.R. § 11.102 (requiring practitioner to abide by the decisions of and consult with client);
 - c. 37 C.F.R. § 11.103 (requiring practitioner to provide diligent representation);
 - d. 37 C.F.R. § 11.104(a)(2) (requiring that a practitioner reasonably consult with the client about the means by which the client's objectives are to be accomplished);
 - e. 37 C.F.R. § 11.104(a)(3) (requiring that a practitioner keep the client reasonably informed about the status of the matter);

- f. 37 C.F.R. § 11.104(a)(4) (requiring that a practitioner promptly comply with reasonable requests for information from the client);
- g. 37 C.F.R. § 11.104(a)(5) (requiring that a practitioner consult with the client about any relevant limitation on the practitioner's conduct);
- h. 37 C.F.R. § 11.104(a)(6) requiring practitioner to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation);
- i. 37 C.F.R. § 11.105(b) (requiring a practitioner to consult with client regarding the scope of the representation);
- j. 37 C.F.R. § 11.116 (setting forth a practitioner's duties in terminating a representation of a client);
- k. 37 C.F.R. § 11.302 (requiring practitioner to expedite proceedings);
- l. 37 C.F.R. § 11.304(a) (practitioner shall not unlawfully obstruct another party's access to evidence);
- m. 37 C.F.R. § 11.304(c) (practitioner shall not knowingly disobey an obligation under the rules of the tribunal);
- n. 37 C.F.R. § 11.304(d) (practitioner shall not fail to comply with a proper discovery request by opposing party);
- o. 37 C.F.R. § 11.503 (practitioner has responsibility over staff);
- p. 37 C.F.R. § 11.505 (proscribing the aiding on the unauthorized practice of law);
- q. 37 C.F.R. § 11.804(c) (proscribing conduct involving dishonesty, fraud, deceit, or misrepresentation);
- r. 37 C.F.R. § 11.804(d) (proscribing conduct that is prejudicial to the administration of justice); and
- s. 37 C.F.R. § 11.804(i) (proscribing other conduct that adversely reflects on the practitioner's fitness to practice before the Office).

4. Without admitting to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct investigated by the OED Director in OED File Nos. [REDACTED] [REDACTED] and [REDACTED] he acknowledges that, if and when he applies for reinstatement under 37 C.F.R. § 11.60

to practice before the USPTO in trademark and/or other non-patent matters, the OED Director will conclusively presume, for the purpose of determining the application for reinstatement, that:

(a) the facts regarding him in OED File Nos. [REDACTED] [REDACTED] and [REDACTED] are true,

and

(b) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §§ 11.101, 11.102, 11.103, 11.104(a)(2), 11.104(a)(3), 11.104(a)(4), 11.104(a)(5), 11.104(a)(6), 11.105(b), 11.116, 11.302, 11.304(a), 11.304(c), 11.304(d), 11.503, 11.505, 11.804(c), 11.804(d), and 11.804(i).

5. He has fully read and understands 37 C.F.R. §§ 11.5(b), 11.27, 11.58, 11.59, and 11.60, and is fully aware of the legal and factual consequences of consenting to exclusion from practice before the USPTO in trademark and other non-patent matters.

6. He consents to being excluded from practice before the USPTO in trademark and other non-patent matters.

Exclusion on Consent

Based on the foregoing, the USPTO Director has determined that Respondent's Affidavit of Resignation complies with the requirements of 37 C.F.R. § 11.27(a). Accordingly, it is hereby ORDERED that:

1. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
2. Respondent shall be, and hereby is, excluded on consent from practice before the Office in trademark and other non-patent matters commencing on the date of this Final Order;

3. The OED Director shall electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <https://foiadocuments.uspto.gov/oed/>;

4. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Exclusion on Consent

This notice concerns Michael D. Stewart. The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Stewart's Affidavit of Resignation and ordered his exclusion on consent from practice before the Office in trademark and other non-patent matters.

Mr. Stewart voluntarily submitted his affidavit at a time when a disciplinary investigation was pending against him. The investigation concerned Mr. Stewart's representation of his trademark clients, including assertions he did not properly communicate with his clients, he did not properly withdraw from representation, he did not act with fairness to opposing parties and counsel, he did not exercise diligence and competence in his legal representation of clients, he did not pursue his clients' objectives, he did not consult with clients as to the means by which such objectives would be pursued, he did not properly expedite TTAB proceedings, he did not give proper access to evidence to opposing parties, he did not obey TTAB court orders, he did not comply with proper discovery requests, he did not properly supervise his staff, he made misrepresentations to his clients and to the board in TTAB proceedings, and he acted in a manner that adversely reflected on his fitness to practice.

Mr. Stewart acknowledged that the OED Director was of the opinion that his conduct violated:

- a. 37 C.F.R. § 11.101 (requiring practitioner to provide competent representation);
- b. 37 C.F.R. § 11.102 (requiring practitioner to abide by the decisions of and consult with client);
- c. 37 C.F.R. § 11.103 (requiring practitioner to provide diligent representation);

- d. 37 C.F.R. § 11.104(a)(2) (requiring that a practitioner reasonably consult with the client about the means by which the client's objectives are to be accomplished);
- e. 37 C.F.R. § 11.104(a)(3) (requiring that a practitioner keep the client reasonably informed about the status of the matter);
- f. 37 C.F.R. § 11.104(a)(4) (requiring that a practitioner promptly comply with reasonable requests for information from the client);
- g. 37 C.F.R. § 11.104(a)(5) (requiring that a practitioner consult with the client about any relevant limitation on the practitioner's conduct);
- h. 37 C.F.R. § 11.104(a)(6) (requiring practitioner to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation);
- i. 37 C.F.R. § 11.105(b) (requiring a practitioner to consult with client regarding the scope of the representation);
- j. 37 C.F.R. § 11.116 (setting forth a practitioner's duties in terminating a representation of a client);
- k. 37 C.F.R. § 11.302 (requiring practitioner to expedite proceedings);
- l. 37 C.F.R. § 11.304(a) (practitioner shall not unlawfully obstruct another party's access to evidence);
- m. 37 C.F.R. § 11.304(c) (practitioner shall not knowingly disobey an obligation under the rules of the tribunal);
- n. 37 C.F.R. § 11.304(d) (practitioner shall not fail to comply with a proper discovery request by opposing party);
- o. 37 C.F.R. § 11.503 (practitioner has responsibility over staff);
- p. 37 C.F.R. § 11.505 (proscribing the aiding on the unauthorized practice of law);
- q. 37 C.F.R. § 11.804(c) (proscribing conduct involving dishonesty, fraud, deceit, or misrepresentation);
- r. 37 C.F.R. § 11.804(d) (proscribing conduct that is prejudicial to the administration of justice); and

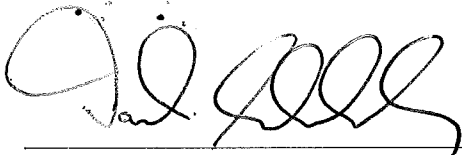
s. 37 C.F.R. § 11.804(i) (proscribing other conduct that adversely reflects on the practitioner's fitness to practice before the Office).

While Mr. Stewart did not admit to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct as alleged in the pending investigation, he acknowledged that, if and when he applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the facts set forth in the OED investigation against him are true, and (ii) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §§ 11.101, 11.102, 11.103, 11.104(a)(2), 11.104(a)(3), 11.104(a)(4), 11.104(a)(5), 11.104(a)(6), 11.105(b), 11.116, 11.302, 11.304(a), 11.304(c), 11.304(d), 11.503, 11.505, 11.804(c), 11.804(d), and 11.804(i).

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, available at: <https://foiadocuments.uspto.gov/oed/>.

5. Respondent shall comply fully with 37 C.F.R. § 11.58; and

6. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for reinstatement.



David Shewchuk
Deputy General Counsel for General Law
United States Patent and Trademark Office

3 July 2019
Date

on delegated authority by

Andrei Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

cc:

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

Mr. Michael D. Stewart
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