

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

In the Matter of

Brian R. Rayve,

Respondent

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Proceeding No. D08-07

Final Order

Director of the Office of Enrollment and Discipline Harry I. Moatz ("OED Director") and Brian R. Rayve ("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 or his designate ("USPTO Director").

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 the pending Complaint and Notice of Proceedings Under 35 U.S.C. § 32 filed 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 evidence previously submitted to the USPTO's Committee on Discipline and from the allegations set forth in the pending disciplinary complaint and notice of proceedings.

Pursuant to such proposed settlement agreement, this Final Order sets forth the parties' stipulated facts, joint legal conclusions, and agreed upon discipline.

Stipulated Facts

1. At all times relevant hereto, Respondent of Park City, Utah, has been an attorney registered to practice before the USPTO and is subject to the Disciplinary Rules of the USPTO Code of Professional Responsibility set forth at 37 C.F.R. § 10.20 et seq. Respondent's registration number is 39,810.

2. On July 10, 2008, the OED Director filed a Complaint and Notice of Proceedings Under 35 U.S.C. § 32 against Respondent predicated on the stipulated facts set forth below.

3. At all times relevant to this complaint, Respondent was the attorney of record for U.S. Patent Application No. 10/885,470 (hereinafter "'470 application'"), which he filed with the USPTO on July 5, 2004, on behalf of a client.

4. In connection with the July 5, 2004, filing of the '470 application, Respondent sent

the USPTO a check dated July 3, 2004, numbered 200, and made payable to the order of "Commissioner for Patents" in the amount of \$653.00.

5. The \$653.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.

6. The \$653.00 check was signed by Respondent.

7. The \$653.00 check was returned unpaid to the USPTO due to insufficient funds.

8. On August 30, 2004, the USPTO mailed to Respondent a notice of missing parts explaining that the application fee totaled \$718.00 and informing him of a two-month period within which to respond, and, on September 8, 2004, the USPTO notified Respondent in writing that check number 200, dated July 3, 2004, for \$653.00 that Respondent had submitted in the '470 application had been returned unpaid by the bank on which it was drawn.

9. On November 30, 2004, Respondent mailed to the USPTO a response to the August 30, 2004, notice of missing parts that included a petition for extension of time and a check in the amount of \$778, which included funds to cover the returned \$653.00 check.

10. On April 1, 2004, Respondent filed a power of attorney with the USPTO and became the attorney of record for U.S. Patent Application No. 09/957,251 (hereinafter "'251 application'") for a client.

11. On or about July 20, 2004, Respondent mailed to the USPTO a petition for extension of time in response to a February 20, 2004, office action in the '251 application.

12. Along with the July 20, 2004, petition, Respondent mailed a check dated July 18, 2004, numbered 207, and made payable to the order of "Commissioner for Patents" in the amount of \$210.00.

13. The \$210.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.

14. The \$210.00 check was signed by Respondent.

15. The \$210.00 check was returned unpaid to the USPTO due to insufficient funds.

16. Respondent has not made good on the returned \$210.00 check.

17. At all times relevant to this complaint, Respondent was the attorney of record for U.S. Patent Application No. 10/672,003 (hereinafter "'003 application'"), which he filed with the USPTO on September 25, 2003, on behalf of a client.

18. On December 12, 2004, Respondent mailed to the USPTO his response, including a petition for an extension in time, to an August 12, 2004, non-final office action issued in the '003

application.

19. Along with the December 12, 2004, response, Respondent mailed a check dated December 12, 2004, numbered 217, and made payable to the order of "Commissioner for Patents" in the amount of \$510.00.

20. The \$510.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.

21. The \$510.00 check was signed by Respondent.

22. The \$510.00 check was returned unpaid to the USPTO due to insufficient funds.

23. On April 19, 2005, the USPTO notified Respondent in writing that the \$510.00 had been returned for insufficient funds and that he was required to pay the \$510.00 plus a \$50.00 fee for processing a returned check.

24. Respondent has not made good on the returned \$510.00 check or the returned check processing fee.

25. At all times relevant to this complaint, Respondent was the attorney of record for U.S. Patent Application No. 10/770,179 (hereinafter "'179 application'"), which he filed with the USPTO on January 31, 2004, on behalf of a client.

26. On October 29, 2004, the USPTO mailed Respondent a non-final office action and informed him of a three-month period in which a response was due.

27. On June 14, 2005, the USPTO mailed Respondent a notice of abandonment of the '179 application for having failed to file a timely response to the October 20, 2004, office action.

28. On August 12, 2005, in response to the June 14, 2005, notice of abandonment, Respondent mailed to the USPTO a petition to withdraw the abandonment of the '179 application.

29. Along with the August 12, 2005, petition, Respondent mailed to the USPTO a check dated August 11, 2005, numbered 236, and made payable to the order of "Commissioner for Patents" in the amount of \$130.00.

30. The \$130.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.

31. The \$130.00 check was signed by Respondent.

32. The \$130.00 check was returned unpaid to the USPTO due to insufficient funds.

33. Respondent has not made good on the returned \$130.00 check.

34. Upon information and belief, the client did not consent to the abandonment of the '003 application.

35. On September 25, 2005, Respondent mailed to the USPTO a petition for extension of time in response to a March 25, 2005, final office action in the '251 application.

36. Along with the September 25, 2005, petition, Respondent mailed a check dated September 24, 2005, numbered 238, and made payable to the order of "Commissioner for Patents" in the amount of \$510.00.

37. The \$510.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.

38. The \$510.00 check was signed by Respondent.

39. The \$510.00 check was returned unpaid to the USPTO due to insufficient funds.

40. On January 4, 2006, the USPTO notified Respondent in writing that the \$510.00 check accompanying his September 25, 2005, petition for extension of time did not clear the bank and informed that he was required to submit \$560.00 for that petition.

41. Respondent has not made good on the returned \$510.00 check.

42. After receiving the January 4, 2006, notice, Respondent filed a notice of appeal and a "Petition for Revival of Unintentionally Abandoned Patent Application." According to the petition, Respondent contacted the USPTO and learned that the '251 application had become abandoned on June 26, 2005, based on his failure to include the proper fee in his September 25, 2005, petition.

43. Upon information and belief, the client did not consent to the June 26, 2005, abandonment of the '251 application.

44. On May 12, 2006, the USPTO granted the petition and informed Respondent of the two-month period for filing an appeal brief.

45. On November 30, 2006, the USPTO informed Respondent that the appeal had been dismissed because he did not timely file the appeal brief, and, consequently, the '251 application had become abandoned because there were no allowable claims.

46. Upon information and belief, the client did not consent to the November 30, 2006, abandonment of the '251 application.

47. At all times relevant to this complaint, Respondent was the attorney of record for U.S. Patent Application No. 11/295,838 (hereinafter "'838 application"), which he filed with the USPTO on December 6, 2005, on behalf of a client.

48. In connection with the December 6, 2005, filing of the '838 application, Respondent sent the USPTO a check dated October 6, 2005, numbered 245, and made payable to the order of "Commissioner for Patents" in the amount of \$500.00.

49. The \$500.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.

50. The \$500.00 check was signed by Respondent.

51. The \$500.00 check was returned unpaid to the USPTO due to insufficient funds.

52. At all times relevant to this complaint, Respondent was the attorney of record for U.S. Patent Application No. 11/342,714 (hereinafter "'714 application'"), which he filed with the USPTO on January 30, 2006, on behalf of a client.

53. In connection with the filing of the '714 application, Respondent sent the USPTO a check dated January 30, 2006, numbered 248, and made payable to the order of "Commissioner for Patents" in the amount of \$1,625.00.

54. The \$1,625.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.

55. The \$1,625.00 check was signed by Respondent.

56. The \$1,625.00 check was returned unpaid to the USPTO due to insufficient funds.

57. On March 2, 2006, the USPTO mailed to Respondent a notice of missing parts and informed him of a two-month period within which to pay the application fees totaling \$1,690.00.

58. On November 7, 2006, the USPTO mailed to Respondent a notice of abandonment for failing to respond timely to the March 2, 2006, notice and pay the application fees.

59. Upon information and belief, the client did not consent to the abandonment of the '714 application.

60. On January 3, 2007, the USPTO received from Respondent a petition to revive the '714 application that included funds to make good the returned \$1,625.00 check.

61. On February 23, 2006, at the start of its investigation of Respondent's returned checks, the USPTO's Office of Enrollment and Discipline (OED) informed Respondent in writing of its concern that his submission to the USPTO of checks with insufficient funds may have violated USPTO Disciplinary Rules.

62. At all times relevant to this complaint, Respondent was the attorney of record for U.S. Patent Application No. 60/787,388 (hereinafter "'388 application'"), which he filed with the

USPTO on March 29, 2006, on behalf of a client.

63. In connection with the March 29, 2006, filing of the '388 application, Respondent sent the USPTO a check dated March 29, 2006, numbered 255, and made payable to the order of "Commissioner for Patents" in the amount of \$100.00.

64. The \$100.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.

65. The \$100.00 check was signed by Respondent.

66. The \$100.00 check was returned unpaid to the USPTO due to insufficient funds.

67. Respondent has not made good on the returned \$100.00 check.

68. On April 18, 2006, the USPTO mailed to Respondent a notice to file missing parts based on his failure to pay the required fees for the '388 and informed Respondent of a two-month period within which he was to respond and pay the required fees.

69. Respondent did not respond in a timely manner, and the application became abandoned on October 19, 2006.

70. Upon information and belief, the client did not consent to the abandonment of the '388 application.

71. Respondent subsequently filed a petition to revive the '388 application, which the USPTO granted on May 22, 2007.

72. On May 19, 2006, during its continuing investigation of Respondent's returned checks, OED again informed Respondent in writing of its concern that his submission of checks to the USPTO with insufficient funds may have violated USPTO Disciplinary Rules.

73. At all times relevant to this complaint, Respondent was the attorney of record for U.S. Patent Application No. 10/672,338 (hereinafter "'338 application'"), which he filed with the USPTO on September 25, 2003, on behalf of a client.

74. On June 13, 2006, Respondent mailed to the USPTO a response, including a petition for extension of time, to a December 13, 2005, office action issued in the '338 application.

75. Along with the June 13, 2006, response, Respondent mailed to the USPTO a check dated June 13, 2006, numbered 260, and made payable to the order of "Commissioner for Patents" in the amount of \$1,080.00.

76. The \$1,080.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.

77. The \$1,080.00 check was signed by Respondent.
78. The \$1,080.00 check was returned unpaid to the USPTO due to insufficient funds.
79. On July 14 and July 27, 2006, the USPTO notified Respondent in writing that the \$1,080.00 check had been returned as unpaid and that he was required to pay the \$1,080.00 fee and a \$50.00 returned check processing fee.
80. Respondent has not made good on the returned \$1,080.00 check or the returned check fee.
81. On July 18, 2006, Respondent mailed to the USPTO a check numbered 263, dated July 18, 2006, and payable to the order of "Commissioner for Patents" in the amount of \$615.00, bearing the check number 263.
82. Respondent sent the \$615.00 check to the USPTO to cover the returned \$500.00 check, a \$65.00 surcharge for a late filing fee, and a \$50.00 fee for processing a returned check.
83. The \$615.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.
84. The \$615.00 check was signed by Respondent.
85. The \$615.00 check was returned unpaid to the USPTO due to insufficient funds.
86. On August 14 and 29, 2006, the USPTO notified Respondent in writing that the \$615.00 check had been returned as unpaid and that he was required to pay the \$500.00 filing fee, a \$65.00 late filing fee surcharge, and a \$50.00 returned check processing fee.
87. Respondent has not made good on the returned \$615.00 check.
88. On July 18, 2006, Respondent mailed to the USPTO a petition for extension of time to respond to a January 18, 2006, office action issued on the '838 application.
89. Along with the July 18, 2006, petition, Respondent mailed a check dated July 18, 2006, numbered 264, and made payable to the order of "Commissioner for Patents" in the amount of \$795.00.
90. The \$795.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.
91. The \$795.00 check was signed by Respondent.
92. The \$795.00 check was returned unpaid to the USPTO due to insufficient funds.
93. On August 14 and 29, 2006, the USPTO notified Respondent in writing that the

124. On February 7, 2008, the USPTO received Respondent's petition for extension of time to respond to the July 26, 2007 office action.

125. Along with the February 7, 2008 petition, Respondent mailed a check dated January 26, 2008, numbered 288, and made payable to the order of "Commissioner for Patents" in the amount of \$525.00.

126. The \$525.00 check was drawn on an account at U.S. Bank that identified "Law Office of Brian R. Rayve" as the maker.

127. The \$525.00 check was signed by Respondent.

128. The \$525.00 check was returned unpaid to the USPTO due to insufficient funds.

129. Respondent has not made good on the returned \$525.00 check.

130. On July 28, 2006, as part of its investigation of Respondent's issuance of checks that were returned for insufficient funds, OED sent a letter to Respondent asking whether he received payment from his clients for fees and services related to the '251 application, the '003 application, the '179 application, the '714 application, the '388 application, the '338 application, the '838 application, and the '470 application, and, if so, a) when he received such funds, b) into what account were the funds deposited, and c) when the funds were deposited.

131. On August 28, 2006, Respondent sent OED a letter in response to OED's July 28, 2006, inquiry stating, in part, that he had enclosed bank statements and other documents relating to the returned checks. Respondent's August 28, 2006, response, however, did not contain bank statements or any other documents relating to the returned checks.

132. On September 26, 2006, OED sent a letter to Respondent requesting that he provide copies of the bank statements and other documents relating to the returned checks that Respondent stated had been enclosed in his August 28 response. Respondent did not respond to OED's September 26, 2006, letter.

133. On November 9, 2006, OED sent another letter to Respondent requesting that he provide copies of the bank statements and other documents relating to the returned checks that Respondent stated had been enclosed in his August 28 response. Respondent did not respond to OED's November 9, 2006, letter, nor has he since provided copies of the documents he represented to have sent in his August 28 response.

Legal Conclusions

134. Based on the information contained in paragraphs 1 through 133, above, Respondent acknowledges that his conduct violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility:

- a. 37 C.F.R. § 10.23(b)(4) by presenting checks to the USPTO on numerous occasions

- that were returned for insufficient funds;
- b. 37 C.F.R. § 10.23(b)(5) by engaging in conduct that is prejudicial to the administration of justice;
 - c. 37 C.F.R. § 10.23(b)(6) by engaging in conduct that adversely reflects on the Respondent's fitness to practice before the USPTO;
 - d. 37 C.F.R. § 10.77(c) by neglecting matters that his clients entrusted to him;
 - e. 37 C.F.R. § 10.84(a)(1) by intentionally failing to seek the lawful objectives of his clients through reasonably available means permitted by law; and
 - f. 37 C.F.R. § 10.89(c)(6) by intentionally or habitually violating USPTO disciplinary rules.

Sanctions

135. Respondent agreed, and it is ORDERED that:

- a. Respondent be, and hereby is, suspended from practicing patent, trademark, and other non-patent law before the Office for two years beginning on the date of this Final Order;
- b. Respondent be, and hereby is, granted limited recognition to practice before the Office beginning on the date of this Final Order and expiring thirty (30) days after the date of this Final Order;
- c. Respondent be, and hereby is directed during the time of his limited recognition to wind up all client business before the Office and to withdraw from employment in all pending proceedings in accordance with 37 C.F.R. § 10.40;
- d. Respondent be, and hereby is, directed not to accept any new clients having business before the Office during the 30 days of limited recognition afforded by paragraph 135(b) of this Final Order;
- e. The OED Director shall publish this Final Order;
- f. The OED Director shall publish the following Notice in the Official Gazette:

Notice of Suspension

Brian R. Rayve of Park City, Utah, a patent attorney whose Registration Number is 39,810 has been suspended from practice before the Office for two years for violating 37 C.F.R. § 10.23(b)(4) by presenting checks to the USPTO on numerous

occasions that were returned for insufficient funds; 37 C.F.R. § 10.23(b)(5) by engaging in conduct that is prejudicial to the administration of justice; 37 C.F.R. § 10.23(b)(6) by engaging in conduct that adversely reflects on the Respondent's fitness to practice before the USPTO; 37 C.F.R. § 10.77(c) by neglecting matters that his clients entrusted to him; 37 C.F.R. § 10.84(a)(1) by intentionally failing to seek the lawful objectives of his clients through reasonably available means permitted by law; and 37 C.F.R. § 10.89(c)(6) by intentionally or habitually violating USPTO disciplinary rules. This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. §§ 11.26 and 11.59.

- g. The OED Director shall, in accordance with 37 C.F.R. § 11.59, give notice to the Utah State Bar, the Ohio State Bar, and to appropriate employees of the Office and to interested departments, agencies, and courts of the United States that the Respondent has been suspended from practice before the Office for two years;
- h. Within 30 days of the date of this Final Order, Respondent shall, in accordance with 37 C.F.R. § 11.58(b)(1)(iv), surrender each client's active USPTO case file(s) to each client or another practitioner designated by each client; and shall file proof thereof with the OED Director within the same 30 day period;
- i. Respondent shall cooperate in good-faith with the practitioner to whom a file is surrendered in order to prevent the client's interests from being harmed as a result of the file transfer and shall do so at no charge to the client or practitioner;
- j. Respondent shall immediately forward any communication relating to a client matter that is addressed to Respondent and/or received by him for the client or the practitioner designated by the client, and, in accordance with 37 C.F.R. §§ 11.58(a) and (b)(5), that Respondent 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;
- k. Within 30 days of the date of this Final Order, Respondent shall, in accordance with 37 C.F.R. §§ 11.58(b)(1)(v), 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 proof thereof with the OED Director no later than filing his petition for reinstatement;
- l. Respondent shall: 1) promptly take steps to comply with the provisions of 37 C.F.R. §§ 11.58(b)(1)(vi), (b)(3), (b)(4), (b)(5), and (b)(6); 2) within 30 days of taking steps to comply with § 11.58(b)(1)(vi), file with the OED Director an affidavit describing the precise nature of the steps taken; and 3) submit proof of compliance with §§ 11.58(b)(3), (b)(4), (b)(5), and (b)(6) with the OED Director upon filing a petition for reinstatement under 37 C.F.R. § 11.60;

- m. Respondent shall comply with the provisions of 37 C.F.R. §§ 11.58(a), (e), and (f) as of the date of this Final Order;
- n. Within 30 days of the date of this Final Order, the OED Director shall prepare and file a motion to dismiss the Complaint and Notice of Proceedings Under 35 U.S.C. § 32 pending against Respondent;
- o. Respondent: 1) within 60 days of the date of this Final Order shall determine whether he received funds from a client for each of the checks identified in the stipulated facts as being returned for insufficient funds and remaining unpaid as of the date of this Final Order and, if so, within 60 days of the date of this Final Order, return all such funds to the respective client and 2) upon seeking reinstatement to practice before the Office, shall provide the OED Director with corroborating proof of all such payments to the clients;
- p. Respondent: 1) within 60 days of the date of this Final Order shall pay the USPTO the amount of returned check fees identified in the stipulated facts and remaining unpaid as of the date of this Final Order and 2) upon seeking reinstatement to practice before the Office, shall provide the OED Director with corroborating proof of all such payments to the USPTO;
- q. Directs that Respondent: 1) within two years of the date of this Final Order shall enroll, complete and receive Continuing Legal Education credit under the Rules of the Utah State Bar for at least one course where the predominant subject matter is law office management for solo practitioners or small law offices and which includes information on establishing, utilizing, and maintaining client trust accounts and 2) upon seeking reinstatement to practice before the Office shall provide the OED Director with corroborating proof of successful completion of such a course, including: documentary evidence of course attendance, a description of the content of the course for which credit was received, and copy of all written materials provided to course participants;
- r. Following the suspension for two years 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:
 - (i) Respondent demonstrates compliance with 37 CFR §§ 11.58 and 11.60; and
 - (ii) Respondent demonstrates compliance with paragraphs 135(o), (p), and (q), of this Final Order;

and

- s. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this agreement.

8 0 5 08
Date

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

on behalf of

Jon W. Dudas
Under Secretary of Commerce for Intellectual
Property and Director of the United States
Patent and Trademark Office

cc:

Harry I. Moatz
Director Office of Enrollment and Discipline
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