

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

In the Matter of

Kenneth A. Roddy,

Respondent

Proceeding No. D2009-37

**Final Order**

Office of Enrollment and Discipline Director Harry I. Moatz ("OED Director") and Kenneth A. Roddy ("Respondent") have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office ("USPTO Director") or his designate for approval.

The OED Director and Respondent's Proposed Settlement Agreement sets forth certain stipulated facts, legal conclusions, and sanctions to which the OED Director and Respondent have agreed in order to resolve voluntarily a disciplinary complaint against Respondent. The Proposed Settlement Agreement, which satisfies the requirements of 37 C.F.R. § 11.26, resolves all disciplinary action by the United States Patent and Trademark Office ("USPTO" or "Office") arising from the stipulated facts set forth below.

Pursuant to such Proposed Settlement Agreement, this Final Order sets forth the parties' stipulated facts, legal conclusions, and agreed upon discipline.

**Jurisdiction**

The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 CFR §§ 11.20(a) and 11.26.

**Facts**

1. Respondent of Houston, Texas, has been a patent agent registered to practice patent law before the Office since June 22, 1984 (Registration Number 31,294), and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 et seq.
2. At all relevant times, Respondent maintained a business/operating account for his patent law practice, but he did not have a separate account for depositing unearned funds he received from clients. When Respondent received unearned funds from clients (e.g., payment in advance for patent law services to be provided in the future), he deposited client funds into his business/operating account.
3. Respondent did not keep complete accounting records for client funds he received.

4. From November 2005 through January 2009, Respondent signed and submitted to the Office nine (9) checks drawn on his business/operating account that were returned to the USPTO for insufficient funds. The returned checks totaled four thousand, six hundred, and seventy-seven dollars (\$4,677.00). Three of the returned checks were presented for payment during a two-day period in November 2005, five were presented during a four-day period in March 2006, and one was presented in January 2009.

5. After receiving notice from the USPTO that the checks he had presented had been drawn on a bank account having insufficient funds, Respondent paid the patent application fees for which the checks were originally presented as well as fees arising from the untimely payment of those fees.

6. Respondent:

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a. has established a client trust account into which he deposits client funds, including monies received as payment in advance for patent law services to be provided;

b. has completed a legal ethics course on the topic of client trust account management;

c. has hired a certified public accountant to assist him in his efforts to improve the management of his law practice, including:

- i. **Financial bookkeeping and bank arrangements.** Respondent has established Client Trust account in accordance with 37 C.F.R. § 10.112(a) and (b) and is using a manual ledger at the recommendation of the accountant. In addition, Respondent has acquired a financial software program that is capable of performing proper Client Trust account functions. All new clients and any new transactions with old clients are being converted to the new system.
- ii. **Fee/engagement letters.** Respondent utilizes new fee/engagement and closing letters that have been reviewed by the accountant and other Texas attorneys.
- iii. **Document tasks and policies.** Respondent has set up checklists for both financial reporting and USPTO transactional procedures. Specifically, the checklists he has instituted require Respondent to reconcile his trust and operating accounts by certain monthly deadlines.

### Legal Conclusion

7. Based on the information contained in paragraphs 1 through 6, above, Respondent acknowledges that his conduct violated 37 C.F.R. §§ 10.112(a) and (b) by not maintaining a separate identifiable bank account for client funds and for not separately preserving the identity of client and business funds, 37 C.F.R. § 10.112(c)(3) by not maintaining complete records of

client funds, and 37 C.F.R. §§ 10.23(b)(4) and 10.23(b)(6) by submitting checks that were returned for insufficient funds.

### **Sanctions**

8. Respondent agreed, and it is ORDERED that:

- a. (i) Respondent is suspended for a period of twenty-four (24) months from the practice of patent, trademark, and non-patent law before the USPTO commencing on the date of this Final Order and (ii) the suspension is immediately stayed as of the date this Final Order and that the stay shall remain in effect until further order of the USPTO Director or his designate;
- b. Respondent serve a twenty-four (24) month probationary period commencing on the date of this Final Order;
- c. at Respondent's own expense, Respondent hire a certified public accountant to review Respondent's legal practice and to prepare and submit a report to the OED Director at six months, 12 months, 18 months and 24 months after the date this Final Order is signed. The report shall indicate whether Respondent is (a) maintaining funds he receives from his clients for patent law services to be rendered in a client trust account and not in any business/operating account or personal account and (b) not issuing checks from the client trust account or business/operating account that are subsequently returned because they were drawn on insufficient funds. The report shall specifically identify each transaction where Respondent has failed to maintain funds he receives from his clients for patent law services to be rendered in a client trust account or has issued a check from the client trust account or business/operating account that was subsequently returned to the Office because it was drawn on insufficient funds. Nothing herein shall extend the deadlines for Respondent to cause the reports to be timely submitted except that the deadlines may be extended by written agreement of the Respondent and the OED Director.
- d. Respondent shall be permitted to practice patent, trademark, and non-patent law before the USPTO during his probationary period unless the stay of the suspension is lifted by order of the USPTO Director or his designate;
- e. if the stay of the suspension is not lifted by order of the USPTO Director or his designate by the end of the probationary period, Respondent is not required to serve the suspension;
- f. (i) in the event that the OED Director is of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) issue to Respondent an Order to Show Cause why the USPTO

Director or his designate should not order that the stay of the suspension be lifted and Respondent be immediately suspended for up to twenty-four (24) months for the violations set forth in paragraph 7, above;

(B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11(a); and

(C) grant Respondent fifteen (15) days to respond to the Order to Show Cause;

and

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(ii) in the event after the 15-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) deliver to the USPTO Director or his designate: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) evidence causing the OED Director to be of the opinion that Respondent failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility during the probationary period, and

(B) request that the USPTO Director or his designate immediately lift the stay of the suspension and suspend Respondent for up to twenty-four (24) months for the violations set forth in paragraph 7, above;

- g. the OED Director publish the Final Order at the Office of Enrollment and Discipline's Reading Room electronically located at:  
**<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>**;
- h. the OED Director publish the following Notice of Stayed Suspension in the *Official Gazette*:

#### **Notice of Stayed Suspension**

Kenneth A. Roddy of Houston, Texas, registered patent agent (Registration Number 31,294). The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Roddy for twenty-four months, with the entirety of the suspension stayed, and placed him on a twenty-four (24) month probation for violating 37 C.F.R. §§ 10.112(a) and 10.112(b)

by not maintaining a separate identifiable bank account for client funds and not separately preserving the identity of client and business funds, 37 C.F.R. § 10.112(c)(3) by not maintaining complete records of client funds, and 37 C.F.R. §§ 10.23(b)(4) and 10.23(b)(6) by submitting checks that were returned for insufficient funds. Mr. Roddy is permitted to practice before the Office during his probation unless the stay of the suspension is lifted.

Mr. Roddy maintained a business/operating account for his patent law practice, but he did not have a separate account for depositing unearned funds he received from clients. When he received unearned funds from clients (e.g., payment in advance for patent law services to be provided in the future), he deposited client funds into his business/operating account. Mr. Roddy did not keep complete accounting records for client funds he received. Additionally, from November 2005 through January 2009, Mr. Roddy signed and submitted to the Office nine (9) checks drawn on his business/operating account that were returned due to insufficient funds. The returned checks totaled four thousand, six hundred, and seventy-seven dollars (\$4,677.00). Three of the returned checks were presented for payment during a two-day period in November 2005, five were presented during a four-day period in March 2006, and one was presented in January 2009. Mr. Roddy has made good on all outstanding checks and returned check fees and has established a client trust account into which he deposits client funds. Mr. Roddy has also hired a certified public accountant to assist him in his efforts to improve the management of his law practice and completed a legal ethics course on the topic of client trust account management.

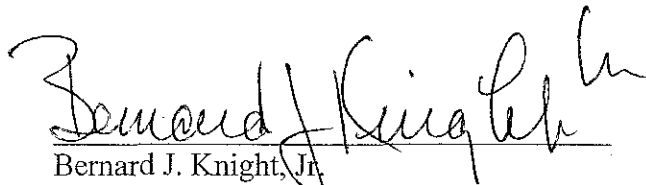
This action is the result of a settlement agreement between Mr. Roddy and the OED Director pursuant to the provisions of 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.26 and 11.59. Disciplinary decisions involving practitioners are posted at the Office of Enrollment and Discipline's Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- e. the OED Director to give notice of the public discipline and the reasons for the discipline pursuant to 37 C.F.R. § 11.59;
- f. in the event that the USPTO Director or his designate lifts the stay of the suspension and Respondent seeks a review of the USPTO Director's decision to lift the stay, any such review shall not operate to postpone or otherwise hold in abeyance the immediate suspension of Respondent;

- g. 37 C.F.R. §§ 11.58 and 11.60 do not apply unless the stay of the suspension is lifted;
- h. if the stay of the suspension is lifted, the OED Director shall give notice of the suspension and the reasons therefor pursuant to 37 C.F.R. § 11.59;
- i. nothing in the Proposed Settlement Agreement or the Final Order shall prevent the Office from seeking discipline against Respondent in accordance with the provisions of 37 C.F.R. §§ 11.34 through 11.57 for the misconduct that caused the stay of the suspension to be lifted;
- j. the record of this disciplinary proceeding, including the Final Order, be considered (1) when addressing any further complaint or evidence of the same or similar misconduct brought to the attention of the Office, and/or (2) in any future disciplinary proceeding (a) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or (b) to rebut any statement or representation by or on Respondent's behalf; and
- k. the OED Director and Respondent bear their own costs incurred to date and in carrying out the terms of this agreement.

APR 29 2010

Date



Bernard J. Knight, Jr.  
General Counsel

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

cc:

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