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DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

**BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

EDWARD FRANCIS RYAN,

Commission No. 08 CH 113

Attorney-Respondent,

FILED - November 14, 2008

No. 2430355.

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorneys, Scott Renfroe and Allison L. Wood, pursuant to Supreme Court Rule 753(b), complains of Respondent Edward Francis Ryan ("Respondent"), who was licensed to practice law in Illinois on November 14, 1968, and alleges that Respondent has engaged in the following conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute. In support, the Administrator states:

COUNT I

(Falsifying time on Town & Country Invoices)

a. Background

1. In 2000, Respondent became a partner in the Chicago office of Holland & Knight, LLP, ("Holland & Knight"), where he concentrated his practice in commercial litigation.
2. Between August 2002 and December 2004, Holland & Knight represented Pinnacle Corporation in a copyright infringement case docketed as, *The Rottlund Company, Inc., d/b/a Rottlund Homes v. Pinnacle Corporation d/b/a Town Country Homes, Town & Country Homes of Illinois, Inc., and Town & Country Homes, Inc., a Minnesota Corporation*, case no. 01 CV 1980, which was pending in the United States District Court for the District of Minneapolis before Judge David S. Doty (herein "*Rottlund* litigation").
3. During the pendency of the *Rottlund* litigation, Pinnacle Corporation was an affiliate of Town & Country Homes ("Town & Country"), a residential real estate development company that was organized by Respondent's brother, William G. Ryan, in the late 1950's. Since 1970, Respondent, who was affiliated with or a partner in various law firms, represented Town & Country in a variety of matters including litigation, and he has been the billing partner and overall supervising attorney on all matters for Town & Country.
4. During the pendency of the *Rottlund* litigation, Holland & Knight attorneys Matthew Farmer, Scott

Petersen, Christopher Carmichael, Christopher Murdoch, Karen Tournier, and Eric Dorkin, as well as paralegals Hope Geisler and Lisa Davlin, were assigned to perform various tasks and to provide services related to the *Rottlund* litigation. These attorneys and paralegals are collectively referred to as the "*Rottlund* timekeepers".

5. During the pendency of the *Rottlund* litigation, the *Rottlund* timekeepers collectively performed a multitude of tasks, including court appearances, taking and defending depositions, drafting pleadings and other documents, organizing and reviewing discovery documents, and conducting legal research.

6. On a regular basis, the *Rottlund* timekeepers, as well as other attorneys, paralegals, and support staff at Holland & Knight, prepared computerized records of time expended and of services provided regarding the client matters assigned to them. These computerized records were prepared at or about the time of the events they described, and were then forwarded to the firm's accounting department, where they were sorted by client or by client matter, from which a billing memorandum ("pre-bill") for each client was created. The pre-bill contained descriptive entries of the services performed and the time expended for those services, relative to each worker assigned to the matter, as well as expenses incurred by the firm for a specific period. For client matters that were billed on an hourly basis, the amount of time billed by each worker, multiplied by the worker's billable rate, determined what charge was listed on the pre-bill.

7. Every month during the period between August 2002 and March 2004, the pre-bill for Town & Country, which contained time entries and a description of services performed by the *Rottlund* timekeepers, was forwarded to Respondent for review, editing, and approval. After making adjustments to the pre-bill, Respondent forwarded the pre-bill to the Holland & Knight accounting department, which processed the pre-bill into an invoice that reflected the total amount of fees and expenses to be charged by Holland & Knight relative to the *Rottlund* litigation for that month.

8. Every month during the period between August 2002 and March 2004, Holland & Knight issued monthly invoices to Town & Country and those invoices were paid by Pinnacle Corporation.

b. Respondent's claimed activities in the *Rottlund* litigation

9. For the dates December 9, 10, 11, 12, and 13, 2002, Respondent recorded a total of 25.40 hours as time he claimed to have expended relative to the *Rottlund* litigation. For each of these five dates, Respondent recorded the following entry:

Review documents produced re: copyright issues; review BSB¹ pleading and discovery issues; attention to issues re: preparation of client representatives for depositions.

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¹ BSB refers to a third party defendant in the *Rottlund* litigation.

10. During the period from December 9, 2002 through December 13, 2002, *Rottlund* timekeeper Matthew Farmer ("Farmer") recorded time expended to prepare for depositions. None of Farmer's entries for that period made any reference to Respondent.

11. During the period from December 9, 2002 through December 12, 2002, *Rottlund* timekeeper Scott Petersen ("Petersen") recorded time expended to prepare for depositions. None of Petersen's entries for that period made any reference to Respondent.

12. For the dates December 17, 18, 19, and 20, 2002, Respondent recorded a total of 15.30 hours as time he

claimed to have expended relative to the *Rottlund* litigation. For each of these four dates, Respondent recorded the following entry:

Review documents produced by parties, including BSB; attention to preparation of witnesses for depositions; review discovery strategy.

13. During the period from December 17, 2002 through December 20, 2002, Farmer recorded time to prepare for and to attend depositions. Respondent did not attend any depositions during that period. Farmer's entry for December 19, 2002 makes no reference to Respondent, and Farmer did not record any time relative to the *Rottlund* litigation on December 20, 2002.

14. On December 18, and 19, 2002, Petersen recorded time preparing for depositions that were conducted on December 19, and 20, 2002. Neither of Peterson's entries for that period make any reference to Respondent, nor did Respondent attend any depositions on those dates.

15. For the dates January 12, 13, 14, 15, 16, and 17, 2003, Respondent recorded a total of 24.20 hours as time he claimed to have expended relative to the *Rottlund* litigation on those dates. For each of these six dates, Respondent recorded the following entry:

Review recent response and reply briefs re: cross motions to compel; preparation for hearing before court; telephone conferences with M. Farmer.

16. On January 12, 2003, Farmer did not record any time relative to the *Rottlund* litigation. On January 13, 2003, Farmer's entry makes no reference as having communicated with Respondent. On January 14, 2003, Farmer traveled to Minnesota, and on January 15, 2003, he attended a court hearing relative to the *Rottlund* litigation regarding various discovery issues. Respondent did not travel to Minnesota, nor did he appear in court on January 15, 2003, or otherwise participate in the hearing. Farmer's entry on January 15, 2003 makes no reference as having communicated with Respondent.

17. On January 16, 2003 and January 17, 2003, Farmer recorded entries describing legal research he conducted and revisions he performed relative to a response to motions for sanctions. Neither of Farmer's entries makes any reference to any communication with Respondent.

18. For the dates February 24, 25, and 26, 2003, Respondent recorded a total of 10.60 hours as time he claimed to have expended relative to the *Rottlund* litigation. For each of these three dates, Respondent recorded the following entry:

Attention to preparation for depositions of witnesses, including BSB personnel, review deposition documents.

19. For the dates February 24, 25, 26, 2003, Farmer recorded entries describing time he expended preparing for depositions. None of Farmer's entries for that period make any reference to Respondent.

20. For the dates February 24, and 25, 2003, Petersen recorded entries describing his review of a memorandum in support of a motion to dismiss and his review of proposed deposition questions for a *Rottlund* employee. Neither of these entries made any reference to Respondent. Petersen did not record time relative to the *Rottlund* litigation on February 26, 2003.

21. For the dates February 27, and 28, 2003, Respondent recorded a total of 8.90 hours as time he claimed to have expended relative to the *Rottlund* litigation. For these two dates, Respondent recorded the following entry:

Review Pinnacle documents re: preparation for depositions, review of BSB documents re: deposition of BSB personnel in Iowa.

22. For the dates February 27, and 28, 2003, Farmer recorded entries describing time he expended preparing for depositions. Neither of these two entries makes any reference to Respondent.

23. For the dates March 3, 4, 5, 6, and 7, 2003, Respondent recorded a total of 25.10 hours as time he claimed to have expended relative to the *Rottlund* litigation. For each of these five dates, Respondent recorded the following entry:

Review key documents; attention to preparation for BSB deposition; review and analyze defense strategy going forward.

24. From March 3, 2003 through March 7, 2003, Farmer recorded entries that described time he spent attending depositions for witnesses identified as being affiliated with BSB Illinois and BSB Iowa. None of those entries made by Farmer made any reference to Respondent, and Respondent did not attend any of these depositions.

25. For the dates March 10, 11, 12, 13, and 14, 2003, Respondent recorded a total of 21.30 hours as time he claimed to have expended relative to the *Rottlund* litigation. For each of these five dates, Respondent recorded the following entry:

Review deposition materials re: analysis of overall litigation issues and preparation of defense strategy re: taking depositions of plaintiff witnesses; attention to analyzing expert issues.

26. On March 10, 2003 and March 11, 2003, Farmer recorded entries describing time he expended preparing for depositions. Neither of Farmer's entries made any reference to Respondent. On March 12, 2003 Farmer recorded time he expended reviewing documents and correspondence, and investigating design issues. There is no reference to Respondent in Farmer's March 12, 2003 entry, and Farmer recorded no time relative to the *Rottlund* litigation on March 13, 2003.

27. During the period from March 10, 2003 through March 14, 2003, Respondent did not attend any depositions relative to the *Rottlund* litigation. During that same period, there were no entries by any *Rottlund* timekeepers that referenced the taking of any depositions, or that referenced any communications with Respondent. No other *Rottlund* timekeeper recorded time expended relative to the *Rottlund* litigation on March 13, 2003, or March 14, 2003.

28. For the dates March 17, 18, 19, 20, and 21, 2003, Respondent recorded a total of 25.90 hours as time he claimed to have expended relative to the *Rottlund* litigation. For each of these five dates, Respondent recorded the following entry:

Reviewing transcripts of depositions of BSB employees; analysis of defenses to claims; attention to supplementing expert testimony.

29. For the dates March 24, 25, 26, 27, 28, 2003, Respondent recorded a total of 26.40 hours as time he claimed to have expended relative to the *Rottlund* litigation. For each of these five dates, Respondent recorded the following entry:

Review deposition transcripts of key BSB personnel; attention to reviewing related documents and drawings; review and revise pre-trial discovery and motion strategy.

30. During the period from March 17, 2003 through March 31, 2003, Farmer recorded 10 entries for time he expended relative to the *Rottlund* litigation. Of the 10 entries made by Farmer, only two entries, one on March 28, and one on March 31, make reference to Respondent.

31. From June 2, 2003 through June 10, 2003, Respondent recorded a total of 34.80 hours relative to the *Rottlund* litigation and described the tasks he performed as: reviewing key architectural and client documents; analysis of deposition transcripts; preparation of various depositions; and reviewing discovery strategy issues.

32. During the period from June 3, 2003 through June 10, 2003, Farmer recorded time that he spent preparing for depositions that took place during that period. None of Farmer's entries for that period made any reference to Respondent, and Respondent did not attend any of the depositions that were conducted during that period.

33. For the dates August 1, 4, 5, and 6, 2003, Respondent recorded a total of 20.60 hours as time he claimed to have expended relative to the *Rottlund* litigation. For each of these four dates, Respondent recorded the following description:

Review deposition transcripts and exhibits; attention to preparation of strategy re: taking of next wave of depositions; preparation for depositions.

34. On August 1, 2003, Farmer recorded time he expended preparing for depositions. That entry makes no reference to Respondent. On August 3, 2003, Farmer recorded time to travel to a deposition and on August 4, 2003, Farmer recorded time at that deposition. Farmer's time entries made no reference to Respondent, nor did Respondent attend the August 4, 2003 deposition. On August 5, and 6, 2003, Farmer recorded time preparing for a deposition. Farmer's time entries made no reference to Respondent.

35. During the period from August 1, 2003 through August 6, 2003, *Rottlund* timekeeper Christopher Murdoch ("Murdoch") recorded time for preparing for depositions and for taking depositions during that period. None of the entries recorded by Murdoch made reference to Respondent, and Respondent did not attend any of the depositions that were taken during that period.

36. For the dates October 6, 7, 8, and 9, 2003, Respondent recorded a total of 15.80 hours as time he claims to have expended relative to the *Rottlund* litigation. For each of these four dates, Respondent recorded the following description:

Attention to analysis.

c. Respondent's alteration of time records

37. Each month between August 2002 and March 2004, Respondent recorded the time he claimed to have spent on the *Rottlund* litigation, and forwarded that time to Holland & Knight's accounting department for processing.

38. Each month between August 2002 and March 2004, the time recorded by the *Rottlund* timekeepers and the time recorded by Respondent was captured in the Town & Country pre-bill, which was forwarded to Respondent for review and approval.

39. The entries recorded by Matthew Farmer, Scott Petersen, Christopher Carmichael, Christopher Murdoch, Karen Tournier, Eric Dorkin, Hope Geisler and Lisa Davlin between August 2002 and March 2004 accurately reflected the time spent on the *Rottlund* litigation by each of these individual *Rottlund*

timekeepers.

40. Each month between August 2002 and March 2004, Respondent revised the pre-bills by reassigning time and descriptions of services he claimed to have performed relative to the *Rottlund* litigation, as reflected in the chart below, such that the vast majority of Respondent's time was reassigned to other *Rottlund* timekeepers, and references to time recorded by Respondent were removed:

Time period of pre-bills submitted by Respondent	Total hours reflected in the pre-bills as originally recorded by Respondent	Total number of hours reassigned by Respondent	Total number of hours for Respondent reflected in invoices sent to Town & Country
8/02 - 4/04	1670.50	1389.10	281.40

41. Each month between August 2002 and March 2004, Respondent revised the pre-bills by shifting time Respondent originally recorded, and the descriptions of services Respondent claimed to have provided, to other *Rottlund* timekeepers, such that the time recorded by various *Rottlund* timekeepers was altered as follows:

Rottlund timekeeper	Time period of pre-bills submitted by each timekeeper	Total hours reflected in the pre-bills as originally recorded by each timekeeper	Total number of Respondent's hours reassigned by Respondent to each timekeeper	Total number of hours for each timekeeper as reflected in invoices sent to Town & Country
Matthew Farmer	8/02 - 4/04	2978.80	355.90	3334.70
Scott Peterson	8/02 - 2/03	435.50	864.90	1300.00
Chris Carmichael	11/02 -10/03	246.00	269.10	515.10
Chris Murdoch	7/03 - 4/04	981.20	343.70	1324.90
Hope Geisler	11/02 -12/02	49.90	79.80	129.70
Lisa Davlin	02/03- 12/03	42.80	14.60	57.40
Eric	01/04	18.30	20.00	38.30

Dorkin				
Karen Tournier	01/04 -3/04	20.30	17.80	38.10

42. Each time that Respondent added hours on the pre-bills for the *Rottlund* litigation, for each of the various *Rottlund* timekeepers, Respondent knew that the time he added had not actually been billed or performed by the *Rottlund* timekeeper reflected on the final monthly bill, and that those services had been provided, if at all, by Respondent.

43. For each month during the period between August 2002 and March 2004, Respondent forwarded the altered pre-bills for the *Rottlund* litigation, with his revisions of time to various *Rottlund* timekeepers, to the Holland & Knight accounting department. Respondent knew that his attributions of time to various *Rottlund* timekeepers, including descriptions of time they had not expended, would be adopted into an invoice that the firm would issue to Town & County.

44. For each month during the period between August 2002 and March 2004, the Holland & Knight accounting department sent invoices to Town & Country that contained all of the revisions made in the pre-bills by Respondent as described in paragraphs 40 and 41 above, including descriptions of time that had not actually been expended, and Pinnacle paid those invoices.

45. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct; and
- b. conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 770.

COUNT II

(False representations made to a tribunal)

46. The Administrator realleges paragraphs 1 through 44 above.

47. The *Rottlund* litigation was tried before a jury during the months of November and December 2004. Respondent did not participate in the trial. The jury returned a verdict in favor of all of the defendants, including Pinnacle Corporation and its affiliates.

48. On or about January 20, 2005, Respondent and Holland & Knight, on behalf of Pinnacle Corporation, caused to be filed "Defendant's Motion for An Award of Attorneys' Fees and Costs Pursuant to the Copyright Act, 17 U.S.C. ? 505 and Federal Rule of Civil Procedure 54(d)(2)" (herein "Fee Motion").

49. The Fee Motion, and its supporting memorandum signed by Respondent, claimed that Town & Country was entitled to recover its fees from the *Rottlund* litigation. The amount of attorney fees and costs sought in the Fee Motion was \$5,524,309.06, relative to the defense of the *Rottlund* litigation from February 2002 through July 2005. Submitted to the judge as part of the request were summaries of the attorneys' fees, costs, and expenses incurred by Holland & Knight relative to the *Rottlund* litigation, taken from the invoices that had been sent to Town & Country. At page 14 of the supporting memorandum, Respondent made the following statements:

The starting point in determining if a requested fee award is reasonable

is the lodestar method, which is calculated by multiplying the number of hours reasonably expended by a reasonable hourly rate. *Bailey v. Runyon*, 50 F. Supp. 2d 891,893-94 (D. Minn. 1999); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433-36 (1983)("A request for fees should not result in a second major litigation").

The *in camera* declaration of Edward F. Ryan, Darren Schwiebert, and Ben Patrick sets forth the hours expended and the rates charged for the attorneys who worked on this matter.

50. In support of the Fee Motion, Respondent also executed an affidavit wherein Respondent attested that he was responsible for all of the billing in the *Rottlund* litigation, and he certified "that the attached exhibits are true and correct compilations of the bills submitted to Pinnacle in conjunction with this matter, minus certain items and discounts as stated in the memorandum of law in support of the motion for attorneys' fees and costs."

51. Respondent knew or should have known that the summaries of the attorneys' fees, costs, and expenses incurred by Holland & Knight relative to the *Rottlund* litigation was material to the Fee Motion to recover fees, and that it would be relied upon by the court to rule on the Fee Motion.

52. Respondent knew that the information contained in the summaries of the attorneys' fees, costs, and expenses incurred by Holland & Knight, taken from the invoices submitted to Town & Country, did not accurately reflect the "hours expended and the rates charged for the attorneys who worked on [the *Rottlund* litigation]", because he had altered the entries on the pre-bills relative to various *Rottlund* timekeepers, as described in Count I above.

53. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. made a statement of material fact or law to a tribunal which the lawyer knows or reasonable knows is false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;
- b. offered evidence before a tribunal that the lawyer knows to be false, in violation of Rule 3.3(a)(4) of the Illinois Rules of Professional Conduct;
- c. conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct; and
- d. conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 771.

COUNT III
(False representations made to a tribunal)
(Connecticut Specialty)

54. The Administrator realleges paragraphs 1 through 52 above.

55. In 2002, at the commencement of the *Rottlund* litigation, the insurance carrier for Pinnacle Corporation was Connecticut Specialty Insurance Company ("Connecticut Specialty"). Pinnacle Corporation notified Connecticut Specialty about the *Rottlund* litigation and made a demand that Connecticut Specialty pay the cost of its defense. Connecticut Specialty refused Pinnacle Corporation's demand.

56. In December 2003, Connecticut Specialty filed an action in the 4th Judicial Circuit of Minnesota that was

docketed as *Connecticut Specialty Insurance Company v. Pinnacle Corporation d/b/a Town & Country Homes et al.*, case no. 27CV03-015259, before Judge Janet N. Poston seeking a declaration that Connecticut Specialty was not required to provide insurance coverage to Pinnacle Corporation or its affiliates relative to the *Rottlund* litigation.

57. On May 14, 2004, Connecticut Specialty filed a motion for summary judgment against Pinnacle Corporation in case no. 27CV03-015259, and on June 1, 2004, Pinnacle Corporation filed a motion for summary judgment against Connecticut Specialty relative to the issues of a duty to defend and indemnify.

58. On January 11, 2005, Judge Poston granted Pinnacle Corporation's motion for summary judgment in case no. 27CV03-015259, and ruled that Connecticut Specialty had a duty to defend and indemnify Pinnacle Corporation and its affiliates in the *Rottlund* litigation.

59. On July 25, 2005, Pinnacle Corporation and its affiliates moved the court in case no. 27CV03-015259, to award them attorneys' fees incurred in the *Rottlund* litigation, as well as the fees incurred in defending Connecticut Specialty's action for declaratory relief. In support of its motion for attorney fees in case no. 27CV03-015259, Respondent and Holland & Knight submitted the same legal bills and the same *in camera* declaration by Respondent as described in paragraphs 49 and 50 above.

60. Respondent knew or should have known that the legal bills submitted by Holland & Knight relative to the *Rottlund* Litigation was material to Pinnacle Corporation's request for attorney fees, and that the legal bills would be considered by the court in deciding whether or not to grant Pinnacle Corporation's request.

61. Respondent knew that the information contained in the legal bills, taken from the invoices that were submitted to Town & Country, did not accurately reflect the time spent by him or the time spent by the various *Rottlund* timekeepers, because he had altered the entries on the pre-bills relative to various *Rottlund* timekeepers, as described in Count I above.

62. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. made a statement of material fact or law to a tribunal which the lawyer knows or reasonable knows is false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;
- b. offered evidence before a tribunal that the lawyer knows to be false, in violation of Rule 3.3(a)(4) of the Illinois Rules of Professional Conduct;
- c. conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct; and
- d. conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 771.

WHEREFORE, the Administrator respectfully requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin,
Administrator
Attorney Registration
and

Disciplinary Commission

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