

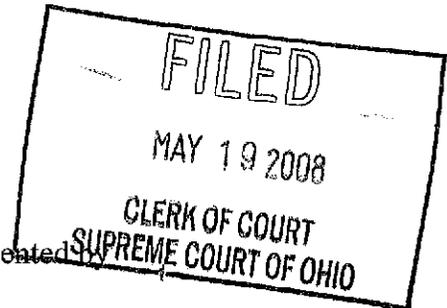
IN THE SUPREME COURT OF THE STATE OF OHIO

Disciplinary Counsel,)
Relator,)
)
)
vs.) Case No. 08-682
) Attorney Discipline
Randall J. Knuth,)
Respondent)

RESPONSE TO ORDER TO SHOW CAUSE AND
MOTION TO SUPPLEMENT THE RECORD

Filed by and on behalf of: Respondent

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IN THE SUPREME COURT OF THE STATE OF OHIO

Disciplinary Counsel,)	
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vs.)	Case No. 08-682
)	Attorney Discipline
Randall J. Knuth,)	
Respondent)	

RESPONSE TO ORDER TO SHOW CAUSE AND
MOTION TO SUPPLEMENT THE RECORD

Respondent hereby responds to the order to show cause, of the claim under Gov. Bar. R. V(11)(F)(4)(a) as to why the imposition of the identical or comparable discipline in this State would be unwarranted and such reasons therefore.

Respondent further hereby Moves for Supplementation of the Record, in that an actual certified copy of the signed Settlement Agreement between Respondent and the United States Patent and Trademark Office is missing from the Court's electronic file, which Settlement agreement, Respondent submits, is different than the Final Order and is necessary under Rule V section 7 for justice, and an actual executed copy by both parties is not in Respondent's possession. Respondent submits such copy is in the United States Patent and Trademark Office.

STATEMENT OF THE CASE

Respondent has been suspended for three years from the practice before the United States Patent and Trademark Office (the "USPTO") for the infractions cited in

Paragraph 3 et al, in the filed certified copy of the Order of the U.S. Department of Commerce (the “ Final Order” or “FO”) relating to insufficient funds in a number of USPTO cases.

Respondent had waived a hearing in the previous matter and accepted the settlement agreement (the “Settlement Agreement” or “SA”) drafted and propounded from the Patent Office OED Director’s attorney (Pertinent pages copied in Appendices). Respondent signed the propounded Settlement Agreement. By the words of the Settlement Agreement, the facts and conclusions of the Settlement Agreement were to be incorporated into the Final Order (SA Paragraph 353 a; SA and FO second unnumbered Paragraph -Page 1) . The Final Order ordering attorney discipline contained substantive changes and omissions of facts as compared to the Settlement agreement which prejudice Respondent.

Respondent subsequently filed a letter with the Mr. Jonathan E. Coughlan, Disciplinary Counsel, in the Ohio Office of Disciplinary Counsel on or about Feb 20, 2008, self reporting and advising him of the pending discipline from the United States Patent Office. Per the Settlement Agreement (Paragraph 353 e) and Order (Paragraph 345), the USPTO OED Director was to forward a copy of the Final Order directly to the appropriate bar authorities.

Prior to the suspension and even the USPTO complaint, Respondent had voluntary sought help from both the Indiana Lawyers Assistance program, and the Tennessee Lawyers Assistance Program (FO Paragraph 338) and followed a referral to a doctor for a course of treatment regarding mental illness (SA Paragraph 349). Such treatment was undertaken and is ongoing (SA Paragraph 350). Respondent cooperated

with the USPTO in the disciplinary action (SA Paragraph 347, FO Paragraph 337).

Respondent is remorseful and acknowledges the wrongful nature of the conduct (SA paragraph 346; FO paragraph 336).

Respondent now responds to the Order to Show Cause.

RULE INVOLVED

The text of the following rule relevant to the determination of the present case is set forth in the appendices: GOV. BAR. R. V (11) (F)(4)(a).

SUMMARY OF ARGUMENT

As the USPTO utilized their own settlement agreement and Respondent signed and returned such settlement agreement, the changes and omissions from the Settlement Agreement to the Final Order raise to a level of constructive fraud in the proceeding against Respondent under GOV. BAR. R. V 11(F)(4)(a).

The agreed and stipulated facts between the USPTO and Respondent from the Settlement Agreement clearly implicate issues regarding GOV. BAR. R. V Section 7 during the time of the alleged conduct. Respondent followed the Tennessee Lawyer Assistance Programs treatment protocol prior to the disciplinary complaint. Based on evidence in a letter from Respondent's Tennessee Doctor (see Appendices), such issues have been alleviated with continued care from Respondent's New Doctor in Ohio. Such facts renders that the misconduct in question warrants substantially different and less discipline in Ohio. Respondent respectfully requests Probation with Monitoring for three years during any time of work in the legal profession in Ohio, during which time the restitution requirements of the USPTO Final order are subsequently fulfilled.

CLEAR AND CONVINCING EVIDENCE OF FRAUD HAS BEEN
COMMITTED IN THE USPTO PROCEEDINGS

Respondent submits that clear and convincing evidence of fraud under GOV. BAR. R. V(11)(F)(4)(a) has occurred where a signed settlement agreement is reached in an attorney discipline matter, but the Final Order of Discipline in the other Jurisdiction does not include all of the agreed, material stipulations of facts.

- A. The USPTO Committed Constructive Fraud on Respondent by changing the terms of the Settlement Agreement incorporated into the Final Order.

From Blacks Law Dictionary, Fifth Edition - Fraud is an intentional perversion of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender some right. Constructive Fraud exists where conduct, though not actually fraudulent, has all actual consequences and all legal effects of fraud.

- B. In both the Settlement Agreement and Final Order, all of the facts from the Settlement were to be incorporated into the Final Order, but were not.

Comparing the two Documents, both the Settlement Agreement and Final Order purport to substantiate the entire agreement between the Respondent and the USPTO (Settlement agreement AND Final Order second unnumbered paragraph; ” In order to resolve this case with the necessity of a hearing, Respondent and the OED Director have agreed to certain stipulated facts, legal

conclusion and sanctions, all of which are set forth below in their entirety.”

Emphasis added.

C. Particular agreed facts are in the Settlement Agreement but not the Final Order.

Facts including actual paragraphs in the Settlement Agreement but missing in the Final Order include Paragraphs relating to Respondent mental illness namely: a) Settlement Agreement Paragraph 349 stipulating to Respondents mental health diagnosis and b) Settlement Agreement Paragraph 350, dealing with Respondent’s ongoing mental health care; Facts changed without notice to Respondent include the above and a fact regarding the timing of the beginning of Discipline- Settlement Agreement Paragraph 353 such that actual notice would be determinable, in that signature of the Final Order and Publication would occur on the same day.

1. Such agreed facts omitted in the Final Order are particularly important to a full understanding of Respondents’ negligent conduct are important mitigating factors in most bar jurisdictions including Ohio (but not the USPTO) and without which, prejudices Respondent, such agreed but omitted facts particularly involving GOV. BAR. R. V Section 7.

2. Such changes Respondent submits were intentionally, as the paragraphs were removed and changed and other paragraphs are almost all the same but renumbered. The Final Order document appears to be a copy of the Settlement Agreement modified to eliminate certain stipulated facts which were all agreed to be in the Final Order.

D. Clear and Convincing Evidence the Documents are not the Same.

Such clearly identifiable changes between the Settlement Agreement and Final Order are Clear and Convincing evidence that they not the same, and that a fraud has occurred, or if without intention, at least a constructive fraud has occurred.

Both the Settlement Agreement and Order Respondent flatly state that they were to include all of the stipulated facts to which Respondent relied on to accept a three year suspension of his Patent Law License.

E. The USPTO Action Prejudices Respondent

1. Such omissions and changes prejudice Respondent in that certain agreed facts are not on the record, thus the need for the Motion for Supplementing the record from the USPTO with a certified copy of the executed Proposed Settlement Agreement faxed to the Patent Office on or about Feb 11, 2008. Respondent has a copy (portions provided) of his executed Proposed Settlement Agreement, but has no copy of the one allegedly signed by the USPTO OED Director Harry Moatz.

2. Respondent relied to his detriment on the representation in the Settlement Agreement that the Settlement stipulated facts would be set out in their entirety in the Final order.

SUCH OMISSIONS ESTABLISH FACTS THAT WOULD WARRANT
SUBSTANTIALLY DIFFERENT AND REDUCED DISCIPLINE

The agreed and stipulated facts between the USPTO and Respondent from the Settlement Agreement in Paragraphs 349 and 350 clearly implicate issues regarding GOV. BAR. R. V Section 7 during the time of the alleged conduct.

As evidenced in the Appendices, Respondent's Tennessee Doctor reports good success with treatment and recommendation to continue to practice law. Such evidence from Respondent's Doctor regarding a mental disorder diagnosis, treatment and remission of Respondent's mental health condition, along with the omission of such facts from the Final Order, if considered, would warrant substantially different and reduced discipline, in that the Doctor's opinion as referenced in his letter offers evidence of strong mitigating factors to Respondent's past behavior.

CONCLUSION

Respondent has shown by clear and convincing evidence of at least constructive fraud in the other jurisdiction's proceeding thereby satisfying GOV. BAR. R. V(11)(F)(4)(a) (i), to prevent necessarily invoking the identical or similar discipline in Ohio solely based on the Final Order. Respondent acknowledges his prior conduct though requires some type of discipline.

RESPONDENT RESPECTFULLY REQUESTS PROBATION WITH
MONITORING FOR THREE YEARS

As the USPTO standards regarding Mental Illness are different from Ohio's, and that there was no case law found to show mitigating factors relative to the Tennessee Bar Lawyers Assistance Program to be on point or helpful related to Patent Office Practice and Professional Responsibility and further that Respondent could not bear the costs of adequate representation for the potential hearing, Respondent agreed to the Settlement offered by the Patent Office, with the items regarding the mental health aspects of his behavior. The Final Order not incorporating such items and unbeknownst changes at the time is at least constructively fraud in the USPTO disciplinary proceeding.

Respondent respectfully submits that with continued mental health treatment, monitoring of his activities, and his continuing recovery, he is no threat to the public. Respondent acknowledges the depression and ADHD which caused difficulties of decreased concentration and attention resulting in ineffective attention to accounting. Respondent sought help prior to filing of the USPTO Complaint.

Respondent respectfully requests Probation with Monitoring for three years while working in the legal profession in Ohio, during which time the restitution requirements of the USPTO Final order are subsequently fulfilled.

Respectfully submitted,



Randall J. Knuth

Petitioner – Registration No. 0046820

APPENDIX A

GOV. BAR. R. V(11)(F)(4)(a) provides in relevant part:

- (a) Thirty days after service of the notice issued pursuant to division (F)(2) of this section the Supreme Court shall impose the identical or comparable discipline imposed in the other jurisdiction, unless the attorney proves either of the following by clear and convincing evidence:
 - (i) A lack of jurisdiction or fraud in the other jurisdiction's disciplinary proceeding;
 - (ii) That the misconduct established warrants substantially different discipline in Ohio.

APPENDIX B

Pertinent Pages of Proposed Settlement Agreement

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE**

**In the Matter of
RANDALL J. KNUTH,
Respondent**

Proceeding No. 06-09

**PROPOSED SETTLEMENT AGREEMENT OF DISCIPLINARY PROCEEDINGS
PURSUANT TO 37 C.F.R. § 10.133(g)**

Harry I. Moatz, Director of Enrollment and Discipline (OED Director), and Randall J. Knuth (Respondent), being fully advised, desire to settle this disciplinary matter without the need for holding a hearing before an Administrative Law Judge. OED Director and Respondent therefore present to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office or his designate (USPTO Director) this settlement of the above-identified disciplinary matter.

In order to resolve the case without the necessity of a hearing, Respondent and the OED Director have agreed to certain stipulated facts, legal conclusions and sanctions, all of which are set forth below in their entirety.

JURISDICTION

1. At all times relevant hereto, Randall J. Knuth (Respondent), formerly of Murfreesboro, Tennessee, and Fort Wayne, Indiana, and currently of Centerville, Ohio, was registered as an attorney to prosecute patent applications before the United States Patent and Trademark Office (USPTO). Respondent's USPTO registration number is 34,644. Respondent is also admitted to practice before the Ohio Supreme Court, as well as the Indiana Supreme Court.

STATEMENT OF THE CASE

2. The Committee on Discipline met on April 3, 2006, and May 8, 2007, at the request of the OED Director. Based upon evidence brought to its attention, the Committee found probable cause to bring charges against Respondent. The charges were brought under 37 C.F.R. §§ 10.23 (c)(8), 10.77(c), 10.84(a)(2), 10.84(a)(3) and 10.112(c)(4).
3. The OED Director filed a Complaint and Notice of Proceedings under 35 U.S.C. § 32 ("Complaint") charging Respondent with violating 37 C.F.R. §§ 10.23 (c)(8), 10.77(c), 10.84(a)(2), 10.84(a)(3) and 10.112(c)(4).
4. The parties agree that this agreement resolves any and all disciplinary action by the USPTO arising from the allegations set forth in the Complaint.

346. Respondent acknowledges the wrongful nature of the complained of conduct and is remorseful regarding the same.
347. Respondent has cooperated with the USPTO in this disciplinary action.
348. Prior to the filing of the Complaint, Respondent voluntarily enrolled in the Tennessee Lawyers Assistance Program on or about June 8, 2005.
349. On or about August 12, 2006, the Tennessee Lawyers Assistance Program referred Respondent to Dr. John Fite, of Franklin, Tennessee, for treatment. Thereafter, Dr. Fite diagnosed Respondent as suffering from "a combination of Adjustment Disorder with Mixed Emotional Features (309.28) and a mild to moderate attention disorder, 314.9 ADHD, Not Otherwise Specified."
350. Respondent is currently under the medical care of Dr. Charles Walters, of Dayton, OH, and is prescribed daily medication for treatment of his mental condition(s).
351. After the filing of the Complaint in this action, Respondent filed with the USPTO another check that was returned for insufficient funds. Specifically, on November 9, 2007, Respondent filed a check for \$750.00 drawn on his Fifth Third Account, check #9307, to pay the Preliminary Examination Fee and WIPO Handling Fee in PCT Application No. PCT/US06/11349. On or about November 13, 2007, the USPTO processed check #9307, but the check was returned for insufficient funds.

LEGAL CONCLUSIONS

352. Based upon the foregoing stipulated facts, Respondent acknowledges that his conduct violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility:
 - a. Rule 10.23(b)(3) by engaging in illegal conduct involving moral turpitude;
 - b. Rule 10.23(b)(4) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation;
 - c. Rule 10.23(b)(5) by engaging in conduct prejudicial to the administration of justice;
 - d. Rule 10.23(b)(6) by engaging in conduct that adversely reflects on his fitness to practice before the USPTO;
 - e. Rule 10.23(c)(3) by misappropriating or failing to properly and timely remit funds received by a practitioner or a practitioner's firm from a client to pay a fee which the client is required by law to pay to the USPTO;

APPENDIX C

Letter from Respondent's Tennessee Doctor

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JOHN W. FIFE, Ph.D
LICENSED PSYCHOLOGIST

September 23, 2007

Re: Randy Knuth

To Whom It May Concern:

This letter is to provide background information regarding my treatment of Mr. Knuth during the period beginning 9-26-2006 and ending 2-16-2007. The majority of the treatment was completed by 2-16-07 as Mr. Knuth began preparations for relocation. I understand he obtained my name initially from the Tennessee Lawyer's Assistance Program (TLAP) for whom I have taken referrals in the past both for assessment and treatment of attorneys experiencing psychological or behavioral difficulties.

Mr. Knuth's initial complaints included a loss of zealousness or "burnout" in his work accompanied with a loss of concentration, attention difficulties, and heightened distractibility. There were behavioral manifestations of depression including verbalizations of worthlessness, not opening his mail, and letting deadlines lapse as well as not paying attention to his business and accounting practices. Historically, these difficulties seemed largely sequelae of a divorce and a conflictual aftermath in which essentially he was estranged from his family and experiencing conflict with his ex-wife over many dimensions including most importantly visitation arrangements with his daughter who was now long distance. The symptoms reportedly followed this time frame (2003-2007) consistently and included. This chronology and symptom report was verified in an interview with his current wife as well.

In addition to his clinical intake interview, Mr. Knuth completed both a standard personality test (MMPI-2) and a battery related to the identification of ADHD as his intake suggested some longstanding problems in this area exacerbated by the recent stressors. The personality test suggested no significant psychopathology at the time of administration (10/06) although symptom history indicated significant anxiety and depression earlier in the year. Continuing family problems were indicated as was a tendency to develop anxiety symptoms under stressful conditions. His profile suggested some likely shifting in his profile to include more depressive elements if retested. Individuals with this profile my experience panic episodes though none were reported by Mr. Knuth. Because of the primary complaint of difficulty with attention and failing to meet deadlines, a battery of ADHD tests including the Conners' Rating Scales, completed by the client and his wife, and the CPT-2, which is an in-office test of vigilance were completed. The results together with the early educational achievement pattern, high achievement based primarily upon classroom exposure to information alone, suggest a gifted individual with a moderate attention disorder. Combining this with the earlier

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information, the presentation is that of an intellectually gifted individual with a mild to moderate attentional difficulty exacerbated by anxiety related to post-divorce adjustment. I would like to emphasize that the severity of the post-divorce challenges that Mr. Knuth reported were in my opinion quite high and I have been a facilitator for divorce recovery groups for some time.

Based upon my assessment I would diagnose Mr. Knuth as experiencing a combination of Adjustment Disorder with Mixed Emotional Features (309.28) and a mild to moderate attention disorder, 314.9 ADHD, Not Otherwise Specified. If I had seen him earlier in this cycle of events, he likely would have warranted a more severe diagnosis such Major Depressive Episode or Anxiety Disorder, Not Otherwise Specified. The relationship between these diagnoses and his misconduct is clear. Depression lowers energy levels often leading to work impairment failure to complete deadlines, and more importantly, exacerbates concentration difficulties leading likely to a pattern of poor work performance. Anxiety also leads to decrements in work performance and would also exacerbate work difficulties. In my medical opinion, based upon the information at hand this is the most likely explanation for what happened. Based upon interview data presented by the client and his wife, it is also my medical opinion that the problems noted would most likely not have occurred had the client's adjustment disorder not developed as it did in response to the stress of his divorce and the subsequent alienation from his family.

The client's treatment program consisted of some twelve sessions during the aforementioned period. His treatment consisted of a combination of direct treatment of anxiety-based symptoms through a treatment technique known as EMDR which is approved by the Pentagon and the VA; psycho-educational material focusing both on anxiety and ADHD; supportive psychotherapy and finally, referral for follow-up care. Mr. Knuth has participated in specific coaching regarding attention disorders and organizational strategies. Most importantly, he has expressed his willingness to repair the mistakes of this past period. At the time of my last contact with him in July, 2007; he seemed much more relaxed and ready to move ahead based upon his new knowledge and changed mood. Specifically, he had been directed to obtain follow-up care and he has requested that I send his records to a provider in his new community.

My understanding is that Mr. Knuth very much wishes to remain a patent attorney. From my understanding of the field, he seems very well qualified by interests and education. He has made a commitment to address issues head-on as they occur, daily if need be and more importantly, he has a concrete plan with aids and the assistance of his wife to ensure he continues to combat these issues. His plan includes time to work on daily organizational tasks and fix the lapses of the past. Also importantly, he has moved closer to his family and daughter which have resulted in less reported stress. He has reportedly reduced the number of clients and has taken on additional interesting work which is an important aspect of managing ADHD as interesting work often equates with better attention. By all apparent reports, the relief from depression and anxiety has arrested the

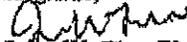
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misconduct. Given that both the client and his wife were involved in the treatment program and that he has already made arrangements for follow-up care in his new residence, a reoccurrence of the circumstances initiating this treatment seem unlikely.

In short, Mr. Knuth's poor work performance and misconduct appears to be related to a stressful period that exacerbated pre-existing, but hidden vulnerabilities. He and his wife have participated actively in treatment. No significant symptoms were present by the end of treatment of anxiety or depression. Mr. Knuth participated in coaching on adopting his work style to attentional weaknesses in effective ways. He reports good success with the modifications to date and has already arranged follow-up care in his new location. Based upon these findings, I recommend without reservation he continue to practice law without restriction.

Regards,

John W. Fite, Ph.D.
Licensed Psychologist

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Certificate of Service

I certify that a copy of this RESPONSE TO ORDER TO SHOW CAUSE AND MOTION TO SUPPLEMENT THE RECORD hand delivered to the Office of Stacy Bechman at the Ohio Disciplinary Counsel, 250 Civic Center Drive Suite 325, Columbus Ohio on May 19, 2008.



By Randall J. Knuth (Reg. no. 0046820)
Respondent.