

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

In the Matter of )  
 )  
Olen L. York, )  
 )  
Respondent ) Proceeding No. D2013-19  
 )  
\_\_\_\_\_ )

**FINAL ORDER**

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

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

**Jurisdiction**

1. At all times relevant hereto, Respondent of Milton, West Virginia, has been a registered patent attorney (Registration No. 53,814) and subject to the USPTO Code of Professional Responsibility set forth at 37 C.F.R. § 10.20 *et seq.*

2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 37 C.F.R. §§ 11.19 and 11.26.

**Stipulated Facts**

**A. Background**

3. The USPTO registered Respondent as a patent attorney on January 28, 2003 (Registration Number 53,814).

4. From September 4, 2005 through July 10, 2009, Respondent worked for a law firm in Huntington, West Virginia.

5. Respondent was an independent contractor to whom the law firm issued 1099-MISC federal tax forms. Under the terms of Respondent’s compensation arrangement with the law firm, clients were billed for services rendered by the law firm and clients paid the law

firm for legal services performed. Monies received by the law firm from a client for whom Respondent provided patent legal services would be distributed as follows: one-third (1/3) of the fee was remitted to the law firm for overhead, one-third (1/3) of the fee was remitted to the attorney who originated the work, and one-third (1/3) of the fee was remitted to Respondent. If Respondent originated the work, he would receive two-thirds (2/3) of the fee and the law firm would receive one-third (1/3) for overhead.

6. Respondent represents that, at all relevant times, he believed that the law firm owed him at least \$14,000 in compensation for legal services rendered to clients.

B. Matters Involving Client #1

7. At all relevant times, Client #1 was a client of the law firm.

8. For purposes of his compensation arrangement with the law firm, Respondent was the originating attorney for the work performed by the law firm on behalf of Client #1.

9. In November 2008, Respondent provided \$1,950 in patent legal services to Client #1.

10. On or about December 31, 2008, Client #1 made a check payable to Respondent dated December 31, 2008, in the amount of \$1,950 in payment of the amount of money he owed to the law firm for work performed by Respondent in November 2008.

11. On or about December 31, 2008, Client #1 gave the \$1,950 check to Respondent for services rendered.

12. On or about January 5, 2009, Respondent deposited the \$1,950 check into his personal checking account.

13. Upon depositing the \$1,950 check into his personal checking account, Respondent did not inform the law firm that he had received \$1,950 from Client #1.

14. Upon depositing the \$1,950 check into his personal checking account, Respondent did not remit the \$1,950, or any portion thereof, to the law firm.

15. In May 2009, Respondent agreed to prepare and file a continuation-in-part patent application ("CIP application") on behalf of Client #1.

16. Client #1 agreed to pay a flat fee of \$3,300 for Respondent's patent legal services to be rendered in connection with the CIP application.

17. Respondent prepared the CIP application on behalf of Client #1.

18. On or about May 27, 2009, Client #1 made a check payable to Respondent dated May 27, 2009, in the amount \$1,200 in partial payment of the \$3,300 he owed for work performed by Respondent on the CIP application.
19. On or about May 27, 2009, Client #1 gave the \$1,200 check to Respondent for services performed.
20. On May 27, 2009, Respondent deposited the \$1,200 check into his personal checking account.
21. Upon depositing the \$1,200 check into his personal checking account, Respondent did not inform the law firm that he had received \$1,200 from Client #1 in partial payment of the \$3,300 Client #1 owed to the law firm for work performed by Respondent on the CIP application.
22. Upon depositing the \$1,200 check into his personal checking account, Respondent did not remit the \$1,200, or any portion thereof, to the law firm.
23. On or about June 5, 2009, Client #1 made a check payable to Respondent dated June 5, 2009, in the amount of \$2,100 in final payment of the \$3,300 for work performed by Respondent on the CIP application.
24. On June 5, 2009, Client #1 deposited the \$2,100 check into his personal checking account.
25. Upon depositing the \$2,100 check into his personal checking account, Respondent did not inform the law firm that he had received \$2,100 from Client #1 in final payment of the \$3,300 Client #1 owed to the law firm for work performed by Respondent on the CIP application.
26. Upon depositing the \$2,100 check into his personal checking account, Respondent did not remit the \$2,100, or any portion thereof, to the law firm.
27. On June 9, 2009, Respondent filed the CIP application at the USPTO on behalf of Client #1.
28. Respondent did not *sua sponte* remit to the law firm any of the \$5,250 in funds Respondent had received from Client #1 on behalf of the law firm.
29. It was not until September 1, 2009, that Respondent obtained a cashier's check in the amount of \$1,750 payable to the law firm and delivered it the law firm in remittance of the money he had received from Client #1.
30. Respondent delivered the \$1,750 cashier's check to the law firm only after the law firm questioned Respondent about the money he had received from Client #1.

C. Additional Matters Involving Client #1

31. At all relevant times, Respondent knew that the law firm's policy was to disclose new client matters to the law firm and to open a separate client file on new matters.

32. Respondent did not open a separate client file for Client #1's CIP application, nor did he disclose Client #1's request for a CIP application to the law firm.

33. Because Respondent did not disclose Client #1's request for a CIP application to the law firm and because Respondent did not open a separate client file for the CIP application, the law firm did not know about Respondent's work on the CIP application.

34. The law firm maintained a deposit account with the Office.

35. The law firm permitted Respondent to use its deposit account for authorized purposes provided that Respondent complied with the firm's policy regarding the use of its deposit account.

36. At all relevant times, Respondent knew that it was part of the law firm's policy to identify the client file number whenever using the firm's deposit account.

37. On June 9, 2009, when Respondent filed the CIP application on behalf of Client #1, Respondent he filed the application electronically and used the law firm's deposit account to pay fees totaling \$462.

38. Respondent did not timely inform the law firm that he had so used its deposit account, nor did Respondent otherwise comply with the law firm's policy regarding the use of its deposit account.

39. It was not until on or about July 24, 2009, that the law firm determined that Respondent had used its deposit account to pay \$462 in fees to the USPTO.

D. Matters Involving Client #2

40. At all relevant times, Client #2 was a patent client of the law firm.

41. Respondent prepared and, on February 23, 2009, filed a utility patent application on behalf of Client #2.

42. On or about August 6, 2009, after Respondent no longer worked for the law firm, Client #2 gave Respondent a \$1,000 check in partial payment of the amount Client #2 owed to the law firm for work performed in connection with the patent application.

43. Client #2 gave the \$1,000 check to Respondent for services performed.

44. On August 6, 2009, Respondent deposited the \$1,000 check he had received from Client #2 into his personal checking account.

45. Upon depositing the \$1,000 check into his personal checking account, Respondent did not inform the law firm that he had received \$1,000 from Client #2 in partial payment of the monies Client #2 owed to the law firm for work performed in connection with the patent application.

46. Upon depositing the \$1,000 check into his personal checking account, Respondent did not remit the \$1,000, or any portion thereof, to the law firm.

47. Respondent did not *sua sponte* deliver to the law firm any of the \$1,000 in funds Respondent had received from Client #2 on behalf of the law firm.

48. It was not until August 18, 2009, that Respondent obtained a cashier's check in the amount of \$1,000 payable to the law firm.

49. Upon obtaining the \$1,000 cashier's check, Respondent did not remit the \$1,000, or any portion thereof, to the law firm.

50. Respondent did not *sua sponte* deliver the \$1,000 cashier's check to the law firm.

51. It was not until September 1, 2009, that Respondent remitted the \$1,000 cashier's check to the law firm.

52. Respondent delivered the \$1,000 cashier's check to the law firm only after the law firm questioned Respondent about the money he had received from Client #2. When Respondent delivered the \$1,000 cashier's check to the law firm, Respondent did not retain the one-third of this check. Respondent represents that he was entitled to retain the one-third of this check based upon the division of fees agreement with the law firm.

#### E. Respondent's Representations and Acknowledgments

53. Respondent represents that, based on his compensation arrangement with the law firm, he reasonably believed that he was entitled to a portion of the monies he received from Client #1 and Client #2 on behalf of the law firm.

54. Respondent further represents that because he believes he is owed at least \$14,000 by the law firm, under the common law of West Virginia as well as the Uniform Commercial Code, he had the right to self-help possession in connection with the attorneys' fees checks paid by the two clients in this case.

55. Respondent represents that he did not intend to deprive permanently the law firm of the funds he received from Client #1 and Client #2 for the law firm but intended to remit the funds to the law firm at a later time.

56. Respondent acknowledges that he should have promptly informed the law firm of the monies he received on the law firm's behalf and promptly remitted the entire amount of the monies he received to the law firm.

57. Respondent acknowledges that he should have complied with the law firm's policy regarding the use of its deposit account.

58. Respondent acknowledges that he should have promptly informed the law firm of his use of its deposit account.

### **Legal Conclusion**

66. Respondent acknowledges that, based on the information contained in the above stipulated facts, his conduct violated 37 C.F.R. § 10.23(a) (proscribing engaging in disreputable or gross misconduct) by (i) receiving funds on behalf of the law firm and not immediately informing the law firm about the funds or remitting the funds but, instead, depositing them into a personal account with the intent of remitting the funds to the law firm at a later time and (ii) by not complying with the law firm's policy regarding the use of its deposit account or promptly informing the law firm of his use of its deposit account.

### **Agreed Upon Sanction**

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

- a. Respondent shall be, and hereby is, publicly reprimanded;
- b. Respondent shall serve a twenty-four (24) month probationary period commencing on the date this Final Order is signed;
- c. Respondent shall be permitted to practice before the USPTO in patent, trademark, and other non-patent matters during his probationary period unless he is subsequently suspended or excluded by order of the USPTO Director or otherwise no longer has the authority to so practice;
- d. (1) in the event that the OED Director is of the opinion that Respondent, during the probationary period, failed to comply with any provision of this Final Order or any provision of the USPTO Rules of Professional Conduct, the OED Director shall:

(A) issue to Respondent an Order to Show Cause why the USPTO Director should not order that Respondent be immediately suspended for up to six (6) months for the violations set forth in the Joint Legal Conclusion, above;

(B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11(a); and

(C) grant Respondent fifteen (15) days to respond to the Order to Show Cause;

and

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

(A) deliver to the USPTO Director: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) argument and evidence supporting the OED Director's conclusion that Respondent failed to comply with any provision of this Final Order or any provision of the USPTO Rules of Professional Conduct during the probationary period, and

(B) request that the USPTO Director immediately suspend Respondent for up to six (6) months for the violations set forth in set forth in the Joint Legal Conclusions, above;

e. In the event that the USPTO Director suspends Respondent pursuant to the preceding subparagraph and Respondent seeks a review of the suspension, any such review of the suspension shall not operate to postpone or otherwise hold in abeyance the suspension;

f. If Respondent is suspended pursuant to the Agreement or this Final Order approving the Agreement:

(1) the USPTO shall promptly dissociate Respondent's name from all USPTO customer numbers and Public Key Infrastructure ("PKI") certificates;

(2) Respondent shall not to use any USPTO Customer Number or PKI certificate unless and until he is reinstated to practice before the USPTO; and

(3) Respondent may not obtain a USPTO Customer Number or a PKI certificate unless and until he is reinstated to practice before the USPTO;

g. The OED Director shall comply with 37 C.F.R. § 11.59;

h. The OED Director shall publish in the *Official Gazette* and in the Office of Enrollment and Discipline's Electronic FOIA Reading Room a notice that is materially consistent with the following:

## Notice of Reprimand and Probation

This notice concerns Olen L. York of Milton, West Virginia, a registered patent attorney (Reg. No. 53,814). The United States Patent and Trademark Office ("USPTO" or "Office") has reprimanded Mr. York and placed him on probation for two years for violating 37 C.F.R. § 10.23(a) (proscribing engaging in disreputable or gross misconduct). Mr. York is permitted to practice before the USPTO in patent, trademark, and other non-patent matters during his probationary period unless he is subsequently suspended or excluded by order of the USPTO Director or otherwise loses the authority to so practice before the Office.

Under the terms of Mr. York's compensation arrangement with the law firm for whom he worked, monies received by the law firm from a client would be distributed as follows: one-third (1/3) of the fee was remitted to the law firm for overhead, one-third (1/3) of the fee was remitted to the attorney who originated the work, and one-third (1/3) of the fee was remitted to the attorney who performed the legal services. If an attorney originated the legal work, he would receive two-thirds (2/3) of the fee, and the law firm would receive one-third (1/3) for overhead.

Mr. York received checks from two clients totaling six thousand two hundred and fifty dollars (\$6,250) for legal services Mr. York had rendered for the clients, but he did not immediately inform the law firm about the funds and did not immediately remit the funds to the law firm. Instead, he deposited the funds into a personal account with the intent to remit the funds to the law firm at a later time. Mr. York represents that, based on his compensation arrangement with the law firm, he reasonably believed that he was entitled to a portion of the monies he received from the clients and that he did not intend to deprive the law firm of funds to which it was entitled. Mr. York also did not comply with the law firm's policy regarding the use of its deposit account and did not promptly inform the law firm of his use of its deposit account. Prior to the Office's investigation, Mr. York had delivered to the law firm all funds to which he believed the law firm was entitled. Mr. York acknowledged that he should have promptly informed the law firm of the monies he received on the law firm's behalf and should have promptly remitted the entire amount of the monies he received to the law firm. In agreeing to the above described sanction, the OED Director took into account that Mr. York acknowledged that his conduct violated the Disciplinary Rules of USPTO Code of Professional Responsibility set forth above.

A practitioner's mishandling of funds collected from clients on behalf



of his or her law firm may constitute ethical misconduct for which they may be appropriately sanctioned. *See, e.g., In re Fredericksen*, D02-08 (USPTO Sep. 23, 2002) (suspending patent attorney for misappropriating fees from his law firm and for failing to maintain complete records of all funds of a client coming into his possession); *In re Casey*, 496 N.W.2d 94, 95 (Wis. 1993) (treating an attorney's misappropriation of funds belonging to law firm no differently than misappropriation of funds belonging to a lawyer's client because "[i]n each case, the lawyer violates the basic professional duty of trust, not only as attorney but also as fiduciary"); *Disciplinary Counsel v. Riek*, 925 N.E.2d 980, 983 (Ohio 2010) (mishandling of clients' funds either by way of conversion, commingling, or just poor management, encompasses an area of the "gravest concern"); *In re Siderits*, 824 N.W.2d 812 (Wis. 2013) (suspending attorney for manipulating his billable hours and thus engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, as well as violating fiduciary duty owed to his law firm); *In re Christian*, 135 P.3d 1062 (Kan. 2006) (disbarring attorney who converted firm fees himself on behalf of firm).

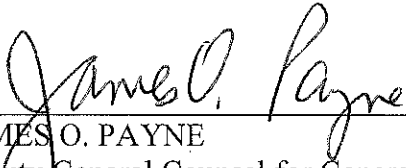
This action is the result of a settlement agreement between the OED Director and Mr. York pursuant to the provisions of 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.20, 11.26, and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, which is publicly accessible at <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

i. Nothing in the Agreement or this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including this Final Order, (1) when addressing any further complaint or evidence of the same or similar misconduct concerning Respondent brought to the attention of the Office, and/or (2) in any future disciplinary proceeding against Respondent (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or (ii) to rebut any statement or representation by or on Respondent's behalf;

j. In the event that a disciplinary complaint was filed against Respondent prior to the signing of this Final Order, the OED Director shall file a motion to dismiss the complaint within fourteen (14) days of the date this Final Order is signed; and

k. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of the Agreement.

[only signature line follows]



JAMES O. PAYNE  
Deputy General Counsel for General Law  
United States Patent and Trademark Office

NOV 18 2013

Date

on behalf of

Deputy Under Secretary of Commerce for Intellectual Property and  
Deputy Director of the United States Patent and Trademark Office

cc:

Director of the Office of Enrollment and Discipline  
United States Patent and Trademark Office

Olen L. York  
c/o Lonnie C. Simmons, Esq.  
DITRAPANO, BARRETT, DIPIERO, MCGINLEY & SIMMONS, PLLC  
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