#6

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of:	)	
Jill A. Scholten,	)	**Proceeding No. D2010-25**
Respondent.	)	

INITIAL DECISION ON DEFAULT

This proceeding was initiated by the issuance of a Disciplinary Complaint Pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 11.25 ("Complaint" or "Compl.") dated April 28, 2010, by Harry I. Moatz, Director of the Office of Enrollment and Discipline ("Complainant" and "OED"), United States Patent and Trademark Office ("PTO"), against Jill A. Scholten ("Respondent"). The Complaint was referred to the undersigned by a Final Order Pursuant to 37 C.F.R. § 11.25(b) ("Final Order") issued on September 3, 2010.[1] In the Final Order, PTO suspended Respondent on an interim basis from the practice of patent, trademark, and other non-patent law before the Agency "for having been convicted - by plea - of the commission of a serious crime" by the Superior Court of the State of California.

The Complaint alleges that Respondent is an attorney registered to practice before the PTO in patent cases (Registration No. 37,716), and is subject to the PTO Disciplinary Rules. Compl. ¶ 1. Further, that Respondent is licensed to practice law in the State of California (California State Bar No. 164629), but is currently ineligible to practice, having been convicted by plea of committing the felony of grand theft in violation of the California Penal Code Section 487(a), on October 19, 2009, in *People of the State of California v. Jill Scholten* (Case No. CR-F-08-0009273). Compl. ¶¶ 2, 3; Compl. Ex. A (Judgment Abstract). For her crime, Respondent was sentenced to one year and four months in prison, and at the time the Complaint was filed, Respondent was still serving her prison sentence. Compl. ¶¶ 4, 6; Compl. Ex. A. The State Bar of California, as a result of Respondent's conviction, suspended her on an interim basis from the practice of law in that jurisdiction. Compl. ¶ 7; Compl. Ex. B (State Bar Order). Complainant concludes in the Complaint that these events put Respondent in violation of Sections 10.23(a), (b)(3), (b)(4) and (b)(6) of the regulations applicable to Practice Before the Patent and Trademark Office promulgated at 37 C.F.R. Parts 10 and 11 ("Rules") by: (1) engaging in disreputable or gross misconduct; (2) engaging in conduct involving moral turpitude; and (3) engaging in conduct involving dishonesty, and (4) engaging in conduct that adversely reflects on her fitness

[1] "Upon entering a final order imposing interim suspension, the [PTO] Director shall refer the complaint to a hearing office to conduct a formal disciplinary proceeding." 37 C.F.R. § 11.25(b)(5).

to practice before the PTO. Compl. ¶¶ 11-12.

On March 21, 2011, Complainant filed a Motion for Entry of Default Judgment and Imposition of Discipline ("Motion" or "Mot."). The Motion seeks an initial decision entering a default judgment against Respondent and ordering Respondent's exclusion from the practice of patent, trademark, and other non-patent law before the Agency. Mot. at 10.

I. Applicable Rules Relevant to Default

In regards to serving a complaint, Rule 11.35 provides in pertinent part:

> (a) A complaint may be served on a respondent in any of the following methods:
>
> > (1) By delivering a copy of the complaint personally to the respondent . . . .
> >
> > (2) By mailing a copy of the complaint by "Express Mail," first-class mail, or any delivery service that provides ability to confirm delivery or attempted delivery to:
> >
> > (i) A respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11 . . . .
>
> * * *
>
> (b) If a copy of the complaint cannot be delivered to the respondent through any one of the procedures in paragraph (a) of this section, the OED Director shall serve the respondent by causing an appropriate notice to be published in the Official Gazette for two consecutive weeks, in which case, the time for filing an answer shall be thirty days from the second publication of the notice. Failure to timely file an answer will constitute an admission of the allegations in the complaint in accordance with paragraph (d) of § 11.36, and the hearing officer may enter an initial decision on default.

37 C.F.R. § 11.35(a)(2), (b). Rule 11.11 provides that registered attorneys must notify the OED Director of the address of their office and any changes to that address within thirty days of the change. 37 C.F.R. § 11.11(a).

Regarding papers other than a complaint, Rule 11.42(f) provides that "[s]ervice by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service." 37 C.F.R. § 11.42(f). The methods permitted are personal delivery, first-class mail, Express Mail, other delivery service, or another mutually agreeable method. 37 C.F.R. § 11.42(b)(1)-(3).

Finally, Rule 11.36 provides in pertinent part:

> (a) Time for answer. An answer to a complaint shall be filed within the time set in the complaint but in no event shall that time be less than thirty days from the date the complaint is filed.
>
> * * *
>
> (e) Default judgment. Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment.

37 C.F.R. § 11.36(a), (e).

II. Discussion regarding Motion for Default Judgment

A. Pleadings regarding Service

After an initial unsuccessful attempt to serve Respondent with the Complaint at a prison where she was no longer located, Complainant obtained from the California Department of Corrections and Rehabilitation ("CDCR") Respondent's "most recent inmate address." Mot. ¶¶ 5-6. Complainant mailed the Complaint to that address on May 28, 2010. Whereupon, Complainant claims "CDCR official Lee April Burton" received the mailing on Respondent's behalf, on July 2, 2010. *Id.* ¶ 6. On July 8, 2010, pursuant to its interim suspension action under 37 C.F.R. § 11.25(b)(2), PTO issued a Notice and Order which, along with another copy of the Complaint, were allegedly delivered to Ms. Burton on behalf of Respondent, on July 13, 2010. *Id.* ¶¶ 7-8. In both cases where Ms. Burton received the mailings, Complainant asserts it has no reason to believe Respondent did not receive the documents mailed. *Id.* ¶¶ 6, 10. The Notice and Order states that if Respondent seeks to contest the imposition of an interim suspension, Respondent shall file a timely response within 40 days. Mot. ¶ 9, Notice and Order at 2.

Because Respondent did not file an answer to the Notice and Order, on September 3, 2010, PTO issued a Final Order, which ordered Respondent's interim suspension, ordered that the Complaint be referred to a hearing officer to conduct a formal disciplinary proceeding, and ordered Respondent to file a written answer to the Complaint within 30 days from the date of the Final Order. Complainant has attempted to serve the Final Order and Complaint to Respondent at multiple addresses. Copies of the Final Order and Complaint were mailed to Correctional Counselor Sheri Cheney on behalf of Respondent at the Female Rehabilitation Community Correctional Center in Bakersfield, California. Mot. ¶¶ 11-12; *see* Certificate of Service accompanying Final Order. This was, Complainant claims, the address where PTO "reasonably believed the Respondent received mail as a CDCR inmate" at the time. Mot. ¶ 12. Ms. Burton again received the mailing, Complainant states, on September 8, 2010. *Id.* However, because PTO subsequently learned that Respondent had been released from prison and paroled, the Agency "had reason to believe that Respondent might not have received the mailing from Ms. Burton." *Id.* Therefore, the Agency attempted on September 13, 2010, to serve the Final Order

and Notice not to the institution, presumably, but to Respondent's CDCR Correctional Counselor, to receive the mail on behalf of Respondent. *Id.* This mailing was returned to Complainant "because Respondent had been paroled." *Id.* Then, Complainant tried sending the same to a Crescent City address that a CDCR official had allegedly provided. *Id.*

It appears that in the meantime, PTO referred the Complaint to the undersigned by mailing a letter dated January 6, 2011 (really dated "2010," but Complainant explains it is a typographical error; Mot. ¶ 14, n.2), with a copy of the Complaint and other pertinent documents attached thereto. Respondent was copied on the letter at two addresses: "California Department of Corrections, NRP Department, 1515 Clay Street, 10th Floor, Oakland, CA" and "133 Club Drive, Crescent City, CA."

Complainant thereafter notified the Tribunal that on February 17, 2011, the PTO Director received notice, presumably from a returned mailing, that the "133 Club Drive, Crescent City, CA" address was not valid. *See* Notification of Supplemental Mailing of Complaint filed Feb. 23, 2011. Complainant attests that it therefore re-mailed the Final Order, on February 17, 2011, to the forwarding address for Respondent provided by the U.S. Postal Service, namely: 814 S 860 W Cedar City, Utah 84720-6610, and stated that it would provide Respondent until March 17, 2011, to file an answer before it sought default judgment. *Id.*; Mot. ¶ 12. The re-mailed Complaint and Final Order were returned and stamped "UNCLAIMED." *See* Addendum to Motion for Default Judgment. However, Complainant argues that this "should not affect the Tribunal's determination" as to whether Respondent was served, because "there is no indication that Respondent does not reside at the Cedar City, Utah, address," since "presumably, Respondent provided the U.S. Postal Service with that address information." *Id.* Further, Complainant states that it "reasonably appears that [Respondent] simply chose to ignore the notices," that there is no evidence she was unable to claim the mailing, and that it is her duty to provide PTO with her current address. *Id.*; 37 C.F.R. § 11.11(a). Complainant attached to its Addendum to the Motion a "Track & Confirm" delivery confirmation page from the USPS website confirming that a mailing arrived at a Cedar City address on February 26, 2011, notice was left on that day and also on March 3, 2011, and it was "Unclaimed" on March 14 and 15, 2011, before being returned to the Agency.

Complainant argues that Respondent was properly served with the Complaint, in prison, on May 28, 2010, and was served with the Final Order in accordance with the Rules on February 17, 2011. Mot. at 4-5. Complainant states that as of the date of the filing of the Motion, March 21, 2011, Respondent has not answered the Complaint. Mot. ¶ 15. Therefore, Respondent has had enough time to answer the Complaint, and because she has not done so, default judgment is appropriate, asserts Complainant. Mot. at 5; *see* Addendum.

B. Discussion as to Service

Knowing that Respondent was incarcerated, Complainant attempted service outside of the methods listed in paragraph (a) of Rule 11.35, and mailed a copy of the Complaint to Respondent's place of incarceration in Chowchilla. When the CDCR official returned that mailing, he provided the OED Director with Respondent's "most recent inmate address." The Motion states that CDCR official Lee April Burton received the mailing sent to this "most recent" address on Respondent's behalf on July 2, 2010. Again, on July 13, 2010, Ms. Burton received another copy of the Complaint and a copy of the Notice and Order concerning the Agency's interim suspension action. Complainant alleges it has no reason to believe Respondent did not receive the documents via Ms. Burton in both instances. The U.S. Supreme Court has held such service of notice to prison inmates adequate to satisfy 14th Amendment Due Process requirements. *Dusenbery v. United States,* 534 U.S. 161 (2002).

Complainant then again employed an unconventional method of service on February 17, 2011, when it mailed the Final Order to the Cedar City address that the USPS provided as Respondent's forwarding address, which was returned "unclaimed." However, neither the Rules nor the Constitution's guarantee of due process require proof of actual receipt of notice. All that is required to meet due process is "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also Dusenbery*, 534 U.S. at 171 ("our cases have never required actual notice;" applying Mullane test in administrative forfeiture proceeding to affirm holding that petitioner's due process rights were satisfied when the FBI sent notice by certified mail to the petitioner's place of incarceration). As the U.S. Court of Appeals for the Fifth Circuit stated in *NLRB v. Clark*, 468 F.2d 459, 465 (5th Cir. 1972):

> Potential defendants could easily insulate themselves from service by mail by . . . denying knowledge of the attempt at service, a contention difficult to disprove. To effectuate the congressional policy in favor of service by mail, it is necessary that the NLRB be able to judge the quality of its attempts at service by something other than the fortuity of whether a defendant can be shown to have had actual notice.

The attempts that were made to serve the Final Order and Complaint on Respondent were reasonably calculated by Complainant under the particular circumstances surrounding Respondent's incarceration and release. The Complaint was received on Respondent's behalf in July 2010, while Respondent was in prison, at an address provided by an official working in California's Department of Corrections and Rehabilitation. It is entirely plausible that Respondent did in fact receive the Complaint. The Final Order was sent by certified mail on February 17, 2011, and delivered on February 26, 2011, to an address that the U.S. Postal Service had on record as Respondent's forwarding address at a time after her release from prison.

The undersigned finds that Respondent was duly served with adequate notice in this proceeding. The same Complaint as sent with the Final Order was twice successfully served on Respondent while incarcerated. Complainant has made multiple attempts to effectuate actual delivery of the Final Order and "[t]he means employed [were] such as one desirous of actually informing the [Respondent] might reasonably adopt to accomplish it." *Mullane* at 657. Furthermore, "unclaimed" does not necessarily mean that the address is incorrect. The Postal Service uses the term "unclaimed" to mean "Addressee abandoned or failed to call for mail," whereas "Moved, Left No Address" indicates that "Addressee moved and filed no change-of-address order" and "Not Deliverable as Addressed--Unable to Forward" means the mail is "undeliverable at address given; no change-of-address order on file; forwarding order expired." See United States Postal Service, Domestic Mail Manual, § 507, Exh. 1.4.1, http://pe.usps.gov/text/dmm300/507.htm. DMM § 507. Additionally, although the PTO Rule at 37 C.F.R § 11.11(a) requiring practitioners to notify PTO of their address changes technically requires notices for changes of "office" addresses only, if Respondent was really interested in receiving communications from PTO, she would have provided PTO with her current address. Lastly, Rule 11.42(f) provides that for papers other than the complaint, "[s]ervice by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service." 37 C.F.R. § 11.42(f). Therefore, service of the Final Order was completed when Complainant mailed it on February 17, 2011.

C. Discussion of Default

The Final Order, properly served, triggered the beginning of this proceeding. As Rule 11.25(b)(5) provides, in pertinent part:

Upon entering a final order imposing interim suspension, the USPTO Director shall refer the complaint to a hearing officer to conduct a formal disciplinary proceeding.

37 C.F.R. § 11.25(b)(5). The issuance of the Final Order also marks the beginning of the time period the respondent has to file an answer to the allegations in the Complaint. Thus, the Final Order notified, in pertinent part:

> ORDERED that Respondent is hereby suspended on an interim basis . . . ;
>
> ORDERED that the Complaint is hereby referred . . . to the hearing officer identified in Complaint for the purpose of conducting a formal disciplinary proceeding;
>
> ORDERED that, within thirty (30) days from the date of this Final Order, Respondent's written answer to the Complaint shall be filed with the hearing officer and a copy of the answer shall be served on the OED Director in accordance with the instructions set out in the Complaint . . . .

Final Order at 2. And the Complaint provided, in pertinent part:

> No response to this Complaint is required to be made by Respondent at the present time. Within thirty (30) days from the date of an Order by the USPTO Director referring this Complaint to a hearing officer, however, Respondent's written answer shall be filed with the hearing officer to whom the USPTO Director refers this matter and Respondent shall serve a copy of the answer on the [OED Director]. . . . A decision by default may be entered against Respondent if a written answer to this Complaint is not timely filed. . . .

Compl. at 1 (citations omitted). The pertinent addresses do appear on page 5 of the Complaint. Therefore, Complainant properly endeavored to alert Respondent to the procedure provided by the Rules and the potential for a decision by default being entered against her should she not answer.

For default to be entered, the Rules do not require that a motion for default be filed, nor do they specify a minimum period to respond to the motion. 37 C.F.R. § 11.36(e). Nevertheless, a substantial period of time has been provided for Respondent to respond to the Motion since it was mailed to her Cedar City address on March 21, 2011. Because Respondent has not responded to the Motion, and has failed to file a timely answer to the Complaint, Respondent is hereby found in default, and is deemed to have admitted all of the allegations in the Complaint pursuant to Rules 11.35(b) and 11.36(e).

III. Rules Regarding Violations Charged in the Complaint

Rule 10.23 (Misconduct), provides, in pertinent part, as follows:

(a) A practitioner shall not engage in disreputable or gross misconduct.

(b) A practitioner shall not:

* * *

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

* * *

(6) Engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

(c) Conduct which constitutes a violation of paragraphs (a) and (b) of this section

includes, but is not limited to:

> (1) Conviction of a criminal offense involving moral turpitude, dishonesty, or breach of trust.
>
> * * *
>
> (5) Suspension or disbarment from practice as an attorney or agent on ethical grounds by any duly constituted authority of a State or the United States . . . .

37 C.F.R. § 10.23.

IV. Findings and Conclusions

Because Respondent is in default and therefore deemed to have admitted all of the allegations in the Complaint, the following findings and conclusions are rendered based upon the allegations in the Complaint.

1. This Tribunal has jurisdiction of this proceeding pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.25(b)(5) and 11.39.

2. At all times relevant to the allegations in the Complaint, Respondent was an attorney registered to practice before the PTO in patent cases (Registration No. 37,716) and was subject to the PTO Disciplinary Rules set forth in 37 C.F.R. Part 10. Compl. ¶ 1.

3. On October 19, 2009, Respondent was convicted by plea of the commission of Grand Theft Over $400, a felony, in violation of California Penal Code 487(a) in *People of the State of California v. Jill Scholten*, Case No. CR-F-08-0009273, before the Superior Court of the State of California, County of Del Norte. Compl. ¶ 3; Compl. Ex. A.

4. On December 21, 2009, Respondent was sentenced to one year and four months in prison. Compl. ¶ 4; Compl. Ex. A.

5. Respondent's conviction was predicated upon Respondent's withdrawal of more than $13,000 from her client trust account and using the funds for personal expenses. Compl. ¶ 5; Mot. at 6, 9; *see* California Bar Journal, Jill A. Scholten, at www.calbarjournal.com/May2011/AttorneyDiscipline/Disbarments.aspx#6.[2]

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[2] The text of the California Bar Journal entry related to Respondent reads:

(continued...)

6. The State Bar Court of the California State Bar suspended Respondent's license to practice law in the State of California on an interim basis in a decision on November 30, 2009, *In the Matter of the Conviction of Jill A. Scholten, No. 164629*, Case No. 08-C-11903, which took effect on December 27, 2009.[3] Compl. ¶ 7; Compl. Ex. B. The suspension was predicated on Respondent's conviction of "a felony involving moral turpitude." *Id.*

7. Respondent's conviction of Grand Theft Over $400 as outlawed by California Penal Code 487(a), based on Respondent stealing a client's money from a client trust account, is a criminal offense involving moral turpitude and a breach of trust. Compl. ¶¶ 5, 11; Mot. at 6, 9.

8. Respondent's suspension and subsequent disbarment by the State Bar of California, based on Respondent's conviction for stealing a client's money from a client trust account, constitutes discipline on ethical grounds pursuant to 37 C.F.R. § 10.23(c)(5). Compl. ¶¶ 5, 7, 12; Mot. at 6, 9.

9. Respondent's conviction and suspension evidence Respondent's engagement in disreputable or gross misconduct, in violation of 37 C.F.R. § 10.23(a). Compl. ¶ 11; 37 C.F.R. § 10.23(a), (c)(1), (c)(5).

10. Respondent's conviction and suspension evidence Respondent's engagement in illegal conduct involving moral turpitude, in violation of 37 C.F.R. § 10.23(b)(3). Compl. ¶ 11; 37 C.F.R. § 10.23(b)(3), (c)(1), (c)(5).

11. Respondent's conviction and suspension evidence Respondent's engagement in conduct involving dishonesty, fraud and deceit in violation of 37 C.F.R. §

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[2](...continued)

JILL A. SCHOLTEN [#164629], 49, of Crescent City was summarily disbarred Sept. 2, 2010, and was ordered to comply with rule 9.20 of the California Rules of Court.

She was convicted of grand theft, a crime that meets the criteria for summary disbarment – it is a felony that involves moral turpitude.

Court records indicate Scholten stole about $13,000 from a client in a divorce proceeding, using the money to pay personal expenses and at casinos. She was sentenced to 16 months in prison.

[3] Respondent was disbarred by the State of California on September 2, 2010. State Bar of California (http://members.calbar.ca.gov/search/member_detail.aspx?x=164629).

10.23(b)(4). Compl. ¶ 11; 37 C.F.R. § 10.23(b)(4), (c)(1), (c)(5).

V. Discussion of Issues Regarding Liability

The Complaint first alleges that because of her felony conviction, Respondent violated Rule 10.23(a) by engaging in disreputable or gross misconduct, Rule 10.23(b)(3) by engaging in illegal conduct involving moral turpitude, and Rule 10.23(b)(4) by engaging in conduct involving dishonesty. Compl. ¶ 11; Motion at 5-6. Second, because of her suspension from the practice of law by the State Bar of California, the Complaint alleges that Respondent violated Rule 10.23(b)(6) by engaging in "any other conduct" that adversely reflects on her fitness to practice before the Office, as identified by Rule 10.23(c)(5)(i). Compl. ¶¶ 7, 12; Compl. Ex. B, *Jill A. Scholten*, 08-C-11903 (Nov. 30, 2009).

Rule 10.23(c)(1) provides that "[c]onviction of a criminal offense involving moral turpitude, dishonesty, or breach of trust" constitutes a violation of Rule 10.23(a) and (b). Respondent's conviction for felony theft was, according to the Complaint, predicated upon Respondent's withdrawal of more than $13,000 from her client trust account and use of that money for personal expenses. Compl. ¶ 5. Respondent's theft of her own clients' money constitutes a criminal offense involves moral turpitude, dishonesty and breach of trust, and is therefore, misconduct as described by Rule 10.23(a) and (b).

Rule 10.23(c)(5)(i) provides that "[s]uspension or disbarment from practice as an attorney or agent on ethical grounds by any duly constituted authority of a State" constitutes a violation of Rule 10.23(a) and (b). As described above, Respondent was at first suspended after being convicted, and then "Disbarred," according to the State Bar of California website.[4] The felony underlying the suspension, which led to disbarment, was one "involving moral turpitude," according to the Presiding Judge in State Bar Court. *See* Compl. Ex. B; *see* n.2 supra. Respondent's suspension and disbarment from the State Bar of California therefore qualify as misconduct under Rule 10.23(a) and (b).

It is not appropriate to find that Respondent's suspension, in addition to qualifying as grounds for discipline under Rule 10.23(a) and (b)(3) and (b)(4), is also grounds under Rule 10.23(b)(6), which describes "any *other* conduct that adversely reflects on the practitioner's fitness to practice before the Office." 37 C.F.R. § 10.23(b)(6). The use of the term "other" automatically excludes grounds that have already been found under other subsections of Rule 10.23(b). Therefore, a violation of Rule 10.23(b)(6) is not found. However, Respondent's conviction and suspension provide ample grounds for discipline pursuant to her resultant liability under 37 C.F.R. § 10.23(a), (b)(3) and (b)(4).

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[4] Available at: http://members.calbar.ca.gov/search/member_detail.aspx?x=164629.

VI. Penalty

As to the penalty for Respondent's engagement in professional misconduct, the Complaint and Motion seek an order of exclusion. Compl. at 4; Mot. at 10. Rule 11.54(b) provides that in determining any penalty, the following factors are to be considered:

> (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).

In its Motion, Complainant discusses each factor in turn. First, Complainant argues that "[b]y taking client funds without authority, Respondent violated fundamental duties of trust and loyalty that an attorney owes to a client." Mot. at 7. Also, Complainant states that Respondent's "violation of criminal law is clearly a violation of duties owed to the public." *Id.* Plus, Complainant asserts, Respondent's misconduct brings "disgrace to the patent bar" and decreases the public's confidence in the integrity and trustworthiness of patent practitioners. *Id.*

Second, Complainant argues that it cannot be reasonably disputed that Respondent's misconduct, the theft of money and the expenditure of that money on personal and/or recreational uses, was knowing and willful. *Id.*

Third, Complainant contends that Respondent appears to have made restitution to her client, and therefore, ultimately only minimal actual financial harm resulted from her misconduct. *Id.* "Nevertheless, Respondent exposed the client to significant financial risk," Complainant points out. *Id.*

Fourth, Complainant argues that despite Respondent's restitution efforts, there are no mitigating factors. *Id* at 7-8 (citing, *inter alia, Iowa Supreme Court Attorney Discipline Bd. v. D'Angelo*, 710 N.W.2d 226, 235 (Iowa 2006) ("restitution is a lawyer's duty . . . not a valid defense or excuse for these ethical violations").

Finally, Complainant argues in its Motion that Respondent's misconduct is "the antithesis of honest, ethical, and moral behavior" and "unequivocally demonstrates her lack of moral fitness" to represent others before the PTO. *Id.* at 9.

Disbarment may be the appropriate sanction when a lawyer has knowingly misappropriated a client's funds. *See* American Bar Association Standards for Imposing Lawyer Sanctions, as amended (1992), 4.11 (Disbarment appropriate when lawyer "knowingly converts client property and causes injury or potential injury to a client"), 4.12 (Suspension appropriate when lawyer "knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client"); *In re Ennenga*, 37 P.3d 1150, 1153-1154 (Utah 2001) (attorney's misappropriation of $18,000 of client's money alone presumes sanction of disbarment; in order to overcome the presumption of disbarment, the mitigating factors must be "significant" or "truly compelling") (citations omitted); *In re Blumenstyk*, 152 N.J. 158 (N.J. 1997) (disbarment is the only appropriate discipline for the knowing misappropriation of client funds) (citing *In re Wilson*, 81 N.J. 451, 453 (N.J. 1979)).

However, Respondent's default in this proceeding has prevented a full record from being developed as to the circumstances surrounding Respondent's professional misconduct and her current circumstances. As such, imposition of an indeterminate suspension, until such time as reinstatement is deemed appropriate, is deemed warranted. Respondent may show cause in the future as to why she failed to respond and may provide some explanation for the misconduct set forth and found herein. Until she does so, her name should be removed from the rolls.

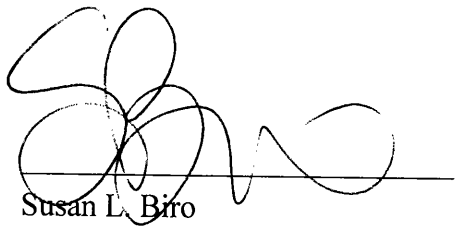
ORDER

After careful and deliberate consideration of the above facts and conclusions, as well as the factors identified in 37 C.F.R. § 11.54(b),

IT IS HEREBY ORDERED that Respondent, **JILL A. SCHOLTEN**, be **SUSPENDED for an indeterminate period** as a licensed agent from the practice of patent, trademark, and other non-patent law before the Patent and Trademark Office.

Respondent's attention is directed to 37 C.F.R. § 11.58 regarding the responsibilities of disciplined practitioners, and 37 C.F.R. § 11.60 concerning petition for reinstatement.

The facts and circumstances of this proceeding shall be fully published in the Patent and Trademark Office's official publication.



Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency[5]

Dated: May 24, 2011
Washington, D.C.

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

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[5] The Administrative Law Judges of the Environmental Protection Agency are authorized to hear cases pending before the United States Department of Commerce, Patent and Trademark Office, pursuant to an Interagency Agreement effective for a period beginning March 22, 1999.

In the Matter of Jill A. Scholten, Respondent
Proceeding No. D2010-25

CERTIFICATE OF SERVICE

I hereby certify that a true copy of **Initial Decision On Default**, dated May 24, 2011, was sent this day in the following manner to the addressees listed below:

Maria Whiting-Beale
Staff Assistant

Dated: May 24, 2011

Copy by Regular Mail to:

U.S. Patent and Trademark Office
Ronald K. Jaicks
Sydney Johnson, Jr.
Mail Stop 8
Office of the Solicitor
P.O. Box 1450
Alexandria, VA 22313-1450

Copy By Regular Mail and Certified Mail Return Receipt:

Jill A. Scholten
814 S 860 W
Cedar City, UT 84720-6610