UNITED STATES OF AMERICA
PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of KENNETH PAUL CAMPBELL, RESPONDENT.	Proceeding No. D2014-11 April 29, 2014

INITIAL DECISION ON DEFAULT JUDGEMENT

The above-entitled matter is before this Court on a *Motion for Entry of Default Judgment and Imposition of Sanction* ("Default Motion"), filed on February 28, 2014, by the Director of the Office of Enrollment and Discipline ("OED Director") for the U.S. Patent and Trademark Office ("USPTO" or "Office"). Kenneth Paul Campbell ("Respondent") has failed to file a timely answer to the OED Director's *Complaint and Notice of Proceedings Under 35 U.S.C. § 32* ("Complaint"). This Court is authorized to hear this proceeding and to issue this *Initial Decision on Default Judgment* pursuant to 37 C.F.R. §§ 11.19 and 11.39.[1]

USPTO regulations state that a failure to respond constitutes an admission of all allegations and "may result in entry of default judgment." 37 C.F.R. § 11.36(e). As Respondent has not filed any response, the *Default Motion* will be **GRANTED.**

PROCEDURAL HISTORY

On January 17, 2014, the OED Director filed the *Complaint* and served a copy on Respondent by first-class certified mail, return receipt requested, at the address Respondent provided to the Office of Enrollment and Discipline. The return receipt that Respondent signed indicated the *Complaint* was delivered on January 25, 2014.

The *Complaint* notified Respondent that he had 30 days from the date of the *Complaint* to file a response, and that "[a] decision by default may be entered against Respondent if a written answer was not timely filed." An answer was therefore due no later than February 18, 2014.

On February 20, 2014, counsel for the OED Director sent a letter to Respondent notifying Respondent that the OED Director had not received an answer to the *Complaint*, and, therefore, the OED Director intended to move for default judgment. The February 20, 2014, letter also

[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 for the U.S. Patent and Trademark Office.

suggested that Respondent contact counsel for the OED Director to discuss settling the matter without the need for a hearing or a motion for default judgment.

Respondent has not filed an answer to the *Complaint* or otherwise communicated with counsel for the OED Director or the Court since the filing of the *Complaint*. As such, the OED Director moved for default judgment on February 28, 2014. Respondent has not responded to the *Default Motion*.

DEFAULT

Part 11 of Title 37 of the Code of Federal Regulations states that "[f]ailure to timely file an answer will constitute an admission of the allegations in the complaint and may result in a default judgment." 37 C.F.R. § 11.36(e). Respondent in this matter has failed to timely submit an answer after being properly served with the *Complaint*. Accordingly, Respondent is deemed to have admitted each of the factual allegations recounted below.

FINDINGS OF FACT

1. Respondent has been registered as a patent agent since January 28, 2003. Respondent's registration number is 52,688.

2. Respondent is not, and has never been, licensed to practice non-patent law in Colorado or any other state or jurisdiction.

3. Respondent's acts and omissions leading to the violations of USPTO Code of Professional Responsibility and USPTO Rules of Professional Conduct alleged herein were willful.

Respondent's Representation of Paul S. Lyke

4. On May 2, 2012, Paul S. Lyke contacted Respondent via e-mail seeking rate information for Respondent's patent services.

5. Respondent sent an e-mail in response the same day. The e-mail provided an estimate of Respondent's fees and asked several questions about Mr. Lyke's invention.

6. In September 2012, Mr. Lyke contact Respondent explaining, "I'm getting closer to launching my product after many delays ...." Respondent responded to this communication from Mr. Lyke.

7. On April 8, 2013, Mr. Lyke again contacted Respondent about Mr. Lyke's invention. Respondent again responded to the inquiry.

8. On or about April 10, 2013, Mr. Lyke paid Respondent $1,820 in advance for Respondent to prepare and file a utility patent application for Mr. Lyke's invention.

9. Respondent acknowledged receipt of Mr. Lyke's $1,820 payment.

10. Mr. Lyke was Respondent's client.

11. On June 21, 2013, Mr. Lyke contacted Respondent to check on the status of his patent application. Respondent did not respond to this inquiry.

12. On June 28, 2013, Mr. Lyke again contacted Respondent to check on the status of his patent application.

13. Respondent did not contact Mr. Lyke until several days later, at which point Respondent stated that he needed more time to process Mr. Lyke's patent application.

14. Mr. Lyke made subsequent attempts to communicate with Respondent on July 25, August 8, and August 12, 2013. Respondent did not respond to any of those inquiries.

15. Respondent did not prepare or file a patent application on behalf of Mr. Lyke.

16. Respondent did not perform any of the legal services for which Mr. Lyke had hired and paid Respondent.

17. Respondent has not returned the $1,820 in fees, despite not performing any of the paid-for services.

Respondent's Unauthorized Practice of Law in Colorado

18. At some point in August or September of 2011, Respondent attempted to act as legal counsel for Jennifer White, a woman who had been involved in a one-car accident. Ms. White received a citation for careless driving and driving under the influence of alcohol as a result of the accident.

19. On September 26, 2011, Respondent filed an Entry of Appearance form on behalf of Ms. White with the El Paso County Combined Court in connection with the careless driving and DUI case, People v. White.

20. On the Entry of Appearance form, Respondent identified himself as "an attorney in fact duly appointed, and licensed to practice Federal Law in the United States of America." Respondent also wrote, "I am a practitioner at law and a member in good standing of the United States Patent Bar. I am not under any order by any

court or administrative agency suspending, enjoining, restraining, disbarring, or otherwise restricting me from practicing law."

21. On the Notice of Future Court Appearance and Order to Report, issued by the El Paso County Combined Court, Respondent signed his name above the signature line for "Attorney's/Defendant's Signature."

22. Respondent, on behalf of Ms. White, communicated with the Deputy District Attorney assigned to prosecute the case in September and December of 2011.

23. Respondent prepared and filed six motions on behalf of Ms. White over the course of the citation proceeding.

24. On December 15, 2011, Respondent appeared at a pretrial conference before El Paso County Court Judge Stephen J. Sletta.[2]

25. Respondent's appearance at the December 15, 2011, pretrial conference led to Judge Sletta issuing the following order:

> The court has received pleadings appointing Kenneth P. Campbell as attorney for defendant. Mr. Campbell is not authorized to practice law in Colorado. Whether or not he is licensed to appear in the patent proceedings is irrelevant to this Court. In addition, these motions reveal that Mr. Campbell does not know the rules of criminal procedure in Colorado nor does he have an understanding of the jurisdiction division of various agencies such as the El Paso County Court, City of Colorado Springs and district attorney's office.

26. Judge Sletta issued a bench warrant for Ms. White's arrest because she was not present at the December 15, 2011, conference and Respondent was not authorized to represent her.

27. On October 7, 2011, while the citation proceeding was before the El Paso County Court, Respondent prepared and filed a civil suit on behalf of Ms. White against the city of Colorado Springs.

28. Respondent signed the October 7, 2011, filing as "Ken Campbell (Atty)" and indicated "YES" beside the statement "I am an attorney."

29. Respondent drafted and, on November 17, 2011, filed a Motion to Quash in the civil suit on behalf of Ms. White.

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[2] The pretrial conference on December 15, 2011, was originally planned for December 14, 2011, but was rescheduled because Ms. White was not present. Respondent, however, was present for both the December 14, 2011 and the December 15, 2011 pretrial conferences.

30. On November 17, 2011, Respondent and Ms. White appeared before Daniel M. Winograd, the magistrate judge presiding over the civil suit.

31. Respondent identified himself before Magistrate Winograd as a "Federal attorney" and provided "52688" as his federal attorney registration number.

32. Upon being questioned by Magistrate Winograd, Respondent admitted that he was not licensed to practice law in Colorado and that the registration number he had provided was from the USPTO.

33. After Magistrate Winograd informed Respondent that he could not represent Ms. White in court, the Magistrate entered a Minute Order stating, "Ptf pres w/ Ken Campbell who claimed to be a federal atty. He was not authorized by court to represent Ptf."

34. Ms. White's suit was dismissed on November 17, 2011.

35. On November 18, 2011, Magistrate Winograd requested that the Colorado Supreme Court's Attorney Regulation Counsel ("ARC") conduct an investigation concerning possible unauthorized practice of law by Respondent.

36. On November 28, 2011, Ms. White's case was reopened and a "Notice of Future Court Date" was issued stating, in part, "Plaintiff may be represented by counsel but Mr. Kenneth Campbell may NOT participate in this hearing." (emphasis in original).

37. Respondent prepared, and on January 19, 2012, filed a Motion for Judgment by Default and to Stay this Civil Action Pending Resolution of a Criminal Charge in the case.

38. On February 23, 2012, Ms. White's small claims court case was closed.

39. The ARC's investigation of Respondent culminated in a February 19, 2013, Order of the Colorado Supreme Court enjoining Respondent from engaging in the unauthorized practice of law in the State of Colorado.

40. Respondent also appeared on behalf of Ms. White at her driver's license revocation proceeding on December 22, 2011, before the Hearings Section of the Colorado Department of Revenue.

41. Respondent introduced himself as the "legal representative" of Ms. White during the hearing.

42. Respondent advocated on behalf of Ms. White at the hearing and signed his name acknowledging receipt of the order revoking Ms. White's driving privileges.

The OED Investigation

43. On May 2, 2013, OED sent Respondent a Request to Practitioner for Information ("May RFI") concerning Respondent's unauthorized practice of law in Colorado.

44. On May 21, 2013, OED received a signed certified mail receipt indicating that the May 2013 RFI was delivered to Respondent's address of record on May 17, 2013.

45. Respondent did not respond to the May RFI.

46. On June 6, 2013, OED re-sent the May RFI via certified mail and noted Respondent's failure to respond to the previous letter. OED also provided Respondent with an additional 16 days to respond to the May RFI.

47. On July 1, 2013, OED received a signed certified mail receipt indicating that Respondent received the June 6 letter.[3]

48. Respondent did not respond to the June 6 letter.

49. On August 1, 2013, OED sent Respondent a letter notifying him of the provisions of 37 C.F.R. § 11.801(b), which outline the implications of failing to cooperate with an OED investigation.

50. The August 1 letter referenced the June 6 letter and was accompanied by a third copy of the May RFI.

51. United States Postal Service records indicate that the August 1 letter was delivered to Respondent's address of record on August 6, 2013.

52. As of the date of the *Complaint*, Respondent had not responded to the May RFI or any of the subsequent mailings.

53. On October 15, 2013, OED sent a Request to Practitioner for Information ("October RFI") concerning Respondent's representation of Mr. Lyke.

54. A signed certified mail receipt indicated that Respondent received the October RFI on October 19, 2013.

55. Respondent did not respond to the October RFI.

56. On November 15, 2013, OED re-sent the October RFI to Respondent via certified mail and noted Respondent's failure to respond to the previous letter.

[3] According to United States Postal Service records, the June 6 letter was not delivered until June 28, 2013. There is no information in the record explaining this delay.

57. USPS records indicate that the November 15 letter was undeliverable as addressed and returned to OED.

58. As of the date of the *Complaint*, Respondent had not responded to the October RFI.

CONCLUSIONS OF LAW

1. Pursuant to 37 C.F.R. § 10.23(a), "[a] practitioner shall not engage in disreputable or gross misconduct." In addition, 37 C.F.R. § 10.23(b)(4) states, "[a] practitioner shall not [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Lastly, 37 C.F.R. § 11.804(c) states, "[i]t is professional misconduct for a practitioner to [e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation."

2. Respondent violated 37 C.F.R. §§ 10.23(a), (b)(4), and 11.804(c) because he: (i) received advance payments from Mr. Lyke for patent legal services; (ii) did not perform the patent legal services for which he was hired; and (iii) failed to refund the advance payments for those legal services.

3. Respondent also violated 37 C.F.R. §§ 10.23(a), (b)(4), and 11.804(c) by representing himself to be a person authorized to practice law in Colorado when Respondent knew such representations were false.

4. Respondent violated 37 C.F.R. §§ 10.23(a), (b)(4), and 11.804(c) by engaging in the unauthorized practice of law in Colorado.

5. Pursuant to 37 C.F.R. § 10.23(b)(5), "[a] practitioner shall not [e]ngage in conduct that is prejudicial to the administration of justice."

6. Respondent violated 37 C.F.R. § 10.23(b)(5) by representing himself to be a person authorized to practice law in Colorado when Respondent knew such representations were false.

7. Respondent also violated 37 C.F.R. § 10.23(b)(5) by engaging in the unauthorized practice of law in Colorado.

8. Pursuant to 37 C.F.R. § 10.23(b)(6), "a practitioner shall not [e]ngage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office." In addition, 37 C.F.R. § 11.804(i) states, "[i]t is professional misconduct for a practitioner to [e]ngage in other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

9. The OED Director has not alleged any "other conduct" of the sort envisioned by 37 C.F.R. §§ 10.23(b)(6) or 11.804(i). The Court therefore has no basis to find a

violation of this regulation. [redacted]

10. Pursuant to 37 C.F.R. § 10.31(d)(1), "[u]nless a practitioner is an attorney, the practitioner shall not hold himself or herself out [t]o be an attorney or lawyer."

11. Respondent violated 37 C.F.R. § 10.31(d)(1) by representing himself to be a person authorized to practice law in Colorado despite his knowledge that such representations were false.

12. Pursuant to 37 C.F.R. § 10.84(a)(3), "[a] practitioner shall not intentionally [p]rejudice or damage a client during the course of a professional relationship."

13. Respondent violated 37 C.F.R. § 10.84(a)(3) by: (i) failing to prepare, file, or prosecute a patent application on behalf of Mr. Lyke; (ii) abandoning Mr. Lyke as a client; and (iii) not refunding Mr. Lyke's $1,820 advance payment.

14. Pursuant to 37 C.F.R. § 10.89(c)(6), when "appearing in a professional capacity before a tribunal, a practitioner shall not [i]ntentionally or habitually violate" the USPTO Disciplinary Rules.

15. Respondent violated 37 C.F.R. § 10.89(c)(6) by engaging in the unauthorized practice of law after: (i) admitting to Magistrate Winograd that Respondent was not licensed to practice law in Colorado; and (ii) after Magistrate Winograd told Respondent that he could not represent Ms. White in court.

16. Respondent also violated 37 C.F.R. § 10.89(c)(6) by representing himself to be a person authorized to practice law in the State of Colorado when Respondent knew such representations were false.

17. Pursuant to 37 C.F.R. § 11.804(a) via § 11.103, "[a] practitioner shall act with reasonable diligence and promptness in representing a client."

18. Respondent violated 37 C.F.R. § 11.804(a) via § 11.103 by: (i) not preparing, filing or prosecuting a patent application on behalf of Mr. Lyke; (ii) not responding to Mr. Lyke's numerous attempts to communicate with him; and (iii) abandoning Mr. Lyke as a client.

19. Pursuant to 37 C.F.R. § 11.804(a) via § 11.104(a)(3), "[a] practitioner shall [k]eep the client reasonably informed about the status of [a] matter."

20. Respondent violated 37 C.F.R. § 11.804(a) via § 11.104(a)(3) by not responding to Mr. Lyke's numerous attempts to communicate with him and abandoning Mr. Lyke as a client.

21. Pursuant to 37 C.F.R. § 11.804(a) via § 11.104(a)(4), "[a] practitioner shall [p]romptly comply with reasonable requests for information from the client."

22. Respondent violated 37 C.F.R. § 11.804(a) via § 11.104(a)(4) by not responding to Mr. Lyke's numerous attempts to communicate with him.

23. Pursuant to 37 C.F.R. § 11.804(a) via § 11.115(d), a practitioner shall promptly deliver to the client any funds that the client is entitled to receive and, upon request by the client, shall promptly render a full accounting regarding such property.

24. Respondent violated 37 C.F.R. § 11.804(a) via § 11.115(d) by failing to return to Mr. Lyke the $1,820 Mr. Lyke paid in advance to Respondent for patent legal services that Respondent did not perform.

25. Pursuant to 37 C.F.R. § 11.804(a) via § 11.801(b), "a practitioner in connection with an application for registration ... shall not [f]ail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, fail to cooperate with the [OED] in an investigation of any matter before it, or knowingly fail to respond to a lawful demand or request for information from an admissions or disciplinary authority."

26. Respondent violated 37 C.F.R. § 11.804(a) via § 11.801(b) by failing to respond to OED's requests for information and not cooperating with OED's investigation.

SANCTIONS

The OED Director requests that the Court sanction Respondent by excluding him from practice before the USPTO in patent, trademark, and other non-patent matters. Before sanctioning a practitioner, the Court must consider the following four factors:

> (1) Whether the practitioner has violated a duty owed to a 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 owed to his Client and the profession.

Respondent agreed to represent his client, Mr. Lyke, in connection with seeking patent protection for his invention. Respondent accepted an advance payment of $1,820 from his client for these services, and was therefore obligated to perform the agreed-upon patent services on Mr. Lyke's behalf. Respondent did not prepare or file a patent application on behalf of Mr. Lyke, did not respond to any of Mr. Lyke's inquiries about the progress of the patent application, and did not refund the payment for the services he failed to perform. In essence, Respondent took his client's money and abandoned him.

Moreover, Respondent is a patent agent, not an attorney. By holding himself out as an attorney, he damages the integrity of the legal profession and puts the public at enhanced risk. Here, his false assertion directly led to Ms. White's small claims case being dismissed. His actions also caused a bench warrant to be issued for Ms. White. This behavior warrants a maximum sanction.

2. Respondent acted knowingly and intentionally.

Respondent acted knowingly and intentionally[4] because he repeatedly disregarded his client's communications regarding his patent application, even after Respondent had accepted an advance payment of $1,820 from his client to perform these services. Respondent's refusal to respond allowed him to evade his obligation to perform the agreed-upon patent services.

Respondent repeatedly asserted in unambiguous terms that he was a member of the legal profession. He stated on his Entry of Appearance form in Ms. White's criminal case that he was "a practitioner at law and a member in good standing of the United States Patent Bar." He filed six motions in that case on behalf of Ms. White, and on several occasions positively indicated that he was her attorney. When filing her civil claim, Respondent indicated "YES" beside the statement "I am an attorney." He also identified himself as Ms. White's "legal representative" in her driver's license revocation hearing. All the while, Respondent was fully aware that he was not authorized to practice law in Colorado as he admitted in direct questioning by Magistrate Winograd.

Even if Respondent had harbored some confusion about his ability to legally represent Ms. White, those doubts were dissolved by Magistrate Winograd when he expressly ordered that "[Ms. White] may be represented by counsel but Mr. Kenneth Campbell may NOT participate in this hearing." (emphasis in original). Respondent blatantly disregarded the court's explicit instruction by filing an additional motion on January 19, 2012.

Lastly, Respondent deliberately refused to participate in OED's investigation of his conduct. The certified mail receipts prove that Respondent received OED's letters, particularly the May RFI and the October RFI. He did not respond to either RFI, and indeed did not respond

[4] Respondent has failed to appear in these proceedings and has, therefore, waived the opportunity to contest the OED Director's assertions as to this state of mind, which is deemed admitted by default. Circumstantially, Respondent's acts and omissions leading to the violations of the USPTO Code of Professional Responsibility alleged in the *Complaint* appeared willful.

to any of the other letters sent to him by OED. He has also failed to respond to communication from the Court in this proceeding.

Respondent's actions: accepting advance payments to perform agreed-upon work, evading numerous phone calls, signing documents, failing to respond to the OED's RFIs, and disregarding the court's explicit instructions, constitute sufficient evidence that Respondent acted intentionally and knowingly. Accordingly, the maximum sanction is warranted.

3. Respondent's misconduct caused an actual and potential injury.

Respondent has caused actual injury to both Mr. Lyke and Ms. White. Mr. Lyke has not recovered the $1,820 he paid Respondent for patent services. Additionally, Respondent's abandonment of the patent application placed Mr. Lyke's intellectual property rights in jeopardy, and has negatively impacted the invention's potential future earnings.

As noted above, Respondent's conduct directly led to a bench warrant being issued for Ms. White's arrest, and caused the dismissal of her civil claim. Moreover, by falsely asserting that he was qualified to represent her, Respondent prevented Ms. White from timely hiring competent legal counsel. This further lessened her chances of success in both the criminal and civil cases. A maximum sanction is therefore appropriate.

4. Are there any aggravating or mitigating factors?

The Court often looks to the ABA's Standards for Imposing Lawyer Sanctions ("ABA Standards") when determining whether aggravating or mitigating factors exist. See In re Chae, Proceeding No. D2013-01, at 4 (USPTO Oct. 21, 2013). A review of the record reveals that aggravating factors exist in this case.

First, Respondent's multiple offenses constitute an aggravating factor. Respondent abused his status as a patent agent, to engage in unauthorized legal representation. This suggests Respondent either did not know—or did not care—about the boundaries of his status as a patent agent. After running afoul of the Colorado courts, his behavior became even more egregious. Respondent did not even attempt to perform any work he agreed to undertake for Mr. Lyke. He simply took the money and abandoned his client.

Second, Respondent ignored every opportunity to interact with Mr. Lyke or participate in OED's investigation. He has not offered any explanation for his conduct. The evidence proves that he received the multiple e-mails from Mr. Lyke, as well as the certified letters from OED. He was therefore aware of the attempts to communicate with him. His silence thus suggests that either Respondent does not acknowledge the wrongful nature of his conduct, or he does acknowledge it and simply does not care to defend himself. Either way, he has proven himself unfit to practice in any capacity before the USPTO.

ORDER

On the basis of Respondent's deemed admissions, and after an analysis of all four enumerated factors, this Court concludes that Respondent's misconduct warrants the penalty of exclusion. Accordingly, the *Default Motion* is **GRANTED**.

IT IS HEREBY ORDERED that Respondent Kenneth Paul Campbell, PTO Registration No. 52,688, be **EXCLUDED** from practice before the U.S. Patent and Trademark Office.

So ORDERED.

J. Jeremiah Mahoney
Administrative Law Judge

Notice of Appeal Rights. Pursuant to 37 C.F.R. § 11.55, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 11.54, must be filed with the U.S. Patent and Trademark Office at the address provided in 37 C.F.R. § 1.1(a)(3)(ii) within 30 days after the date of this Initial Decision. Such appeal must include exceptions to the Administrative Law Judge's Decision and supporting reasons therefor. Failure to file such an appeal in accordance with 37 C.F.R. § 11.55 will be deemed both an acceptance by Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing INITIAL DECISION ON DEFAULT JUDGEMENT, issued by J. Jeremiah Mahoney, Administrative Law Judge, in D2014-11, were sent to the following parties on this 29th day of April, 2014, in the manner indicated:

Wendy Johnson, Staff Assistant

VIA FIRST CLASS MAIL AND E-MAIL:

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