

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

**In the Matter of
David W. Denenberg,
Respondent**

Proceeding No. D2006-20

FINAL ORDER

The Director of Enrollment and Discipline (OED Director) of the United States Patent and Trademark Office (USPTO) and **Bradley P. Sylvester** (Respondent), have submitted a settlement agreement in the above-identified 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, the OED Director and Respondent have agreed to certain stipulated facts, legal conclusions and sanctions, all of which are set forth below. It was further agreed between the OED Director and Respondent that this agreement resolves any and all disciplinary action by the USPTO arising from the allegations set forth in the Complaint.

Pursuant to that agreement, this Final Order sets forth the following stipulated facts, agreed-upon legal conclusions and sanctions.

STIPULATED FACTS

1. The Appellate Division of the Supreme Court for the First Judicial Department in the County of New York ("Appellate Division") in a proceeding styled *In the Matter of David W. Denenberg*, M-1181, entered a decision on August 17, 2006.
2. The Appellate Division stated that on January 11, 2005 in Nassau County District Court, Respondent entered a guilty plea in satisfaction of a misdemeanor complaint charging him with misconduct in relation to nominating petitions in violation of Election Law § 17-122(7), upon conviction for which Respondent was sentenced to a conditional discharge and directed to pay surcharges totaling \$160.
3. The Appellate Division stated that previously, the Appellate Division deemed the offense to be a "serious crime" within the contemplation of Judiciary law § 90(4)(d) and referred the matter directly to a Hearing Panel to conduct a sanction hearing.
4. The Appellate Division stated that prior to the hearing, the parties stipulated that Respondent, while running for re-election as a Nassau County Legislator, violated Election Law § 17-122(7) by "stating falsely that signatures contained [in nominating petition #12] were signed in his presence by the named individuals, when in fact, [those] individuals had not signed their names to the petition in his presence nor had they signed

this petition at all”; and that the District Attorney had alleged that approximately 25% of the signatures found to be invalid were obtained from a member of the same household and that the remainder were forged by someone unrelated to the purported signatory.

5. The Appellate Division stated that Election Law §17-122(7) provides: “Any person who . . . [b]eing a notary public, commissioner of deeds or a subscribing witness to a petition, provided for in this chapter, for the designation or nomination of a candidate, or a petition for opportunity to ballot at a primary election, thereby makes a false statement or makes a false affidavit thereon . . . is guilty of a misdemeanor.”
6. The Appellate Division stated that Respondent did not contest these assertions but denied any knowledge of, or participation in, the forgeries.
7. The Appellate Division stated that at his plea allocution before District Court, Respondent stated that he had “attested to signatures” on a petition that contained invalid signatures and had been “careless,” asserting that he would “never let this happen again.”
8. The Appellate Division stated that before the Hearing Panel, Respondent explained that after voters signed the petition in his presence, the sheets were sent to party headquarters, where any missing information was filled in, and then returned to him for verification of the signatures, and Respondent said that it did not occur to him to compare the signatures on the petitions returned to him to verify that entries were not duplicated or entered in the same handwriting.
9. The Appellate Division stated that Respondent fully appreciated that his signed verification statement was equivalent to an affidavit, subject to the same penalties as if sworn.
10. The Appellate Division stated in the decision that Respondent has a long history of public service; that the Hearing Panel received character evidence, described as “far ranging, voluminous and of significant weight,” attesting to his “tireless efforts on behalf of his community and the well being of his neighborhood and constituents.”
11. The Appellate Division stated that the Hearing Panel had recommended public censure; that the Departmental Disciplinary Committee for the First Judicial Department had presented a motion and memorandum of law to the Court seeking an order confirming the findings of fact, conclusions of law, and the sanction recommendation of the Hearing Panel; and that Respondent, by his attorney, submitted an affirmation and memorandum of law in opposition to the motion and instead sought the issuance of the sanction of private reprimand, but in no event a sanction greater than of public censure.
12. The Appellate Division declined to accept the sanction recommended by the Hearing Panel, stating that while Respondent’s misconduct may be the result of carelessness, it remains that he was convicted of violating Election Law § 17-122(7), for which suspension is the appropriate sanction.

13. The Appellate Division, on or about August 17, 2006, entered an order granting so much of the petition of the Departmental Disciplinary Committee confirming so much of the determination of the Hearing Panel with respect to its findings of facts and conclusions of law, and disaffirmed the sanction of public censure, and suspended Respondent from the practice of law in the State of New York for a period of 90 days, effective September 18, 2006 and until further order of the court.
14. Respondent submitted an Affidavit to the Office of Enrollment and Discipline stating that he has notified all of his clients of his suspension in accordance with the New York, Appellate Division, First Department Court Rules; all of his clients' cases have been transferred to other counsel; that he has stopped practicing law; and that as of September 18, 2006, he is in full compliance with his New York Suspension Order.

LEGAL CONCLUSIONS

15. Based upon the foregoing stipulated facts, Respondent acknowledges that his conduct violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility:
 - a. 37 CFR § 10.23(c)(5), by having been suspended as an attorney from the practice of law on ethical grounds by a duly constituted authority of a State.

SANCTIONS

Based on the foregoing, it is:

16. **ORDERED** that the Final Order incorporates the facts stipulated in Paragraphs 1 - 15 above.
17. **ORDERED** that Respondent is suspended from practicing patent, trademark and other non-patent law before the USPTO for three months, *nunc pro tunc* from September 18, 2006.
18. **ORDERED** that the OED Director publish the Final Order.
19. **ORDERED** that the OED Director publish the following Notice in the Official Gazette:

Notice of Suspension

David W. Denenberg, of New York, New York, a patent attorney whose registration number is 40,986, has been suspended from practice before the Office for a period of three months. This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. 10.133(g).

20. **ORDERED** that the OED Director to give notice to appropriate employees of the USPTO, courts, and authorities of New York and any other state in which Respondent is known to be a member of the bar; and any appropriate bar association. 37 C.F.R. § 10.159(a).
21. **ORDERED** that within 30 days of the date of this Final Order, Respondent shall, in accordance with 37 C.F.R. § 10.158(b)(2), surrender each client's active USPTO case file(s) to (1) each client or (2) another practitioner designated by each client, if said surrender had not occurred prior to the date of the Final Order, and shall file proof thereof with the OED Director within the same 30 day period.
22. **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, all in accordance with 37 C.F.R. §§ 10.158(a), (b)(2), (b)(6).
23. **ORDERED** that within 30 days of the date of the Final Order, Respondent shall, in accordance with 37 C.F.R. §§ 10.158(b)(8), 10.160(d), 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.
24. **ORDERED** that after the date 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, 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.
25. **ORDERED** that after the date of the Final Order, Respondent shall promptly take steps to fully comply with the provisions of 37 C.F.R. §§ 10.158(c) and (d) if said steps had not occurred prior to the date of the Final Order.

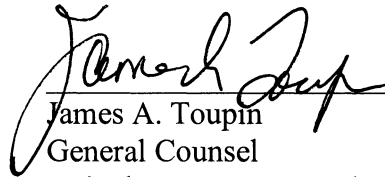
REINSTATEMENT

26. **ORDERED** that following the suspension for three months in compliance with the foregoing provisions, Respondent may apply for reinstatement to practice effective upon filing a petition for reinstatement and an affidavit showing compliance with the following conditions:
 - a. Respondent demonstrates compliance with 37 CFR §§ 10.158 and 160.
27. **ORDERED** that all parties shall bear their own costs.

On behalf of Jon W. Dudas
*Under Secretary of Commerce For Intellectual
Property and Director of the United States Patent
And Trademark Office*

12/18/06

Date



James A. Toupin
General Counsel
United States Patent and Trademark Office

cc: Harry I. Moatz
OED Director

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