

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE**

In the Matter of:

DALE B. HALLING,

Respondent.

Proceeding No. D2019-10

June 13, 2019

INITIAL DECISION AND ORDER ON DEFAULT JUDGMENT

This matter arises from a disciplinary complaint filed by the Director for the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “the Office”) against Dale B. Halling (“Respondent”) pursuant to 35 U.S.C. § 32 as implemented by 37 C.F.R. Part 11.¹ The OED Director has filed a *Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction* (“Default Motion”) seeking a default judgment and an order excluding Respondent from practice before the Office.

PROCEDURAL HISTORY

On January 15, 2019, the OED Director filed a *Complaint and Notice of Proceedings under 35 U.S.C. § 32* (“Complaint”) against Respondent pursuant to 35 U.S.C. §§ 32 and 11.34 alleging violations of the USPTO Rules of Professional Conduct (37 C.F.R. §§ 11.101 *et seq.*). The same day the *Complaint* was filed, the OED Director attempted to serve it upon Respondent pursuant to 37 C.F.R. § 11.35(a)(2)(i) by sending Respondent three copies of the *Complaint* via U.S. certified mail, with return receipt requested, as detailed below.

The first copy was mailed to Respondent’s official address of record with the OED Director,² namely: Law Office of Dale B. Halling, LLC, 3595 E. Fountain Head Blvd., Suite A2, Colorado Springs, CO 80910. On March 14, 2019, the *Complaint* sent to Respondent at this address was returned to the USPTO with the notation, “Return to Sender, Unable to Forward.” The OED Director also mailed a copy of the *Complaint* to an address where it is believed that Respondent receives mail, that being: Law Office of Dale B. Halling, LLC, 3595 E. Fountain Head Blvd., Suite M2, Colorado Springs, CO 80910. The *Complaint* sent to Respondent at this address was returned to the USPTO with the notation, “Return to Sender, Not Deliverable as Addressed, Unable to Forward.” Additionally, the OED Director mailed a copy of the *Complaint* to another address where it is believed that Respondent receives mail, that being: Law Office of Dale B. Halling, LLC, 110 E. Center Street, #2044, Madison, SD 57042. The *Complaint* sent to Respondent at this address was returned to the USPTO with the notation, “Return to Sender, Not Deliverable as Addressed, Unable to Forward.”

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 are authorized to hear cases brought by the USPTO.

² 37 C.F.R. § 11.11(a) requires a registered practitioner such as Respondent to notify the OED Director of the postal address for his office and to provide written notice of any address change within 30 days of the change.

Unable to affirmatively verify service by mail, the OED Director served Respondent with notice of the *Complaint* by publication pursuant to 37 C.F.R. § 11.35(b), which requires publication in USPTO's Official Gazette for two consecutive weeks. A notice was published in the Official Gazette on April 9, 2019, and April 16, 2019. However, Respondent failed to file an answer within the time allotted under 37 C.F.R. § 11.35(b).³

On April 29, 2019, counsel for the OED Director sent a letter to Respondent's three known addresses notifying Respondent that the OED Director intended to file a motion for default judgment and imposition of disciplinary sanctions. The letter invited Respondent to contact counsel on or before May 14, 2019, to discuss resolving the default motion voluntarily pursuant to 37 C.F.R. § 11.43. Respondent did not respond to this letter. Meanwhile, on February 6, 2019, the Court had issued a *Notice of Hearing and Order* directing Respondent to file an answer to the *Complaint* by February 27, 2019, but Respondent did not enter an appearance or file an answer.

On May 16, 2019, the OED Director filed the *Default Motion*. Pursuant to the Court's *Notice of Hearing and Order*, any party opposing a motion before this Court must file his opposition within ten days after the motion is docketed, meaning that a response to the *Default Motion* was due on May 31, 2019. However, Respondent did not respond to the *Default Motion* by that date.

As of the date of this decision, Respondent has neither answered the *Complaint* nor the *Default Motion*, nor sought an extension of time to do so, nor otherwise appeared in this matter. In short, the Court has received no communication from or on behalf of Respondent.

APPLICABLE LAW

I. 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). This authority flows from 35 U.S.C. § 2(b)(2)(D), which empowers the USPTO to establish regulations governing patent practitioners' conduct before the Office, and 35 U.S.C. § 32, which empowers the USPTO to discipline a practitioner who is "shown to be incompetent or disreputable, or guilty of gross misconduct," or who violates USPTO's regulations. 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 at 37 C.F.R. part 11, subpart C, and with section 7 of the Administrative Procedure Act, 5 U.S.C. § 556, by a hearing officer appointed by USPTO. See 37 C.F.R. §§ 11.39(a), 11.44.

³ 37 C.F.R. § 11.35(b) provides that an answer is due within thirty days after the second publication of the notice, meaning that in this case, the answer was due on May 16, 2019.

II. Consequences for Failure to Answer Complaint

The USPTO's procedural rules set forth the requirement for answering the *Complaint* and the consequences for failing to do so: "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(e).

III. Burden of Proof

The OED Director must prove alleged disciplinary violations by "clear and convincing evidence." 37 C.F.R. § 11.49; *In re Johnson*, Proceeding No. D2014-12, slip op. at 2 (USPTO Dec. 31, 2014).⁴ Likewise, it is Respondent's burden to prove any affirmative defense by clear and convincing evidence. 37 C.F.R. § 11.49. This standard "protect[s] particularly important interests ... where there is a clear liberty interest at stake." *Johnson*, slip op. at 3 (quoting *Thomas v. Nicholson*, 423 F.3d 1279, 1283 (Fed. Cir. 2005)) (internal quotation marks omitted). "Clear and convincing evidence" requires a level of proof that falls "between a preponderance of the evidence and proof beyond a reasonable doubt." *Id.* (quoting *Addington v. Texas*, 441 U.S. 418, 424-25 (1979)) (internal quotation marks omitted). The evidence must be of such weight so as to "produce[] 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." *Id.* (quoting *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001)) (internal quotation marks omitted). "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." *Id.* (quoting *Foster v. AlliedSignal, Inc.*, 293 F.3d 1187, 1194 (10th Cir. 2002)) (internal quotation marks omitted).

FINDINGS OF FACT

As a result of Respondent's failure to answer the *Complaint*, Respondent is deemed to have admitted the allegations in the *Complaint*, which are set forth below as the Court's findings of fact. See *In re Riley*, Proceeding No. D2013-04 (USPTO July 9, 2013)⁵ (granting Director's motion for default judgment when respondent failed to answer the complaint).

At all times relevant to the *Complaint*, Respondent has been registered to practice before USPTO. Respondent was registered to practice before the USPTO as a patent attorney on October 25, 1994 (Registration No. 38,170). Respondent was admitted to practice law in Illinois on November 4, 1993 and is in inactive status. Respondent was admitted to practice law in Missouri on April 23, 1993 and is in inactive status. Respondent was admitted to practice law in Colorado on March 16, 1995. He is currently suspended in Colorado for failure to cooperate with an investigation being conducted by the Colorado Supreme Court's Office of Attorney Regulation regarding Respondent's alleged professional misconduct in that jurisdiction.

⁴ Available at: <https://go.usa.gov/xmWrf>.

⁵ Available at: <https://e-foia.uspto.gov/Foia/RetrievePdf?system=OED&fNm=0748> DIS 2013-07-09.

Count I. Respondent's Neglect of his Client's Patent Application

In July 2011, SuperVee, LLC ("SuperVee" or "client") hired Respondent to file a patent application for SuperVee's products. On August 25, 2011, Respondent filed U.S. Patent Application No. 13/217,760 ("the '760 application") naming Marcus Caldwell and Jeffrey Lathrop of SuperVee as the inventors.

On September 8, 2011, the USPTO mailed a Notice to File Corrected Application Papers to Respondent in the '760 application. The Notice to File Corrected Application Papers was sent to Respondent's address of record in the '760 application. Respondent received the Notice to File Corrected Application Papers. However, Respondent did not inform SuperVee of the Notice to File Corrected Application Papers. He also did not advise SuperVee about the options for responding to the Notice to File Corrected Application Papers. Nor did Respondent explain to SuperVee the potential adverse consequences to the company's intellectual property rights if no response was filed.

Respondent did not file a response to the September 8, 2011 Notice to File Corrected Application Papers. Accordingly, on May 18, 2012, the USPTO mailed a Notice of Abandonment to Respondent in the '760 application for failure to respond to the Notice to File Corrected Application Papers. The Notice of Abandonment was sent to Respondent's address of record in the '760 application and Respondent received it.

On February 13, 2014, Respondent filed a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(a) ("First Petition to Revive") in the '760 application. Although the Petition to Revive was filed on February 13, 2014, it was dated January 20, 2014. Respondent did not inform SuperVee of the February 13, 2014 Petition to Revive.

On February 25, 2014, the USPTO automatically granted the February 13, 2014 First Petition to Revive. The February 25, 2014 Order granting the First Petition to Revive was sent to Respondent's address of record in the '760 application and Respondent received it. Respondent did not inform SuperVee of the February 25, 2014 decision granting the Petition to Revive.

On May 1, 2014, the USPTO issued a Restriction Requirement in the '760 application. The Restriction Requirement was sent to Respondent's address of record in the '760 application and Respondent received it. Respondent did not inform SuperVee of the Restriction Requirement issued in the '760 application. He also did not advise SuperVee about the options for responding to the Restriction Requirement. Nor did he explain to SuperVee the potential adverse consequences to the company's intellectual property rights if no response was filed. Respondent did not file a response to the Restriction Requirement.

As a result of Respondent's failure to file a response, on December 22, 2014, the USPTO issued a second Notice of Abandonment in the '760 application, this time for failure to respond to the May 1, 2014 Restriction Requirement. Respondent did not inform SuperVee of the December 22, 2014 Notice of Abandonment. He also did not advise SuperVee about the options for responding to the Notice of Abandonment. Nor did he explain to SuperVee the potential adverse consequences to the company's intellectual property rights if no response was filed.

On October 21, 2015, Respondent filed in the '760 application a Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 C.F.R. § 1.137(a) ("Second Petition to Revive"). Respondent did not inform SuperVee of the Second Petition to Revive. On October 21, 2015, the USPTO automatically granted Respondent's Second Petition to Revive in the '760 application. Respondent did not inform SuperVee of the October 21, 2015 decision granting the Second Petition to Revive.

On November 4, 2016, the USPTO issued a non-final Office action in the '760 application. The non-final Office action rejected three claims as being unpatentable over prior art, and indicated three other claims would be allowable if rewritten to overcome formal objections. It set a three-month period for a reply. The non-final Office action was sent to Respondent's address of record in the '760 application and Respondent received it. Respondent did not inform SuperVee of the November 4, 2016 non-final Office action. He also did not advise SuperVee about the options for responding to the November 4, 2016 non-final Office action. Nor did he explain to SuperVee the potential adverse consequences to the company's intellectual property rights if no response was filed.

Respondent did not file a response to the November 4, 2016 non-final Office action. On June 20, 2017, Respondent filed in the '760 application a Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 C.F.R. § 1.137(a) ("Third Petition to Revive"), which included a response to the November 4, 2016 non-final Office action. The Third Petition to Revive was supplemented on July 13, 2017 with payment of the required petition fee. He did not inform his client of the June 20, 2017 Petition to Revive in the '760 application.

On August 2, 2017, the USPTO issued another Notice of Abandonment in the '760 application for failure to respond to the November 4, 2016 non-final Office action. The August 2, 2017 Notice of Abandonment was mailed to Respondent's address of record in the '760 application and Respondent received it.

Respondent did not inform SuperVee of the August 2, 2017 Notice of Abandonment. He also did not advise SuperVee about the options for responding to the August 2, 2017 Notice of Abandonment. Nor did he explain to SuperVee the potential adverse consequences to the company's intellectual property rights if no response was filed.

On October 27, 2017, the USPTO granted Respondent's Third Petition to Revive. Respondent did not inform SuperVee of the October 27, 2017 decision granting the Third Petition to Revive in the '760 application.

Other Findings of Fact

Respondent's acts and omissions leading to the charged violations of the USPTO Rules set forth in the Complaint were willful. In addition to his misconduct in connection with his representation of his client SuperVee, Respondent did not respond to OED during the disciplinary investigation, did not answer the *Complaint* per the Court's *Notice of Hearing and Order* or otherwise communicate with counsel for the OED Director, and did not respond to the

Court's order to file an answer. Respondent also failed in his obligation to keep his address up to date with the OED Director pursuant to 37 C.F.R. § 11.11(a).⁶

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes that Respondent violated the USPTO Rules of Professional Conduct as alleged, for the following reasons.

Count I (misconduct related to the '760 application)

- a. 37 C.F.R. § 11.103 provides that a practitioner "shall act with reasonable diligence and promptness in representing a client." Respondent violated this provision as charged in Count I when he (i) failed to respond to the September 8, 2011 Notice to File Corrected Application Papers and allowed the '760 application to go abandoned as reflected in the Notice of Abandonment mailed on May 18, 2012; (ii) failed to respond to the May 1, 2014 Restriction Requirement in the '760 application and allowed the '760 application to go abandoned as reflected in the Notice of Abandonment mailed on December 22, 2014; (iii) failed to respond to the November 4, 2016 non-final Office action and allowed the '760 application to go abandoned as reflected in the Notice of Abandonment mailed on August 2, 2017; (iv) failed to inform SuperVee of the September 8, 2011 Notice to File Corrected Application Papers, the May 1, 2014 Restriction Requirement, the November 4, 2016 non-final Office action, and the Notices of Abandonment mailed on May 18, 2012, December 22, 2014, and August 2, 2017; (v) did not advise SuperVee about options for responding to the communications from the USPTO; and (vi) did not explain to SuperVee the potential adverse consequences to the company's intellectual property rights if no response was filed to the USPTO communications.
- b. 37 C.F.R. § 11.104(a)(3) provides that a practitioner must "keep the client reasonably informed about the status of the matter." Respondent violated this provision as charged in Count I by (i) failing to communicate with SuperVee about the status of the '760 application, including the September 8, 2011 Notice to File Corrected Application Papers, the May 1, 2014 Restriction Requirement, the November 4, 2016 non-final Office action, the Notices of Abandonment mailed on May 18, 2012, December 22, 2014, and August 2, 2017, and the Petitions to Revive dated February 13, 2014, October 21, 2015, and June 20, 2017; (ii) not advising SuperVee about options for responding to the communications from the USPTO; and (iii) not explaining to SuperVee the potential adverse consequences to the company's intellectual property rights if no response was filed to the USPTO communications.
- c. 37 C.F.R. § 11.104(b) provides that a practitioner "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Respondent violated this provision as charged in Count I when he (i) did

⁶ OED sent an initial Request for Information and Evidence ("RFI") to the address on file with the OED Director. This RFI was returned as undeliverable. OED sent a Second RFI to two addresses for Respondent, the address on file with the OED Director and an address on file with the Colorado State Bar. The Second RFIs sent to both addresses were returned to OED as undeliverable. Similarly, the *Complaint* and requests to meet and confer sent by counsel for the OED Director to all addresses were also returned as undeliverable. Respondent was eventually served with the *Complaint* by publication.

not inform SuperVee of the September 8, 2011 Notice to File Corrected Application Papers, the May 1, 2014 Restriction Requirement, the November 4, 2016 non-final Office action, or the Notices of Abandonment mailed on May 18, 2012, December 22, 2014, and August 2, 2017; (ii) did not advise SuperVee about options for responding to the communications from the USPTO; and (iii) did not explain to SuperVee the potential adverse consequences to the company's intellectual property rights if no response was filed to the USPTO communications.

SANCTIONS

The OED Director asks the Court to sanction Respondent by entering an order excluding him from practice before the USPTO. The primary purpose of legal discipline is not to punish, but rather “to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.” *In re Brufsky*, Proceeding No. D2013-18, slip op. at 8 (USPTO June 23, 2014)⁷ (citing *Matter of Chastain*, 532 S.E.2d 264, 267 (S.C. 2000)). The OED Director believes that exclusion is the appropriate sanction in this case because Respondent's behavior demonstrates a willful disregard of his obligations to his clients, the USPTO, and this Court and reflects that he lacks basic ethical capacities and, thus, should not be permitted to continue to represent others before the Office.

In determining an appropriate sanction, USPTO regulations require the Court to consider the following four factors: (1) whether the practitioner has violated a duty owed to a client, the public, the legal system, or 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 conduct; and (4) the existence of any aggravating or mitigating factors. 37 C.F.R. § 11.54(b).

I. Violation of Duties Owed to Client, Public, and Legal Profession

The practitioner-client relationship is a fiduciary relationship in which the practitioner owes the client a duty to represent his or her interests diligently and in good faith. *See In re Bender*, Proceeding No. D2000-01, slip op. at 20 (USPTO Sept. 30, 2003)⁸ (“Respondent owed a fiduciary duty individually to each of his clients.”); *Carter v. ALK Holdings, Inc.*, 605 F.3d 1319, 1325 (Fed. Cir. 2010) (referencing patent practitioner's expected fiduciary duties to clients); *see also In re Law Examination of 1926*, 210 N.W. 710, 711 (Wis. 1926) (“An attorney occupies a fiduciary relationship toward his client. It is one of implicit confidence and of trust ... There is no field of human activity which requires a fuller realization with respect to a fiduciary relationship than that which exists between the lawyer and his client.”).

In this case, Respondent breached the fiduciary duty he owed to his client by neglecting the '760 application and failing to communicate with his client. Specifically, he breached his duty to SuperVee by not keeping the company informed about correspondence from the Office, not advising them as to the options for responding to the correspondence, and not informing

⁷ Available at: <https://go.usa.gov/xmWgb>.

⁸ Available at: <http://go.usa.gov/x9tbQ>.

them of the adverse consequences to their intellectual property rights if no response was filed. He also breached his fiduciary duties by allowing the '760 application to go abandoned three times without SuperVee's knowledge or consent. He then attempted to cover up his neglect by filing three petitions to revive the application without the knowledge or consent of the company.

Aside from violating his fiduciary duty to his client, Respondent also violated the specific duties imposed by USPTO's laws and regulations. Each attorney licensed to practice before USPTO must sign an oath or affirmation that he will observe the laws and rules governing USPTO practice. Respondent violated this oath when he failed to adhere to the USPTO Rules of Professional Conduct, thereby violating the duty he owed both to his clients and to the legal profession (specifically, the patent bar) to act in a professional manner in accordance with the patent bar's rules and standards and with the oath he signed.

Further, Respondent breached his duties to his client and the USPTO by neglecting SuperVee's application, including ignoring important communications from the USPTO. He also breached his duty to the patent bar by diminishing the public's confidence in patent practitioners.

II. Whether Respondent Acted Intentionally, Knowingly, or Negligently

Respondent's misconduct with respect to his client SuperVee was intentional, knowing, and negligent. Respondent knowingly and intentionally failed to inform SuperVee about the communications from the Office in the company's patent application and he did not advise the company as to the options for responding to the correspondence or the consequences if no response was filed. He was negligent in that he allowed the patent application to go abandoned multiple times and did not inform the client of the abandonments or obtain consent to allow the abandonment of the application. Each time the application went abandoned Respondent knowingly and intentionally filed a Petition to Revive without informing his client in an attempt to cover up his neglect of the application.

The USPTO has suspended and excluded practitioners who acted knowingly, intentionally, or negligently by, *inter alia*, failing to advise a client of important office communications in violation of the ethics rules. See, e.g., *In re Myers*, Proceeding No. D2015-33 (USPTO Dec. 31, 2015)⁹ (practitioner excluded for, *inter alia*, allowing multiple patent applications to become abandoned without client consent, failing to notify the client of important Office communications, and failing to withdraw as attorney of record); *In re Schaefer*, Proceeding No. D2007-01 (USPTO Apr. 30, 2007)¹⁰ (similar misconduct; suspension); *Moatz v. Rosenberg*, Proceeding No. D06-07 (USPTO Mar. 7, 2007)¹¹ (practitioner excluded for, *inter alia*, neglecting legal matters entrusted to him, failing to notify a client of important Office communications, and effectively withdrawing from employment in a proceeding before the USPTO without permission from the Office and without having taken reasonable steps to avoid prejudice to the client).

⁹ Available at: <https://go.usa.gov/xmYuy>.

¹⁰ Available at: <https://go.usa.gov/xmYu6>.

¹¹ Available at: <https://go.usa.gov/xmYuh>.

In other jurisdictions, neglect of a client matter is a serious ethical violation. See Comm. on Prof'l Ethics & Conduct v. Freed, 341 N.W.2d 757, 759 (Iowa 1983) (“We view respondent’s retreat from the obligation he assumed as a serious matter, to be equated with the conduct of a surgeon who, without transferring responsibility, drops his scalpel and abandons his patient in the course of an operation.”); In re Jaynes, 278 N.W.2d 429, 434 (N.D. 1979) (“Neglecting a client’s case after accepting it is a very serious violation of the Code of Professional Responsibility.”).

III. Injury Caused by Respondent’s Conduct

Respondent’s misconduct caused actual and potential injury to his client. Respondent caused actual injury when he allowed the ‘760 application to go abandoned three times, thereby delaying the examination of the application by the USPTO. Respondent also caused potential injury by allowing the application to go abandoned multiple times because he risked the possibility of the Office denying his petition to revive the application, thereby jeopardizing the examination and allowance of the application.

IV. Aggravating and Mitigating Factors

The American Bar Association’s STANDARDS FOR IMPOSING LAWYER SANCTIONS (“STANDARDS”) set forth aggravating and mitigating factors for the Court to consider in determining an appropriate sanction. Citing § 9.22 of the STANDARDS, the OED Director contends that the following aggravating factors warrant a more severe sanction in this case: a dishonest or selfish motive; a pattern of misconduct; multiple violations; and substantial experience in the practice of law. The OED Director further asserts that, despite Respondent’s lack of prior disciplinary infractions, which is a mitigating factor, the serious misconduct at issue in this case warrants the sanction of exclusion. This Court agrees, and discusses the relevant aggravating and mitigating factors in turn below.

Aggravating Factors

The first aggravating factor is a dishonest and selfish motive. See STANDARDS § 9.22(b). Respondent was dishonest when he did not inform his client each time the company’s patent application went abandoned. In addition, he had a selfish motive to cover up the abandonments in order to avoid the risk of the company terminating his representation.

The second and third aggravating factors are a pattern of misconduct and multiple offenses. See STANDARDS § 9.22(c), (d). Respondent committed multiple offenses, such as repeatedly ignoring Office communications and deadlines, resulting in the application going abandoned three times without the knowledge or consent of his client. Respondent also engaged in a pattern of not communicating with his client regarding the status of the application, including regarding the receipt of important Office communications and the suggested response to them. By engaging in this pattern of misconduct, Respondent committed multiple violations of the USPTO Rules of Professional Conduct.

The fourth aggravating factor is Respondent’s substantial experience in the practice of law. See STANDARDS § 9.22(i). Respondent has been registered to practice before the USPTO

for over twenty-five years, since October 25, 1994. He should know better than to engage in the misconduct demonstrated in this case.

Mitigating Factors

STANDARDS § 9.32 identifies mitigating factors which, if they exist, may justify a reduction in the degree of discipline to be imposed. See STANDARDS §§ 9.31, 9.32. The only mitigating factor here is the “absence of a prior disciplinary record.” See STANDARDS § 9.32(a). The Court finds this mitigating factor to be of little weight, given Respondent’s misconduct as described above.

Analysis

The Court finds that aggravating factors are present under § 9.22(b), (c), (d), and (i) of the STANDARDS. The factors most egregious are that Respondent neglected his client’s matter by allowing the application to go abandoned three times, then took measures to cover up this neglect by filing petitions to revive the application without the client’s knowledge or consent. In terms of mitigation, Respondent has a clean disciplinary record. The Court agrees with the OED Director that despite Respondent’s lack of prior disciplinary infractions, the serious misconduct at issue in this case warrants the correspondingly serious sanction of exclusion.

CONCLUSION

Because Respondent has failed to answer the *Complaint* or otherwise appear in this matter, Respondent is found to be in **DEFAULT**. Based on the facts hereby admitted, this Court finds that Respondent has violated the USPTO Rules of Professional Conduct as alleged.

After analyzing the factors enumerated in 37 C.F.R. § 11.54(b), the Court concludes that Respondent’s misconduct warrants the sanction of exclusion. Accordingly, Respondent shall be **EXCLUDED** from practice before the U.S. Patent and Trademark Office in patent, trademark, and other non-patent matters.¹²

So **ORDERED**,



Alexander Fernández
United States Administrative Law Judge

Notice of Required Actions by Respondent: Respondent is directed to refer to 37 C.F.R. § 11.58 regarding his responsibilities in case of suspension or exclusion.

Notice of Appeal Rights: Within thirty (30) days of this initial decision, either party may file an appeal to the USPTO Director pursuant to 37 C.F.R. § 11.55.

¹² An excluded practitioner is eligible to apply for reinstatement no earlier than five years from the effective date of the exclusion. See 37 C.F.R. § 11.60(b). Eligibility is predicated upon full compliance with 37 C.F.R. § 11.58.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION AND ORDER ON DEFAULT JUDGMENT**, issued by Alexander Fernández, Administrative Law Judge, in D2019-10, were sent to the following parties on this 13th day of June 2019, in the manner indicated:



Iamaradette Jones, Staff Assistant

VIA REGULAR MAIL:

Dale B. Halling
Law Office of Dale B. Halling, LLC
3595 E. Fountain Boulevard, Suite A2
Colorado Springs, CO 80910

VIA E-MAIL:

Melinda M. DeAtley
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