

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

In the Matter of:

TARLEY G. STEVENSON,

Respondent.

Proceeding No. D2019-12

December 13, 2019

INITIAL DECISION 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 Tarley G. Stevenson (“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 and a Memorandum of Points and Authorities in Support* (“Default Motion”) seeking a default judgment and an order excluding Respondent from practice before the Office.

PROCEDURAL HISTORY

On March 20, 2019, the OED Director filed a *Complaint and Notice of Proceedings* (“Complaint”) against Respondent pursuant to 35 U.S.C. § 32. The *Complaint* stated that Respondent was required to file her written Answer with the Tribunal within thirty (30) days from the date of the filing of the *Complaint*. The *Complaint* also alerted Respondent that a decision by default could be entered against her if a written Answer was not timely filed.

Also, on March 20, 2019, in accordance with 37 C.F.R. § 11.35(a) (2), the OED Director served copies of the *Complaint* on Respondent at four addresses where counsel reasonably believed Respondent received mail. The OED Director served one copy to Crossley Patent Law Office, 1011 N. 1st Street, Montrose, CO 81401 (“the Montrose, Colorado address”), which is the address provided by Respondent to the Office of Enrollment and Discipline (“OED”) pursuant to 37 C.F.R. § 11.11. In addition, the OED Director served copies of the *Complaint* to two addresses in Wyoming: (a) [REDACTED] (“the Jackson, Wyoming address”) and (b) [REDACTED] (“the Bondurant, Wyoming address”). Finally, the OED Director also served a copy of the *Complaint* to [REDACTED] (“the Latham, New York address”). The United States Postal Service (“USPS”) returned the copy of the

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 have been appointed by the Secretary of Commerce and are authorized to hear cases brought by the USPTO.

Complaint mailed to the Montrose, Colorado address marked “not deliverable as addressed” and “UTF.”² The copies of the *Complaint* mailed to the Jackson, Wyoming and Bondurant, Wyoming addresses were returned to the Office by the USPS and marked “Return to Sender/Attempted-Not Known/Unable to Forward.” The USPS also returned to the Office the *Complaint* mailed to the Latham, New York address, which USPS marked “Return to Sender/Not Deliverable as Addressed/Unable to Forward.”

On March 25, 2019, the Court issued a *Notice of Hearing and Order* requiring Respondent to file her Answer on or before April 19, 2019. However, Respondent did not file an Answer by the specified deadline, nor did she enter an appearance before this Court.

Meanwhile, because the OED Director had been unable to serve Respondent by mail, he served notice on Respondent via publication pursuant to 37 C.F.R. § 11.35(b). Notices were published in the USPTO Official Gazette for two consecutive weeks, on May 28, 2019 and June 4, 2019. USPTO regulations mandate that Respondent had thirty days from the date of publication of the second Notice in the Official Gazette to file an answer to the *Complaint*, thus making her Answer due on or before July 4, 2019. *See* 37 C.F.R. § 11.35(b). However, Respondent did not file an Answer or otherwise contact counsel for the OED Director.

On November 7, 2019, the OED Director filed the *Default Motion*. Thereafter, the Court issued an *Order to Show Cause*³ directing Respondent to file a proposed Answer to the *Complaint* by November 18, 2019, and to show cause why the *Default Motion* should not be granted. Respondent did not respond to the *Default Motion* or the *Order to Show Cause*.

As of the date of this decision, Respondent still has not filed an Answer to the *Complaint*, sought an extension of time to do so, or otherwise appeared in this matter, and the Court has received no communication from or on behalf of Respondent.

APPLICABLE LAW

USPTO Disciplinary Proceedings. 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 USPTO to establish regulations governing patent practitioners’ conduct before the Office, and 35 U.S.C. § 32, which empowers 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 an 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

² Counsel to the OED Director believes that the notation “UTF” is an abbreviation for “Unable to Forward.”

³ The certificates of service for the *Order to Show Cause* and *Notice of Hearing and Order* state that the order and notice were both sent to Respondent via first-class mail. Each document was mailed to all four of the addresses listed on the certificate of service (the Montrose, Colorado address; the Jackson, Wyoming address; the Bondurant, Wyoming address; and the Latham, New York address).

officer appointed by the USPTO. See 37 C.F.R. §§ 11.39(a), 11.44. The OED Director has the burden of proving any alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49.

In 1985, the USPTO issued regulations based on the ABA Model Code of Professional Responsibility to govern attorney conduct and practice. See Practice Before the Patent and Trademark Office, 50 Fed. Reg. 5158 (Feb. 6, 1985) (Final Rule) (codified at 37 C.F.R. §§ 10.20-10.112). These rules set forth the USPTO Code of Professional Responsibility and “clarif[ied] and modernize[d] the rules relating to admission to practice and the conduct of disciplinary cases.” Id. at 5158. In May 2013, USPTO replaced the USPTO Code with the USPTO Rules of Professional Conduct, which are fashioned on the ABA’s Model Rules of Professional Conduct. See Changes to Representation of Others Before the United States Patent and Trademark Office, 78 Fed. Reg. 20180 (April 3, 2013) (Final Rule) (codified at 37 C.F.R. §§ 11.101-11.901). By updating its regulations, USPTO sought 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.”⁴ Id. at 20180.

Consequences for Failure to Answer Complaint. 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). The disciplinary *Complaint* served on Respondent also stated: “A decision by default may be entered against Respondent if a written answer is not timely filed.”

FINDINGS OF FACT

As a consequence 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.

USPTO registered Respondent as a patent agent on June 2, 2014, and as a patent attorney on February 6, 2015. Her USPTO registration number is 72,618. On November 24, 2014, Respondent became associated with the Crossley Patent Law Office in Montrose, Colorado. Crossley Patent Law Office was one of a number of patent law firms that received referrals from a company named InventHelp.

On January 22, 2015, Respondent was admitted to practice law in New York (New York Registration Number 5328539). By court order she is suspended from the practice of law in her licensing jurisdiction. See Matter of Stevenson, 110 N.Y.S.3d 346 (N.Y. App. Div. 2019).

On January 1, 2016, Respondent purchased fifty percent of the shares of the Crossley Patent Law Office and the firm began to operate under the name, “Crossley & Stevenson IP Law.” On November 1, 2016, Respondent left Crossley & Stevenson IP Law and formed Stevenson IP, LLC (“Stevenson IP”). Referrals from InventHelp formed a substantial percentage of Stevenson IP’s clients.

⁴ Thus, the USPTO Code, the Comments and Annotations to the ABA Model Rules, and disciplinary decisions and opinions issued by state boards are useful to understanding the USPTO Rules. See 78 Fed. Reg. at 20180.

1. The McClain Representation

On or around October 19, 2016, Mr. David McClain executed a written agreement through which he agreed to pay Crossley Patent Law Office \$1,265.00 for drafting up to seven drawings for his invention (a cell phone), preparing a design patent application for his invention, and filing the design application with USPTO. The \$1,265.00 included the USPTO fee that was to be paid at the time of the filing of the design application. Mr. McClain filled out a credit card authorization form on Crossley & Stevenson IP Law letterhead authorizing the firm to charge his credit card in the amount of \$1,265.00 plus a 4% credit card service charge.

On November 1, 2016, Respondent ended her employment with Crossley & Stevenson IP Law and started working for Stevenson IP. On November 23, 2016, Stevenson IP charged Mr. McClain's credit card in the amount of \$1,315.60. This amount represented the \$1,265.00 charge that Mr. McClain had authorized plus a 4% service fee for using a credit card. On or about July 26, 2017, Stevenson IP sent Mr. McClain a copy of a draft design patent application and drawings. On or about August 6, 2017, Mr. McClain executed a Power of Attorney and Declaration in favor of Stevenson IP. Mr. McClain also executed a credit card authorization form on that date in favor of Stevenson IP in the amount of \$197.60.

Respondent performed no meaningful legal work on behalf of Mr. McClain after August 6, 2017. Stevenson IP did not file the design patent application for which Mr. McClain had contracted and paid. Mr. McClain attempted to reach Respondent by phone and email on many occasions, including but not limited to every day for three months starting on May 1, 2018. Respondent did not respond to Mr. McClain's attempts to contact her, and she has not refunded Mr. McClain any amount of money.

2. The Bruno Representation

In March 2017, Mr. Matt Bruno entered into a written contract with InventHelp in which he agreed to pay \$15,500.00 for patent services related to his paper bag-napkin invention. Mr. Bruno also agreed that \$1,600.00 of his funds would be held in an escrow account for the purpose of paying a patent attorney that InventHelp would refer to him to file the patent application. Mr. Bruno paid InventHelp approximately \$13,000.00 of the \$15,500.00 that he agreed to pay in the written contract with InventHelp.

On June 7, 2017, InventHelp referred Mr. Bruno to Respondent to prepare and file a utility patent application. During the course of the representation, Respondent never spoke directly with Mr. Bruno. Mr. Bruno's interaction with Respondent was limited to exchanging documents and brief conversations with her staff. Neither Respondent nor anyone else informed Mr. Bruno of the material risks and reasonably available alternatives to InventHelp, as a third party payor, compensating Respondent for legal services to be rendered on behalf of Mr. Bruno.

On January 9, 2018, Respondent, through Stevenson IP, sent Mr. Bruno documents to review and sign in connection with filing a utility patent application, including a Power of Attorney, a Declaration for Utility Application using an Application Data Sheet, and a Nonpublication Request. Mr. Bruno signed those documents on January 26, 2018 and returned

them to Stevenson IP. On February 1, 2018, Mr. Bruno paid Stevenson IP \$730.00 to cover the USPTO filing fees for his application.

Respondent never filed the patent application on behalf of Mr. Bruno. Mr. Bruno repeatedly called the telephone number associated with Respondent's office, but his calls were not returned. Mr. Bruno has not received any return phone calls or any other communication from Respondent since January 9, 2018. Mr. Bruno has not received a refund of any part of the money paid to Stevenson IP.

3. The Davydov Representation

Ms. Angela Davydov contracted with InventHelp in May 2016 for assistance with her collapsible shopping cart invention. As part of that agreement, Ms. Davydov agreed to pay InventHelp a minimum of \$4,500.00, and authorized InventHelp to make monthly withdrawals from her bank account. The agreement provided that the first \$3,050.00 collected would be paid to InventHelp, and the next \$1,450.00 would be held by InventHelp in an escrow account, to be paid to a patent attorney for "patent services."

Crossley & Stevenson IP Law sent a letter to Ms. Davydov dated August 30, 2016, advising her that her file had been referred by InventHelp to Crossley & Stevenson. That letter noted that Ms. Davydov had already paid \$1,450.00 "for a utility patent application," and explained that the \$1,450.00 held in escrow would be disbursed from InventHelp to Crossley & Stevenson IP Law.

Mr. Davydov received a letter from Stevenson IP dated November 20, 2016, in which Respondent related that she was no longer employed by Crossley & Stevenson and asked Ms. Davydov whether she wanted Respondent to continue to represent her. Ms. Davydov indicated that she wanted Respondent to continue to represent her. Stevenson IP sent a letter to Ms. Davydov by email requesting authorization to prepare a utility patent application. Ms. Davydov signed the document on December 31, 2016, and returned it to Stevenson IP.

On January 28, 2017, Ms. Davydov tendered payment directly to Stevenson IP in the amount of \$400.00 for USPTO filing fees. On February 8, 2017, Stevenson IP filed U.S. Utility Patent Application No. 15/427,535 ("the '535 application") and paid \$400.00 to the Office for filing fees related to the '535 application. On the same date, Respondent filed a Power of Attorney, naming Respondent as the attorney of record in the '535 application. On February 9, 2018, USPTO issued a Notice of Allowance and Fees Due relating to the '535 application. The Notice of Allowance advised Ms. Davydov and her attorney that the issuance fees must be paid within three months or the application would be regarded as abandoned.

Respondent did not notify Ms. Davydov that the Notice of Allowance and Fees Due in the '535 Application had been issued, nor did she forward a copy of the Notice to Ms. Davydov. Respondent last contacted Ms. Davydov on March 27, 2018, after Ms. Davydov had wished Respondent a happy Easter. At that time, Respondent did not inform Ms. Davydov that the Notice of Allowance and Fees Due had been issued. Ms. Davydov made several attempts to contact Respondent thereafter, but was unable to do so. Ms. Davydov directly contacted USPTO

on May 9, 2018. At that time, Ms. Davydov learned that her patent application was in danger of being abandoned due to nonpayment of the issuance fees. On May 10, 2018, the '535 Application went abandoned for failure to pay the issuance fee within the three-month statutory period. Thereafter, Ms. Davydov revoked the Power of Attorney granted to Respondent and submitted a Petition for Revival of an Application Abandoned Unintentionally Under 37 C.F.R. § 1.137(a). On September 27, 2018, the Office granted the Petition.

4. The [REDACTED] Representation

On [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] executed an agreement with Crossley & Stevenson IP Law in which Crossley & Stevenson IP Law agreed to provide design patent application services in exchange for payment of \$1,265.00. These services related to Mr. and Ms. [REDACTED]'s invention, a "[REDACTED]" On [REDACTED], Mr. and Ms. [REDACTED] paid Crossley & Stevenson in full.

On [REDACTED], Respondent filed U.S. Design Patent Application No. [REDACTED] ("the [REDACTED] application") on behalf of Mr. and Ms. [REDACTED]. On the same date, Respondent filed a Power of Attorney in the [REDACTED] application. On [REDACTED], Patricia K. Crossley contacted Mr. and Ms. [REDACTED] and notified them that Respondent was no longer employed by Crossley & Stevenson IP Law. Ms. Crossley asked Mr. and Ms. [REDACTED] whether they wished to continue to be represented by Respondent, and Mr. and Ms. [REDACTED] indicated that they did.

On [REDACTED], the USPTO issued a Notice of Allowance and Fees Due in the [REDACTED] application. That Notice indicated that the issue fee must be paid within three months from the mailing date or the application would be regarded as abandoned. On [REDACTED], not having received the issue fee within three months of the Notice of Allowance, USPTO deemed the [REDACTED] application abandoned. On [REDACTED], Mr. and Ms. [REDACTED] received a letter from Respondent, enclosing the Notice of Abandonment and explaining that it was possible to file a Petition to Revive. Respondent stated that Stevenson IP would charge \$1,500.00 to file the Petition. Mr. and Ms. [REDACTED] repeatedly attempted to contact Respondent after receiving the [REDACTED] letter, but they never received any return call or correspondence.

5. The Dill Representation

On October 31, 2016, Respondent filed U.S. Patent Application No. 15/339,030 ("the '030 application") on behalf of Mr. James Dill for a "Tick Removal Ointment." On March 15, 2017, the USPTO issued a Non-Final Rejection in the '030 application which set a three-month period to respond. On October 5, 2017, because no response to the Non-Final Rejection was received, the USPTO issued a Notice of Abandonment. At no time did Respondent notify Mr. Dill of the Non-Final Rejection, that a Response to the Non-Final Rejection was required, or that the '030 application had been abandoned.

6. The Mitchell Representation

Mr. Harold Mitchell hired Respondent in April 2017 to represent him in preparing and filing a utility patent application for a self-charging cell phone with a self-charging battery pack.

Mr. Mitchell paid Stevenson IP \$1,200.00 and provided Respondent with eight drawings of his invention to be filed with the application. Mr. Mitchell sent Respondent an email message on September 8, 2017, in which he requested an update as to the status of his application. Respondent replied by email message dated September 9, 2017, and stated that her office would complete the application within the next week.

On October 20, 2017, not having received a completed application, Mr. Mitchell sent another email message to Respondent requesting a status update. On November 24, 2017, Mr. Mitchell sent Respondent an email message requesting that she issue a \$1,200.00 refund and return his drawings. On December 18, 2017, Mr. Mitchell sent Respondent a letter ending the representation and again requesting that she issue a \$1,200.00 refund and return the drawings. On December 29, 2017, Respondent sent a \$1,200.00 check to Mr. Mitchell. Respondent did not return Mr. Mitchell's original drawings.

On January 3, January 10, January 17, and January 21, 2018, Mr. Mitchell sent email messages to Respondent again requesting that she return his eight original drawings. To date, Respondent has not returned to Mr. Mitchell his original drawings.

CONCLUSIONS OF LAW

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

1. 37 C.F.R. § 11.103 provides that a practitioner "shall act with reasonable diligence and promptness in representing a client." Respondent violated this rule as charged in Counts I-VI by (1) not filing a design patent application on behalf of Mr. McClain, as she had been hired and paid in advance to do; (2) failing to file a utility patent application of behalf of Mr. Bruno, as she had been hired and paid in advance to do; (3) failing to inform Ms. Davydov of the issuance of the Notice of Allowance and Fees Due in the '535 application and failing to take steps to have the patent issued; (4) not informing Mr. and Mrs. [REDACTED] of the [REDACTED] Notice of Allowance and Fees Due in the [REDACTED] application or the [REDACTED] Notice of Abandonment in the [REDACTED] application until [REDACTED]; (5) not responding to the Non-Final Rejection in the '030 application and not informing Mr. Dill of the rejection, the need to file a response, or the Notice of Abandonment in the '030 application; and (6) failing to take any significant action to draft or file Mr. Mitchell's patent application between the time Respondent accepted compensation to do so in April 2017 and the termination of the representation in December 2017.

2. 37 C.F.R. § 11.104(a)(2) provides that a practitioner shall "[r]easonably consult with the client about the means by which the client's objectives are to be accomplished." Respondent violated this rule as charged in Counts IV and V by (1) not informing Mr. and Ms. [REDACTED] of the Notice of Allowance and Fees Due or the Notice of Abandonment in the [REDACTED] application and failing to consult with them regarding responses to the Notices; and (2) not informing Mr. Dill of the Notice of Abandonment in the '030 application or consulting with him regarding the legal options following abandonment.

3. 37 C.F.R. § 11.104(a)(3) provides that a practitioner shall “[k]eep the client reasonably informed about the status of the matter.” Respondent violated this rule as charged in Counts I-V by (1) failing to provide information about the design patent application she was hired to file for Mr. McClain; (2) not providing information about the utility patent application she was hired to file for Mr. Bruno, including not responding to numerous telephone calls from Mr. Bruno regarding the status of the application; (3) failing to inform Ms. Davydov of the issuance of the Notice of Allowance and Fees Due in the ‘535 application; (4) not informing Mr. and Mrs. [REDACTED] of the [REDACTED] Notice of Allowance and Fees Due or the [REDACTED] Notice of Abandonment in the [REDACTED] application until [REDACTED]; and (5) not informing Mr. Dill of the Non-Final Rejection or Notice of Abandonment in the ‘030 application.

4. 37 C.F.R. § 11.104(a)(4) provides that a practitioner shall “[p]romptly comply with reasonable requests for information from the client.” Respondent violated this rule as charged in Counts I and II by (1) failing to respond to numerous telephone calls from Mr. McClain regarding the status of his design patent application; and (2) not responding to numerous telephone calls from Mr. Bruno regarding the status of his utility patent application.

5. 37 C.F.R. § 11.108(f) provides that a practitioner shall not accept compensation for representing a client from anyone other than the client unless the client gives informed consent. Respondent violated this rule as charged in Count II by accepting compensation from InventHelp for performing legal work for Mr. Bruno without obtaining Mr. Bruno’s informed consent.

6. 37 C.F.R. § 11.115(d) provides that a practitioner “shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.” Respondent violated this rule as charged in Counts I and II by (1) not refunding Mr. McClain any of the fees and costs paid in advance for the preparation and filing of a design patent application that was never filed; and (2) not refunding to Mr. Bruno any of the \$730.00 paid to Respondent for USPTO filing fees for a utility patent application that was never filed.

7. 37 C.F.R. § 11.116(d) provides that “[u]pon termination of representation, a practitioner shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.” Respondent violated this rule as charged in Counts I, II, III, and VI by (1) not refunding to Mr. McClain any of the advanced legal fees or the government filing fee charged for the preparation and filing of a design patent application that was never filed; (2) retaining the \$730.00 paid by Mr. Bruno for USPTO filing fees for a utility patent application that was never filed; (3) failing to take steps to notify Ms. Davydov of the issuance of the Notice of Allowance and Fees due, failing to take steps to have the patent issued, and failing to otherwise protect her interests after the termination of the representation; and (4) failing to return Mr. Mitchell’s eight original drawings to him after the termination of the representation.

8. 37 C.F.R. § 11.804(c) provides that is professional misconduct for a practitioner to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Respondent violated this rule as charged in Counts I and II by (1) retaining the fees and costs paid in advance by Mr. McClain for the preparation and filing of a design patent application that was never filed, and (2) retaining the \$730.00 filing fee paid by Mr. Bruno for a utility patent application that was never filed.

SANCTIONS

The OED Director asks the Court to sanction Respondent by entering an order excluding her from practice before USPTO in patent, trademark, and other non-patent matters. 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)⁵ (citing *Matter of Chastain*, 532 S.E.2d 264, 267 (S.C. 2000)).

In determining an appropriate sanction, USPTO regulations require this 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. See 37 C.F.R. § 11.54(b); see also *In re Morishita*, Proceeding No. D2017-25 (USPTO Sept. 28, 2018); *In re Lau*, Proceeding No. D2016-37 (USPTO May 1, 2017); *In re Schwedler*, Proceeding No. D2015-38 (USPTO Mar. 21, 2016).

1. Respondent violated duties owed to her clients, the public, the legal system, and the legal profession.

As discussed above, Respondent violated eight sections of the USPTO Rules of Professional Conduct (“Rules”). By failing to comply with the ethical requirements enumerated in those Rules, Respondent breached duties owed to her clients, the public, the legal system, and the legal profession.

The practitioner-client relationship is a fiduciary relationship. See *Moatz v. Bender*, Proceeding No. D2000-01, slip op. at 20 (USPTO Sept. 30, 2003) (“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 towards his client. It is one of implicit confidence and of trust ... There is no field of human activity which requires fuller realization with respect to a fiduciary relationship than that which exists between the lawyer and his client.”) Respondent violated the fiduciary practitioner-client relationship when she allowed Ms. Davydov, Mr. Dill, and Mr. and Ms. [REDACTED]’s patent applications to go abandoned. She also violated the fiduciary relationship

⁵ All USPTO disciplinary decisions cited in this opinion are available at <https://foiadocuments.uspto.gov/oed/>.

when she contracted with Messrs. McClain, Bruno, and Mitchell to perform legal services but did not perform the work she agreed to do.

Specifically, Respondent executed a written agreement with Mr. McClain in which she agreed to draft, prepare and file a patent application. Mr. McClain paid Respondent \$1,513.20 to perform these legal services. Respondent plainly violated the fiduciary practitioner-client relationship when she took Mr. McClain's money, but did not subsequently file a patent application on his behalf; failed to respond to multiple phone calls and emails that Mr. McClain sent to her concerning the filing status of the application; and failed to refund to Mr. McClain any portion of the unearned fees she held for services that she never performed.

Similarly, Mr. Bruno paid InventHelp \$13,000.00, of which \$1,600.00 would be held in an escrow account for purposes of paying a patent attorney to help Mr. Bruno file a patent application. After InventHelp referred Mr. Bruno to Respondent, Mr. Bruno paid Respondent an additional \$730.00 to cover the cost of USPTO filing fees. Respondent plainly violated the fiduciary practitioner-client relationship when she accepted compensation from Mr. Bruno but failed to file a patent application on his behalf; failed to return any of the numerous telephone calls that Mr. Bruno made to Respondent's law office; and failed to refund to Mr. Bruno any portion of the unearned fees she held for services that she never performed.

Likewise, Ms. Davydov paid InventHelp \$4,500.00, of which \$1,450.00 would be held by InventHelp in an escrow account for patent legal services. After Ms. Davydov consented to Respondent's representation, Ms. Davydov sent Stevenson IP an additional \$400.00 for USPTO filing fees. Respondent plainly violated the fiduciary practitioner-client relationship when, after filing Ms. Davydov's utility patent application, she failed to inform Ms. Davydov that the Office had issued a Notice of Allowance and Fees Due; allowed Ms. Davydov's application to go abandoned; and, without notice, unilaterally stopped responding to communications from Ms. Davydov.

Mr. and Ms. [REDACTED] executed an agreement with Crossley & Stevenson IP Law in which, in exchange for \$1,265.00, Respondent agreed to provide design patent services. Respondent filed a design patent application on behalf of Mr. and Ms. [REDACTED], and subsequently breached the fiduciary practitioner-client relationship when she failed to timely inform Mr. and Ms. [REDACTED] that the Office had issued a Notice of Allowance and Fees Due in their application; failed to respond to the notice and consequently allowed the application to go abandoned; and, after indicating to Mr. and Ms. [REDACTED] that it was possible to file a Petition to Revive the application, unilaterally stopped responding to communications from Mr. and Ms. [REDACTED].

With respect to Mr. Dill, Respondent breached the fiduciary practitioner-client relationship when she failed to inform Mr. Dill that the Office had issued a Non-Final Rejection; failed to file a response to the Non-Final Rejection and consequently allowed Mr. Dill's patent application to go abandoned; and failed to inform Mr. Dill that his application had been abandoned.

Finally, Respondent agreed to represent Mr. Mitchell and prepare and file a utility patent application on his behalf. Mr. Mitchell paid Respondent \$1,200.00 and provided her with eight original drawings to be filed with the application. Respondent plainly violated the fiduciary practitioner-client relationship when she failed to file a patent application on Mr. Mitchell's behalf; delayed refunding to Mr. Mitchell the \$1,200.00 he paid for services that Respondent did not perform; and failed to return eight original drawings to Mr. Mitchell despite multiple communications from Mr. Mitchell requesting the same.

Each attorney licensed to practice before USPTO must sign an oath or affirmation swearing to or affirming, *inter alia*, that she will observe USPTO's laws and rules of practice. Respondent signed her oath or affirmation on June 2, 2014. Congress bestowed USPTO with plenary authority to govern the conduct of patent practitioners. See 35 U.S.C. § 2(b)(2)(D). Pursuant to that authority, USPTO established its substantive ethics rules—the USPTO Rules of Professional Conduct, which became effective May 3, 2013—and the procedural rules governing disciplinary proceedings. See 37 C.F.R. §§ 11.01 to 11.901; *id.* §§ 11.19 *et seq.* Accordingly, when Respondent failed to adhere to the Rules she agreed to follow when she became a registered practitioner before USPTO, she violated duties owed to her clients, the legal profession, and USPTO.

Respondent violated her duty to the legal profession (*i.e.*, the patent bar) by engaging in misconduct that decreases the public's confidence in the integrity and professionalism of patent practitioners by, *inter alia*, not representing her clients competently and diligently. Respondent also violated duties she owed to the legal system and the legal profession by not communicating with USPTO and failing to participate in the disciplinary proceeding after the OED Director filed the *Complaint*. Such conduct imperils the orderly functioning of the disciplinary process. See In re Lau, supra.

2. Respondent acted knowingly and negligently.

Respondent's acts and omissions were knowing and negligent. She knowingly agreed to represent multiple clients, but consistently neglected her clients by ignoring their reasonable requests for information and/or failing to file patent applications she had been paid to file. She also failed to inform her clients about, or take any action on, critical, time-sensitive communications sent by the Office concerning their patent applications, which led to Ms. Davydov, Mr. and Ms. [REDACTED], and Mr. Dill's patent applications going abandoned. Lastly, Respondent ignored communications from this Court and USPTO concerning the instant matter. Respondent knew or should have known of the communications sent to her concerning her clients' patent applications and the instant disciplinary matter, and her failure to acknowledge or address these communications was therefore knowing and negligent.

Neglect of client matters 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) (stating that client neglect is a "very serious violation"); In re Gardner, 39 A.D.2d 84, 85, (N.Y. 1972) (characterizing client

neglect as “a most serious dereliction”). USPTO considers deserting a client after being paid for legal services to be “a significant ethical violation for which attorneys have been disbarred.” In re Shippey, Proceeding No. D2011-27, slip op. at 12 (USPTO Oct. 14, 2011). USPTO has suspended and excluded practitioners for abandoning clients or neglecting their clients’ applications. See, e.g., In re Campbell, Proceeding No. D2014-11 (USPTO Apr. 29, 2014); In re Shippey, *supra*; In re Hormann, Proceeding No. D2008-04 (USPTO July 8, 2009).

Practitioners have also been suspended and excluded for allowing patent applications to go abandoned. See In re Hormann, *supra* (excluding practitioner for, *inter alia*, allowing patent applications to go abandoned without the clients’ consent and failing to notify clients of abandonments); In re Day, Proceeding No. D2011-32 (USPTO Aug. 10, 2011) (imposing two-year suspension for, *inter alia*, allowing applications to go abandoned without client consent); In re Frantz, Proceeding No. D2012-32 (USPTO Mar. 5, 2013) (excluding practitioner on consent for neglecting 52 patent and trademark matters by allowing them to go abandoned without the clients’ consent).

A lawyer’s duty to communicate honestly and promptly with clients is also fundamental. When a practitioner fails to communicate with her clients in order to hide the neglect of their legal matters, other jurisdictions have imposed a severe sanction. See Cincinnati Bar Ass’n v. Deaton, 806 N.E.2d 503, 509 (Ohio 2004) (citations omitted) (“[B]ecause respondent also deliberately concealed his neglect to protect his personal interests, thereby sacrificing his clients’ welfare to preserve his own[, w]e view his actions as the equivalent of misappropriating funds from these clients, an offense that, absent sufficiently mitigating circumstances, requires our most severe sanction.”) (citations omitted); Iowa Sup. Ct. Atty. Disciplinary Bd. v. Sotak, 706 N.W.2d 385 (Iowa 2005) (suspending lawyer for, *inter alia*, failing to file required pleadings and to inform clients when their cases were dismissed as a result of his neglect.).

USPTO has suspended and excluded practitioners who acted knowingly, intentionally or negligently in 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) (excluding practitioner for, *inter alia*, allowing multiple patent applications to go abandoned without client consent and failing to notify the client of important Office communications); In re Schaefer, Proceeding No. D2007-01 (USPTO Apr. 30, 2007) (suspending practitioner for, *inter alia*, failing to inform client of important Office communications); Moatz v. Rosenberg, Proceeding No. D2006-07 (USPTO Mar. 7, 2007) (excluding practitioner for same conduct).

USPTO has also dealt severely with practitioners who fail to take reasonable steps to protect a client’s interests upon termination of representation, such as by giving reasonable notice to the client, surrendering papers and property to which the client is entitled, and refunding any advance payment of expenses that have not been earned or incurred. See In re Morishita, *supra*, (excluding via default judgment a practitioner who, *inter alia*, failed to refund advance payment of fee or expenses that had not been earned or incurred); In re Walker, Proceeding No. D2018-04 (USPTO Mar. 23, 2018) (suspending practitioner on consent where he, *inter alia*, agreed to refund client money but did not do so); In re Schwedler, *supra* (excluding practitioner, where among other things, he failed to refund any portion of the unearned fees paid to him in advance by the client).

All of these cases support imposing serious sanctions upon Respondent in view of her knowing and negligent conduct in neglecting client matters and abandoning client representations without warning and without regard for her clients' interests.

3. Respondent caused significant actual injury to her clients.

Respondent caused actual injury to her clients by neglecting their patent applications, failing to communicate about the status of their applications, and failing to advise her clients so that they could make informed decisions about their patent applications and would be aware of the potential consequences to their intellectual property rights. Respondent's reckless disregard of critical Office communications caused Mr. and Ms. [REDACTED], Ms. Davydov and Mr. Dill's patent applications to go abandoned. Should any of the abandoned applications be revived, the clients still may lose valuable intellectual property rights in the form of a shortened patent life. They may also have delays in the marketing and selling of their products as a consequence of Respondent's misconduct. In addition, Mr. McClain and Mr. Bruno gave Respondent money to prepare and file patent applications that Respondent never filed. Messrs. McClain and Bruno have not received a refund of Respondent's unearned fees. Ms. Davydov expended additional money to revive her patent application, which should not have gone abandoned in the first instance. Finally, Mr. Mitchell gave Respondent eight original drawings to file along with his patent application. Respondent has not returned those drawings to Mr. Mitchell.

Having caused her clients actual injury, Respondent should receive a significant sanction. See *In re Stecewycz*, Proceeding No. D2015-09 (USPTO Dec. 16, 2015) (excluding practitioner who injured clients by, *inter alia*, abandoning their applications); *In re Coyle*, Proceeding No. D2016-16 (USPTO July 27, 2016) (excluding practitioner who caused actual and potential injury when he abandoned a patent application and failed to return payment for services not rendered).

4. Aggravating and mitigating factors.

The American Bar Association's Standards for Imposing Lawyer Sanctions set forth aggravating and mitigating factors for the Court to consider in determining an appropriate sanction. AM. BAR. ASS'N, STANDARDS FOR IMPOSING LAWYER SANCTIONS §§ 9.22, 9.32 (2015) (hereinafter "ABA STANDARDS"); see, e.g., *In re Sheasby*, Proceeding No. D2013-13, slip op. at 9 (USPTO Dec. 31, 2013).

Aggravating Factors

Section 9.22 of the ABA STANDARDS identifies eleven aggravating factors which, if they exist, warrant a more severe sanction. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. See ABA STANDARDS § 9.21. There are four aggravating factors present in this case.

The first aggravating factor is a "pattern of misconduct." See ABA STANDARDS § 9.22(c). In the instant matter, Respondent engaged in similar conduct with regard to seven clients concerning six separate applications. Respondent accepted money from three clients and

did not subsequently provide the legal services she was hired to perform. She failed to refund unearned fees to two clients, and did not return one client's personal property (namely, Mr. Mitchell's eight original drawings). She also failed to respond promptly, or at all, to communications from six of her seven clients. In addition, Respondent allowed three applications to go abandoned and did not inform three clients about Office communications concerning their applications.

Because the record shows repeated instances of similar misconduct, Respondent engaged in a "pattern of misconduct" within the meaning of § 9.22(c). See, e.g., In re Ivey, Proceeding No. D2013-22 (USPTO Mar. 7, 2014) (finding pattern of misconduct when practitioner prepared and filed multiple applications that all went abandoned); People v D'Acquisto, 146 P.3d 1041 (Colo. O.P.D.J. 2006) (finding lawyer engaged in pattern of misconduct by failing to professionally represent clients and to appear in court on six separate client matters); In re Gines, 869 So. 2d 778, 782 (La. 2004) (finding "consistent pattern of disregard for [lawyer's] obligations under the Rules of Professional Conduct" as well as a pattern of neglect of client matters, failure to communicate, and failure to account for fees, warranting disbarment).

The second aggravating factor is the commission of "multiple offenses." See ABA STANDARDS § 9.22(d). Multiple offenses committed in the context of a single disciplinary proceeding may be an aggravating factor. See In re Flindt, Proceeding No. D2016-04 (USPTO Aug. 4, 2017); In re Fuess, Proceeding No. D2015-08 (USPTO July 21, 2017). In this case, as explained above, Respondent's misconduct involved multiple clients with multiple matters before the Office and violated eight provisions of the Rules.

The third aggravating factor is a practitioner's refusal "to acknowledge the wrongful nature of his or her conduct." See ABA STANDARDS § 9.22(g). A lack of remorse warrants a more severe sanction. Id.; see, e.g., In re Stecewycz, Proceeding No. D2014-15, slip op. at 37 (USPTO May 5, 2016) ("[F]ailure to acknowledge the wrongful nature of [the] misconduct or show any remorse for [the] conduct is a weighty factor in aggravation."). Respondent has not displayed any remorse for her conduct. She never apologized to Ms. Davydov, Mr. and Ms. [REDACTED], or Mr. Dill for allowing their applications to go abandoned. She did not apologize to Mr. McClain or Mr. Bruno for not filing patent applications that they paid her to file. On multiple occasions, Respondent did not offer an apology or explanation for failing to reply to her clients' reasonable requests for information about the status of their patent applications.

The fourth and final aggravating factor is an "indifference to making restitution." See ABA STANDARDS § 9.22(j); see, e.g., In re Woodring, 210 P.3d 120 (Kan. 2009) (finding indifference to making restitution when lawyer failed to repay clients by time of hearing and oral argument, and provided no evidence of inability to do so); In re Parker, 815 So. 2d 794, 796 (La. 2002) (finding indifference to restitution when lawyer failed to refund unearned fees after acknowledging that he owed them). Respondent has made no apparent effort to refund the unearned fees she collected from Messrs. McClain and Bruno. Respondent did provide Mr. McClain with a draft patent application and drawings, but she never filed the application and has retained that portion of his payment that was for USPTO filing fees. Mr. Bruno also paid Respondent \$730.00 to cover USPTO filing fees for a patent application that she never filed. Similarly, Respondent has made no apparent attempt to provide redress to Ms. Davydov, Mr.

██████ and Ms. ██████, or Mr. Dill for allowing their patent applications to go abandoned, other than sending a letter to Mr. and Ms. ██████ suggesting a solution that she then failed to pursue. Mr. Mitchell gave Respondent eight original drawings to accompany his patent application. Respondent has not returned those drawings to Mr. Mitchell, apologized for not returning the original drawings, or made any attempt to compensate Mr. Mitchell for his loss. Respondent's indifference to making restitution warrants a severe sanction. *In re Morishita*, supra (finding that failure to repay misappropriated funds warrants a more severe sanction); *In re Myers*, supra (finding failure to return prepaid filing fees to be an aggravating factor that resulted in exclusion).

Mitigating Factors

Section 9.23 of the ABA STANDARDS identifies mitigating factors which, if they exist, are considerations or facts that may justify a reduction in the degree of discipline to be imposed. See ABA STANDARDS § 9.31. Two mitigating factors present in Respondent's case are the "absence of a prior disciplinary record" and "inexperience in the practice of law." See ABA STANDARDS § 9.32(a), (f). The Court does not find these factors significant enough to outweigh the serious nature of Respondent's misconduct and the harm she caused her clients.

5. Exclusion is the appropriate sanction.

The OED Director requests that the Court enter an order excluding Respondent from practice before the Office based on Respondent's neglect of her client's applications, which led to three applications going abandoned; her repeated failure to keep clients reasonably informed about the status of their applications; her failure to communicate promptly, or at all, with multiple clients; her failure to return unearned funds and personal property; and her failure to participate in this disciplinary proceeding.

The USPTO has previously excluded, via default judgment, respondents who neglected client matters, failed to communicate, and failed to participate in disciplinary proceedings before the Court. See, e.g., In re Morishita, supra; *In re Lau*, supra; *In re Schwedler*, supra; see also In re Halling, Proceeding No. D2019-10 (USPTO June 13, 2019); *In re Whitney*, Proceeding No. D2018-48 (USPTO Mar. 14, 2019); *In re Riley*, Proceeding No. D2013-04 (USPTO July 9, 2013); *In re Muhammad*, Proceeding No. D2013-21 (USPTO Jan. 28, 2014); *In re Golden*, Proceeding D2007-09 (USPTO Apr. 21, 2008).

As above noted, 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." The requested exclusion is fair, appropriate and necessary because Respondent violated duties owed to her clients, the public, the legal system, and the legal profession; acted knowingly and negligently; caused actual and potential harm to her clients; and engaged in a pattern of misconduct involving multiple rule violations.

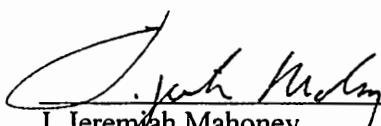
CONCLUSION

Because Respondent has failed to answer the *Complaint* or otherwise appear in this matter, Respondent is found to be in **DEFAULT** and to have admitted all the allegations in the *Complaint*. See 37 C.F.R. § 11.36(e).

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), this 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.⁶

So **ORDERED**,


J. Jeremiah Mahoney
United States Administrative Law Judge

Notice of Required Actions by Respondent: Respondent is directed to refer to 37 C.F.R. § 11.58 regarding her responsibilities in the 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.

⁶ 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.