UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of: ERIK B. CHERDAK, Respondent.	Proceeding No. D2018-22 (Counts IV-XI) December 21, 2023

Appearances:

Robin Crabb
Eteena Tadjiogueu
Associate Solicitors, *United States Patent and Trademark Office*

Erik Cherdak
Pro Se

BEFORE: Alexander **FERNÁNDEZ-PONS**, United States Administrative Law Judge

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INITIAL DECISION AND ORDER

This matter arises from a *Complaint and Notice of Proceedings under 35 U.S.C. § 32* ("Complaint") filed by the Director of the Office of Enrollment and Discipline ("OED Director") for the United States Patent and Trademark Office ("USPTO" or "Office") requesting that Erik B. Cherdak ("Respondent') be sanctioned for violating the USPTO's disciplinary rules.[1]

PROCEDURAL HISTORY

On March 28, 2018, the OED Director filed a *Complaint* (Proceeding No. D2018-22) in this case alleging eleven (11) counts of misconduct against Respondent. Counts I-III relate to Respondent's representation of clients Fitistics, LLC and Sean McKirdy, which resulted in civil litigation ("Fitistics Litigation"). While the Fitistics Litigation was pending appeal, the OED Director filed a second *Complaint and Notice of Proceedings under 35 U.S.C. § 32* (Proceeding No. D2019-05) on December 21, 2018. Because the D2019-05 *Complaint* raised factual

[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 (HUD) have been appointed by the U.S. Commerce Secretary and are authorized to hear cases brought by the U.S. Patent and Trademark Office.

allegations related to those at issue in Proceeding No. D2018-22, the Tribunal consolidated the cases.

On August 18, 2019, Counts IV-XI of Proceeding No. D2018-22 were bifurcated to allow those counts to proceed while the Fitistics Litigation was pending. Counts IV-XI concern Respondent's alleged failure to file and pay taxes, failure to pay judgments and debts, false statements made to tribunals, and his failure to cooperate with OED's investigation. However, the OED Director has since withdrawn all charges related to Count VII and Count IX, leaving only Counts IV-VI, VIII, and X-XI at issue here.

I. Proceedings before Administrative Law Judge J. Jeremiah Mahoney

The hearing commenced on October 21, 2019. At the time, Administrative Law Judge J. Jeremiah Mahoney was presiding over the proceedings. As a preliminary matter, Respondent raised objections to the OED Director's exhibits and requested a stay of the proceeding. The Tribunal found that Respondent's objections were untimely and denied his request on that basis. Nevertheless, Respondent was clearly not prepared to proceed so the hearing was rescheduled for December 2019.

On December 9, 2019, the hearing was reconvened. Respondent was called to the witness stand and, during his testimony, he raised multiple untimely objections to the OED Director's exhibits. Respondent also attempted to further delay the proceedings by requesting a stay so he could brief and file a Motion to Reconsider previously imposed sanctions.[2] His request was denied as untimely, because had two months to make the request, but waited until the hearing had reconvened to do so. Respondent also made a request to stay the proceeding so he could prepare exhibits to be presented in his case-in-chief. That request was also denied. Ultimately, ALJ Mahoney recused himself from the proceeding necessitating a postponement of the hearing.[3]

II. Proceedings before the Undersigned Administrative Law Judge

By *Order* dated December 10, 2019, this matter was referred to the Undersigned and the hearing was scheduled to resume on April 20, 2020. Respondent attempted to delay the proceedings by requesting that the matter be held in abeyance so he could brief dispositive motions. However, his request was denied because the deadline for dispositive motions had long since passed. The Undersigned also noted that, should Respondent feel compelled to file a dispositive motion, a stay was nevertheless unwarranted because the hearing was still months away.

Due to the outbreak of Coronavirus Disease 2019 (COVID-19), the hearing was rescheduled for August 26, 2020. Just over two weeks before the hearing was scheduled to resume, Respondent requested a stay, in part so he could conduct additional discovery.

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[2] The sanctions arose from Respondent's conduct during discovery and are more fully described below.

[3] Respondent requested recusal because he purportedly believed the presiding judge could be biased by a statement opposing counsel had made during the hearing. ALJ Mahoney noted in the record (and the Undersigned agrees) that his recusal was not warranted. Nonetheless, ALJ Mahoney transferred this matter out of an abundance of caution.

Respondent's request was denied.[4] Then, just over a week before the hearing, Respondent again requested a continuance this time citing a medical issue. Respondent's request was granted, and the hearing date was eventually rescheduled for October 19, 2020.

While Respondent's request for a continuance for medical reasons was pending, Respondent filed a *Combined Motion* requesting dismissal or, in the alternative, a continuance of the hearing date so discovery could be reopened. Respondent's *Combined Motion* was timely received on the Tribunal's previously established deadline of August 19, 2020. However, Respondent attempted to supplement his *Combined Motion* with filings that included additional argument and evidence after the deadline had passed. The Tribunal recognized Respondent's supplements to be attempts at circumventing its deadlines and issued an order striking the supplements from the record and establishing strict filing requirements to include page limits and formatting requirements.[5]

On reconsideration, the Tribunal granted leave for Respondent to file one supplement to his *Combined Motion* but explicitly warned that, "Any attempt to subvert the Tribunal's page limits on filings (including, but not limited to, inserting arguments as exhibits) will result in the filing being stricken from the record." Upon receipt of Respondent's *Supplemental Brief* filed on September 3, 2020, it was apparent that Respondent's submission was "prepared with the intention of circumventing the Tribunal's formatting protocols" and "was evidence of his disregard for the Tribunal's intent to ensure an efficient and orderly proceeding."[6] As a result, the Undersigned struck Respondent's *Supplemental Brief*, but granted Respondent another opportunity to supplement his *Combined Motion*.

On September 9, 2020, Respondent filed a new *Supplemental Brief* that exceeded the Tribunal's page limits that were expressly stated on at least two previous occasions. This resulted in the Tribunal striking Respondent's non-compliant filing without granting leave to re-file. In requesting reconsideration of the Tribunal's *Order* striking his September 9th *Supplemental Brief*, Respondent advanced claims that were false and blatantly misleading. The Tribunal denied this request and noted that Respondent was not granted leave to refile, "because Respondent has demonstrated that he will not comply with the Tribunal's orders regardless of the number of chances he gets to do so."

Upon due consideration, Respondent's *Combined Motion* was ultimately denied by *Order* dated October 7, 2020. That same day, which was less than two weeks before the hearing, Respondent requested that the hearing date be vacated and that all scheduled dates and deadlines be stayed for two months. Respondent cited an ongoing medical issue that Respondent claimed

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[4] The Tribunal recognized this request to be yet another of Respondent's delay tactics. Still, the Tribunal noted that Respondent could file a motion to reopen discovery with the understanding that the hearing would continue as scheduled.

[5] In requesting reconsideration, Respondent admitted that he filed the supplements to present arguments and facts that he did not have time to include with his original motion.

[6] Respondent's *Supplemental Brief* included footnotes that encompassed half a page or more of legal arguments. Respondent also included a two-page, single-spaced table purporting to describe the exhibits he was including. However, the table went beyond merely identifying the exhibits and extensively included Respondent's characterization of the evidence and his legal arguments.

had been limiting his ability to work.[7] The Tribunal partially denied Respondent's request, because his evidence presented in support thereof failed to demonstrate that a two-month stay was warranted. Instead, the Tribunal rescheduled the hearing for December 14, 2020.

The hearing commenced on December 14, 2020, and continued through December 16, 2020. On the second day of the hearing, counsel for the OED Director informed the Tribunal that two emails presented by Respondent for impeachment purposes were not authentic. The Tribunal concluded that expert witness testimony was necessary to determine which variations of the emails were authentic.[8] As such, at the conclusion of the hearing the Tribunal stated the record would be kept open to receive expert testimony at a later date.

The evidentiary hearing to receive expert witness testimony was scheduled for May 10, 2021. Respondent moved for a stay and for a mistrial, both of which were denied because Respondent's claims in support of his motion related to the counts that had already been bifurcated and stayed (Counts I-III). The evidentiary hearing convened as scheduled, and lasted two days after which time the evidentiary record was closed.

At the conclusion of the hearing, the Parties were advised that Post-Hearing Briefs would be due 45 days after the transcript became available, and Response Briefs would be due 30 days after the deadline for Post-Hearing Briefs. The Parties were also warned that extensions would not be granted under any circumstances.

Following the Tribunal's receipt of the hearing transcript on June 4, 2021, the Tribunal issued a *Post-Hearing Order* setting the deadlines for Post-Hearing Briefs and Response Briefs as July 26, 2021, and August 25, 2021, respectively. Although the *Order* afforded the Parties more than the originally indicated 45 days to submit their Post-Hearing Briefs, Respondent moved the Tribunal to extend the deadlines by an additional thirty (30) days, because he did not realize the *Post-Hearing Order* had been filed in his spam folder until July 13, 2021.[9] Respondent's request was denied, and the Parties timely filed their Post-Hearing Briefs and Response Briefs.

On October 21, 2021, Respondent filed a request for an "emergency hearing" and for leave to brief a motion for sanctions on the basis that he had newly discovered facts during a collateral proceeding establishing litigation misconduct by opposing counsel and one of the hearing witnesses. The Tribunal denied Respondent's request explaining that it would not consider reopening the record at this late stage in the proceeding nor would it consider granting leave for Respondent to move for sanctions on such serious allegations without evidence to

[7] Tellingly, this ongoing medical issue did not prevent Respondent from filing no less than five briefs and motions in the month leading up to Respondent's request to stay the proceeding.

[8] Although the authenticity of the emails is not determinative of any allegation in the *Complaint*, the issue was probative of a witness's credibility.

[9] Respondent did not deny receiving the hearing transcript on June 4, 2021, which would have triggered the 45-day clock for submitting Post-Hearing Briefs had Respondent not received the Tribunal's *Post-Hearing Order*.

support his accusations. To date, Respondent has yet to produce any evidence in this regard. Accordingly, this matter is ripe for decision.[10]

APPLICABLE LAW

USPTO Disciplinary Proceedings. 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); see Sperry v. Fla. *ex rel*. Fla. Bar, 373 U.S. 379 (1963) (upholding the USPTO's exclusive authority against challenge from state bar). The Director of the USPTO may suspend or exclude a person from practice before the Patent and Trademark Office 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; see also 37 C.F.R. § 11.19(b)(1)(iv). The practitioner must receive "notice and opportunity for a hearing" before such disciplinary action is taken. 35 U.S.C. § 32. Disciplinary hearings are conducted in accordance with USPTO's procedural rules and with section 7 of the Administrative Procedure Act, 5 U.S.C. § 556, by an impartial hearing officer appointed by the USPTO. 37 C.F.R. §§ 11.39, 11.44.

The USPTO has duly promulgated regulations governing the conduct of persons authorized to practice before the Office. The USPTO Rules of Professional Conduct (37 C.F.R. §§ 11.101 *et seq*.), which became effective May 3, 2013, are based upon the American Bar Association ("ABA") Model Code of Professional Responsibility and apply to persons who practice before the Office. See CHANGES TO REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE, 78 Fed. Reg. 20179 (Apr. 3, 2013) (Final Rule) (codified at 37 C.F.R. §§ 11.101-11.901). The USPTO's purpose for modelling its disciplinary rules after the ABA's Model Code of Professional Responsibility was to "provid[e] attorneys with consistent professional conduct standards, and large bodies of both case law and opinions written by disciplinary authorities that have adopted the ABA Model Rules." Id. at 20180; but see Kroll v. Lee, No. 1:16-cv-704 (LMB/IDD), 2017 U.S. Dist. LEXIS 77424, at *14 n.6 (E.D. Va. May 22, 2017) (noting the ABA Model Rules are "obviously not a source of legal authority"). For misconduct occurring prior to May 3, 2014, the USPTO Code of Professional Responsibility (37 C.F.R. §§ 10.20 *et seq*.) applies.[11]

Standard and Burden of Proof. The OED Director has the burden of proving the alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49. Thereafter, Respondent has the burden to prove any affirmative defense by clear and convincing evidence. Id.

The clear and convincing standard is applied "to protect particularly important interests . . . where there is a clear liberty interest at stake." Thomas v. Nicholson, 423 F.3d 1279, 1283

[10] The delay between briefing and the issuance of this ruling was caused by limited government resources, the time taken to consider the parties' respective evidence and positions, and the impact of the COVID-19 pandemic, which necessitated closure and reopening of the Tribunal's physical office during the pendency of this case and disrupted some of the Tribunal's operations and workflow.

[11] The *Complaint* alleges Respondent committed various violations of the USPTO disciplinary rules both before and after the effective date of the USPTO Rules of Professional Conduct.

(Fed. Cir. 2005). This is an intermediate standard "between a preponderance of the evidence and proof beyond a reasonable doubt." Addington v. Texas, 441 U.S. 418, 424-25 (1979). The standard requires evidence "of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001). "Evidence is clear 'if it is certain, unambiguous, and plain to the understanding,' and it is convincing 'if it is reasonable and persuasive enough to cause the trier of facts to believe it.'" Foster v. Allied Signal, Inc., 293 F.3d 1187, 1194 (10th Cir. 2002) (citing Ortega v. IBP, Inc., 874 P.2d 1188, 1198 (Kan. 1994), disapproved of by *In re* B.D.-Y., 187 P.3d 594 (Kan. 2008)).

PRELIMINARY MATTERS—RESPONDENT'S EVIDENCE AND OBJECTIONS

Throughout this proceeding, Respondent has claimed that his due process rights have been violated and that he has been prejudiced because he has been precluded from presenting evidence in his case-in-chief. Such preclusion, however, resulted from appropriately meted sanctions stemming from Respondent's very actions.

Respondent was twice sanctioned for his conduct during discovery. ALJ Mahoney issued a ruling compelling Respondent to sufficiently answer and provide responsive documents to the OED Director's authorized discovery requests. He also cautioned Respondent that, "providing evasive or incomplete discovery requests may later allow the OED Director to legitimately maintain that Respondent's failure to cooperate, in good faith, with USPTO's reasonable pretrial discovery efforts supports adverse inferences being drawn against Respondent."

On August 14, 2019, a ruling was issued on the OED Director's *Motion for Sanctions* finding that Respondent had not complied with ALJ Mahoney's order to adequately respond to the OED Director's discovery requests. In the ruling, the Tribunal noted Respondent "dragged his feet" and "has been completely uncooperative." The Tribunal also found that such conduct was prejudicial to the OED Director's ability to prepare for hearing. However, Respondent's representations, that he had begun to produce documents to the OED Director, mollified the Tribunal into believing Respondent would no longer withhold information or otherwise avoid his discovery obligations in bad faith. As such, Respondent was not sanctioned and was instead given yet another opportunity to produce the requested information. Respondent was further warned that sanctions would be forthcoming should he fail to adequately respond to the outstanding discovery requests by August 21, 2019.

Rather than comply with the order, Respondent engaged in a "document dump" wherein he uploaded thousands of files to a Dropbox Folder without indication of which documents were responsive to what interrogatories or requests for production. The Tribunal specifically found that "no reasonable attorney would genuinely believe that Respondent's actions show a good faith attempt to comply with his discovery obligations." Still, Respondent was given a final opportunity to comply before a ruling on the OED Director's *Renewed Motion for Sanctions* would be made.

In the *Ruling on Fourth Motion to Compel and for Sanctions*, the Tribunal found, "[t]here is no question that Respondent has not honored his discovery obligations and has failed to comply with the [Tribunal's] discovery orders." Further, it was "clear that Respondent has acted in bad faith in repeatedly attempting to avoid his discovery obligations." And, although the OED Director claimed a default judgment would be an appropriate sanction for Respondent's misconduct, the Tribunal determined a less drastic sanction would be effective at combating the prejudice to the OED Director. As such, Respondent was precluded from offering in his defense any documentary evidence that would have been responsive to the unanswered discovery requests, and the Tribunal would infer that Respondent failed to adequately respond to these discovery requests because his answers would have been damaging to his claims.

Although the sanctions did not completely preclude Respondent from offering evidence, Respondent nevertheless did not submit any hearing exhibits or prehearing statements to the Tribunal as required. Respondent also failed to file any written objections he may have had to the OED Director's hearing exhibits that were first exchanged on August 27, 2019, and then submitted to the Tribunal and to Respondent on October 7, 2019.

After ALJ Mahoney's recusal, the Tribunal issued an order rescheduling the hearing and establishing new prehearing deadlines. Portions of the *Ruling on Fourth Motion to Compel and for Sanctions* that prohibited Respondent from offering evidence and that established adverse inferences against Respondent were rescinded. In so doing, Respondent was given yet another opportunity to present exhibits at the hearing. Respondent was also permitted to make written objections to the OED Director's exhibits, which he failed to do previously.

Despite this reprieve, Respondent still failed to comply by timely exchanging his exhibits with the OED Director. Respondent was given an additional week to complete the exchange and was warned that the failure to comply would "result in a sanction precluding the noncompliant party from producing <u>any</u> evidence at the hearing." Again, Respondent disregarded the Tribunal's directives. Respondent was provided the opportunity to show cause as to why sanctions should not be imposed for failing to comply, but he failed to appear. As a result, a sanction was imposed on Respondent precluding him from introducing any exhibits, including joint exhibits that have not yet been admitted into evidence, unless specifically authorized.[12]

Respondent also failed to timely raise objections to the OED Director's hearing exhibits that were refiled after the proceeding was transferred to the Undersigned ALJ. The Parties were specifically warned that, "[a]n objection that is not timely raised, or that is insufficiently pled for the Tribunal to discern the basis therefor, will be deemed waived." As a result of Respondent's inaction, the Tribunal ruled that Respondent had effectively waived any objection to the OED Director's exhibits.[13]

[12] The Tribunal noted that it may authorize an exhibit for impeachment purposes.

[13] Despite this finding, six months later Respondent requested a "special, second pre-trial hearing to go over objections previously made or permit Respondent to make any and all objections." In this request, Respondent claimed that the Tribunal's orders did not address the potential for objections being waived and that he previously made objections that stand in the record. They did. He did not.

Respondent has had every opportunity to present evidence in his defense or raise objections to the OED Director's evidence. Respondent did not fail to do so. He refused. As such, he was precluded from presenting exhibits or witnesses at the hearing and his objections to the OED Director's exhibits were waived.

FINDINGS OF FACT

I. Background

Respondent was licensed as an attorney by Pennsylvania under ID No. 66669 on December 17, 1992. He was registered by the USPTO as a patent attorney and assigned Registration Number 39,936, on February 14, 1996.

II. Failure to File and Pay Taxes (Count IV)

Respondent filed a petition for bankruptcy in the U.S. Bankruptcy Court for the District of Maryland on April 27, 2015, in case number 15-15976. The IRS filed a Proof of Claim for Internal Revenue Taxes on May 28, 2015, and indicated that no tax return had been filed for the 2012, 2013, and 2014 tax years. Respondent eventually filed his 2012, 2013, 2014, and 2015 tax returns on or about February 15, 2017.

Within the tax returns that Respondent submitted for tax years 2012-2015, he admits adjusted gross income of $168,846 in 2012; $377,874 in 2013; $80,207 in 2014; and $194,057 in 2015. As of 2017, Respondent's total tax liability totaled $807,470.97, which includes $703,764.96 in federal tax liability, interest, and penalties and $103,706.01 in state tax liability, interest and penalties.

III. Carolynne Tilga Chandler Judgment (Count V)

Carolyne Tilga (a.k.a Carolynne Tilga, a.k.a. Carolynne Chandler) was a longtime client of Respondent. On February 9, 2009, Ms. Tilga filed a Complaint for Confessed Judgment against Respondent, in Carolynne Tilga v. Erik Cherdak, Case No. 308650V (Montgomery County, MD Circuit Court).

On February 13, 2009, judgment was entered against Respondent in Case No. 308650V in the amount of $150,000. Respondent submitted a Motion to Vacate Judgment by Confession, which was denied. Respondent also filed a notice of appeal, but that appeal was dismissed because Respondent failed to timely file an Information Report as required under Maryland's rules of civil procedure.

On November 1, 2010, Ms. Tilga and Respondent executed a Settlement Agreement, in which Respondent agreed to pay Ms. Tilga $135,000, with $50,000 due within 60 days of the date of the agreement. However, Respondent did not comply with the terms of the Settlement Agreement resulting in Ms. Tilga filing a Complaint for Confessed Judgment in Carolynne Tilga v. Erik Cherdak, Case No. 351245V (Montgomery County, MD Circuit Court).

On September 12, 2011, the court found in favor of Ms. Tilga and entered a judgment against Respondent in the amount of $141,615, including attorney's fees. Respondent filed a Motion to Vacate, which was denied on November 7, 2011. Respondent alleged, among other things, that Ms. Tilga and her attorney had fraudulently induced Respondent to sign the Settlement Agreement.

As noted above, Respondent filed a petition for bankruptcy in the U.S. Bankruptcy Court for the District of Maryland on April 27, 2015, in case number 15-15976 ("2015 Bankruptcy"). Despite the 2011 judgment, Respondent did not identify Ms. Tilga as a creditor or serve Ms. Tilga with a copy of the petition for bankruptcy.

Respondent filed another petition for bankruptcy in the U.S. Bankruptcy Court for the District of Maryland on December 5, 2016, in case number 16-25927 ("2016 Bankruptcy"). Respondent named Ms. Tilga as a creditor in his petition for bankruptcy, and identified the nature of her claim as "confessed judgment." On May 2, 2017, Ms. Tilga filed a Proof of Claim in Respondent's bankruptcy proceedings, claiming the judgment amount of $141,615 plus interest. Respondent's 2016 Bankruptcy was terminated on Respondent's motion, with no discharge of any debt. Respondent never paid the $141,615 judgment entered against him.

IV. Steven War Judgment (Count VI)

Steven War is an attorney licensed in the District of Columbia and Virginia, and is registered as a patent attorney before the USPTO. Beginning in 2011, Mr. War worked as a technical expert for Respondent in relation to two lawsuits Respondent had brought in the Eastern District of Virginia. Pursuant to the engagement agreement executed in one of the two cases, McNeely Hare & War, LLP, made an arbitration claim against Respondent related to his failure to pay one of the two contracts. The arbitrator found in favor of McNeely, Hare & War in the amount of $14,322.50, plus interest, attorney's fees, administrative fees, and the full amount of the arbitrator's fee.

During the arbitration proceeding, the arbitrator issued an order recommending that McNeely, Hare & War "consider requesting an inquiry by the State of Virginia[14] Bar authorities with respect to whether Respondent had complied fully with his responsibilities as an attorney … in connection with his conduct in this Arbitral proceeding." Respondent had failed to comply with orders by the arbitrator to submit "a list of all witnesses and exhibits intended to be offered by him[.]" Respondent had also made representations to the arbitrator to the effect that he was unable to attend the June 11, 2013, arbitration proceeding because of treatments for cancer. However, McNeely, Hare & War presented evidence establishing to the arbitrator's satisfaction that "before, during, and after the period preceding the … hearing … Respondent was actively involved on his own behalf in preparation of pleadings and otherwise in … litigation in the Virginia Federal District Court."

In July 2014, Mr. War filed two complaints against Respondent in the District Court for Montgomery County, in Steven War v. Erik Cherdak, Case No. 11381; and Steven War v. Erik

[14] The arbitrator was initially under the mistaken impression that Respondent was a licensed attorney in the Commonwealth of Virginia.

Cherdak, Case No. 11382. On November 12, 2014, Mr. War obtained two judgments against Respondent, one for $23,212.16 plus costs in Case No. 11381, and the other for $15,322.50 plus costs in Case No. 11382. Respondent filed motions to vacate both of the November 12, 2014, judgments. Both motions were denied.

Mr. War and Respondent entered into an agreement to settle both of Mr. War's actions against Respondent. The essence of the agreement was that Respondent was to pay the amount of the judgment in two installments, and that Mr. War would then file a line of dismissal, among other actions. Respondent did not make any payment under this agreement.

Respondent did not list Mr. War as a creditor or serve him with a copy of the bankruptcy petition in his 2015 Bankruptcy, which was dismissed. Respondent named Mr. War as a creditor in his 2016 Bankruptcy petition. However, the bankruptcy was voluntarily dismissed, with no discharge of any debt, on January 26, 2018.

On June 24, 2019, Respondent filed a renewed motion to vacate the Maryland judgments. On July 15, 2019, the motion was denied, and the court further ordered that "defendant will not file any additional motions to vacate in either of these cases." Mr. War has attempted to collect on his judgments for years. As of December 15, 2020, Mr. War had not been paid by Respondent according to the terms of the judgments.

V. James Thompson and David Stern Judgment (Count VIII)

On October 20, 1993, Respondent assigned his interest in U.S. Patent Application No. 08/085,936 ("Athletic Shoe with Timing Device") to James Thompson and David Stern. Respondent entered into an agreement with Messrs. Stern and Thompson, in which they assigned their interest back to Respondent. In exchange, Respondent agreed to pay $8,000, plus 15% of the first $500,000 of the net proceeds from licensing or settlement of claims made under the patent.

Messrs. Stern and Thompson filed an arbitration claim, stating that Respondent failed to pay them under the terms of the agreement. During the proceedings, Respondent violated two separate discovery orders. On September 26, 2013, the arbitrator entered an award in favor of Messrs. Stern and Thompson in the amount of $45,242.00.

On November 4, 2013, Messrs. Stern and Thompson filed a petition to confirm and enforce the arbitration award against Respondent in the Circuit Court for Montgomery County, Maryland, in Case No. 383829V. On December 26, 2013, the court entered a judgment in favor of Messrs. Stern and Thompson in the amount of $45,242.00.

On February 26, 2016, Respondent filed a motion to stay enforcement of the judgment, based on "newly discovered…evidence that defendants perpetuated an extrinsic fraud on this court and in underlying proceedings." On March 3, 2016, Respondent filed a motion to stay enforcement of the proceedings and a brief in support. The court denied both of Respondent's motions.

In the 2015 bankruptcy proceeding, which was dismissed, Respondent did not identify Messrs. Stern and Thompson as creditors, nor did he serve his petition for bankruptcy upon them. On January 22, 2017, Messrs. Stern and Thompson filed a Proof of Claim in Respondent's 2016 bankruptcy proceeding in the amount of $55,427, based on the amount of the arbitration award plus interest.[15] Respondent's bankruptcy proceeding was dismissed on Respondent's motion without discharge of any debt.

VI. Petition for Reinstatement before the Disciplinary Board of the Supreme Court of Pennsylvania (Count X)

On November 17, 2007, Respondent was transferred to inactive status in Pennsylvania for nonpayment of his license fee, and that status was changed to administrative suspension on September 1, 2010. Respondent filed a petition for reinstatement on March 24, 2017. By his signature on the petition for reinstatement, Respondent certified that his answers within were true and correct to the best of his knowledge, information, and belief.

Respondent's petition for reinstatement included a Special Reinstatement Questionnaire to the Disciplinary Board of the Supreme Court of Pennsylvania ("Pennsylvania Disciplinary Board"). Within the questionnaire, Respondent denied that there were unsatisfied judgments against him and denied having debts that were more than ninety (90) days past due. However, these representations were knowingly false as he had recently identified numerous creditors and judgments during his 2016 bankruptcy proceeding. In addition, Respondent also falsely certified that he had timely filed state and federal tax returns "for each and every year" since his admission to the Pennsylvania Bar. On May 16, 2017, a representative of the Pennsylvania Office of Disciplinary Counsel determined that there "is no impediment to reinstatement" based on their review of Respondent's Petition.

VII. The OED's Investigation (Counts X and XI)

On April 6, 2017, OED sent Respondent a Request for Information and Evidence Under 37 C.F.R. § 11.22(f) ("First RFI") that included a deadline of May 5, 2017, for a response.[16] In the First RFI, OED directed Respondent to submit a copy of his March 24, 2017 Petition for Reinstatement that was submitted to the Pennsylvania State Bar."

Respondent submitted a signed answer to the First RFI on or about June 6, 2017. In his response Respondent answered, "Please see attached at Exhibit 12" and purported to provide a copy of his Petition for Reinstatement. However, the response was misleading, because the questionnaire attached was not the same as the questionnaire submitted to the Pennsylvania Disciplinary Board.[17]

[15] Just prior to the filing date of his 2016 Bankruptcy, Respondent sent Messrs. Stern and Thompson a check for $1000. This partial payment was reflected in the Proof of Claim.

[16] This deadline was subsequently extended to June 5, 2017, upon Respondent's request.

[17] In the version of the questionnaire submitted to OED, Respondent changed his response regarding unsatisfied judgments to "yes" which was a truthful response.

Respondent also gave several false or misleading statements in response to a Second Request for Information and Evidence Under 37 C.F.R. § 11.22(f) ("Second RFI") that OED sent to Respondent on August 4, 2017. When OED asked Respondent if he was "delinquent on any federal debt (including, but not limited to … student loans)," Respondent answered, in pertinent part, "I paid my student loans as they came due and *I have not received any writing regarding any delinquency, payment due, etc., in over 10 years*." (emphasis added) However, this response was false, because earlier in the year, Respondent received a proof of claim from Respondent's student loan provider asserting a total claim of $75,986.09.

Respondent also falsely told OED that a claim to Central Roofing and Siding Co ("Central Roofing") had been paid in full and that the company had released the claim it had against him.[18] This was misleading because Respondent fraudulently used a credit card issued to the law firm that employed Respondent to pay Central Roofing's claim. Central Roofing returned those funds after being informed by the law firm that Respondent's charge on the credit card was unauthorized. Respondent's statement was also false, because Central Roofing had not released its claim and was still attempting to obtain payment from Respondent. Central Roofing obtained a judgment against Respondent in Maryland for $27,275.00.

In the First and Second RFIs, OED reminded Respondent of his obligation to cooperate with OED in the investigation, and told him that deliberately failing to disclose a material fact or intentionally providing evasive answers would result in violations of 37 C.F.R. §§ 11.801(b) and 11.804(d). Nevertheless, Respondent was nonresponsive or intentionally evasive in many of his answers. Respondent requested a total of three tolling agreements extending the time in which he was able to respond to OED's inquiries, and was reminded on at least one occasion that his answers to the OED's questions were non-responsive.

Several questions posed by OED required a response from Respondent with supporting documentation. Although Respondent provided written responses, he would often completely ignore the requirement to provide documentation, or he would claim that documentation was forthcoming but never submit it. For example, Respondent was asked if he or a third-party had communicated something in writing and, if so, to provide the document. On at least two occasions, Respondent answered in the affirmative but did not provide the documents or explain their omission. Respondent was also asked to list all bank accounts which held funds from licensing or settlement agreements, and to provide bank statements showing the receipt of those funds. In his response Respondent merely answered, "I await copies of all bank statements and will provide the same to OED in due course." This answer was not responsive, and Respondent never provided bank statements showing receipt of the funds.

For many questions, Respondent provided an answer that was non-responsive or evasive. In the First RFI, OED asked Respondent to provide his employment history, including dates,

[18] The request posed by OED was, "Explain why you did not inform Central Roofing and Siding Co. of your bankruptcy filing prior to the company beginning work on your behalf." OED inquired regarding this issue after receiving information that Respondent entered into a contract with Central Roofing on November 3, 2016, in which Central Roofing contracted to repair his roof and gutters. After the contract was entered into, but before the work began, Respondent filed his 2016 Bankruptcy. Respondent did not make payment as required by the contract and did not list the company as a creditor. Central Roofing only discovered Respondent's pending bankruptcy after it engaged an attorney to pursue a claim for repayment.

titles, the name of the entities he worked for, and job descriptions. Respondent did not provide the requested information in his first response to the First RFI. OED asked for this information again in the Second RFI. Rather than respond with this information, Respondent answered, "a copy of my CV has been attached," but did not attach that document.

Question 7 of the Second RFI included multiple subparts regarding Respondent's claim that he was never Fitistics' patent practitioner. The questions specifically identified prior inconsistent statements and asked Respondent for information regarding his relationship with Fitistics and work that had been done for the company. Respondent did not fully respond to the questions and instead merely reiterated his position that he was never Fitistics' patent practitioner.

VIII. Respondent's Conduct During the Hearing

At the commencement of the hearing before the Undersigned ALJ, the OED Director moved the Tribunal to admit all the OED Director's hearing exhibits that had been previously provided to the Tribunal and Respondent. Although the Tribunal already ruled that any objections Respondent may have had to those exhibits were waived, Respondent nevertheless objected on the basis that he did not have those exhibits or did not know to which exhibits the OED Director was referring. Respondent's claims were not only untimely, but also disingenuous, because the Tribunal observed that he had physical copies of the OED Director's exhibits before him and was referring to them. As such, the exhibits were admitted into the record.

Throughout the hearing, Respondent also demonstrated an astounding lack of decorum. Respondent frequently mischaracterized witness testimony, and continuously attempted to testify through his questioning despite receiving warnings from the Tribunal not to do so. He was discourteous to opposing counsel and, at times, would intentionally mischaracterize opposing counsel's statements or conduct in an apparent effort to contaminate the record or persuade the Tribunal to rule in his favor. He displayed disrespect for the Tribunal's authority, often interrupting and plainly speaking over the Undersigned during rulings. After receiving a ruling against him, Respondent would continue to argue his position, often making statements that mischaracterized the circumstances supporting the Tribunal's decision. He refused to abide by the Tribunal's directions to move on from lines of questioning that were repeatedly asked and answered. He refused to correct his conduct despite warnings. And, in an especially appalling moment, he insulted a witness who was testifying by stating, "I'm done with this liar" as he passed the witness.

Respondent's behavior continued post-hearing as well. After unsuccessfully requesting reconsideration of the Tribunal's sanction precluding him from presenting evidence at the hearing, Respondent made multiple attempts to introduce exhibits by claiming they were being offered for impeachment, when they did not meet the standard.[19] Respondent even impermissibly attached an exhibit to his *Respondent's Post-Hearing Brief* in an effort to move it into the evidentiary record of this case. At the hearing, Respondent had offered the same exhibit for impeachment purposes, but the Tribunal had denied that request, finding it did not impeach

[19] Respondent was successful in admitting other impeachment evidence that was later accused of being altered.

the testimony of the witness and that Respondent was impermissibly trying to "backdoor" the exhibit.

IX. Respondent's Submission of Altered Evidence

Respondent's most egregious act was submitting manufactured evidence to the Tribunal. During the testimony of Mr. War, Respondent offered an email dated January 12, 2012, and an email dated February 5, 2012, both purporting to impeach Mr. War's credibility. The emails (hereinafter "Cherdak Impeachment Emails") were accepted into evidence.

Later, when Mr. War was called as a rebuttal witness, he testified that he had mistakenly believed he sent the Cherdak Impeachment Emails when he, in fact, did not. As to why he had previously thought he had authored emails almost nine years before his testimony he explained,

> When I saw the emails yesterday, it appeared to have come from my email address, which was steve@mitandlaw.com. It conformed with my memory of invoices I had sent to Mr. Cherdak about that time frame. They were all addressed to Mr. Cherdak the way I addressed them back then. The beginning parts were things that I would normally say when I sent out an invoice, and I checked the invoices themselves, and they looked like they were authentic.

Mr. War further explained, "I kind of assumed they were from me because the representation was made that they were from me." However, Mr. War noted on rebuttal that did not recognize those emails in part because the invoices were imbedded into the emails rather than attached. And, following his prior testimony, he searched his email records from that period, which he still maintained.

Mr. War could not find the Cherdak Impeachment Emails despite searching his records. Instead, he found two emails that were sent close in time on January 11, 2012, and February 4, 2012, respectively. Those emails (hereinafter "War Invoice Emails") had very similar language to the Cherdak Impeachment Emails except they did not include the language that Respondent used to impeach Mr. War's credibility. The War Invoice Emails were also consistent with how Mr. War would send invoices—as attachments to the email rather than imbedded in the email.

Mr. War further testified that he no longer believed he sent the Cherdak Impeachment Emails. Specifically, on rebuttal he reviewed the Cherdak Impeachment Emails and noticed characteristics such that made him question their authenticity. For example, in the February 5, 2012, email there were alignment and spacing inconsistencies in the header. Mr. War also explained that it was his practice to attach invoices to emails, rather than embed them, so his clients could easily print the invoices for their records.

On cross-examination, Respondent attempted to elicit testimony from Mr. War regarding the metadata from the emails at issue. However, Mr. War testified consistently that he "never dealt with metadata" and "never examined metadata." As a result, Respondent requested to

personally testify on rebuttal to authenticate the Cherdak Impeachment Emails by explaining how the "metadata and source listings were created, were put together, and printed out."

The Tribunal recognized that Respondent should have an opportunity to rebut Mr. War's testimony on rebuttal. And, faced with the serious allegation that Respondent had altered or falsified evidence, the Tribunal determined that testimony on the authenticity of the emails should come from an expert. Therefore, the hearing was adjourned but would reconvene on a later date to address the limited issues of the authenticity of the Cherdak Impeachment Emails and the War Invoice Emails.

The Tribunal conducted an evidentiary hearing from May 10-11, 2021, to receive expert testimony as to the authenticity of the Cherdak Impeachment Emails and the War Invoice Emails. The OED Director offered the testimony of Bobby Ray Williams, Jr, who is a data scientist, technologist by trade, with a focus on digital forensics investigations. At the time of his testimony, Mr. Williams had approximately 20 years of experience as a consultant, technologist, and subject matter expert in the field of e-discovery and computers. Respondent offered the testimonies of Avinash Srinivasan and Steve Bergin. Dr. Srinivasan is a certified ethical hacker and certified computer hacking forensics investigator, who has approximately 12 years in forensic evaluation of digital data. Mr. Bergin is a forensic expert holding a master's certificate in digital forensics. Prior to being retained by Respondent, Mr. Bergin had analyzed email authenticity issues for the FBI and Air Force a total of eight times. The three witnesses were each qualified and accepted as an expert witness on the issue.

Mr. Williams testified that he personally collected the War Invoice Emails from three different locations on Mr. War's devices to perform a forensic analysis as to their authenticity. After conducting a preliminary analysis of the War Invoice Emails, he concluded that the emails had been historically preserved, defensibly collected by a qualified technological professional using optimal methods and formats, the metadata was preserved to the greatest extent possible, the email headers were kept intact, and the files and associated metadata were consistent with normal user activity. Upon further analysis, Mr. Williams found that the War Invoice Emails contained metadata consistent with valid email messages, including the file data and email headers. Mr. Williams testified with 95 percent certainty that the War Invoice Emails were sent and were not altered between 2012 and the time that Mr. Williams collected them from Mr. War's devices.

Mr. Williams also conducted an analysis of the Cherdak Impeachment Emails. He found that the files of the Cherdak Impeachment Emails that Respondent produced had anomalies that could not be duplicated using normal send and receive methods. Mr. Williams testified that certain of the PDF documents produced by Respondent contained information indicating that they had been generated using a web application called aspose.app. Aspose.app is marketed as an application with the ability to edit emails.

During the hearing, Mr. Williams conducted a demonstration wherein he created an email and sent that email to another email account within his control. Mr. Williams then used the aspose.app web application to add text to the email message and change the format of the email from Outlook format to Apple Mail format. After changing the format of the email, Mr.

Williams was able to change the date of the email from May 10, 2021, to May 10, 2012, and change multiple characters within the IP addresses listed within the header. Mr. Williams then opened the file within MS Outlook revealing that the text he added using aspose.app was updated in the body of the email and the email header now suggested that the email was sent in 2012, not 2021.

Based on his testing and analysis, Mr. Williams, who chose not to use absolutes, testified with 70-75 percent certainty that the Cherdak Impeachment Emails had been altered. Mr. Williams opined that human manipulation was the only explanation for the anomalies. He also testified that he did not have any alternate theories besides manipulation.

Respondent's experts, on the other hand, reached the conclusion that the Cherdak Impeachment Emails were authentic and that the War Invoice Emails were never sent. The experts relied on information contained in the headers of the Cherdak Impeachment Emails and the War Invoice Emails. Dr. Srinivasan and Mr. Bergin opined that the Cherdak Impeachment Emails were authentic, because the headers included information consistent with a message that had been sent and received. Dr. Srinivasan testified that, if the Cherdak Impeachment Emails had been altered, he expected to see anomalies when the altered email was synchronized to the server or that the header would include information reflecting an error. However, Mr. Williams' demonstration proved this would not be the case.

Mr. Bergin testified that the War Invoice Emails were never sent, because they did not contain origin and path data in the headers indicating they were never sent. However, Mr. Williams rebutted this testimony and explained that his own testing showed that email files stored in the sent folder have not yet travelled on their path to the recipient, so they do not contain origin and path data.

Unlike Mr. Williams, Respondent's experts did not personally undertake a forensic collection of any of the emails at issue. Instead, their analysis was performed based only on the information sent to them by Respondent. Both of Respondent's experts acknowledged that it is not "best practice" to conduct an analysis and make conclusions based solely on one source of data. They admitted that it would be preferrable to have multiple sources of information to determine email authenticity. Neither Respondent nor his experts proffered a viable reason as to why they did not personally collect data from Mr. War or Respondent's computers.[20]

The scope of Dr. Srinivasan and Mr, Bergin's investigations was limited to header information on emails Respondent presented to them. Dr. Srinivasan acknowledged that his focus was on comparing header information and reviewing the "hop" data to determine whether an email was sent and received. He noted that he was "specifically not asked to look at any tampering with the email contents" and that he did not confirm the authenticity of the contents or whether the body of the email was modified.

[20] Indeed, the Tribunal's *Order* dated January 6, 2021, specifically provided that, "Either party or both may direct their expert to perform a forensic collection of the electronic files, and to include information related to the data collection in their expert report."

After considering the testimonies of Mr. Williams, Dr. Srinivasan, and Mr. Bergin, the Tribunal gives greater weight to the conclusions drawn by Mr. Williams. Mr. Williams personally collected the data he analyzed whereas Dr. Srinivasan and Mr. Bergin relied solely on data that had been passed to them by an interested party. Moreover, Dr. Srinivasan and Mr. Bergin's conclusions, which relied upon email header information, were undermined by Mr. Williams's testimony and demonstration as to how that information could have been, and likely was, manipulated. Accordingly, the Tribunal concludes that the Cherdak Impeachment Emails were not authentic and had been altered before they were submitted as evidence.

The Tribunal further finds that Respondent's motive for not complying with orders regarding discovery and the presentation of evidence is clear. Had he actually exchanged exhibits with opposing counsel and filed them with the Tribunal in advance as required, his duplicity would have been discovered. Instead, it is reasonably inferred that Respondent deliberately withheld his exhibits, at least one of which contained altered evidence, in order to surprise and prejudice an unsuspecting OED Director and the Undersigned ALJ. This is the only explanation for why Respondent still refused to produce his exhibits in advance to avoid additional sanctions. Indeed, Respondent is too clever to squander a second chance at offering evidence unless he had other motives. Based upon the Tribunal's direct observations of Respondent's conduct during the hearing, the Tribunal can say with certainty that a practitioner who behaves with such contempt and in such a cavalier fashion in front of a judge would go as far as submitting altered evidence.

DISCUSSION[21]

At the hearing, the OED Director presented evidence that Respondent's conduct violated the USPTO's disciplinary rules. Specifically, such misconduct related to Respondent's failure to comply with federal and state income tax obligations; his failure to pay court-ordered judgments; false statements he made to various tribunals; and his failure to comply with OED's investigation into his misconduct.

Respondent waived his objections to the OED Director's evidence and presented no evidence to contradict the OED Director's claims. The only evidence Respondent presented was related to the impeachment of Mr. War's testimony, and the Tribunal found that evidence was fabricated. Accordingly, and for the reasons set forth below, the Tribunal finds Respondent violated the USPTO Code of Professional Responsibility for misconduct that occurred before May 3, 2013, and violated the USPTO Rules of Professional Conduct for misconduct that occurred on or after May 3, 2013.

I. Respondent engaged in disreputable or gross misconduct.

The OED Director claims Respondent's conduct before May 3, 2013, constituted disreputable or gross misconduct in violation of the USPTO Code of Professional Responsibility.

[21] The Tribunal has considered all issues raised and all documentary and testimonial evidence both in the record and presented at hearing. Those issues not discussed herein are not addressed because the Tribunal finds they lack materiality or importance to the decision.

Specifically, the OED Director points to Respondent's failure to timely file and pay federal and state taxes, and his failure to pay Ms. Tilga the money he owed pursuant to two judgments.

The USPTO Code of Professional Responsibility prohibited practitioners from engaging in disreputable or gross misconduct. 37 C.F.R. § 10.23(a). In promulgating its regulations, the USPTO declined to define what constitutes "disreputable or gross misconduct." See 50 Fed. Reg. 5158-01 *5163 (Feb. 6, 1985) (acknowledging a comment suggesting that the terms be defined and noting that they appear in the statute and "need no further definition in the rules"). However, this Tribunal has held that "disreputable conduct has generally included unprofessional conduct" and includes "any conduct violative of the ordinary standard of professional obligation and honor." *In re* Lane, Proceeding No. D2013-07, slip op. at 12 (USPTO Mar. 11, 2014) (quoting Poole v. United States, CIV.A. 84-0300, 1984 U.S. Dist. LEXIS 15351, at *7 (D.D.C. 1984)).[22]

Here, the OED Director has presented copies of Respondent's bankruptcy proceeding documents including claims by the IRS and the State of Maryland demonstrating that Respondent failed to timely file his federal income tax returns for years 2012-2013[23] and owed significant amounts of unpaid state and federal taxes, penalties, and interest for tax years between 2003 and 2012. Such misconduct is disreputable and violates 37 C.F.R. § 10.23(a). See *In re* Miller, Proceeding No. D2012-11, slip op. at 2 (USPTO Mar. 13, 2012) (concluding a practitioner engaged in disreputable conduct by failing to timely file and pay federal and state income tax returns). Respondent's failure to timely file his income tax return for year 2013 did not constitute misconduct under the rule, because that filing would not have been considered untimely until the following year at which time 37 C.F.R. § 10.23(a) would have been superseded by the implementation of the USPTO Rules of Professional Conduct.[24] However, he violated the rule by failing to timely file his return for year 2012 and failing to timely pay his taxes.

Respondent also engaged in disreputable or gross misconduct by refusing to pay Ms. Tilga money owed to her. On this issue, the OED Director presented evidence that a judgment in the amount of $150,000 was initially entered against Respondent. Despite two unsuccessful attempts to challenge the judgment, Respondent still did not make payment as required. After, when Ms. Tilga and Respondent entered into a Settlement Agreement requiring Respondent to only pay $135,000, Respondent still failed to make payment resulting in a second judgment against him that he also failed to overturn. Respondent made repeated attempts to ignore his obligation to repay this substantial debt to Ms. Tilga. Such conduct constitutes gross misconduct and violates 37 C.F.R. § 10.23(a). See *In re* Halvonik, Proceeding D96-03, slip op. at 72 (USPTO Mar. 4, 1999) (final order) (practitioner failing to promptly pay his client $500 that he knew the client was entitled to amounts to gross misconduct), aff'd, Halvonik v. Dudas, 398 F. Supp. 2d 115, 130 (D.D.C. 2005).

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[22] USPTO disciplinary decisions cited herein are available online at https://foiadocuments.uspto.gov/oed/.

[23] Those returns, and his 2014-2015 returns were not filed until February 15, 2017.

[24] The Tribunal takes administrative notice that the due date for filing a federal tax return for a given year falls on or just after April 15th of the following year.

II. Respondent engaged in illegal conduct adversely reflecting on his fitness as a practitioner.

The OED Director alleges Respondent's failure to timely file federal income tax returns and failure to pay past due federal and state income taxes on or after May 3, 2013, constitute illegal conduct that adversely reflects on Respondent's honesty, trustworthiness, or fitness as a practitioner in violation of 37 C.F.R. § 11.804(b).

USPTO Rule of Professional Conduct 11.804(b) provides that "[i]t is professional misconduct for a lawyer to . . . (b) commit a criminal act that reflects adversely on the practitioner's honesty, trustworthiness, or fitness as a practitioner in other respects." See also MODEL RULES OF PROF'L CONDUCT R. 8.4(b). The "mere commission of a criminal act does not necessarily reflect adversely on the fitness of an attorney to practice law." Iowa Supreme Court Att'y Disciplinary Bd. v. Templeton, 784 N.W.2d 761, 763 (Iowa 2010). However, jurisdictions that also adopted the ABA Model Rules have generally found that the willful failure to file income file returns and pay taxes is a criminal act that violates the rule. See Att'y Griev. Comm'n of Md. v. Yates, 467 Md. 287, 302 (Md. 2020) ("Willful failure to file is quintessentially a criminal act that reflects adversely on an attorney's fitness as an attorney."). The term "willful" in the context of federal criminal tax statutes means "a voluntary, intentional violation of a known legal duty." United States v. Pomponio, 429 U.S. 10, 12 (1976).

The OED Director's evidence demonstrates that Respondent's 2014 tax filing was not timely, and that he had significant unpaid federal and state tax obligations on or after May 3, 2014. In addition, when OED asked Respondent in the Second RFI whether he filed federal income taxes, Respondent admitted that he owed some back taxes although he disputed the amounts due. The Tribunal finds the OED Director's evidence, including Respondent's admission to OED that he owed some back taxes, demonstrates Respondent willfully failed to pay past due federal taxes in violation of federal statutes. See 26 U.S.C.S. § 7203.

However, the OED Director's evidence is insufficient to demonstrate that Respondent's failure to file his 2014 federal tax return and failure to pay past due state taxes are criminal acts that also violate this rule. Rather, the evidence merely demonstrates that Respondent was not in compliance with state and federal tax laws. Without an admission or other evidence that Respondent's noncompliance was voluntary and intentional, the Tribunal cannot conclude that his failure to file the 2014 tax return or to pay state taxes was a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a practitioner in other respects. Cf. Yates, 467 Md. at 302 (finding an attorney's failure to file was willful because the attorney admitted he was always aware of his obligation to file tax returns and to pay taxes but did not do so); *In re* Steffensen, 428 P.3d 1104, 1111 (Utah 2018) (deferring to the lower court's finding, based on circumstantial evidence, that a lawyer knowingly and intentionally failed to file a proper tax return).

III. Respondent knowingly disobeyed obligations under the rules of a tribunal.

The OED Director claims Respondent disobeyed his obligations to tribunals when he failed to pay court-ordered judgments in favor of Ms. Tilga, Mr. War, and Messrs. Stern and Thompson.

The USPTO disciplinary rules provide that "a practitioner shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based upon an assertion that no valid obligation exists." 37 C.F.R. § 11.304(c). "Open refusal" is defined as "good faith and open noncompliance in order to test an order's validity." Att'y Griev. Comm'n v. Levin, 69 A.3d 451, 469 (Md. 2013) (citing Geoffrey C. Hazard, Jr. & W. William Hodes, The Law of Lawyering § 30.9, at 30-21 (3d ed. 2001, 2011 Supp.)).

The OED Director presented evidence of judgments in favor of Ms. Tilga, Mr. War, and Messrs. Thompson and Stern. Those judgments constitute court orders with which Respondent was obligated to comply by remitting payment. Respondent did not remit payment as required. Respondent's attempts to challenge the validity of those judgments by requesting stays and moving to vacate the orders are insufficient to invoke the "open refusal" exception, because his motions were all denied. Assuming, *arguendo*, that he was continuing to pursue challenges to their validity, this still does not mean he was free to ignore them. See People v. Head, 332 P.3d 117, 132 (Colo. 2013) (noting that an appeal is the proper remedy to challenge the validity of a court order, but the attorney was still required to promptly comply pending appeal unless a stay is issued.). Accordingly, the Tribunal finds that Respondent knowingly disobeyed his obligation under the rules of a tribunal, which constitutes a violation of 37 C.F.R. § 11.304(c). See e.g., *In re* Kleinsmith, Proceeding No. D2016-10, slip op. at 3 (USPTO Nov. 5, 2019) (practitioner knowingly failed to make court-ordered child support payments in violation of 37 C.F.R. § 11.304(c)); *In re* Disciplinary Action Against Giberson, 581 N.W.2d at 355 ("Knowing violations can occur when a lawyer fails to comply with a court order that applies directly to him or her, as in the case of lawyers who do not comply with a divorce decree ordering spousal maintenance or child support.").

IV. Respondent knowingly made false statements of fact to tribunals.

The OED Director also claims Respondent's false statements to OED, the Bankruptcy Court for the District of Maryland, and the Pennsylvania Disciplinary Board implicate the USPTO disciplinary rules proscribing false statements made to a tribunal.

A practitioner shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the practitioner. 37 C.F.R. § 11.303(a)(1). "Knowingly" means with actual knowledge of the fact in question, and a person's knowledge may be inferred from circumstances. 37 C.F.R. § 11.1. Included in the definition of "tribunal" is the USPTO, a court, an arbitrator in a binding arbitration, or a legislative body, administrative agency or other body acting in an adjudicative capacity. Id.

Respondent made false statements to the Bankruptcy Court for the District of Maryland. In his 2015 bankruptcy proceeding, Respondent omitted Ms. Tilga, Mr. War, and Messrs. Thompson and Stern as creditors even though he knew he had not paid the judgments against him. He later identified these creditors and their claims in his 2016 bankruptcy proceedings. However, there is no evidence that he ever corrected the omissions from the 2015 bankruptcy proceeding before it was dismissed.

Respondent also made false statements to the Pennsylvania Disciplinary Board by providing false answers in the questionnaire he submitted supporting his request for reinstatement. He denied having judgments against him and debts that were more than ninety (90) days past due. He also falsely stated that he timely filed and paid his taxes each year. These representations were knowingly false because the judgments and tax violations had been identified during his 2016 bankruptcy proceeding and before his request for reinstatement.

Similarly, Respondent's statements to OED during its investigation were also false and misleading. He submitted to OED a different version of the questionnaire and misrepresented that it was the version he had sent to the Pennsylvania Disciplinary Board. He also made false statements to OED when he asserted that the Central Roofing claim had been paid in full and released. The statement was false because Central Roofing had not released its claim. It was also knowingly misleading because less than a week before he made this representation to OED, Respondent had attempted to pay the Central Roofing claim using his employer's credit card without authorization.[25] Respondent never corrected these false and misleading statements and therefore violated 37 C.F.R. § 11.303(a). See *In re* Walpert, Proceeding No. D2018-07, slip op. at 14 (USPTO June 14, 2019) (initial decision finding a practitioner engaged in misconduct when he falsely represented to the Massachusetts Board of Bar Overseers and to the OED that he had timely informed a client of filing irregularities prior to April 2016).

V. Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The OED Director alleges Respondent engaged in dishonest conduct because he ignored his obligations to pay judgments and failed to comply with agreements he entered into. In addition, the OED Director claims Respondent lied to OED, the Bankruptcy Court for the District of Maryland, and the Pennsylvania Disciplinary Board.

The USPTO disciplinary rules state that it is professional misconduct to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. 37 C.F.R. § 11.804(c). In the absence of codified definitions, this Tribunal has previously looked to common dictionary definitions as useful guidance. See *In re* Kelber, No. 2006-13, slip op. at 33 (USPTO Sept. 23, 2008). Dishonesty is "characterized by lack of truth, honesty, or trustworthiness." *Dishonest*, MERRIAM-WEBSTER DICTIONARY ONLINE, http://www.merriam-webster.com/dictionary/dishonest; see also *In re* Shorter, 570 A.2d 760, 767-68 (D.C. 1990) (stating that dishonesty "encompasses

[25] The timing of these events is telling. The Second RFI issued on August 4, 2017, specifically requested information regarding Central Roofing's claims against Respondent. He made no efforts to make payment on Central Roofing's claim until a few days before he would submit his response to the Second RFI claiming Central Roofing was paid in full. The Tribunal reasonably infers Respondent made the fraudulent payment for the express purpose of misleading OED into believing the Central Roofing matter had been resolved.

conduct evincing a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness"). Deceit is defined as "the quality of being dishonest or misleading." *Deceit*, MERRIAM-WEBSTER DICTIONARY ONLINE, http://www.merriam-webster.com/dictionary/deceit. Misrepresentation is "[t]he act of making a false or misleading assertion about something, usu[ally] with the intent to deceive," and includes "not just written or spoken words but also any other conduct that amounts to a false assertion." *Misrepresentation*, BLACK'S LAW DICTIONARY (9th ed. 2009).

The OED Director presented evidence that Respondent failed to pay court-ordered judgments and otherwise refused to pay monies owed to Ms. Tilga, Mr. War, and Messrs. Thompson and Stern. The OED Director claims in his *Post-Hearing Brief* that Respondent's failure to pay his debts is evidence of dishonest conduct, because Respondent "engaged in multiple business transactions in which he receives the goods or services, and simply does not pay."

The Tribunal disagrees with the OED Director's reasoning. Although Respondent has made no effort to hide or obscure the fact that he does not intend to pay these judgments, he entered into the agreements that gave rise to judgments at issue before May 3, 2013, when this disciplinary rule went into effect. Therefore, the dishonest conduct of entering into these agreements while having no intent to honor them would not trigger a violation under this rule. Respondent's refusal to pay the judgments is not honorable but, without more, it does not constitute a violation of 37 C.F.R. § 11.804(c). See *In re* Swayze, Proceeding No. D2019-44, slip op. at 19 (USPTO Aug. 24, 2023) ("Sanctionable dishonesty or misrepresentation generally requires an intent to deceive.")

However, Respondent nevertheless engaged in conduct violating this disciplinary rule. As found *supra*, Respondent made false and misleading statements to OED, the Bankruptcy Court for the District of Maryland, and the Pennsylvania Disciplinary Board of the Supreme Court of Pennsylvania. Such misconduct is dishonest and deceitful in violation of 37 C.F.R. § 11.804(c). See Walpert, Proceeding No. D2018-07, slip op. at 15 (USPTO June 14, 2019) (initial decision finding practitioner engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation when he lied to the Massachusetts Board of Bar Overseers and the OED).

VI. Respondent failed to respond to OED's lawful requests for information.

The *Complaint* also alleges Respondent engaged in misconduct because he was not candid with OED during its investigation and provided evasive and non-responsive answers to the First and Second RFIs.

The USPTO disciplinary rules state that a practitioner, in connection with a disciplinary matter, shall not knowingly fail to respond to a lawful demand or request for information unless disclosure of such information is protected. 37 C.F.R. § 11.801(b). As noted *supra*, "knowingly" means having "actual knowledge of the fact in question." Id. at § 11.1.

OED issued two RFIs to Respondent. Each advised Respondent that his failure to respond could result in violations of 37 C.F.R. § 11.801(b). In numerous instances, Respondent

omitted documents he was required to produce. Sometimes, Respondent claimed he would submit the document(s) but never did so. Other times, Respondent completely ignored the fact that the question required supporting documentation.[26] Additionally, many of his written responses were conveniently evasive or non-responsive to OED's questions. For example, Respondent avoided explaining how it could be that Fitistics LLC was not his client when he had previously made statements under oath that he represented the company. At times, Respondent provided misleading or blatantly false responses, which is worse than not responding at all.

Respondent's conduct was knowing because he received both of the RFIs, knew of his obligation to respond, and knew that providing false information, deliberately failing to disclose a material fact, or intentionally providing evasive answers was misconduct. His actions, coupled with his multiple attempts to postpone the due date for his responses to the RFIs, further demonstrate that Respondent's failure to cooperate with OED by responding to RFIs was intentional. Accordingly, Respondent's misconduct violates 37 C.F.R. § 11.801(b). See *In re* Disciplinary Matter Involving Chaobal, 498 P.3d 617, 627 (Alaska 2021) (by failing to timely respond and by responding to grievances with few facts and unfulfilled promises to supplement his responses, an attorney violated the rule proscribing failing to respond to a lawful demand for information).

VII. Respondent engaged in conduct prejudicial to the administration of justice.

The OED Director claims Respondent's misconduct alleged in Counts IV, V, VI, VIII, X, and XI constitutes conduct prejudicial to the administration of justice.

The USPTO disciplinary rules state that it is misconduct for a practitioner to engage in conduct that is prejudicial to the administration of justice. 37 C.F.R. § 10.23(b)(5) (for conduct occurring before May 3, 2013); 37 C.F.R. § 11.804(d) (for conduct occurring on or after May 3, 2013). Such misconduct includes "conduct which impedes or subverts the process of resolving disputes" or "frustrates the fair balance of interests or 'justice' essential to litigation or other proceedings." *In re* Friedman, 23 P.3d 620, 628 (Alaska 2001). Generally, an attorney engages in such conduct when his behavior negatively impacts the public's perception of the courts or legal profession or undermines public confidence in the efficacy of the legal system. Att'y Grievance Comm'n v. Rand, 981 A.2d 1234, 1242 (Md. 2009). Misconduct that is prejudicial to the administration of justice does not require a mental state other than negligence. *In re* Martinez, 462 P.3d 36, 45 (Ariz. 2020).

Respondent's failure to file timely income tax returns and to pay past due federal and state taxes (Count IV) is conduct prejudicial to the administration of justice. See *In re* Cook, 33 So. 3d 155, 158 (La. 2010) ("The…failure to file income tax returns is professional misconduct that reflects poorly on a profession as a whole, even though the offense may have nothing to do with client representation."); Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Runge, 588

[26] During the hearing, Respondent attempted to sow uncertainty by suggesting that responsive documents had been produced but were overlooked by OED's investigating attorneys. However, Respondent failed to provide evidence that he actually produced the documents or that any documents were overlooked. OED's witness testified consistently and repeatedly that every document Respondent submitted during the investigation was reviewed. Without evidence to the contrary, the Tribunal finds her credible testimony to be uncontroverted.

N.W.2d 116, 118 (Iowa 1999) (failure to file a tax return is conduct prejudicial to the administration of justice).

Respondent's refusal to pay court-ordered judgments (Counts V, VI, and VIII) is also conduct prejudicial to the administration of justice. See People v. Verce, 286 P.3d 1107, 1109 (Colo. 2012) (holding that knowingly disobeying a court order to pay child support constitutes conduct prejudicial to the administration of justice); *In re* Disciplinary Action Against Giberson, 581 N.W.2d 351, 354 (Minn. 1998); Daniels v. Statewide Griev. Comm., 204, 804 A.2d 1027, 1028 (Conn. App. Ct. 2002) (holding that the failure to pay a default judgment in a timely manner is conduct prejudicial to the administration of justice).

In addition, Respondent's false statements made to the Pennsylvania Disciplinary Board, the Maryland Bankruptcy Court for the District of Maryland, and OED (Count X) constitute conduct prejudicial to the administration of justice. See Bd. of Prof'l Responsibility v. Custis, 348 P.3d 823, 833 (Wyo. 2015) (sanctioning a lawyer for submitting a brief containing material misrepresentations that would have impacted a central issue in the case and that caused undue delay and wasted the resources of opposing counsel and the court); *In re* Ogunmeno, 312 Kan. 508, 518, 476 P.3d 1162, 1172 (Kan. 2020) (adopting the disciplinary board's finding that a lawyer's presentation of altered evidence to a court was conduct prejudicial to the administration of justice and imposing disbarment).

Finally, Respondent's failure to cooperate with in the OED's investigation by responding to OED's RFIs (Count XI) constitutes conduct prejudicial to the administration of justice. *In re* Keller, Proceeding No. D2022-22 (USPTO Apr. 23, 2023); *In re* Stecewycz, Proceeding No. D2014-15, slip op. at 27 (USPTO May 5, 2016); Bender v. Dudas, 490 F.3d 1361, 1368 (Fed. Cir. 2007) (affirming finding that providing the USPTO with evasive responses to RFIs constitutes conduct that is prejudicial to the administration of justice).

SUMMARY OF VIOLATIONS FOUND

Based on the foregoing, the Tribunal finds clear and convincing evidence exists to show that Respondent engaged in misconduct in violation of the USPTO disciplinary rules. Respondent engaged in disreputable or gross misconduct in violation of 37 C.F.R. § 10.23(a) by failing to timely file and pay taxes due before May 3, 2013, and failing to pay Ms. Tilga pursuant to a settlement agreement or a judgment in her favor. Respondent's failure to timely and pay federal taxes that were past due on or after May 3, 2013, also constitutes criminal conduct adversely reflecting on his fitness as a practitioner in violation of 37 C.F.R. 11.804(b). Respondent knowingly disobeyed obligations under the rules of a tribunal in violation of 37 C.F.R. § 11.304(c) by refusing to pay court-ordered judgments. Respondent also knowingly made false statements of fact to tribunals in violation of 37 C.F.R. 11.303(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of 37 C.F.R. § 11.804(c) through his submissions to the Pennsylvania Disciplinary Board, the Bankruptcy Court for the District of Maryland, and OED. By providing non-responsive and evasive responses to the First and Second RFI, Respondent failed to respond to OED's lawful requests for information in violation of 37 C.F.R. § 11.801(b). Finally, Respondent's misconduct in Counts IV, V, VI,

VIII, X, and XI constitutes conduct prejudicial to the administration of justice in violation of 37 C.F.R. § 10.23(b)(5) and 37 C.F.R. 11.804(d).[27]

SANCTIONS

The OED Director requests that the Tribunal sanction Respondent by entering an order excluding Respondent from practice before the Office. Before sanctioning a practitioner, the Tribunal 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). When considering if and what sanction is appropriate, "[w]e start from the premise that protection of the public and bar, not punishment, is the primary purpose of attorney discipline and that we must accordingly consider relevant mitigating and aggravating circumstances." *In re* Burmeister, Proceeding No. D1999-10, slip op. at 11 (USPTO Mar. 16, 2004) (quoting Coombs v. State Bar of California, 779 P.2d 298, 306 (Cal. 1989)).

1. Respondent violated his duty to the public, the legal system, and the legal profession.[28]

First, Respondent violated his duty to the public by failing to pay taxes and court-ordered judgments. Respondent also breached his duties to the legal system and the legal profession by making false statements to the Pennsylvania Disciplinary Board, the Bankruptcy Court for the District of Maryland, and OED. Such conduct casts doubt on the integrity of the legal system and legal profession. Finally, Respondent's failure to respond to OED's RFIs reflects poorly on the legal profession's ability to self-regulate.

2. Respondent's misconduct was intentional and knowing.

Respondent's conduct was intentional. "Acting with intent constitutes the most culpable mental state and arises when a lawyer acts with a conscious objective or purpose to accomplish a particular result." *In re* Glazer, Proceeding No. D2018-34 slip op. at 5 (USPTO Mar. 4, 2020) (citing Preamble to American Bar Association's STANDARDS FOR IMPOSING LAWYER SANCTIONS

[27] The *Complaint* also charges Respondent with "engaging in other conduct that adversely reflects on practitioner's fitness to practice before the Office" in violation of 37 C.F.R. § 10.65 for misconduct occurring before May 3, 2013, and 37 C.F.R. § 11.804(i) for misconduct occurring on or after May 3, 2013. However, the OED Director did not present evidence relating to this charge and withdraws the charge in relation to all counts.

[28] The Tribunal's reference to the "legal profession" pertains to the profession of being a practitioner appearing before the Office.

(1992) ("ABA STANDARDS")). Respondent intentionally and repeatedly skirted his obligation to pay court-ordered judgments. Respondent also intentionally refused to pay past due federal taxes.

Respondent knowingly made false statements to the Pennsylvania Disciplinary Board, the Bankruptcy Court for the District of Maryland, and OED. Specifically, he knew of the existence of the judgments against him and that those claims had not been paid but did not disclose them in his submissions. See *In re* Aquilla, Proceeding No. D2022-27, slip op. at 7 (USPTO Jan. 27, 2023) ("Knowing" is defined as "act[ing] with conscious awareness of the nature or attendant circumstances of his or her conduct both without the conscious objective or purpose to accomplish a particular result."). Respondent also knowingly failed to submit responsive answers to the RFIs even after being informed that his previous answers were evasive and non-responsive.

3. Respondent's misconduct caused actual injury.

Respondent's misconduct caused actual injury. He owes over $800,000 in federal and state taxes and over $200,000 in court judgments to Ms. Tilga, Mr. War, and Messrs. Stern and Thompson. In addition, Ms. Tilga, Mr. War, and Messrs. Stern and Thompson have expended significant resources to enforce judgments thereby exacerbating the injury caused by the unpaid judgments themselves.

4. Aggravating and mitigating factors exist in this case.

The Tribunal often looks to the ABA Standards when determining whether aggravating or mitigating factors exist. See *In re* Chae, Proceeding No. D2013-01, slip op. at 4 (USPTO Oct. 21, 2013). Upon consideration, the Tribunal finds that multiple aggravating factors apply, and one mitigating factor applies.

Respondent acted with a dishonest or selfish motive. Respondent's false statements and misleading representations are indicative of his intent to deceive the Pennsylvania Disciplinary Board, the Bankruptcy Court for the District of Maryland, and OED. Respondent also acted with a selfish motive when he failed to pay taxes or judgments as required.

Respondent's conduct here does not reflect a one-time lapse in judgment. Rather, each violation of the disciplinary rule is supported by multiple instances of misconduct reflecting a pattern. Respondent's tax violations spanned multiple years. In addition, Respondent had no less than three judgments and a litany of creditors alleging unpaid claims. Respondent also made false statements to three separate tribunals demonstrating his proclivity for dishonesty. In all, Respondent's misconduct resulted in multiple offenses of the disciplinary rules.

Respondent also engaged in the bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. As found, Respondent failed to fully respond to OED's RFIs. This violated Respondent's duty to the legal profession. Respondent's obstructionist acts did not end there. Throughout the proceedings before this Tribunal, Respondent repeatedly failed to comply with orders and established

procedures. This resulted in lengthy delays and the expenditure of significant Tribunal resources to address Respondent's wayward conduct.

Throughout this disciplinary process, Respondent demonstrated dishonest behavior. He was disingenuous in many of his pleadings, often making misrepresentations about the case's history or the conduct of opposing counsel. Time and again, Respondent mischaracterized witness testimony and attempted to circumvent the Tribunal's orders and procedures regarding the presentation of evidence. And, when Respondent proffered a legitimate basis for the Tribunal to admit evidence he had been precluded from offering, further testimony revealed that the exhibit was fabricated.

Respondent has refused to acknowledge the wrongful nature of his conduct. During these proceedings, Respondent continued to challenge the validity of the judgments against him even though his multiple attempts to overturn them failed. And, when confronted about making false statements, he attempted to explain them away on technicalities that do not pass muster. The Tribunal questions whether Respondent will ever recognize the wrongful nature of his conduct.

Respondent has substantial experience as a practitioner before the USPTO. He has been a registered practitioner since February 14, 1996. In other words, he should know better, and his experience is an aggravating factor.

Respondent has also demonstrated an indifference in making restitution. Although he entered into settlement agreements to satisfy the claims against him, it was quickly revealed that he had no intention of paying the claims in full. Instead, Ms. Tilga and Mr. War were required to pursue judgments against him, which resulted in additional expense especially when Respondent frivolously continued seeking to overturn those judgments.

Finally, as a mitigating factor, the Tribunal recognizes that Respondent does not have a prior disciplinary record. The suspensions by the Pennsylvania Disciplinary Board were administrative in nature and were not related to misconduct.[29]

The Tribunal has considered the factors set forth in 37 C.F.R. § 11.54(b) to include additional aggravating and mitigating factors and determines that the maximum sanction is warranted. Respondent's conduct was intentional on the worst counts and, in many instances, involved the most serious misconduct for a practitioner—lying. And, based on Respondent's egregious conduct during the disciplinary proceedings, the Tribunal doubts Respondent is fit to practice before the Office.

CONCLUSION AND ORDER

Based on the foregoing findings and conclusions, the Tribunal finds Respondent engaged in disreputable or gross misconduct. Respondent also knowingly disobeyed obligations under

[29] In his *Verified Request for an Emergency Hearing* dated September 30, 2021, Respondent alluded to a recent "collateral proceeding." In the *OED Director's Response*, it was revealed that the proceeding was, in fact, a disciplinary matter filed by the Pennsylvania Disciplinary Board against Respondent. Nevertheless, the Tribunal is unaware of the facts and circumstances related to that case.

the rules of a tribunal, and made false statements of fact to multiple tribunals. He failed to respond to OED's lawful requests for information. In addition, Respondent committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a practitioner. Respondent engaged in additional sanctionable conduct—namely conduct involving dishonesty, fraud, deceit, or misrepresentation and conduct prejudicial to the administration of justice.

Respondent's misconduct injured the public, the legal system, and the legal profession. His conduct was at least knowing and, in many instances, intentional. He caused actual injury. And, consideration of the aggravating factors and mitigating factor applicable in this matter supports the conclusion that Respondent should be excluded from practice before the Office.

ORDER

For the reasons set forth above, Respondent shall be **EXCLUDED** from practice before the U.S. Patent and Trademark Office.[30]

So **ORDERED**,

ALEXANDER FERNANDEZ-PONS

Digitally signed by: ALEXANDER FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-PONS C = US O = U.S. Government OU = Department of Housing and Urban Development, Office of the Secretary
Date: 2023.12.21 13:11:20 -05'00'

Alexander Fernández-Pons
United States Administrative Law Judge

Notice of Appeal Rights: Within fourteen (14) days of the date of this initial decision, either party may appeal to the USPTO Director by filing a notice of appeal. 37 C.F.R. § 11.55(a). In the absence of an appeal, this decision will become the final decision of the USPTO Director pursuant to 37 C.F.R. § 11.54(d).

[30] Respondent is directed to 37 C.F.R. § 11.58, which sets forth Respondent's duties while excluded from practice before the USPTO.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION AND ORDER** issued by Alexander Fernández-Pons, Administrative Law Judge, in D2018-22 (Counts IV-XI), were sent to the following parties on this 21st day of December 2023, in the manner indicated:

Cinthia Matos, Docket Clerk
Office of Hearings and Appeals

VIA EMAIL

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