

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

In the Matter of:

Ian P. Coyle,

Respondent.

Proceeding No. D2016-16

July 27, 2016

INITIAL DECISION ON DEFAULT JUDGMENT

On July 8, 2016, the Director of the Office of Enrollment and Discipline (OED Director) for the United States Patent and Trademark Office (USPTO or Office) filed a *Memorandum in support of Motion for Entry of Default Judgment and Imposition of Disciplinary Sanctions* (Default Motion) in the above-captioned matter.¹

PROCEDURAL HISTORY

On April 8, 2016, the OED Director filed a Two-Count Complaint and Notice of Proceedings under 35 U.S.C. § 32 ("Complaint") against Respondent. The Complaint stated that Respondent was required to file his written answer with the Tribunal within 30 days from the date of the Complaint. The Complaint alerted Respondent that a decision by default could be entered if a written answer was not timely filed.

Also on April 8, 2016, the OED Director served the Complaint on Respondent pursuant to 37 C.F.R. § 11.35(a)(2)(i) by mailing a copy of the Complaint via U.S. certified mail, return receipt requested, to the address provided by Respondent to the OED Director pursuant to 37 C.F.R. § 11.11(a), namely: Dr. Ian P. Coyle, IP Coyle Intellectual Property Agency, 205 N.E.12th Avenue, Ft. Lauderdale, FL 33301.² The Complaint was returned to the Office by the United States Postal Service marked "Return to Sender; Attempted—Not Known; Unable to Forward." See attached Exhibit A.

On April 11, 2016, this Court issued a *Notice of Hearing and Order* in this matter, establishing a hearing in this matter at 10:00 a.m. on August 9, 2016, in Washington, DC at the U.S. Courtroom in the HUD Office of Hearings and Appeals, 409 3rd Street, SW, Suite 201.

¹ Pursuant to an Interagency Agreement in effect beginning March 27, 2013, Administrative Law Judges of the U.S. Department of Housing and Urban Development are authorized to hear cases brought by the U.S. Patent and Trademark Office.

² 37 C.F.R. § 11.11(a) requires a registered practitioner such as Respondent to provide written notice to the OED Director of any change in his or her postal address within thirty days of the date of the change.

Because the service copy of the Complaint was returned, the USPTO served Respondent by publication as permitted by 37 C.F.R. § 11.35(b). This regulation permits service by publishing a notice in two consecutive issues of the USPTO *Official Gazette* informing the reader of the disciplinary proceedings initiated against Respondent and providing instructions on how to obtain a copy of the Complaint. The two required notices were published on May 24, 2016 and May 31, 2016. Copies of the published notice are attached. *See* Exhibit B.

On June 28, 2016, counsel for the OED Director sent Respondent a letter by regular mail to the address listed in the Complaint notifying Respondent that no answer to the Complaint had been received by the OED Director. Pursuant to 37 C.F.R. § 11.43, the June 28 letter further informed Respondent that counsel for the OED Director intended to file a Motion for Default Judgment and Imposition of Disciplinary Sanction and invited Respondent to contact her prior to the motion being filed so that they could discuss the possibility of resolving the motion voluntarily. *See* attached Exhibit C.

As of the date of the filing of this *Decision*, Respondent has not answered the *Complaint*, sought an extension of time to do so, or responded to the *Notice of Hearing and Order*, or OED counsel's letter.

APPLICABLE LAW

The USPTO has the “exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it.” Kroll v. Finnerty, 242 F.3d 1359, 1364 (Fed. Cir. 2001). The Director of the USPTO may suspend or exclude a person from practice before the USPTO if the person is “shown to be incompetent or disreputable, or guilty of gross misconduct,” or if the person violates regulations established by the Office. 35 U.S.C. § 32. The OED Director has the burden of proving alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49. The Respondent must prove any affirmative defense by clear and convincing evidence. Id.

COUNTS ALLEGED IN COMPLAINT

COUNT I

(Neglect, failure to communicate, failure to perform services, failure to return unearned fees)

- a. Failing to act with reasonable diligence and promptness in representing a client, by not conducting a prior art search or preparing and filing a patent application for Dr. Alsaidan as he was hired and paid in advance to do, in violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct;
- b. Failing to keep the client reasonably informed about the status of a matter, by not providing information about the status of the patent legal services for which he was hired to perform, including not responding to numerous telephone calls or emails from the client about the status of Dr.

Alsaidan's application, in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct;

c. Failing to promptly comply with a client's reasonable requests for information, by not responding to Dr. Alsaidan's numerous telephone calls and emails about the status of his matter, in violation of 37 C.F.R. § 11.104(a)(4) of the USPTO Rules of Professional Conduct;

d. Failing to promptly deliver to the client any funds that the client is entitled to receive, by not refunding to Dr. Alsaidan the \$900 advance fee paid to Respondent that Dr. Alsaidan was entitled to receive for legal services Respondent never performed, in violation of 37 C.F.R. § 11.115(d) of the USPTO Rules of Professional Conduct;

e. Failing to refund any advance payment of fees or expenses that has not been earned or incurred, by not refunding the \$900 fee paid by Dr. Alsaidan in advance for legal services that Respondent never performed upon termination of the practitioner-client relationship, in violation of 37 C.F.R. § 11.116(d) of the USPTO Rules of Professional Conduct;

f. Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by being dishonest and keeping the \$900 fee paid by Dr. Alsaidan in advance without having performed the legal services for which he was paid, in violation of 37 C.F.R. § 11.804(c) of the USPTO Rules of Professional Conduct; and/or

g. Engaging in the acts and omissions set forth above that adversely reflect on Respondent's fitness to practice before the Office, such as abandoning his client, which do not otherwise violate specific misconduct provisions of the USPTO Rules of Professional Conduct, in violation of 37 C.F.R. § 11.804(i)

COUNT II

(Failure to cooperate with a disciplinary investigation)

a. Failing to cooperate with the Office of Enrollment and Discipline in an investigation and knowingly failing to respond to a lawful demand for information, by failing to respond to OED's First RFI despite receiving it, and/or refusing to accept delivery of OED's Lack of Response letter of July 20, 2015, or to respond to it, in violation of 37 C.F.R. § 11.801(b) of the USPTO Rules of Professional Conduct; and/or

b. Engaging in conduct that is prejudicial to the administration of justice, by failing to respond to OED's First RFI despite receiving it, and/or refusing to accept delivery of OED's July 20, 2015 Lack of Response letter, or to respond to it, in violation of 37 C.F.R. § 11.804(d) of the USPTO Rules of Professional Conduct.

CONSEQUENCES OF FAILURE TO ANSWER COMPLAINT

Section 11.36 of Title 37 of the Code of Federal Regulations (C.F.R.) sets forth the requirement for answering the *Complaint* and the consequences for not doing do. "Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment." 37 C.F.R. § 11.36(e). As a result of Respondent's failure to answer the *Complaint*, Respondent is deemed to have admitted the allegations in the *Complaint*, which are set below as the Court's findings of fact.

FINDINGS OF FACT

1. Respondent was registered by the USPTO as a patent agent on April 13, 2009 (Registration Number 64,216).
2. Respondent's acts and omissions leading to the alleged violations of the Rules set forth in this Complaint were willful.
3. On March 9, 2015, Dr. Mohammed Alsaidan ("Dr. Alsaidan") contacted Respondent to conduct a prior art search and to prepare and file a patent application for Dr. Alsaidan's invention for an improved biopsy device.
4. On March 14, 2015, Dr. Alsaidan consulted with Respondent about his improved biopsy device.
5. On March 16, 2015, Respondent sent Dr. Alsaidan a proposal for patent legal services: to conduct a prior art search and to prepare and file a non-provisional patent application.
6. On March 18, 2015, Dr. Alsaidan accepted Respondent's proposal and electronically transferred \$900 to Respondent as an advance payment toward the agreed upon \$1,800 fee.
7. Respondent received the funds and, on April 9, 2015, provided a receipt to Dr. Alsaidan for the \$900 advance fee.
8. On or about April 23, 2015, Dr. Alsaidan sent further details regarding his invention to Respondent.
9. On April 29, 2015, Dr. Alsaidan sent an email requesting an update from Respondent.
10. Respondent did not respond to the April 29, 2015 email.
11. On May 3, 2015, Dr. Alsaidan sent an email requesting an update from Respondent.
12. Respondent did not respond to the May 3, 2015 email.

13. On May 8, 2015, Dr. Alsaidan sent an email requesting an update and a time estimate from Respondent.

14. Respondent did not respond to the May 8, 2015 email.

15. On May 13, 2015, Dr. Alsaidan sent an email to Respondent noting that he had sent three previous emails without receiving any response, stating that he had also left telephone messages that were not returned, and requesting Respondent to please respond.

16. Respondent did not respond to the May 13, 2015 email.

17. On May 21, 2015, Dr. Alsaidan sent an email requesting a refund of his transferred money if Respondent was not able to draft a patent application.

18. Respondent did not respond to the May 21, 2015 email, nor did he return Dr. Alsaidan's advance fee.

19. On May 25, 2015, Dr. Alsaidan sent an email to Respondent noting that he had not received any response from Respondent over the last six weeks.

20. Respondent did not respond to the May 25, 2015 email.

21. On May 28, 2015, Dr. Alsaidan sent an email to Respondent referencing his earlier calls and emails and requesting a response.

22. Respondent did not respond to the May 28, 2015 email.

23. In May or June 2015, Dr. Alsaidan, frustrated with Respondent's lack of response to his multiple attempts to communicate, attempted to personally visit Respondent at his business address. Upon arriving at the address, Dr. Alsaidan discovered it appeared to be a residence and that no one was there.

24. Upon information and belief, Respondent did not conduct a prior art search as he had agreed to do on Dr. Alsaidan's behalf.

25. Upon information and belief, Respondent did not prepare a patent application as he had agreed to do on Dr. Alsaidan's behalf.

26. Respondent did not file a patent application with the USPTO as he had agreed to do on Dr. Alsaidan's behalf.

27. Even though Dr. Alsaidan paid Respondent \$900 to conduct a prior art search and to prepare and file a patent application for his invention for an improved biopsy device, upon information and belief, Respondent did not perform any legal services for Dr. Alsaidan and did not return the \$900 fee paid in advance.

28. From the foregoing, it is inferred that Respondent abandoned Dr. Alsaidan as a client.

29. The practitioner-client relationship between Respondent and Dr. Alsaidan effectively terminated upon Respondent's abandonment of Dr. Alsaidan as a client.

30. After the termination of the practitioner-client relationship, Respondent did not return the unearned fee that Dr. Alsaidan was entitled to receive due to Respondent's failure to perform the agreed-upon legal services.

31. Respondent has not returned the \$900 fee paid in advance to him by Dr. Alsaidan.

32. On June 15, 2015, the Office of Enrollment and Discipline ("OED") mailed to Respondent, at the address he had previously provided to the OED Director pursuant to 37 C.F.R. § 11.11, a Request for Information and Evidence Under 37 C.F.R. § 11.22(f) (the "First RFI"), requesting information regarding Dr. Alsaidan's grievance (detailed above in Count I).

33. The First RFI was lawfully issued pursuant to 37 C.F.R. § 11.22(f)(1)(ii).

34. The First RFI requested that Respondent respond within thirty days, or on or before July 15, 2015.

35. The First RFI was delivered to Respondent on June 19, 2015, and the Certified Mail Receipt was signed by him.

36. A copy of the First RFI was also emailed to Respondent at ian@iancoyle.net and did not bounce back.

37. Respondent did not respond to the First RFI on or before July 15, 2015.

38. On July 20, 2015, OED mailed a Lack of Response letter to Respondent, noting that he had failed to respond to the First RFI. The letter provided Respondent with another copy of the First RFI.

39. A copy of the letter was also emailed to Respondent.

40. The July 20, 2015 letter gave Respondent fourteen days to respond, or until no later than August 3, 2015.

41. The July 20, 2015 letter was returned to OED by the U.S. Postal Service as unclaimed and unable to be forwarded.

42. The email sending a copy of the July 20, 2015 letter was not successfully delivered due to a problem with Respondent's email server either being offline or unable to accept messages.

43. Respondent did not respond to the July 20, 2015 letter, or to the First RFI, on or before August 3, 2015.

44. On December 16, 2015, OED sent another letter to Respondent noting his failure to respond, outlining the potential rule violations being considered, and asking that he contact OED.

45. The December 16, 2015 letter was returned to OED by the U.S. Postal Service, which noted "return to sender, not deliverable as addressed, unable to forward."

46. As of the date of the filing of this Complaint, Respondent has not responded to the First RFI.

47. Registered practitioners have a duty to notify the OED Director of any change of address within 30 days of the date of such change. 37 C.F.R. § 11.11(a).

43. Respondent has not notified the OED Director of any change of address.

DISCUSSION

At all times relevant to this Complaint, Respondent of Ft. Lauderdale, FL, was a patent agent registered to practice before the USPTO and subject to the USPTO Rules of Professional Conduct, which are set forth at 37 C.F.R. §§ 11.101 through 11.901. This Tribunal has jurisdiction over this proceeding pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.19, 11.32, and 11.39.

Respondent failed to advise the OED Director of his current contact address, and was therefore served in this action by publication as authorized by 37 C.F.R. § 11.35(b). Having failed to respond to the *Complaint*, the *Notice of Hearing and Order*, and the *Motion for Default Judgment*, Respondent is in default, and the matter is ripe for ruling.

Based upon the foregoing findings of fact, confirming the allegations in the *Complaint*, the Court concludes that Respondent violated the USPTO Rules of Professional Conduct as alleged. Respondent agreed to undertake the representation of Dr. Alsaidan, and received \$900 as an advance fee from Dr. Alsaidan to conduct a prior art search and prepare and file a patent application. Thereafter, Respondent failed to respond to multiple requests for communication from Dr. Alsaidan, did not do the work he was hired to do (namely, conduct a prior art search and prepare and file a patent application), and failed to refund Dr. Alsaidan's fee paid in advance, even though he provided no legal services to Dr. Alsaidan. Respondent, in abandoning the matter entrusted to him by Dr. Alsaidan, ignored his duties to his client.

In addition to his misconduct in connection with his representation of Dr. Alsaidan, Respondent also engaged in misconduct with respect to the investigation conducted by the Office of Enrollment and Discipline ("OED") and this disciplinary proceeding. Respondent failed to respond to a lawful request for information ("RFI") from OED, despite having received it, did not respond to subsequent letters from OED, failed to answer the Complaint filed by the OED Director, and failed to respond to a letter informing him of the OED Director's intention to file a Motion for Default Judgment.

SANCTIONS

Having found the Respondent violated USPTO Rules of Professional Conduct, the Court must determine an appropriate sanction. Before sanctioning a practitioner, the Court must consider the following four factors:

(1) whether the practitioner has violated a duty owed to client, to the public, to the legal system, or to the profession;

(2) whether the practitioner acted intentionally, knowingly, or negligently;

(3) the amount of the actual or potential injury caused by the practitioner's misconduct; and

(4) the existence of any aggravating or mitigating factors.

37 C.F.R. § 11.54(b)

(1) Respondent violated his duties to the Client, and the patent bar.

Respondent agreed to perform legal work and accepted money from his client to provide legal services, but did not do so; he also ignored multiple client inquiries and did not refund his client's advance fees. Respondent not only failed his affirmative duty to keep his client apprised of the status of his case, but also failed to respond to multiple client requests for an update. Therefore, Respondent has repeatedly failed to adhere to his duties to the client.

Respondent also violated his duty to the patent bar by willfully violating its disciplinary rules. By not responding in this matter, Respondent failed to cooperate with the OED Director's lawful investigation into his misconduct, thereby violating his duties to the profession and the justice system. Respondent has also failed to participate in these proceedings, despite ample opportunity to do so.

(2) Respondent Acted Intentionally and Knowingly.

Respondent's acts and omissions were intentional. He intentionally chose not to do the work that he was hired to do. He knowingly abandoned his client and failed to return unearned fees. Respondent ignored his client's efforts to contact him, which included multiple email messages, phone calls, and a personal visit to Respondent's business address. With respect to his failure to cooperate, Respondent personally signed for receipt of the First RFI, yet failed to file any response. Thereafter, the OED Director made diligent efforts to contact Respondent, but he did not communicate with the Office. Respondent has offered no explanation as to why he abandoned his client, nor has he explained his failure to cooperate with the OED investigation, or even communicate about the matter.

(3) Respondent's misconduct caused actual and potential injury.

Respondent abandoned Dr. Alsaidan's patent application, and failed to return Dr. Alsaidan's payment for services. As a consequence, Dr. Alsaidan both suffered delay in the potential granting of his patent and suffered the loss of the \$900 he had paid to Respondent. This misconduct supports a significant sanction.

(4) Aggravating and Mitigating factors exist in this case.

The American Bar Association has promulgated a list of aggravating and mitigating factors for use in assessing attorney disciplinary sanctions. *See* American Bar Association STANDARDS FOR IMPOSING LAWYER SANCTIONS (2005) (hereinafter, "Standards.") The Standards have been referenced when determining the appropriate sanction to be imposed in a USPTO disciplinary proceeding. Standard § 9.22 identifies aggravating factors which, if they exist, warrant more severe sanctions.

This case presents four aggravating factors. One aggravating factor is "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency." *See* Standards § 9.22(e). Respondent has completely failed to participate in the discipline process. Respondent did not respond to OED's requests for information, file an answer to the Complaint, or even seek permission to file a late answer.

A second aggravating factor is a dishonest or selfish motive. *See* Standards § 9.22(b). Respondent took \$900 from Dr. Alsaidan, but failed to do what Dr. Alsaidan had hired him to do and then failed to respond to multiple inquiries regarding the status of the case. Respondent did not perform the services he had agreed to perform, but kept the money.

A third aggravating factor which applies in this case is Respondent's "indifference to making restitution." *See* Standards § 9.22(j). Respondent has apparently made no attempt to return the unearned fees he received from Dr. Alsaidan.

Fourth, Respondent has failed to acknowledge the wrongful nature of his misconduct or show any remorse for his conduct in this matter. This failure is a weighty factor in aggravation.

As for mitigation, Standard § 9.32(a) identifies the lack of a prior disciplinary record as a mitigating factor. Respondent has not been disciplined during the seven years he has been registered, and that is a mitigating factor, even though practitioners are expected to follow the rules. However, Respondent's failure to appear and participate in these proceedings suggests that Respondent may no longer be capable of professionally representing his clients. In short, to the extent Respondent's prior record is mitigating, it is insufficient to offset the aggravating factors in this matter.

The OED Director requests that the Tribunal enter an order excluding Respondent from practice before the Office based on Respondent's neglect of a client matter; failing to return his client's unearned fees; engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; failing to seek the lawful objectives of the client; failing to carry out a contract of employment entered into with a client; prejudice or damage to a client during the course of a professional relationship; failing to cooperate with OED; and engaging in conduct that is prejudicial to the administration of justice.

Under the circumstances of this case, the requested exclusion is fair and appropriate because Respondent violated duties owed to his client and the legal profession; acted knowingly and intentionally caused significant injury to his client, and because there are multiple aggravating factors. In this matter, Respondent took the client's money, then abandoned him.

He failed to return unearned fees to the client. Respondent further ignored the requests of the USPTO and this Court. Hence, his exclusion from practice before the Office in patent, trademark, and other non-patent matters is an appropriate sanction that satisfies the purpose of this disciplinary proceeding in a fair and reasonable manner.

CONCLUSION

Because Respondent was properly notified and failed to answer the *Complaint* or otherwise appear in this matter Respondent is found in **DEFAULT**. On the basis of the facts thereby admitted, the Court finds Respondent has violated the foregoing Rules of Professional Conduct and Professional Responsibility, as alleged. The OED Director requests that the Court sanction Respondent by excluding him from practice before the USPTO in patent, trademark, or other non-patent cases or matters. Based upon its foregoing analysis of the above enumerated sanction factors, the Court concludes that Respondent's misconduct warrants the sanction of exclusion.

Accordingly, Respondent shall be **EXCLUDED** from practice before the U.S. Patent and Trademark Office in patent, trademark, and other non-patent matters.³

So **ORDERED**,



J. Jeremiah Mahoney
United States Administrative Law Judge

Notice of Required Actions by Respondent: Respondent is directed to 37 C.F.R. § 11.58 regarding responsibilities in cases of suspension or exclusion.

Notice of Appeal Rights: Within thirty (30) days of this initial decision, either party may file an appeal to the USPTO Director. 37 C.F.R. § 11.55(a).

³ An excluded practitioner is eligible to apply for reinstatement no earlier than at least five years from the effective date of the exclusion. *See* 37 C.F.R. § 11.60(b). If Respondent petitions for reinstatement, his reinstatement—if granted—may be conditioned, *inter alia*, upon restitution to the Client in this matter.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION ON DEFAULT JUDGMENT**, issued by J. Jeremiah Mahoney, Administrative Law Judge, in D2016-16, were sent to the following parties on this 27th day of July, 2016, in the manner indicated:


Cinthia Matos, Docket Clerk

VIA FIRST-CLASS MAIL

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