

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

In the Matter of)	
)	
Gary L. Shaffer,)	
)	Proceeding No. D2014-18
Respondent)	
)	
_____)	

FINAL ORDER

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Gary L. Shaffer (“Respondent”) have submitted a Proposed Settlement Agreement (“Agreement”) to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“USPTO Director”) for approval.

Jurisdiction

1. At all relevant times, Respondent of Alexandria, Virginia has been a registered patent attorney (Registration No. 34,502) and subject to the USPTO Code of Professional Responsibility and the USPTO Rules of Professional Conduct.¹
2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.19, 11.20, and 11.26.

Stipulated Facts

3. Respondent was registered as a patent attorney on January 29, 1991 (Registration Number 34,502).
4. Respondent was admitted to the Pennsylvania Bar on November 5, 1979, but is currently administratively suspended in Pennsylvania.
5. Respondent was admitted to the District of Columbia Bar on December 10, 1999, and is currently in active status.

¹ The events at issue in this matter occurred prior to May 3, 2013. Therefore, the USPTO Code of Professional Responsibility is applicable. See 37 C.F.R. §§ 10.20 through 10.112. Effective May 3, 2013, the USPTO Rules of Professional Conduct apply to persons who practice before the Office. See 37 C.F.R. §§ 11.101 through 11.901.

6. Respondent represented Client #1 before the Office in trademark matters.

7. Respondent neglected two trademark applications filed on behalf of Client #1; did not inform Client #1 of important Office correspondence; allowed the trademark applications to become abandoned without Client #1's knowledge or consent; did not inform Client #1 of the abandonments; and filed new trademark applications for the two trademarks without permission from Client #1.

8. Respondent represented Client #2 before the Office in trademark matters.

9. Respondent neglected a trademark application filed on behalf of Client #2; did not inform Client #2 of important Office correspondence; allowed the trademark application to become abandoned without Client #2's knowledge or consent; and did not inform Client #2 of the abandonment.

Joint Legal Conclusions

10. Respondent acknowledges, based on the above stipulated facts, that he violated 37 C.F.R. §§ 10.23(a) and (b) via 37 C.F.R. § 10.23(c)(8) (proscribing failure to inform a client of important Office correspondence when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) was received by the practitioner on behalf of a client or former client, and (iii) was such that a reasonable practitioner would believe under the circumstances that the client or former client should be notified) by not informing his clients of important Office correspondence that Respondent received in connection with their trademark applications.

11. Respondent acknowledges, based on the above stipulated facts, that he violated 37 C.F.R. § 10.77(c) (proscribing neglect of legal matters entrusted to a practitioner) by allowing trademark applications to become abandoned without his clients' knowledge or consent and taking action to remedy the neglect without the clients' permission.

Agreed Upon Sanction

12. Respondent agrees, and it is hereby ORDERED that:

- a. Respondent is hereby suspended from practice before the Office in patent, trademark, and other non-patent matters for five (5) months commencing on the date this Final Order is signed;
- b. Respondent shall serve a twenty-four (24) month period of probation beginning on the date of any decision granting a petition for Respondent's reinstatement;
- c. Respondent shall be permitted to practice before the USPTO in patent, trademark, and other non-patent matters before the USPTO during his probationary period, unless his probation is revoked and he is suspended

by order of the USPTO Director or otherwise no longer has the authority to practice;

- d. Respondent shall comply with 37 C.F.R. § 11.58;
- e. The OED Director shall comply with 37 C.F.R. § 11.59;
- f. The USPTO shall promptly dissociate Respondent's name from all USPTO Customer Numbers and Public Key Infrastructure ("PKI") certificates;
- g. Respondent shall not apply for or obtain a USPTO Customer Number unless and until he is reinstated to practice before the USPTO;
- h. Respondent shall remain suspended from practice before the Office in patent, trademark, and other non-patent matters until the OED Director grants a petition requesting Respondent's reinstatement pursuant to 37 C.F.R. § 11.60;
- i. Respondent is granted limited recognition to practice before the Office commencing on the date this Final Order is signed and expiring sixty (60) days after the date this Final Order is signed, with such limited recognition being granted for the sole purpose of facilitating Respondent's compliance with the provisions of 37 C.F.R. § 11.58(b);
- j. Respondent shall refund \$5,000 to Client #1;
- k. Respondent shall pay costs of \$100 associated with this proceeding;
- l. Within 30 days of the date of this Final Order, Respondent shall provide to the OED Director a letter acceptable to the OED Director from a registered patent attorney in which said attorney agrees to serve as a practice monitor for Respondent during the period of his probation;
- m. Respondent shall comply with the following conditions before the OED Director considers any petition for reinstatement from Respondent pursuant to 37 C.F.R. § 11.60:
 - (1) Respondent agrees to continue to receive counseling from a mental health professional at least once a month during his suspension and comply with all treatment recommendations of the mental health professional, including attending therapy sessions and taking medication as prescribed; and
 - (2) Respondent agrees to provide to all treating mental health professionals an appropriate release as required under state and federal law authorizing the treating professional to: (a) disclose to the OED

Director, as requested, information pertaining to the nature of Respondent's compliance with any treatment plan established; (b) promptly report to the OED Director Respondent's failure to comply with any part of an established treatment plan; and (c) respond to any inquiries by the OED Director regarding Respondent's mental or emotional state or compliance with any established treatment plan.

- (3) Respondent shall provide to the OED Director a letter from his mental health professional confirming that there is no mental health reason that Respondent is not capable of practicing patent, trademark, and other non-patent law, including having the ability to meet deadlines and communicate with his clients, and that his mental condition is stable;
- (4) Respondent agrees that, if requested by the OED Director, i) he shall submit to a mental health examination to be performed by an independent mental health professional selected by the OED Director in the OED Director's sole discretion, and ii) Respondent shall reimburse the OED Director for all costs associated with said examination;
- (5) Respondent shall provide to the OED Director a letter from his legal assistant setting forth her understanding of her work responsibilities, her weekly work schedule, her experience with trademark and patent prosecution, and her experience with the docketing and calendaring software used by Respondent; and
- (6) Respondent shall establish and use the following:
 - (A) A diary and docketing system, including a mechanism by which approaching deadlines are noted, that is commonly accepted by patent and trademark professionals;
 - (B) A system by which telephone messages are recorded and telephone calls are returned in a timely manner;
 - (C) A system by which written requests by clients for the status of their legal matters are answered, either orally or in writing, in a timely manner;
 - (D) A system whereby clients are apprised at the outset of the representation of the basis upon which fees will be calculated and costs paid; and
 - (E) For cases in which the fee is to be calculated on an hourly basis, a system by which clients are provided with regular

itemized billing statements provided at least quarterly, setting forth the services performed by respondent, the date upon which each service was performed, the time spent by respondent on each service and the amount to be charged to the client.

- n. During Respondent's probationary period, Respondent shall cause the practice monitor to submit quarterly reports to the OED Director during the period of Respondent's probation, confirming that Respondent is meeting deadlines, communicating with clients, and complying with the requirements set out in paragraphs (6)(A) through (6)(E) above. Said reports shall be due to the OED Director on January 1st, April 1st, July 1st, and October 1st of the respective calendar year; and a failure to provide the OED Director with said reports shall constitute a *per se* violation of this Proposed Settlement Agreement and the Final Order approving this Proposed Settlement Agreement.

- o. If the OED Director is of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Final Order or any provision of the USPTO Rules of Professional Conduct or the USPTO Code of Professional Responsibility, the OED Director shall:
 - (1) issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending Respondent for up to an additional twelve (12) months for the violations set forth in the Joint Legal Conclusions above;
 - (2) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11; and
 - (3) grant Respondent fifteen (15) days to respond to the Order to Show Cause; and

In the event that after the 15-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Agreement, Final Order, or any provision of the USPTO Rules of Professional Conduct, the OED Director shall:

- (1) deliver to the USPTO Director: (i) the Order to Show Cause; (ii) Respondent's response to the Order to Show Cause, if any; and (iii) argument and evidence causing the OED Director to be of the opinion that Respondent, during Respondent's probationary period,

failed to comply with any provision of the Agreement, Final Order, or any provision of the USPTO Rules of Professional Conduct or the USPTO Code of Professional Responsibility; and

- (2) Request that the USPTO Director enter an order immediately suspending Respondent for up to an additional twelve (12) months for the violations set forth in the Joint Legal Conclusions above;
- p. Nothing herein shall prevent the OED Director from seeking discipline for the misconduct leading to Respondent's additional suspension pursuant to the preceding paragraph;
- q. In the event the USPTO Director suspends Respondent pursuant to paragraph o, above, and Respondent seeks a review of the suspension, any such review of the suspension shall not operate to postpone or otherwise hold in abeyance the suspension;
- r. The OED Director shall electronically publish the Final Order at OED's electronic FOIA Reading Room, which is publicly accessible at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;
- s. The OED Director shall publish the following notice in the *Official Gazette*:

Notice of Suspension and Probation

This notice concerns Gary L. Shaffer of Alexandria, Virginia, a registered patent attorney (Registration No. 34,502). The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Shaffer from practice before the Office in patent, trademark, and non-patent matters for five months for violating 37 C.F.R. §§ 10.77(c) and 10.23(a) and (b) via 10.23(c)(8). Mr. Shaffer must meet certain requirements before seeking reinstatement, and if reinstated will serve a 24-month probationary period under the supervision of a practice monitor.

Mr. Shaffer allowed several trademark applications to go abandoned without his clients' knowledge or consent and failed to communicate with his clients. In mitigation, Mr. Shaffer has stated that he is suffering from depression and post-traumatic stress disorder, for which he is now seeking treatment.

This action is the result of a settlement agreement between Mr. Shaffer and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19, 11.20, and 11.26. Disciplinary decisions involving practitioners are posted for

