

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

In the Matter of)	
)	
Larry W. Brantley,)	Proceeding No. D2020-17
)	
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 Larry W. Brantley (“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.

The Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below, is hereby approved. This Final Order sets forth the parties’ stipulated facts, legal conclusions, and sanctions.

Jurisdiction

1. At all times relevant, Respondent of Redstone Arsenal, Alabama, has been a registered patent practitioner (Registration No. 46,052) and an attorney licensed in the state of Alabama. Respondent is registered to practice before the USPTO in patent matters and is subject to the USPTO Rules of Professional Conduct, which are set forth at 37 C.F.R. §§ 11.101 through 11.901.

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.

Joint Stipulated Facts

Background Regarding Respondent's Employment

3. On September 26, 1997, Respondent was admitted to practice law in the State of Alabama.

4. The USPTO registered Respondent as a patent attorney on March 24, 2000, assigning him Registration No. 46,052.

5. On February 28, 2011, Respondent became a Federal employee subject to Federal conflict of interest laws, rules, and regulations when he was hired by the United States Army Aviation and Missile Command, in Huntsville, Alabama, as a patent attorney.

6. On May 18, 2011, Command Counsel of the Army approved, with important and unambiguous restrictions, Respondent's request to practice law outside of his employment with the Army.

7. The May 18, 2011 authorization restricted Respondent from certain outside practice, including, among others: (a) no representation of clients before the United States Patent and Trademark Office or any other department or agency of the U.S. Government; and (b) no outside employment involving patent law. This authorization had no expiration date.

8. From at least July 19, 2011, Respondent's was able to send faxes from his home and did so.

9. On April 30, 2013, a subsequent Command Counsel of the Army revoked all prior approvals for outside legal work, including Respondent's May 18, 2011 authorization.

10. On July 16, 2013, subsequent Command Counsel of the Army approved, with important and unambiguous restrictions, Respondent's request to practice law outside of his employment with the Army.

11. Respondent participated in the drafting of his July 16, 2013 authorization.
12. The July 16, 2013 authorization contained the following restrictions, among others, including an express prohibition on representing clients before the Office in patent or trademark matters:

The proposed outside practice will involve providing legal advice and services to clients relating to various areas of the law, including providing general advice regarding intellectual property matters to clients[,] providing limited assistance to clients seeking and maintaining patents, trademarks, and copyrights without representing the clients before the United States Patent and Trademark Office or the United States Copyright Office; assisting clients in responding to allegations of patent, trademark, and copyright infringement; and representing clients in patent, trademark, and copyright infringement litigation, provided that the United States Government is not a party to the litigation, with the following limitations:

- 1) No representation of clients before the United States Patent and Trademark Office or any other department or agency of the U.S. Government;
 - 2) No outside employment involving patent prosecution or any other activities that require interaction with the USPTO[.]
13. On April 30, 2014, the July 16, 2013 authorization expired.
 14. On May 1, 2014, Command Counsel of the Army approved, with important and unambiguous restrictions Respondent's request to practice law outside of his employment with the Army.
 15. The May 1, 2014 authorization contained the same restrictions as the July 16, 2013 authorization, including the express prohibition against representing clients before the Office in patent or trademark matters.
 16. On December 31, 2014, Respondent left Federal employment and returned to practicing law in the private sector.

17. From approximately December 31, 2014, to April 16, 2017, Respondent worked as counsel and then as a partner at a law firm in the private sector.

18. On April 17, 2017, Respondent was re-employed in the Federal service when he returned to Federal employment as a patent attorney for the division of Army Material Command.

19. In this Federal position, Respondent served as senior Patent Attorney.

20. From June 6, 2014 until June 30, 2017, Respondent and/or his law firm, Brantley Intellectual Property Law, maintained and occupied a private law office that was located in close proximity to the Army base on which he worked.

21. On April 17, 2017, Respondent re-entered Federal service when he began working for the Army as a patent attorney for the division of Army Material Command.

22. On June 30, 2017, Command Counsel of the Army approved Respondent's request to practice law outside of his employment with the Army.

23. The June 30, 2017 authorization contained the following restrictions, among others, including an express prohibition against representing clients before the Office in patent or trademark matters:

The proposed outside practice will involve providing legal advice and services to clients relating to various areas of the law, including: providing general advice regarding intellectual property matters to clients; providing assistance to clients seeking and maintaining patents, trademarks, and copyrights without representing the clients before the United States Patent and Trademark Office or the United States Copyright Office; assisting clients in responding to allegations (by parties other than the United States) of patent, trademark, and copyright infringement or trade secret misappropriation; assisting clients in licensing patents or other intellectual property; asserting or initiating infringement actions; and teaching intellectual property law courses at local colleges or universities subject to the following limitations:

- 1) No representation of clients before the United States Patent and Trademark Office (USPTO) or any other department or agency of the U.S. Government;
- 2) No outside employment involving activities that require interaction with the USPTO[.]

24. The June 30, 2017 authorization expired on June 1, 2018. No further authorizations were granted.

Respondent's Specific Legal Services for Private Clients While He Was a Federal Employee

25. As set forth below, while Respondent was employed as a Federal employee, he provided the following paid representational services to private clients that constitute practice before the Office, even though Respondent did not become a practitioner of record for the private clients:

- a. Respondent was retained to perform a patent search and provided a patentability opinion relating to Client A's invention and did so.
- b. Respondent assisted Client B with the drafting and filing of Client B's patent application, which Respondent sent to the Office via fax. Respondent also assisted Client B with drafting a response to an Office Action, which Respondent filed via fax. Respondent did not sign the patent application data sheet or the response to the Office Action, and was not practitioner of record.
- c. Respondent assisted Client C with the drafting and filing of a Revocation of a Power of Attorney and an Amendment with respect to Client C's patent application. Respondent faxed Client C's Revocation of a Power of Attorney and the Amendment to the Office. Respondent did not sign Client C's patent application data sheet and was not practitioner of record.
- d. Respondent assisted with the drafting and filing of Client D's patent application. Respondent filed responses to two Notices of Incomplete Reply with respect to Client D's patent application. Respondent did not sign the filings and was not practitioner of record.
- e. Respondent represented Client E before the U.S Copyright Office when he prepared and filed a copyright registration application on behalf of Client E. Respondent did not sign the copyright registration.
- f. Respondent represented Client F before the USPTO when he assisted with the drafting and filing of Client F's provisional patent application. Respondent also

paid the filing fees for Client F's provisional patent application. Respondent did not sign the provisional patent application and was not practitioner of record.

g. Prior to Respondent's Federal employment, while Respondent practiced law in the private sector, he represented Client G and two of Client G's related companies. Respondent's practitioner-client relationship with Client G continued during Respondent's Federal employment. While Respondent was a Federal employee, Respondent assisted Client G and his companies with the drafting and filing of several patent applications and other filings related to those applications, and with the drafting, filing and prosecuting of a trademark application. While Respondent was a Federal employee, Respondent sent filings to the USPTO on behalf of Client G. Although the filings were made with Client G's signature, Respondent prepared the filings. Respondent sent the filings via facsimile from Respondent's number, and at least one of those filings bore the fax header, "Brantley Intellectual Property." Respondent did not sign the filings made on behalf of Client G during Respondent's Federal employment and was not practitioner of record.

h. Respondent represented Client H before the USPTO by assisting her with the drafting and filing of a patent application. Respondent did not sign the application or become practitioner of record.

i. Client I hired Respondent to assist with prosecution of a trademark application. Respondent represented Client I before the USPTO by assisting with the drafting and filing of Client I's trademark application, which was filed in August 2013.

j. Respondent provided legal services for Client J, including a patent search and patentability opinion for Client J's invention, pursuant to an executed engagement agreement.

k. Respondent represented Client K before the USPTO by assisting him with the drafting and filing of a provisional patent application, and by assisting him with the drafting and filing of a non-provisional patent application. Respondent did not sign these filings and was not practitioner of record.

l. Respondent represented Client L before the USPTO by assisting him with the drafting and filing of a patent application that was filed with the USPTO. Respondent did not sign this filing and was not practitioner of record.

m. Respondent represented Client M and Client M's company before the USPTO by assisting with the drafting and filing of a design patent application, a status update that Respondent faxed to the Office, and a Response to Abandonment/Termination Letter that Respondent faxed to the Office. Respondent did not sign these filings and was not practitioner of record.

n. Respondent represented Client N before the USPTO by assisting with the drafting and filing of a trademark application and related responses to Office actions. Respondent did not sign these filings and was not practitioner of record.

o. Respondent sent Client O an executed engagement agreement agreeing to assist in filing a provisional patent application for Client O's invention. Respondent represented Client O before the USPTO by assisting him with the drafting and filing of a provisional patent application that was filed. Respondent did not sign this filing and was not practitioner of record.

p. Client P engaged Respondent to prosecute a patent application. Respondent represented Client P before the USPTO by drafting and filing a patent application that was filed. Respondent did not sign this filing and was not practitioner of record.

q. Client Q engaged Respondent to draft and file a trademark application. Respondent represented Client Q before the USPTO by assisting her with the drafting and filing a trademark application that was filed. Respondent did not sign this filing and was not practitioner of record.

r. Respondent represented Client R before the USPTO by assisting Client R with the drafting in preparation of filing and filing of a Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal of Registration of a Mark under Sections 8 and 9. Although Respondent did not sign this filing, Respondent was listed in the correspondence section.

s. Respondent was attorney of record in Client S's trademark application from its filing date in May 2016 through its abandonment in October 2017. Respondent did not take steps to withdraw from the representation after he was re-employed by the Army in April 2017. Because Respondent remained attorney of record, he represented the applicant in the application while a Federal employee.

t. Respondent was attorney of record in Client T's trademark application from its filing date in February 2016 through August 10, 2017. Respondent did not take steps to withdraw from the representation after he was re-employed by the Army in April 2017. Because Respondent remained attorney of record, he represented the applicant in the application while a Federal employee.

u. Respondent was attorney of record in Client U's trademark application from its filing date in March 2016 through its abandonment in October 2017. Respondent did not take steps to withdraw from the representation after he was re-employed by the Army in April 2017. Because Respondent remained attorney of record, he represented the applicant in the application while a Federal employee.

v. Although Respondent returned as a patent attorney for the division of Army Material Command on April 17, 2017, time entry records for Respondent at the private law firm show billing entries for 1.1 hours of "filing provisional patent application" on April 25, 2017, 0.3 hours for "sending email to [REDACTED] re: Certificate of Registration for [REDACTED] mark and maintenance of filing deadlines" on April 26, 2017, and 0.1 hours for "Premium time entry" on April 27, 2017.

Army Discipline Imposed Against Respondent

26. Effective Monday May 6, 2019, Respondent was indefinitely suspended from the performance of legal duties as a Department of the Army attorney within the Office of the Command Counsel, U.S. Army Command.

27. On September 4, 2020, the Department of the Army found that Respondent had engaged in one charge of “prohibited outside employment,” but did not sustain charges of a second charge of “prohibited outside employment” or a charge of “conduct unbecoming a Federal employee.” The Department of the Army suspended Respondent from his Federal employment position for 14 days.

28. On September 8, 2020, Respondent and the Department of the Army entered into an Abeyance Agreement, which modified Respondent’s discipline to hold the 14-day suspension in abeyance pending Respondent’s completion of a two-year probationary period and prevented the discipline from becoming part of Respondent’s employment file if he successfully completed the probationary period. Respondent has successfully completed the probationary period imposed and remains employed by the Department of the Army.

Applicable Legal Standards

29. Federal regulations set forth a broad definition of practice before the Office in patent matters. “Practice before the Office in patent matters includes, but is not limited to, preparing and prosecuting any patent application, consulting with or giving advice to a client in contemplation of filing a patent application or other document with the Office, drafting the specification or claims of a patent application; drafting an amendment or reply to a communication from the Office that may require written argument to establish the patentability of a claimed invention; drafting a reply to a communication from the Office regarding a patent application; and drafting a communication for a public use, interference, reexamination

proceeding, petition, appeal to or any other proceeding before the Patent Trial and Appeal Board, or other proceeding.” 37 C.F.R. § 11.5(b)(1).

30. Federal regulations set forth a broad definition of practice before the Office in trademark matters. “Practice before the Office in trademark matters includes, but is not limited to, consulting with or giving advice to a client in contemplation of filing a trademark application or other document with the Office; preparing and prosecuting an application for trademark registration; preparing an amendment which may require written argument to establish the registrability of the mark; and conducting an opposition, cancellation, or concurrent use proceeding; or conducting an appeal to the Trademark Trial and Appeal Board.” 37 C.F.R. § 11.5(b)(2).

31. Providing a preliminary patentability opinion and a conducting a patent search are activities that constitute practice before the Office as defined by 37 C.F.R. § 11.5.

32. Drafting in preparation of filing patent applications, trademark applications, responses to Office actions, and other documents to be filed with the USPTO is practice before the Office as defined by 37 C.F.R. § 11.5.

33. A registered practitioner who assists another by providing consultation in anticipation of filing and in preparing patent or trademark documents that are later filed with the USPTO engages in practice before the USPTO even though the registered practitioner does not, himself or herself, sign or file documents with the USPTO. *See In re Achterhof*, Proceeding No. D2017-24 (USPTO Dec. 11, 2018); *In re Achterhof*, Proceeding No. D2017-24 (USPTO Nov. 18, 2019).

34. While he was a federal employee, Respondent engaged in so-called “ghostwriting” of documents; in other words, he drafted documents contemplated to be filed with

the Office on behalf of private clients, without attribution to him or naming him as the attorney of record.

35. Such “ghostwriting” a document on behalf of a client in contemplation of filing the document with the USPTO is practice before the Office by the “ghostwriter,” even if the “ghostwriter” never enters an appearance at the USPTO on behalf of the client.

36. The version of Federal regulation 37 C.F.R. § 11.10(e) that applied when Respondent engaged in impermissible practice before the Office on behalf of private clients while he was a Federal employee explained that “[p]ractice before the Office by Government employees is subject to any applicable conflict of interest laws, regulations or codes of professional responsibility.”

37. A practitioner who is a former or current Federal Government employee shall not engage in any conduct which is contrary to applicable Federal ethics law, including conflict of interest statutes and regulations of the department, agency or commission formerly or currently employing said practitioner. 37 C.F.R. § 11.111.

38. “Ghostwriting” a document on behalf of a client in contemplation of filing the document with the USPTO constitutes representation of the client before the Office by the “ghostwriter” even if the “ghostwriter” never enters an appearance at the USPTO on behalf of the client.

39. Federal regulation 5 C.F.R. § 2635.802 states:

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee’s official duties: (a) If it is prohibited by statute or by an agency supplemental regulation; or (b) If, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee’s disqualification from matters so central or critical to the performance of his official duties that the employee’s ability to perform the duties of his position would be materially impaired. Employees are cautioned that even though an outside activity may not be prohibited under this section, it may

violate other principles or standards set forth in this part or require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

Additional Considerations

40. Respondent has never previously been the subject of professional discipline by the USPTO, and he represents that he has not been disciplined by any other jurisdiction.

41. Respondent represents that he now fully recognizes the seriousness of his acts and omissions connected to his representation of persons or entities before a Federal agency while he was a Federal employee.

42. Respondent acknowledges that, as a registered practitioner, he reasonably could have contacted the USPTO Office of Enrollment of Discipline for information in connection with his obligations under the USPTO Rules of Professional Conduct.

Joint Legal Conclusions

43. Based on the information contained in the joint stipulated facts above, Respondent engaged in the following misconduct prior to May 3, 2013:

- a. disreputable or gross misconduct by violating the Army's regulations and outside practice of law authorizations and Federal ethics law, including 5 C.F.R. § 2635.802, by consulting in anticipation of filing, preparing, and prosecuting patent and trademark applications before the USPTO and a copyright registration application before the U.S. Copyright Office, in violation of 37 C.F.R. § 10.23(a) of the USPTO Code of Professional Responsibility;
- b. conduct that is prejudicial to the administration of justice by violating the Army's regulations and outside practice of law authorizations and Federal ethics law, including 5 C.F.R. § 2635.802, by consulting in anticipation of filing, drafting in preparation for filing, filing, not withdrawing as attorney of record in trademark matters pending before the Office, and by receiving compensation for these actions on behalf of others before the Office while employed by the Department of the Army, in violation of 37 C.F.R. § 10.23(b)(5) of the USPTO Code of Professional Responsibility;

- c. conduct which constitutes a violation of 37 C.F.R. § 10.23(a) or (b), which includes knowing practice by a Government employee contrary to applicable Federal conflict of interest laws, or regulations of the Department, agency or commission employing said individual by violating the Army's regulations and outside practice of law authorizations and Federal ethics law, including 5 C.F.R. § 2635.802, by consulting in anticipation of filing, drafting in preparation for filing, filing, not withdrawing as attorney of record in trademark matters pending before the Office, and by receiving compensation for these actions on behalf of others before the Office while employed by the Department of the Army, in violation of 37 C.F.R. § 10.23(a) and (b) via 37 C.F.R. § 10.23(c)(20) of the USPTO Code of Professional Responsibility; and
- d. failing to withdraw from employment if the practitioner knows or it is obvious that the practitioner's continued employment will result in violation of a Disciplinary Rule by not withdrawing from representing others in trademark matters pending before the Office while employed by the Department of the Army in violation of 5 C.F.R. § 2635.802, in violation of 37 C.F.R. § 10.40(b) of the USPTO Code of Professional Responsibility.

44. By reason of the conduct described above, Respondent has engaged in the following misconduct on or after May 3, 2013:

- a. as a practitioner who is a current Federal government employee, by engaging in conduct which is contrary to applicable Federal ethics law, including conflict of interest regulations of the department, agency or commission formerly or currently employing him, by consulting in anticipation of filing, preparing and prosecuting patent and trademark applications before the USPTO, not timely withdrawing as attorney of record in numerous trademark matters pending before the Office, and receiving compensation for representing others before the Office while employed by the Department of the Army, in violation of 37 C.F.R. § 11.111 of the USPTO Rules of Professional Conduct;
- b. failing to withdraw from the representation of a client when the representation resulted in a violation of the USPTO Rules of Professional Conduct or other law by not withdrawing from representing others in patent and trademark matters pending before the Office while employed by the Department of the Army, in violation of 37 C.F.R. § 11.116(a)(1) of the USPTO Rules of Professional Conduct; and

- c. engaging in conduct prejudicial to the administration of justice by engaging in conduct which is contrary to applicable Federal ethics law, including conflict of interest regulations of the department, agency or commission formerly or currently employing him, by consulting in anticipation of filing, preparing and prosecuting patent and trademark applications before the USPTO, not timely withdrawing as attorney of record in numerous trademark matters pending before the Office, and receiving compensation for representing others before the Office while employed by the Department of the Army, in violation of 37 C.F.R. § 11.804(d) of the USPTO Rules of Professional Conduct.

Agreed Upon Sanction

45. Respondent has freely and voluntarily agreed, and it is hereby ORDERED, that:
- a. Respondent shall be and is hereby publicly reprimanded;
 - b. Respondent shall serve a thirty-six (36) month probationary period that commences on the date of this Final Order;
 - c. As a condition of probation, within each of the three 12-month portions of the 36-month probationary period, Respondent shall, (1) at his own cost and expense, take and receive six (6) hours of continuing legal education courses in the specific area of professional ethics, and (2) within 30 days of taking and receiving the course work comprising any part of the six-hour requirement, submit a declaration with accompanying documentary proof to the OED Director evidencing that Respondent has completed the course work comprising any part of the six-hour requirement;
 - d. As a condition of probation, within each of the three 12-month portions of the 36-month probationary period, Respondent shall (1) devote no less than forty (40) hours of his personal time providing (i) unpaid, pro bono legal services not involving intellectual property law or practice before any federal agency, and/or (ii) other volunteer services (*i.e.*, not related to the practice of law) for the benefit of underserved or marginalized populations within his community, and (2) submit a declaration with accompanying documentary proof to the OED Director evidencing that Respondent has satisfied his annual pro bono/volunteer service requirement;
 - e. As a condition of probation, Respondent shall pay in full \$9,227.18 in allowable costs, as described in 37 C.F.R. § 11.60(d)(2)(i), (ii), and (iii), that were incurred by the USPTO in connection with the institution, prosecution, and dismissal of the formal disciplinary proceeding against Respondent. Respondent may pay the costs in installments every 12 months, as long as each payment totals at least one third of the costs and the first payment is made within sixty (60) days of the date of this Final Order;

- f. (1) In the event the OED Director is of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Agreement, this Final Order, or any disciplinary rule of the USPTO Rules of Professional Conduct, the OED Director shall: (i) issue to Respondent an Order to Show Cause why the USPTO Director should not order that Respondent be immediately suspended for up twenty-four (24) months for the violations set forth in the Joint Legal Conclusions, above; (ii) 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(a); and (iii) grant Respondent fifteen (15) days to respond to the Order to Show Cause; and
- (2) In the event that after the 15-day period for response and after the consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Agreement, this Final Order, or any disciplinary rule of the USPTO Rules of Professional Conduct, the OED Director shall: (i) deliver to the USPTO Director or his designee: (A) the Order to Show Cause; (B) Respondent's response to the Order to Show Cause, if any; and (C) argument and evidence causing the OED Director to be of the opinion that Respondent failed to comply with any provision of the Agreement, this Final Order, or any disciplinary rule of the USPTO Rules of Professional Conduct during the probationary period; and (ii) request that the USPTO Director immediately suspend Respondent for up to twenty-four (24) months for the violations set forth in the Joint Legal Conclusions, above;
- g. Nothing in this Final Order shall prevent the OED Director from seeking discipline for any misconduct that formed the basis for an Order to Show Cause issued pursuant to the preceding subparagraph;
- h. In the event the USPTO Director suspends Respondent pursuant to subparagraph f. 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;
- i. Nothing in this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including this Final Order:
- (1) when addressing any further complaint or evidence of the same or similar misconduct concerning Respondent brought to the attention of the Office; and/or
- (2) in any future disciplinary proceeding against Respondent (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed, and/or (ii) to rebut any statement or representation by or on Respondent's behalf; and/or

(3) in connection with any request for reconsideration submitted by Respondent pursuant to 37 C.F.R. § 11.60;

- j. The OED Director shall electronically publish this Final Order at OED's electronic FOIA Reading Room, which is publicly accessible at: <http://foiadocuments.uspto.gov>;
- k. The OED Director shall publish a notice in the Official Gazette that is materially consistent with the following:

Notice of Reprimand and Probation

This notice concerns Larry W. Brantley of Redstone Arsenal, Alabama, a registered practitioner (Registration No. 46,052) and an attorney licensed in the state of Alabama. The Director of the United States Patent and Trademark Office ("USPTO") has publicly reprimanded Mr. Brantley. Mr. Brantley is also serving a 36-month probationary period. Mr. Brantley's conditions of probation include an annual six-hour CLE requirement in ethics, forty (40) hours of annual pro bono law service or certain other volunteer services, and full payment of the USPTO's costs incurred in connection with his disciplinary proceeding.

While Mr. Brantley was employed as a patent attorney by the U.S. Army, he represented private clients before the USPTO for compensation. The Army had authorized Mr. Brantley to engage in limited outside practice of law, but prohibited him from engaging in, *inter alia*, "outside employment involving patent law," "representation of clients before the USPTO or any other department or agency of the U.S. Government," and "outside employment involving patent prosecution or any other activities that require interaction with the USPTO." Although Mr. Brantley did not enter formal appearances at the USPTO on behalf of his private clients, he drafted documents contemplated to be filed with the Office on behalf of private clients, without attribution to him or naming him as the attorney of record and faxed such documents to the USPTO. Such conduct has been referred to as "ghostwriting." In addition, Mr. Brantley provided patent searches and patentability opinions for his private clients. He also failed to withdraw as attorney of record from three private clients' pending trademark applications when he returned to employment by the Army after a hiatus practicing law in the private sector.

Providing preliminary patentability opinions and conducting a patent search for another are activities that constitute practice before the Office. A practitioner assisting another by providing consultation in anticipation of filing and preparing patent or

trademark documents that are later filed with the USPTO is practice before the Office, even if the practitioner does not personally sign or file the documents with the USPTO or enter an appearance at the USPTO. “Ghostwriting” a document for a client in contemplation the document being filed with the USPTO is practice before the Office and constitutes representation of the client before the USPTO.

This action is the result of a settlement agreement between Mr. Brantley 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 public reading at the OED Reading Room, available at: <http://foiadocuments.uspto.gov>;

The Office of Enrollment and Discipline offers an anonymous hotline for practitioners who may have general questions about their ethical obligations. Although OED does not give formal opinions, it can help a practitioner identify the provisions of the USPTO Rules of Professional Conduct that may be implicated by the practitioner’s acts or omissions, as well as published decisions in the OED Reading Room. Practitioners seeking such assistance may telephone 571 272-4097 and ask to speak to the “Attorney of the Day” or may send an email message to OED@USPTO.gov;

- l. Respondent, by his agreement, has waived all rights to: (1) seek reconsideration of this Final Order under 37 C.F.R. § 11.56, (2) have this Final Order reviewed under 37 C.F.R. § 11.57, and (3) otherwise to appeal or challenge this Final Order in any manner; and
- m. Within a reasonable period after the entry of this Final Order approving the Agreement, the OED Director shall file a motion dismissing the pending disciplinary action without prejudice.

Users, Shewchuk, David
Digitally signed by Users,
Shewchuk, David
Date: 2023.04.11 15:47:54
-04'00'

Date

David Shewchuk
Deputy General Counsel for General Law
United States Patent and Trademark Office

on delegated authority by

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property
and Director of The United States Patent and Trademark
Office

CUI//PRIVILEGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Order was sent, on this day, to the parties in the manner indicated below-

Via first-class mail and e-mail:

Mike McCabe
MCCABE & ALI, LLP
9233 Fall River Lane
Potomac, MD 20854
mike@mccabeali.com
Counsel for Respondent

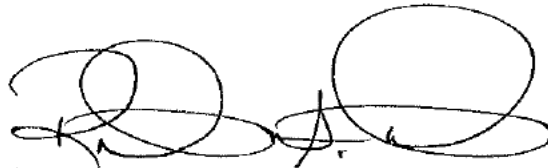
Via e-mail:

John Ferman
Robin Crabb

[REDACTED]
[REDACTED]
[REDACTED]
Counsel for the OED Director

4/10/2023

Date



United States Patent and Trademark Office
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