

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

In the Matter of:)	
)	
Rachel E. Gilboy,)	Proceeding No. D2019-56
)	
Respondent.)	
)	

INITIAL DECISION ON DEFAULT JUDGMENT

A. PROCEDURAL HISTORY

On November 22, 2019, the Director of the Office of Enrollment and Discipline (“OED”) for the United States Patent and Trademark Office (“USPTO”) initiated this disciplinary proceeding by filing a Complaint and Notice of Proceedings under 35 U.S.C. § 32 (“Complaint”) against Rachel E. Gilboy (“Respondent”). The Complaint alleges in ten counts that Respondent, a registered patent agent, willfully violated the USPTO Rules of Professional Conduct set forth at 37 C.F.R. Part 11 (“Rules”) by, *inter alia*, neglecting patent matters entrusted to her, abandoning clients, misappropriating client funds, and failing to cooperate with the OED in its investigation into these occurrences. For these violations, OED seeks entry of an order excluding Respondent from practice before the USPTO in patent matters and other relief. The Complaint notified Respondent that she had thirty days from the date of the notice to file an Answer with the hearing officer and that a decision by default might be entered against her if she failed to file a timely written Answer. The Complaint also provided Respondent with the undersigned hearing officer’s correct address.

On January 10, 2020, the OED Director submitted a Status Report indicating that Respondent had not filed an Answer to the Complaint and that the OED intended to serve Respondent by publication pursuant to 37 C.F.R. § 11.35(b). To substantiate service by publication, the Status Report set forth the attempts to serve the Complaint on Respondent by certified mail, regular mail, and UPS delivery consistent with 37 C.F.R. § 11.35(a)(2)(i). On February 12, 2020, counsel for the OED Director submitted a Second Status Report to this Tribunal with proof that service of the Complaint by publication was completed on February 11, 2020.¹ Accordingly, Respondent’s Answer was due on or before March 12, 2020. The record evinces that to date Respondent failed to timely Answer or otherwise respond to the Complaint.

¹ On July 1, 2020, the Director submitted a Notice of Documentation Related to Service of Process on Respondent (“Service Notice”) attached to which was the documentary evidence it offered in support of service having been properly accomplished.

On March 20, 2020, thirty-eight days after service by publication was completed and one-hundred and nineteen days after the Complaint was filed, counsel for the OED Director filed a Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction (“Motion”).² To date, Respondent has not filed a response to the Motion.

B. SERVICE OF PROCESS

The record shows that the OED Director properly served Respondent with the Complaint as required by the Rules. Rule 11.11 requires an attorney or agent registered to appear before the USPTO to notify the “Director of his or her postal address for his or her office, . . . e-mail addresses . . . , and business telephone number, as well as every change to any of said addresses or telephone numbers within thirty days of the date of the change.” 37 C.F.R. § 11.11(a). Rule 11.35 provides that the Director may serve a complaint on a respondent “[b]y mailing a copy of the complaint by ‘Express Mail,’ first-class mail, or any delivery service that provides the ability to confirm delivery or attempted delivery to . . . [a] respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11.” 37 C.F.R. § 11.35(a)(2)(i). “If a copy of the complaint cannot be delivered to the respondent... the Director shall serve the respondent by causing an appropriate notice to be published in the Official Gazette for two consecutive weeks.” 37 C.F.R. § 11.35(b).

In both the Motion and Service Notice, the OED represents that the last address Respondent provided pursuant to Rule 11.11 was: P.O. Box 25895, Scottsdale, Arizona 85255. Mot. at 2; Service Notice at 1-2. The USPTO also reasonably believed that Respondent received mail at two additional addresses, namely: 4019 E. Hamblin Drive, Phoenix, Arizona 85050 (“Hamblin Address”) and [REDACTED] (“Mariposa Address”). Mot. at 2.

On November 22, 2019, counsel for the Director mailed via postage-prepaid certified mail, return receipt requested and first-class postage prepaid mail, and had delivered via United Parcel Service (UPS) overnight delivery, a copy of the Complaint to the address Respondent provided to the OED pursuant to Rule 11.11. Compl. at 45 (Certificate of Service); Mot. Ex. A; Service Notice at 1-2. The United States Postal Service (“USPS”) was unable to deliver the Complaint sent by certified mail to that address and returned it to the USPTO. The Complaint sent by UPS was returned also. Service Notice at 2, Att. B, C. The Complaint sent by first-class mail to the Rule 11.11 address was not returned to the USPTO. Service Notice at 2.

Concomitantly, on November 22, 2019, counsel for the Director mailed via postage-prepaid certified mail, return receipt requested and first-class postage prepaid mail, and had delivered via UPS overnight delivery, a second copy of the Complaint to the Hamblin Address. Mot. Ex. A; Service Notice at 3. The USPS was unable to deliver the Complaint sent by certified mail to the Hamblin Address and returned it to the USPTO. *Id.* and Service Notice, Att. D. The Complaint sent by first class postage prepaid mail to the Hamblin Address was not

² The Director’s Motion was accompanied by a Memorandum of Points and Authorities in Support of Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction. Page citations herein to “Motion” are to this Memorandum.

returned to the USPTO. Service Notice at 3. The Complaint sent via UPS to the Hamblin Address was left at the front door, but no person signed for delivery. *Id.*; Service Notice, Att. E.

Also on November 22, 2019, counsel for the Director mailed via postage-prepaid certified mail, return receipt requested and first class postage prepaid mail, and had delivered via United Parcel Service overnight delivery, a third copy of the Complaint to the Mariposa Address. Service Notice at 3. The USPS was unable to deliver the Complaint sent by certified mail to the Mariposa Address and returned it to the USPTO. *Id.*; Service Notice, Att. F. The Complaint sent by first class postage prepaid mail to the Mariposa Address was returned to the USPTO marked “Return to Sender, Not Deliverable As Addressed, Unable to Forward.” Service Notice at 3, Att. G. The Complaint sent via UPS to the Mariposa Address was left at the front door, but no person signed for delivery. Service Notice at 3, Att. H.

Because the Director was unable to confirm service by mail to Respondent, counsel for the Director served notice via publication pursuant to 37 C.F.R. § 11.35(b). Mot. Ex. A; Service Notice at 4. Notices were published in the Official Gazette for two consecutive weeks, on February 4 and 11, 2020. *See* OED Second Status Rpt., Exs. A, B; Service Notice at 4, Att. I, J. Based on the foregoing and 37 C.F.R. § 11.35(b), I find that proper service of the Complaint upon Respondent has been accomplished.³

C. RESPONDENT’S DEFAULT

In accordance with 37 C.F.R. § 11.35(b), the time for Respondent to file an Answer to the Complaint was thirty days from the second publication of the notice on February 11, 2020. The record reflects that to date, Respondent has not filed an Answer to the Complaint nor otherwise responded. Further, this Tribunal has not received any response from Respondent to the Motion for Default which the OED sent to her on March 20, 2020 at the addresses identified above.⁴

³ The Service Notice also documents an attempt made by the OED Director on March 13, 2020 to informally notify Respondent by letter regarding the filing of the Complaint and efforts made to obtain service. Service Notice at 5-6, Att. K. Approximately one year prior to instituting this action, the OED reached out to Michael McCabe, Esq., Respondent’s counsel in a separate [REDACTED] action [REDACTED], regarding the extent of his representation of Respondent. Service Notice, Att. A. Mr. McCabe confirmed to the OED in an email dated December 17, 2018, that he represented Respondent only in that proceeding. Service Notice, Att. A. More recently, the OED reached out to Leonard DuBoff, Esq., who represents Respondent as a defendant in a class action suit pending in the United States District Court for the Southern District of New York styled *Zanotti v. Invention Submission Corp.*, Civil Action No. 18-CV-5893 (NSR). Service Notice, Att. L. By email dated May 22, 2020, Mr. DuBoff advised the OED that he was not authorized to receive any information on Respondent’s behalf other than in respect to the class action and, as to his client’s current address(es), he provided the same Rule 11 address and the Hamblin Drive address that the OED had used previously to attempt service upon Respondent. Service Notice, Att. L.

⁴ Rule 11.43 provides that “[t]he hearing officer will determine...the time period for filing [a] response” to a motion. 37 C.F.R. § 11.43. However, in the context of a motion for default, where the respondent has not answered the complaint or otherwise appeared in the proceeding, it is not necessary to allow extended time for a response to the motion. *Uland*, PTO Proceeding No. D99-03, slip op. at 2 (Aug. 3, 1999) (Initial Decision on Default). Further, 37 C.F.R. § 11.35(b) and § 11.36(e) provide that failure to timely file an answer “will constitute an admission of the allegations in the complaint” and do not provide a requirement for a motion for default or a response thereto. *Cf.*, Federal Rule of Civil Procedure 55(b)(1) (allowing entry of judgment on default upon request of plaintiff, for failure of defendant to appear).

Because the Director served Respondent with the Complaint in full compliance with the requirements set forth in 37 C.F.R. § 11.35(b), and Respondent failed to file a timely Answer, Respondent is hereby found to be in **DEFAULT**. See 37 C.F.R. § 11.36(e).

Further, Respondent's failure to file a timely Answer to the Complaint constitutes an admission of all well-pled factual allegations in the Complaint, as set forth below. *Id.*

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW ON LIABILITY

The OED Director must prove alleged violations by “clear and convincing evidence.” 37 C.F.R. § 11.49; *Johnson*, PTO Proceeding No. D2014-12, slip op. at 2 (Dec. 31, 2014) (Initial Decision). “Clear and convincing evidence” requires a level of proof that falls “between a preponderance of the evidence and proof beyond a reasonable doubt.” *Johnson*, slip op. at 3 (quoting *Addington v. Texas*, 441 U.S. 418, 424-25 (1979)) (internal quotation marks omitted). The evidence produced 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).

The following findings of fact and conclusions of law are made based upon the clear and convincing evidence in the record:⁵

1. Respondent was registered as a patent agent by the USPTO on November 26, 2007.
2. Respondent's registration number is 61,510.
3. Respondent is the founder and principal member of RG Patent Consulting LLC, in Phoenix, Arizona.
4. On October 15, 2007, Respondent signed an “OATH OR AFFIRMATION” in which she swore or affirmed that, if registered by the USPTO, she would, *inter alia*, “observe the laws and rules of practice of the Office.”
5. The USPTO “laws and rules of practice” which Respondent swore to observe include those set forth in 37 C.F.R. Part 11.

⁵ This Initial Decision adopts most, but not all, of the Rules violations alleged in the Complaint. Violations that are alleged in the Complaint but not incorporated into this Initial Decision were not adequately supported by well-pled factual allegations.

COUNT I

Misconduct in the Representation of Mr. Dino Hoxha

6. In 2016, an invention development company referred Mr. Dino Hoxha to Respondent to prepare and file an application for his invention, [REDACTED].
7. Mr. Hoxha's goal in seeking patent protection for his invention was to protect the invention's functional aspect and to prevent a competitor from [REDACTED], not to protect ornamental features or the way it looked.
8. Mr. Hoxha paid Respondent \$1,460 to prepare his patent application and \$190 for government filing fees.
9. On [REDACTED], Respondent filed a design patent application, [REDACTED], on behalf of Mr. Hoxha for the invention [REDACTED].
10. The correspondence information listed on the application data sheet included Customer Number 90201 which is associated with Respondent and RG Patent Consulting, LLC.
11. On [REDACTED] Respondent also sent Mr. Hoxha a copy of the "as-filed" application.
12. Respondent informed Mr. Hoxha that "any other documents will be forwarded to you as received from the USPTO" and confirmed receipt of the payment of fees and expenses from Mr. Hoxha.
13. By filing a design patent application instead of a utility patent application, Respondent did not satisfy Mr. Hoxha's patent protection goal.
14. On [REDACTED], 2017, the USPTO issued an Office action in the [REDACTED] application and mailed it to Respondent at the correspondence address Respondent had provided to the USPTO for the [REDACTED] application.
15. The Office action rejected the one pending claim, objected to the specification and the drawings, and set a three-month period for responding.
16. Respondent did not inform Mr. Hoxha of the [REDACTED], 2017 Office action, nor advise Mr. Hoxha of potential options for responding to the Office action, nor inform Mr. Hoxha of the potential consequences to his intellectual property rights in the [REDACTED] application should no response be filed with the USPTO.
17. Respondent did not file a response to the Office action nor did she inform Mr. Hoxha that she had not file a response.
18. On [REDACTED], 2017, the USPTO mailed a Notice of Abandonment to Respondent because it had received no response to the [REDACTED], 2017 Office action.

19. Respondent did not inform Mr. Hoxha of the Notice of Abandonment, nor advise Mr. Hoxha of potential options for responding to the Notice of Abandonment, nor inform Mr. Hoxha as to the potential consequences to his intellectual property rights in the [REDACTED] application should no response be filed.
20. Respondent did not file a response to the Notice of Abandonment.
21. On June 13, 2018, Joe Hoxha, Mr. Hoxha's son, who assisted his father with communications, sent Respondent an email seeking a status update on the [REDACTED] application, stating:

[Y]ou and your firm are workign [sic] on a patent for my father Dino Hoxha that involves a [REDACTED]. I just wanted to touch base with you to see how everything was coming along. It has been over 2 years since we last corresponded. Have you heard any news from the patent commission [USPTO]? At what stage is our application along the line, just wanted to ask you things like that. You can either respond to this email, or call me at my cell phone. . . .
22. Respondent did not respond to the June 13, 2018 email from Joe Hoxha.
23. Joe Hoxha sent another email to Respondent on June 26, 2018 which stated:

This is Joe again, just wanted to follow up with you[.] I tried giving you a call yesterday and leaving a voicemail. I've also left a voicemail for attorney [Bruce] Lev, and no one has gotten back to me. Please give me a call or respond to this email.
24. Bruce Lev is a registered patent practitioner who formerly worked at RG Patent Consulting, LLC for/with Respondent.
25. In July 2018, Respondent did not return telephone messages left asking for contact regarding the Hoxha matter.
26. On July 2, 2018, rather than emailing or telephoning, Respondent sent Mr. Hoxha a letter and told him that the USPTO Patent Examiner had rejected the claim in the [REDACTED] application and a response was needed.
27. Respondent informed Mr. Hoxha that she would charge \$600 to prepare and file a response to the Office action.
28. Respondent's July 2, 2018 letter did not inform Mr. Hoxha that the [REDACTED] application was abandoned or explain that it was abandoned because a response to the [REDACTED], 2018 Office action had not been timely filed.

29. Respondent did not include a copy of the Notice of Abandonment with the July 2, 2018 letter and did not explain the 16-month delay in communicating with Mr. Hoxha about the Office action.

30. On July 16, 2018, Joe Hoxha sent Respondent an email indicating that he did not understand the Office action's rejection of the drawings and requested that Respondent contact him. The email stated, in part:

Hello Rachel, so I got something in the mail form [sic] you saying the patent claim for a design patent on my dad's invention has been rejected because the drawing was not specific enough. . .

Ok so I remember that you guys took care of the drawing. . .

Secondly, I have been trying to contact you for over a month now. I have been calling leaving voicemails, emails to you and Bruce. As a client of yours I do not appreciate being treated that way, by not having anyone call me back from your office after having tried to reach out as many times as I did, and it seems pretty convenient that you are ready to take emails now as it says in your notice that you mailed to me now that there is a potential 600\$ [sic] fee coming your way.

CALL ME ON THE PHONE TODAY! this is a stupid problem to be having. I could have sent you videos of my product that demonstrate very clearly what the product is so that way no on [sic] can screw up the drawing or what exactly the idea.

Call me today I am not emailing you anymore.

31. Respondent did not respond to this July 16, 2018 email, either by telephone as requested or via email.

32. In July 2018, Mr. Hoxha filed a complaint with the Better Business Bureau ("BBB") which stated that Respondent was not responding to his inquiries.

33. On August 2, 2018, after Respondent received the BBB complaint, she emailed Mr. Hoxha stating, in part:

We received your complaint you filed with the BBB and are in the process of responding, however we will draft the office action response which over 50 percent of all design patents receive at least one and is to be expected at no charge, but the BBB complaint has to be resolved first. Please advise in writing not in voicemail . . . if this will resolve your complaint you filed at the BBB . . . we will

amend the drawings and specification as per the examiner's request.

34. On August 2, 2018, Mr. Hoxha responded to Respondent's email message stating that he wanted Respondent to address his questions and concerns before they could talk about resolving the BBB complaint, writing, in part:

Look at who decided to write . . . Your [sic] going to call me . . . and your [sic] going to answer everyone [sic] of my questions, once you have answered my questions as [sic] satisfied all my concerns and take responsibility for any mishandeling [sic] on your end then we can talk about resolving my various complaints against you and your company, untill [sic] then there is no reason for me to do so because you have yet to address anything. Like I said, I do not care to accommodate you by continuing to write emails back and forth. Either you call me and we discuss this over the phone at length or nothing.

35. According to Mr. Hoxha, Respondent insisted that she could fix the [REDACTED] application, but she did not explain the manner in which she could do so.
36. Respondent did not discuss with Mr. Hoxha filing a Petition to Revive the abandoned [REDACTED] application and did not advise Mr. Hoxha of the potential consequences of the USPTO's grant or denial of a Petition to Revive the [REDACTED] application on Dino Hoxha's intellectual property.
37. Mr. Hoxha telephoned Respondent in August 2018 and left messages asking Respondent to contact him, but his calls were not returned.
38. Mr. Hoxha did not withdraw the BBB complaint, as he believed that Respondent was trying to "save herself" and he would not get a viable patent application. Instead, he filed a second complaint with the BBB.
39. Respondent abandoned Mr. Hoxha as a client by ceasing to communicate with him, thereby terminating the representation.
40. Ultimately, Mr. Hoxha hired another registered USPTO practitioner who filed a petition to revive the [REDACTED] application on [REDACTED].
41. Based upon the foregoing, it is found that Respondent willfully⁶ –

A. failed to act with reasonable diligence and promptness in representing a client by, *inter alia*, not filing an application seeking the type of patent protection

⁶ Under 5 U.S.C. § 558(c), willfulness is established where the respondent "intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice" or "acts with careless disregard of statutory requirements." *Halvonik v. Dudas*, 398 F. Supp. 2d 115, 125-26 (D.D.C. 2005).

desired by Dino Hoxha, waiting over 16 months to notify Mr. Hoxha that an Office action had been issued in the [REDACTED] application, not timely responding to the Office action, and not informing Mr. Hoxha of the issuance of the Notice of Abandonment, in violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct;

- B. failed to keep the client reasonably informed about the status of the matter by, *inter alia*, not timely informing Mr. Hoxha of the Office action, the due date for responding to the Office action, the consequences of not responding to the Office action, and the issuance of the Notice of Abandonment, and by not responding to the June 16, 2018, June 26, 2018, and July 16, 2018 email requests and numerous telephone calls seeking information about the status of the [REDACTED] application from or on behalf of Mr. Hoxha, all in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct; and
- C. failed to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation by, *inter alia*, not explaining the limited nature of the scope of patent protection afforded by the [REDACTED] application or why a design application would not satisfy Mr. Hoxha's patent protection goals, not timely informing Mr. Hoxha of the Office action and the options for responding thereto, not informing Mr. Hoxha of the potential consequences of failing to respond to the Office action, not informing Mr. Hoxha of the Notice of Abandonment and the potential consequences of the abandonment, and not explaining the potential options for responding to the Notice of Abandonment, in violation of 37 C.F.R. § 11.104(b) of the USPTO Rules of Professional Conduct.⁷

COUNT II

Misconduct in the Representation of Mr. Carey Leon Jones

- 42. On or about October 31, 2018, Mr. Carey Leon Jones paid Respondent \$3,000 in advance to prepare and file an appeal with the Patent Trial and Appeal Board ("PTAB").
- 43. Thereafter, Mr. Jones left Respondent telephone voicemail messages and sent Respondent email messages inquiring about the status of the appeal.
- 44. Respondent did not respond to Mr. Jones' inquiries nor did she not perform the professional services related to his PTAB appeal.

⁷ Respondent is not found liable on 37 C.F.R. § 11.804(i) which provides a practitioner shall not "[e]ngage in other conduct that adversely reflects on the practitioner's fitness to practice before the Office." This subsection of the regulation is essentially a "catch all" provision regulating conduct that does not fall under the subsections immediately preceding it. Therefore, by the language of the subsection, if the alleged conduct is found to violate any provision of § 11.804, then it cannot violate § 11.804(i). *Flindt*, PTO Proceeding No. D2016-04, slip op. at 39 (Aug 4, 2017) (Initial Decision).

45. Mr. Jones has not received a refund of the \$3,000 fee he paid in advance to Respondent.
46. Respondent abandoned Mr. Jones as a client by not performing the services for which she was retained and paid, and by ceasing to communicate with Mr. Jones, thereby terminating representation.
47. Ultimately, Mr. Jones hired another registered practitioner and paid that practitioner \$2,950 to prepare and file his appeal with the PTAB.
48. Based upon the foregoing, it is found that Respondent willfully –
 - A. failed to act with reasonable diligence and promptness in representing a client in, *inter alia*, not timely preparing and filing Mr. Jones’s appeal with the PTAB, in violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct;
 - B. failed to keep the client reasonably informed about the status of the matter by not communicating with Mr. Jones about his appeal to the PTAB, in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct;
 - C. failed to promptly deliver to the client funds or other property that the client is entitled to receive by refunding to Mr. Jones the \$3,000 he paid in advance to Respondent to prepare and file his PTAB appeal, which Respondent did not do, in violation of 37 C.F.R. § 11.115(d) of the USPTO Rules of Professional Conduct; and
 - D. failed, upon termination of the representation, to take reasonably practicable steps to the extent reasonably practicable to protect her 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 including by not refunding to Mr. Jones the \$3,000 he paid Respondent in advance to prepare and file his PTAB appeal after Mr. Jones terminated his relationship with Respondent, in violation of 37 C.F.R. § 11.116(d) of the USPTO Rules of Professional Conduct.⁸

COUNT III

Misconduct in the Representation of Mr. Eron Broughton

49. In the summer of 2017, and in December of 2018, Mr. Eron Broughton paid Respondent a total of \$5,180 in three advance installments to amend his pending patent application (U.S. Patent Application No. 15/659,270, hereinafter the ’270 application) and put it in

⁸ The Complaint miscites this provision of the Rules violated as 37 C.F.R. § 11.1116(d). Compl. ¶ 46(f). The Tribunal takes this to be an immaterial scrivener’s error.

form for allowance by the USPTO.

50. Despite being paid, Respondent did not amend Mr. Broughton's pending patent application.
51. Mr. Broughton reported to the OED that he has not heard from Respondent since receiving an email from her on February 28, 2019, even though he telephoned and emailed Respondent multiple times after that date.
52. Respondent did not perform the professional services related to the '270 application that Mr. Broughton hired her to do and has not refunded any of the \$5,180 Mr. Broughton paid Respondent in advance for such services.
53. Respondent abandoned Mr. Broughton as a client by not performing the services for which she was paid and by ceasing to communicate with him after February 28, 2019, thereby terminating the representation.
54. Based upon the foregoing, it is found that Respondent willfully –
 - A. failed to act with reasonable diligence and promptness in representing a client in, *inter alia*, not amending the '270 application to be in a form for allowance by the Office as she had been hired to do, in violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct;
 - B. failed to keep her client reasonably informed about the status of the matter by, not communicating with Mr. Broughton about the status of the amendment to his patent application, in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct;
 - C. failed to promptly deliver to the client funds or other property that the client is entitled to receive by, *inter alia*, not delivering to Mr. Broughton the \$5,180 he paid Respondent in advance for Respondent to amend his patent application and put it in form for allowance, which Respondent did not do, in violation of 37 C.F.R. § 11.115(d) of the USPTO Rules of Professional Conduct; and
 - D. failed, upon termination of the representation, to take reasonably practicable steps to protect her 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 by, *inter alia*, not delivering to Mr. Broughton the \$5,180 he paid in advance to Respondent to amend his patent application and put it in form for allowance after Respondent terminated her relationship with Mr. Broughton by ceasing to communicate with Mr. Broughton and abandoning him as a client, in violation of 37 C.F.R. § 11.116(d) of the USPTO Rules of Professional Conduct.

COUNT IV

Misconduct in the Representation of Fabian and Yolanda Zolorzano

55. In November 2018, Fabian and Yolanda Zolorzano (“the Zolorzanos”) paid \$3,200 in advance to Respondent via Paypal for her to file a Notice of Appeal in connection with their U.S. Patent Application No. [REDACTED].
56. Respondent did not perform the professional services related to the Notice of Appeal that the Zolorzanos hired her to perform.
57. Yolanda Zolorzano left several voicemail messages for, and sent several emails to, Respondent about their Notice of Appeal and sought reimbursement of the \$3,200 they had paid in advance to Respondent when she did not perform the contracted for services.
58. Respondent did not respond to the Zolorzanos’ attempts to communicate.
59. Respondent abandoned the Zolorzanos as clients by not performing the professional services for which she was paid in advance and by ceasing to communicate with them, thereby terminating the representation.
60. The Zolorzanos were able to obtain a refund from Paypal for the \$3,200 paid to Respondent.
61. Based upon the foregoing, it is found that Respondent willfully –
 - A. failed to act with reasonable diligence and promptness in representing a client in, *inter alia*, not filing the Zolorzanos’ Notice of Appeal, in violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct; and
 - B. failed to keep her clients reasonably informed about the status of their matter by, *inter alia*, not communicating with the Zolorzanos about the Notice of Appeal, in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct.

COUNT V

Misconduct in the Representation of Ms. Yvonne Bates

62. Ms. Yvonne Bates hired Respondent to prepare and prosecute a patent application on her behalf and paid Respondent \$3,200 in advance for such professional services.
63. On [REDACTED], Respondent filed U.S. Patent Application No. [REDACTED] (“the [REDACTED] application”) for Ms. Bates’ invention, [REDACTED].
64. On [REDACTED], 2017, the USPTO issued a non-final Office action in the [REDACTED] application and mailed it to Respondent at the address Respondent had provided to the USPTO for the [REDACTED] application.

65. Respondent did not notify Ms. Bates of the non-final Office action, advise her of options for responding to the non-final Office action or inform her of the potential consequences to Ms. Bates' intellectual property rights of not responding to the non-final Office action.
66. Respondent did not file a response to the non-final Office action which caused the [REDACTED] application to become abandoned.
67. Respondent did not inform Ms. Bates that she had not filed a response to the non-final Office action.
68. On [REDACTED], 2018, the Office issued a Notice of Abandonment in the [REDACTED] application and mailed it to Respondent at the address Respondent had provided to the USPTO for the [REDACTED] application.
69. Respondent did not notify Ms. Bates of the Notice of Abandonment, advise Ms. Bates of options for responding to the Notice of Abandonment, or inform Ms. Bates of the potential consequences to Ms. Bates' intellectual property rights of not responding to the Notice of Abandonment.
70. As of the date of filing the Complaint, the [REDACTED] application remains in an abandoned status.
71. Ms. Bates told OED that she may be getting "the run arounds" [sic] from Respondent and described Respondent's mishandling of the [REDACTED] application as follows:

My concern is my application may have been abandoned. I have not received any feedback or communication from R[G] Patent Consulting since early 2017 in which she, Respondent, stated documents were mailed to my home, but I never received anything. She suggested I contact our local postal service which I did, but they did not have any mail from R[G] Consulting.

I have paid quite a bit of money to R[G] Patent Consulting and I feel as if they have dropped the ball and have not communicated with me or given an update on the status of the application.

I certainly hope this company did not fold and I'm left holding the bag so to speak.

Times are hard, our economy does not seem to be improving. I do not have \$3,200 to toss around. Now I am left to wonder if this entire process is [sic] a scam from the beginning.

72. Respondent abandoned Ms. Bates as a client by not responding to the Office action or the Notice of Abandonment issued in the [REDACTED] application and by ceasing to communicate with Ms. Bates, thereby terminating the representation.

73. Based upon the foregoing, it is found that Respondent willfully –

- A. failed to act with reasonable diligence and promptness in representing a client in, *inter alia*, not responding to the June 15, 2017 Office action, and allowing the [REDACTED] application to become abandoned without Ms. Bates’ knowledge or consent, in violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct;
- B. failed to reasonably consult with her client about the means by which the client’s objectives are to be accomplished by, *inter alia*, not timely communicating with Ms. Bates about the [REDACTED] application, in violation of 37 C.F.R. § 11.104(a)(2) of the USPTO Rules of Professional Conduct;
- C. failed to keep the client reasonably informed about the status of the matter by, *inter alia*, not communicating with Ms. Bates about the [REDACTED] application, in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct; and
- D. failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation by, *inter alia*, not communicating with Ms. Bates about the [REDACTED] application, in violation of 37 C.F.R. § 11.104(b) of the USPTO Rules of Professional Conduct.

COUNT VI

Misconduct in the Representation of Dr. Hind Alshear

- 74. Dr. Hind Alshear hired and paid Respondent to prepare and file a patent application on her invention, [REDACTED].
- 75. On [REDACTED], Respondent filed U.S. Provisional Patent Application No. [REDACTED] for Dr. Alshear’s invention.
- 76. On January 20, 2019, Dr. Alshear paid \$1,875 in advance to Respondent as a first installment payment for Respondent to prepare and file a non-provisional patent application for the invention, which was to be filed in a timely manner so that it could claim priority to U.S. Provisional Patent Application No. [REDACTED].
- 77. On January 21, 2019, Respondent sent an email to Dr. Alshear stating, “I believe we should have everything we need for the drafting and filing of the Non-Provisional and will start work this week since your deadline is in under 6 weeks.”
- 78. On February 28, 2019, Respondent sent an email to Dr. Alshear stating, “We are going to do a 30 day extension and pay the fee to keep your priority date as I had a family emergency I was dealing with. I will email you the application in the next 2 weeks for your review and approval and you will keep you [sic] 2018 priority date.”

79. Respondent did not file Dr. Alshear's non-provisional application by the deadline or file an extension of time to do so.
80. Dr. Alshear hired and paid another registered practitioner to prepare and file a non-provisional patent application in regard to her invention and a petition seeking to restore the lost priority based upon the previously filed Provisional Application No. [REDACTED].
81. That non-provisional application (U.S. Application No. [REDACTED]) and the petition were filed on [REDACTED].
82. On May 3, 2019, Respondent emailed Dr. Alshear stating she would proceed with the filing of a non-provisional application.
83. Dr. Alshear attempted to communicate with Respondent by trying to telephone her "at a bunch of different numbers," but as of the filing of the Complaint, Dr. Alshear had not further heard from Respondent after receiving the May 3, 2019 email.
84. Dr. Alshear has not received a refund of the \$1,875 she paid to Respondent in advance for the non-provisional application.
85. Respondent abandoned Dr. Alshear as a client by not performing the professional services for which she was paid and by ceasing to communicate with Dr. Alshear as of May 3, 2019, thereby terminating the representation.
86. Based upon the foregoing, it is found that Respondent willfully –
 - A. failed to act with reasonable diligence and promptness in representing a client in, *inter alia*, not filing Dr. Alshear's non-provisional patent application, in violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct;
 - B. failed to keep the client reasonably informed about the status of her matter by, *inter alia*, not communicating with Dr. Alshear about her non-provisional patent application, in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct;
 - C. failed to promptly deliver to the client funds or other property that the client is entitled to receive by, *inter alia*, not delivering to Dr. Alshear the \$1,875 she paid in advance to Respondent as a first installment to prepare and file a non-provisional patent application, which Respondent did not do, in violation of 37 C.F.R. § 11.115(d) of the USPTO Rules of Professional Conduct; and
 - D. failed, upon termination of the representation, to take reasonably practicable steps to protect her 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 by, *inter alia*,

not delivering to Dr. Alshear the \$1,875 she paid in advance to Respondent as a first installment to prepare and file a non-provisional patent application after Dr. Alshear terminated her relationship with Respondent, in violation of 37 C.F.R. § 11.116(d) of the USPTO Rules of Professional Conduct; and

- E. engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation by, *inter alia*, specifically representing to Dr. Alshear that she would to prepare and file a request for an extension of time in order to retain the benefit of the priority date, and then not doing so by the deadline, in violation of 37 C.F.R. § 11.804(c) of the USPTO Rules of Professional Conduct.

COUNT VII

Misconduct in the Representation of Ms. Elaine Getchas

- 87. In December 2018, Ms. Elaine Getchas paid Respondent \$2,000 in advance to file a continuation-in-part patent application.
- 88. Respondent did not file a continuation-in-part patent application for Ms. Getchas.
- 89. As a result, Ms. Getchas hired and paid another patent practitioner to file a continuation-in-part application on her behalf.
- 90. Ms. Getchas telephoned Respondent several times asking that the \$2,000 she paid in advance be returned to her.
- 91. Respondent did not respond to Ms. Getchas's telephone calls.
- 92. Respondent has not returned to Ms. Getchas the \$2,000 she paid in advance.
- 93. Respondent abandoned Ms. Getchas as a client by not performing the professional services for which she was paid and by ceasing to communicate with her, thereby terminating the representation.
- 94. Ms. Getchas described to OED her predicament with Respondent as follows:

I am not a wealthy person. I'm living on a social security check each month. I also had to borrow another \$2,000 to pay another office to file this application for me. . . . I need assistance to obtain the \$2,000 I paid to Rachel be returned to me.
- 95. Based upon the foregoing, it is found that Respondent willfully –
 - A. failed to act with reasonable diligence and promptness in representing a client by, *inter alia*, not filing Ms. Getchas's continuation-in-part patent application,

in violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct;

- B. failed to keep her client reasonably informed about the status of the matter by, *inter alia*, not communicating with Ms. Getchas about her continuation-in-part patent application, in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct;
- C. failed to promptly deliver to the client any funds or other property that the client is entitled to receive by, *inter alia*, not delivering to Ms. Getchas the \$2,000 she paid in advance to Respondent to prepare and file a continuation-in-part patent application, which Respondent did not do, in violation of 37 C.F.R. § 11.115(d) of the USPTO Rules of Professional Conduct; and
- D. failed, upon termination of the representation, to take reasonably practicable steps to protect her 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 by, *inter alia*, not delivering to Ms. Getchas the \$2,000 she paid in advance to Respondent to prepare and file a continuation-in-part patent application after Respondent terminated her relationship with Ms. Getchas by ceasing to communicate with Ms. Getchas and abandoning her as a client, in violation of 37 C.F.R. § 11.116(d) of the USPTO Rules of Professional Conduct.

COUNT VIII

Misconduct in the Representation of Mr. Dharmesh Joshi

- 96. In 2018, Mr. Dharmesh Joshi paid Respondent \$3,450 via credit card in advance to file a non-provisional patent application on his behalf.
- 97. The advance included USPTO filing fees of \$435.
- 98. On [REDACTED] Respondent filed U.S. Patent Application No [REDACTED] ("the [REDACTED]") for Mr. Joshi's invention, a [REDACTED]
- 99. On [REDACTED], 2018, the Office issued a Notice of Missing Parts of Nonprovisional Application and mailed it to Mr. Joshi.
- 100. The [REDACTED], 2018 Notice of Missing Parts indicated that: \$435 in fees had not been paid with the application filing; a properly executed inventor's oath or declaration had not been received; and the certification of micro entity status did not properly identify the application to which it relates.
- 101. On January 14, 2019 and February 3, 2019, Mr. Joshi notified Respondent about the problems with his application as set forth in the [REDACTED], 2018 Notice of Missing

Parts.

102. Because of the problems with the [REDACTED] application, Mr. Joshi filed a charge dispute with his credit card company reversing the \$3,450 payment to Respondent.

103. On March 5, 2019, Respondent sent an email to Mr. Joshi stating that she would respond to the [REDACTED], 2018 Notice of Missing Parts if Mr. Joshi would contact his credit card company and allow it to process the \$3,450 credit card payment to her:

If you agree I will draft the response today and send you a copy before being mailed in, but I need the chargeback resolved as the only issue with filing is one Micro form and your signature not being accepted.

104. Based on Respondent's promise, Mr. Joshi allowed his credit card to process the \$3,450 payment to Respondent.

105. On [REDACTED], 2019, Respondent filed a response to the [REDACTED], 2018 Notice of Missing Parts. However, the credit card Respondent used to attempt to pay the required fees and surcharges for the response was declined.

106. Because Respondent's credit card was declined, on [REDACTED] 2019, the USPTO issued a Notice of Incomplete Reply (Nonprovisional) to Mr. Joshi explaining the fee deficiencies in Respondent's [REDACTED], 2019 response, namely, that the search fee, examination fee, and surcharge fee for late submissions were not submitted.

107. Respondent never paid the fees owed as outlined in the [REDACTED], 2019 Notice of Incomplete Reply, or otherwise responded to that Notice.

108. On [REDACTED] 2019, the Office mailed a Notice of Abandonment to Mr. Joshi because no response to the [REDACTED], 2019 Notice of Incomplete Reply was filed with the USPTO.

109. As of the date of the filing of this Complaint, the [REDACTED] application remained abandoned.

110. Respondent abandoned Mr. Joshi as a client by not performing the professional services for which she was paid and by ceasing to communicate with him, thereby terminating the representation.

111. Respondent did not refund to Mr. Joshi any of the fees he had paid her in advance including the \$435 in filing fees he paid in advance to respondent.

112. Based upon the foregoing, it is found that Respondent willfully –

A. failed to act with reasonable diligence and promptness in representing a client by, *inter alia*, not properly paying USPTO the filing fee upon initial filing with the [REDACTED] application and not responding correctly or thoroughly to the

Notice of Missing Parts or the Notice of Incomplete Reply, resulting in the [REDACTED] application becoming abandoned without Mr. Joshi's consent, in violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct;

- B. failed to keep the client reasonably informed about the status of the matter by, *inter alia*, not communicating with Mr. Joshi about her handling of his patent application, in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct;
- C. failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation by, *inter alia*, not communicating with Mr. Joshi about her handling of his application and the filing fees, in violation of 37 C.F.R. § 11.104(b) of the USPTO Rules of Professional Conduct;
- D. failed to promptly deliver to the client any funds or other property that the client is entitled to receive by, *inter alia*, not delivering to Mr. Joshi the \$435 in fees he paid in advance to Respondent to prepare and file his patent application, including responding completely to the Notice of Missing Parts and the Notice of Incomplete Reply, which Respondent did not do, in violation of 37 C.F.R. § 11.115(d) of the USPTO Rules of Professional Conduct;
- E. failed, upon termination of the representation, to take steps to protect her 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 by, *inter alia*, not delivering to Mr. Joshi the \$435 in fees he paid in advance to Respondent to prepare and file his patent application, including responding completely to the Notice of Missing Parts and the Notice of Incomplete Reply, after Respondent terminated her relationship with Mr. Joshi by ceasing to communicate with Mr. Joshi and abandoning him as a client, in violation of 37 C.F.R. § 11.116(d) of the USPTO Rules of Professional Conduct; and
- F. engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation by, *inter alia*, by specifically accepting from her client advance sums to cover filing fees and then not using such funds for that purpose and by failing to all the correct deficiencies in the initial [REDACTED] patent application filing in response to Office correspondence after promising to do so if Mr. Joshi dropped his credit card dispute and directed his credit card company to release the \$3,450 to her, in violation of 37 C.F.R. § 11.804(c) of the USPTO Rules of Professional Conduct.

COUNT IX

Misconduct in Connection with Failure to Pay Sarah Purol and Alfonso Martinez

113. Respondent made representations to two contractors – registered practitioner Sarah Purol and draftsman Alfonso Martinez of AM Patent Drawings & Graphics, LLC – that induced them to perform services for Respondent’s clients.
114. Thereafter, Respondent ceased communicating with them and did not pay them for the services they performed.
115. In November 2018 through January 2019, Ms. Purol incurred \$7,150 in patent consulting fees for work she performed for Respondent’s clients at the request of Respondent.
116. Ms. Purol told OED that Respondent “begged me to do it for which I worked over Thanksgiving and Christmas to get it done within the time period she requested.”
117. Up until January 2019, Respondent represented to Ms. Purol that she would pay for her patent consulting work.
118. In January 2019, when the work was completed, however, Respondent stopped communicating with Ms. Purol, did not pay her, and did not explain why she was not paying the outstanding \$7,150 invoice.
119. Respondent has never paid Ms. Purol for the work she performed at Respondent’s request.
120. Ms. Purol described to OED her predicament with Respondent as follows:
- \$7,150 is no small sum of money to me. . . . I am now retired and therefore on a fixed income. I have two sons in college and another adult son who has autism who I am guardian for. I was counting on being paid and I still need to be paid. . . .
- What she is doing to me is theft; in fact it is grand theft.
121. In November 2018 through February 2019, Mr. Martinez performed \$8,092.50 in patent illustration work at the request of Respondent.
122. According to Mr. Martinez:
- I am the owner of AM Patent Drawings & Graphics, LLC and my company was doing patent illustration work for her [Respondent]. She had always paid her bills but started falling behind about half a year or so ago. I have attached a statement listing what she owes our company in unpaid invoices. The total amount is \$8,092.50.

I'm not sure what other actions to take against her but if you have any advice as to what I can do, that would be appreciated. I definitely want to do what I can to hold her responsible for her paying us.

123. Respondent has never paid Mr. Martinez for the work he performed from November 2018 through February 2019 at Respondent's request.

124. Based upon the foregoing, it is found that Respondent willfully –

A. engaged in other conduct that adversely reflects on the practitioner's fitness to practice before the Office, by serially failing to make provision to pay and/or failing to forthrightly and consistently communicate regarding unpaid fees with another registered practitioner, Ms. Purol, and an illustrator, Mr. Martinez, both of whom she engaged in her professional capacity, in violation of 37 C.F.R. § 11.804(i) of the USPTO Rules of Professional Conduct.

COUNT X

Misconduct in Connection with Failure to Respond to OED's Request for Information

125. OED opened multiple investigations into Respondent's conduct, identified as OED File Numbers [REDACTED]

126. The Rules provide that during the course of an investigation, the OED Director may request from a practitioner information and evidence regarding possible grounds for discipline of the practitioner. 37 C.F.R. § 11.22(f)(1)(ii).

127. A practitioner has an ethical obligation to respond to any lawfully issued Request for Information ("RFI"), as set forth in 37 C.F.R. § 11.801(b).

128. Pursuant to 37 C.F.R. § 11.11(a)(1), a registered practitioner must notify the OED Director of his or her postal address for his or her office, up to three email addresses where he or she receives email, and a business telephone number, as well as every change to any of said addresses or telephone number within thirty days of the date of the change.

129. A USPTO-issued "Customer Number" is a unique number created by the USPTO that allows a practitioner to easily associate all of his or her filings with a single mailing address, thus eliminating typographical errors or variations in addresses that can make it difficult to receive patent correspondence from the USPTO.

130. USPTO Customer Number 90201 is assigned to RG Patent Consulting, LLC at the following address: "RG Patent Consulting LLC, 4019 E. Hamblin Drive, Phoenix, Arizona 85050."

131. OED sent by certified mail and first-class mail RFIs to Respondent seeking information from her during the course of its investigation of Respondent's acts and omissions as outlined above and in the Complaint.
132. The RFIs were lawfully issued pursuant to 37 C.F.R. § 11.22(f)(1)(ii).
133. As detailed below, Respondent failed to respond to any of the RFIs.

RFI in Mr. Hoxha's Matter [REDACTED]

134. On January 17, 2019, OED sent an RFI to Respondent seeking information about her representation of Dino Hoxha ("Hoxha RFI").
135. OED sent the Hoxha RFI to the address that Respondent had provided to OED as her official contact information pursuant to 37 C.F.R. § 11.11(a)(1), namely: "RG Patent Consulting, LLC, P.O. Box 25895, Scottsdale, Arizona 85255."
136. On January 23, 2019, Robert Gilboy signed the U.S. Postal Service certified mail receipt for the Hoxha RFI mailed on January 17, 2019, to RG Patent Consulting, LLC P.O. Box 25895, Scottsdale, Arizona 85255.
137. The OED Director represented to this Tribunal that he "reasonably believes that Robert Gilboy is Respondent's father and is a person to whom Respondent gave permission to retrieve her mail."
138. On January 17, 2019, OED also sent a copy of the Hoxha RFI to the addresses associated with the USPTO Customer Number 90201 for RG Patent Consulting, LLC namely: "RG Patent Consulting LLC, 2019 E. Hamblin Drive, Phoenix Arizona 85050."
139. On January 23, 2019, Respondent signed the U.S. Postal Service certified mail receipt for the Hoxha RFI mailed on January 17, 2019, to RG Patent Consulting LLC, 4019 E. Hamblin Drive, Phoenix, Arizona 85050.
140. Respondent's response to the Hoxha RFI was due on or before February 18, 2019.
141. OED did not receive a response from Respondent to the Hoxha RFI.
142. On March 7, 2019, OED mailed a Lack of Response letter regarding the Hoxha RFI to Respondent at P.O. Box 25895, Scottsdale, Arizona and to 4019 E. Hamblin Drive, Phoenix, Arizona. Each letter was sent via certified mail and first-class mail.
143. OED's Lack of Response letter set forth the consequences of a failure to respond and provided Respondent with another copy of the Hoxha RFI.
144. The Lack of Response letter gave Respondent fourteen days to respond, or until no later than March 21, 2019.

145. The certified mail copy of the March 7, 2019 Lack of Response letter mailed to P.O. Box 25895, Scottsdale, Arizona was refused.
146. The certified mail copy of the March 7, 2019 Lack of Response letter mailed to 4019 E. Hamblin Drive, Phoenix, Arizona was unclaimed.
147. The first-class mailings of the Lack of Response letter were not returned to OED; therefore, it is presumed each was received by Respondent.
148. Respondent did not respond to the Lack of Response letter or the Hoxha RFI on or before March 21, 2019.
149. As of the date of the filing of the Complaint, Respondent had not responded to the January 17, 2019 Hoxha RFI.

RFI in Mr. Jones' Matter [REDACTED]

150. On March 6, 2019, OED sent an RFI to Respondent seeking information about her representation of Carey Jones ("Jones RFI").
151. OED sent the Jones RFI to P.O. Box 25895, Scottsdale, Arizona 85255 and to 4019 E. Hamblin Drive, Phoenix, Arizona 85050.
152. The Jones RFI was sent to each address by certified mail and regular U.S. mail.
153. The copies of the Jones RFI sent to Respondent via certified mail were returned to the USPTO.
154. According to the U.S. Postal Service's online tracking system: (a) the Jones RFI mailed to P.O. Box 25895 was available for pickup on March 9, 2019, remained unclaimed as of March 30, 2019, and was being returned to the USPTO; and (b) the Jones RFI mailed to 4019 E. Hamblin Drive resulted in a March 11, 2019 notice left at the address because

⁹ While the Complaint contains a section titled "RFI in Ms. Purol matter [REDACTED]," the material allegation therein explicitly refers to an RFI seeking information about the "representation of Mr. Jones." Compl. ¶ 150. As such, it appears duplicative of the allegations set forth in this section. The OED Director noted this error in its Motion and ostensibly attempts to correct the error by attaching to the Motion, as Exhibit B, an RFI sent to Respondent in regard to her interactions with Ms. Purol. Mot. at 20. Amendment of the Complaint in such an informal and unilateral manner is not authorized by the Rules. *See*, 37 C.F.R. § 11.45 ("The OED Director may . . . with the authorization of the hearing officer, amend the complaint to include additional charges . . . If amendment of the complaint is authorized, the hearing officer shall authorize amendment of the answer. Any party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegations in the complaint or answer as amended, and the hearing officer shall make findings on any issue presented by the complaint or answer as amended."). As the OED Director has not specifically sought leave to amend the Complaint, and more significantly, as a result, Respondent has not had an opportunity to respond to such a request or to admit or deny the allegations in regard to the RFI purportedly sent to her regarding Ms. Purol, this Tribunal declines to make a finding as to the facts alleged therein.

there was “No Authorized Recipient Available,” remained unclaimed as of March 28, 2019, and was returned USPTO.

155. The copies of the Jones RFI sent to Respondent by regular U.S. mail were not returned to the USPTO, and therefore, it is presumed that Respondent received them.
156. Respondent’s response to the Jones RFI was due on or before April 5, 2019.
157. Respondent did not respond to the Jones RFI.
158. On April 18, 2019, a copy of the Jones RFI was mailed again via certified mail to P.O. Box 25895 and 4019 E. Hamblin Drive.
159. The April 18, 2019 correspondence sent via certified mail was returned to the USPTO.
160. According to the U.S. Postal Service’s online tracking system: (a) the Jones RFI mailed to P.O. Box 25895 was available for pickup on April 22, 2019, remained unclaimed as of May 17, 2019, and was returned to the USPTO; and (b) the Jones RFI mailed to 4019 E. Hamblin Drive resulted in an April 24, 2019 notice left at the address because there was “No Authorized Recipient Available,” remained unclaimed as of May 10, 2019, and was returned to the USPTO.
161. The copies of the Jones RFI sent by regular mail on April 2019 were not returned to the USPTO and, thus, it is presumed they were received by Respondent.
162. Respondent did not respond to the April 18, 2019 mailings.
163. As of the date of the filing of the Complaint, Respondent had not responded to the March 6, 2019 Jones RFI.

RFI in Mr. Broughton’s Matter [REDACTED]

164. On March 6, 2019, OED sent an RFI to Respondent seeking information about her representation of Eron Boughton (“Broughton RFI”).
165. OED sent the Boughton RFI to the P.O. Box 25895 address and the 4019 E. Hamblin Drive address, both by certified mail and regular U.S. mail.
166. The copies of the Boughton RFI sent by certified mail were returned to USPTO.
167. According to the U.S. Postal Service’s online tracking system: (a) the Boughton RFI mailed to P.O. Box 25895 was available for pickup on March 9, 2019, remained unclaimed as of March 30, 2019, and was returned to the USPTO; and (b) the Boughton RFI mailed to 4019 E. Hamblin Drive resulted in a March 9, 2019 notice left at the address because there was “No Authorized Recipient Available,” remained unclaimed as of March 26, 2019, and was returned to the USPTO.

168. The copies of the Broughton RFI sent by regular mail on March 6, 2019 were not returned to the USPTO and are presumed to have been received by Respondent.
169. Respondent's response to the Broughton RFI was due on or before April 5, 2019.
170. Respondent did not respond to the Broughton RFI.
171. On April 18, 2019, a Lack of Response letter along with another copy of the Broughton RFI was mailed to the P.O. Box 25895 and 4019 E. Hamblin Drive addresses.
172. The correspondence sent via certified mail on April 18, 2019 was returned to the USPTO.
173. According to the U.S. Postal Service's online tracking system: (a) the Broughton Lack of Response letter mailed to P.O. Box 25895 was available for pickup on April 24, 2019, remained unclaimed as of May 17, 2019, and was returned to the USPTO; and (b) the Broughton Lack of Response letter mailed to 4019 E. Hamblin Drive remained unclaimed as of May 7, 2019 and was being returned to the USPTO.
174. The Broughton Lack of Response letters sent by regular mail on April 18, 2019, each of which contained a copy of the Broughton RFI, to P.O. Box 25895 and 4019 E. Hamblin Drive were not returned to the USPTO and are presumed to have been received by Respondent.
175. Respondent did not respond to the April 18, 2019 Lack of Response letter or the enclosed RFI.
176. As of the date of the filing of the Complaint, Respondent had not responded to the March 6, 2019 Broughton RFI.

RFI in the Zolorzanos' Matter [REDACTED]

177. On March 5, 2019, OED sent an RFI to Respondent seeking information about her representation of Fabian and Yolanda Zolorzano ("Zolorzano RFI").
178. OED sent the Zolorzano RFI to the P.O. Box 25895 address and the 4019 E. Hamblin Drive address, both by certified mail and regular U.S. mail.
179. The Zolorzano RFI sent by certified mail to P.O. Box 25895 was delivered and signed for by Robert Gilboy.
180. The Zolorzano RFI sent by certified mail to 4019 E. Hamblin Drive was returned to the USPTO.
181. According to the U.S. Postal Service's online tracking system, the Zolorzano RFI mailed

to 4019 E. Hamblin Drive resulted in a March 8, 2019 notice left at the address because there was “No Authorized Recipient Available,” remained unclaimed as of March 26, 2019, and was returned to the USPTO.

182. The copies of the Zolorzano RFI sent by regular mail on March 5, 2019 were not returned to the USPTO and they are presumed to have been received by Respondent.
183. Respondent’s response to the Zolorzano RFI was due on or before April 4, 2019.
184. Respondent did not respond to the Zolorzano RFI.
185. On April 18, 2019, OED mailed a “Lack of Response” letter with a copy of the Zolorzano RFI to the P.O. Box 25895 and 4019 E. Hamblin Drive addresses via certified and regular mail.
186. The Lack of Response letters sent via certified mail were returned to the USPTO.
187. According to the U.S. Postal Service’s online tracking system: (a) the Zolorzano Lack of Response letter mailed to P.O. Box 25895 was available for pickup on April 24, 2019, remained unclaimed as of May 17, 2019, and was returned to the USPTO; and (b) the Zolorzano Lack of Response letter mailed to 4019 E. Hamblin Drive resulted in an April 22, 2019 notice left at the address because there was “No Authorized Recipient Available,” remained unclaimed as of May 7, 2019, and was returned to the USPTO.
188. The Zolorzano Lack of Response letters sent by regular mail on April 18, 2019 were not returned to the USPTO and, thus, it is presumed they were received by Respondent.
189. Respondent did not respond to the April 18, 2019 Zolorzano Lack of Response mailings.
190. As of the date of the filing of the Complaint, Respondent had not responded to the March 5, 2019 Zolorzano RFI.

RFI in Ms. Getchas’ Matter [REDACTED]

191. On April 8, 2019, OED sent an RFI to Respondent seeking information about her representation of Elaine Getchas (“Getchas RFI”).
192. OED sent the Getchas RFI to both the P.O. Box 25895 and 4019 E. Hamblin Drive addresses, each by both certified mail and regular U.S. mail.
193. The Getchas RFI sent by certified mail to P.O. Box 25895 was delivered on April 17, 2019 and signed for by Robert Gilboy.
194. The Getchas RFI sent by certified mail to 4019 E. Hamblin Drive was returned to the USPTO.

195. According to the U.S. Postal Service's online tracking system, a notice was left on April 11, 2019, for the Getchas RFI mailed to 4019 E. Hamblin Drive because there was "No Authorized Recipient Available," remained unclaimed as of April 26, 2019, and it was returned to the USPTO.
196. The copies of the Getchas RFI sent by regular mail on April 8, 2019 were not returned to the USPTO and, thus, it is presumed they were received by Respondent.
197. Respondent's response to the Getchas RFI was due on or before May 8, 2019.
198. Respondent did not respond to the Getchas RFI by May 8, 2019.
199. On May 15, 2019, a "Lack of Response" letter which included a copy of the Getchas RFI was sent by certified and first-class mail to Respondent at the P.O. Box 24895 and 4019 E. Hamblin Drive addresses.
200. The Getchas Lack of Response letters sent via certified mail were returned to the USPTO.
201. According to the U.S. Postal Service's online tracking system: (a) the Lack of Response letter and Getchas RFI mailed to P.O. Box 25895 was available for pickup on May 18, 2019, remained unclaimed as of June 6, 2019, and was returned to the USPTO; and (b) the Lack of Response letter and Getchas RFI mailed to 4019 E. Hamblin Drive resulted in a May 18, 2019 notice left at the address because there was "No Authorized Recipient Available," remained unclaimed as of June 5, 2019, and was returned to the USPTO.
202. The Getchas Lack of Response letters sent by OED via regular mail on May 15, 2019 were not returned to the USPTO, and it is presumed they were received by Respondent.
203. Respondent did not respond to the Getchas Lack of Response letter or the Getchas RFI.
204. On July 1, 2019, OED emailed a copy of the Lack of Response letter and Getchas RFI to Respondent at [REDACTED]
205. The July 1, 2019 email reminded Respondent of her obligation to update her address with OED.
206. OED received no notification indicating that the July 1, 2019 email sent to Respondent was not delivered.
207. The OED Director has represented to this Tribunal that he presumes the email was received by Respondent.
208. Respondent did not respond to the July 1, 2019 email from OED.
209. On July 23, 2019, OED emailed Respondent again, and asked her to contact OED by

telephone.

210. OED received no notification indicating that the email sent to Respondent on July 23, 2019 was not delivered.
211. The OED Director has represented to this Tribunal that he reasonably presumes the July 23, 2019 email was received by Respondent.
212. Respondent did not respond to the July 23, 2019 email from OED.
213. As of the date of the filing of the Complaint, Respondent had not responded to the April 8, 2019 Getchas RFI.

RFI in Mr. Joshi's Matter [REDACTED]

214. On July 16, 2019, OED sent an RFI to Respondent seeking information about her representation of Dharmesh Joshi ("Joshi RFI").
215. The Joshi RFI was sent to P.O. Box 25895 and to 4019 E. Hamblin Drive, both by certified mail and regular U.S. mail.
216. The copies of the Joshi RFI sent by certified mail were returned to the USPTO.
217. According to the U.S. Postal Service's online tracking system: (a) the Joshi RFI mailed to P.O. Box 25895 was available for pickup on July 18, 2019, remained unclaimed as of August 13, 2019, and was returned to the USPTO; and (b) the Joshi RFI mailed to 4019 E. Hamblin Drive resulted in a July 18, 2019 notice left at the address because there was "No Authorized Recipient Available," remained unclaimed as of August 5, 2019, and was returned to the USPTO.
218. The copies of the Joshi RFI sent by regular mail to P.O. Box 25895 and to 4019 E. Hamblin Drive were not returned to the USPTO and, thus, it is presumed they were received by Respondent.
219. Respondent's response to the Joshi RFI was due on or before August 15, 2019.
220. Respondent did not respond to the Joshi RFI on or before August 15, 2019 and had not submitted a response as of the date of the filing of the Complaint.

RFI in Ms. Bates' Matter [REDACTED]

221. On July 16, 2019, OED sent an RFI to Respondent seeking information about her representation of Yvonne Bates ("Bates RFI").
222. The Bates RFI was sent to P.O. Box 25895 and to 4019 E. Hamblin Drive by both certified mail and regular U.S. mail.

223. The copies of the Bates RFI sent by certified mail were returned to the USPTO.
224. According to the U.S. Postal Service's online tracking system: (a) the Bates RFI mailed to P.O. Box 25895 was available for pickup on July 19, 2019, remained unclaimed as of August 6, 2019, and was returned to the USPTO; and (b) the Bates RFI mailed to 4019 E. Hamblin Drive resulted in a July 19, 2019 notice left at the address because there was "No Authorized Recipient Available," remained unclaimed as of August 5, 2019, and was returned to the USPTO.
225. The copies of the Bates RFI sent by regular mail to P.O. Box 25895 and to 4019 E. Hamblin Drive were not returned to the USPTO, and thus it is presumed that they were received by Respondent.
226. Respondent's response to the Bates RFI was due on or before August 15, 2019.
227. Respondent did not respond to the Bates RFI on or before August 15, 2019 and had not submitted a response as of the date of the filing of the Complaint.

RFI in Mr. Martinez's Matter [REDACTED]

228. On April 24, 2019, OED sent an RFI to Respondent seeking information about her dealing with Alfonso Martinez ("Martinez RFI").
229. The Martinez RFI was sent to P.O. Box 25895 and to 4019 E. Hamblin Drive, each by both certified mail and regular U.S. mail.
230. The copies of the Martinez RFI sent by certified mail were returned to the USPTO.
231. The Martinez RFI mailed P.O. Box 25895 via regular mail was returned marked "forward time expired," return to sender.
232. The certified mail delivery to the Post Office Box was returned marked "Return to Sender, Unclaimed, Unable to Forward."
233. The Martinez RFI mailed certified mail to 4019 E. Hamblin Drive was returned marked "Return to Sender, Unclaimed, Unable to Forward."
234. The copy of the Martinez RFI sent by regular mail to 4019 E. Hamblin Drive was not returned to the USPTO and thus is presumed to have been received by Respondent.
235. Respondent's response to the Martinez RFI was due on or before May 24, 2019.
236. Respondent did not respond to the Martinez RFI on or before May 24, 2019 and had not submitted a response as of the date of the filing.

RFI in Dr. Alshear's Matter [REDACTED]

237. On April 24, 2019, OED sent an RFI to Respondent seeking information about her representation of Hind Alshear ("Alshear RFI").
238. The Alshear RFI was sent to P.O. Box 25895 and to 4019 E. Hamblin Drive, each by both certified mail and regular U.S. mail.
239. A copy of the Alshear RFI sent by certified mail was returned to the USPTO.
240. According to the U.S. Postal Service's online tracking system: (a) the Alshear RFI mailed to P.O. Box 25895 was available for pickup on April 29, 2019, remained unclaimed as of May 17, 2019, and was returned to the USPTO; and (b) the most recent information about the Alshear RFI mailed to 4019 E. Hamblin Drive indicated the status is "Awaiting Delivery Scan" and the status has not been updated since April 29, 2019.
241. The copies of the Alshear RFIs sent by regular mail to P.O. Box 25895 and to 4019 E. Hamblin Drive were not returned to the USPTO, and it is presumed they were received by Respondent.
242. Respondent's response to the Alshear RFI was due on or before May 24, 2019.
243. Respondent did not respond to the Alshear RFI on or before May 24, 2019 and had not submitted a response as of the date of the filing of the Complaint.

The Director's Additional Attempts to Communicate with Respondent

244. In addition to the correspondence described above, OED made additional efforts to contact Respondent about the matters addressed in the Complaint.
245. On March 26, 2019 and March 27, 2019, in connection with the Hoxha matter, OED Staff Attorney Charlema Grant left telephone messages for Respondent asking her to contact OED.
246. The messages explained that OED wished to communicate with her about the January 17, 2019 Hoxha RFI and the March 7, 2019 Hoxha Lack of Response letter sent to Respondent.
247. Respondent did not respond to the telephone messages.
248. On April 3, 2019 at 10:16 am, Ms. Grant sent an email to Respondent's email address [REDACTED] requesting that Respondent contact OED.
249. The email was received by Respondent and, on April 3, 2019 at 1:26 pm, Respondent sent a return email to Ms. Grant mistakenly stating that "the matter" was scheduled for a

hearing and that she was represented by attorney Mr. Michael McCabe.¹⁰

250. On April 3, 2019 at 1:48 pm, Ms. Grant responded by sending a return email to Respondent that (a) explained that Ms. Grant was contacting her about a matter separate [REDACTED], and (b) informed Respondent that Mr. McCabe had stated to OED that he only represented Respondent in the other [REDACTED] case, not with respect to the Hoxha investigation.

251. The OED Director reasonably believes that this email was received by Respondent.

252. Ms. Grant received no notification indicating that the email sent to Respondent was not delivered.

253. Respondent did not respond to Ms. Grant's April 3, 2019, 1:48 pm, email.

254. In connection with the Jones, Broughton, Zolorzano, Getchas, Alshear, Bates, and Joshi matters, on July 23, 2019, OED's Senior Counsel for Disciplinary Investigation Ronald K. Jaicks telephoned Respondent at a telephone number that OED reasonably believed was used by Respondent.

255. Mr. Jaicks was connected to a telephone answering machine with a message recording that identified "Rachel" at "RG Patent Consulting" as the name of person speaking on the recorded message.

256. Mr. Jaicks left a message for "Rachel Gilboy" giving his name ("Ron Jaicks with the USPTO"), leaving his telephone number ("571-272-[REDACTED]"), and asking that she telephone him about correspondence that has been sent to her by the USPTO.

257. Respondent did not respond to Mr. Jaicks' telephone message.

258. On July 23, 2019, Mr. Jaicks sent an email to Respondent's email address [REDACTED] which read as follows:

The U.S. Patent and Trademark Office (Office of General Counsel, Office of Enrollment and Discipline) has sent several letters to you since April 2019. They were sent to you either by USPTO employee Emily Sprague or USPTO employee Paul Nguyen-Ba.

The letters concern at least seven (7) different and important matters for which OED requested information from you. You have not responded to the correspondence. Accordingly, I kindly ask that you telephone me at 571-272-[REDACTED] to discuss this matter.

¹⁰ In addition to the instant matter, currently pending [REDACTED] is a [REDACTED], separate, [REDACTED] case against Respondent, [REDACTED]. Mr. McCabe represents Respondent in that proceeding.

I respectfully request the courtesy of a telephone call even if it is only to inform me that you do not wish to respond to the letters.

259. Mr. Jaicks received no notification indicating that the email he sent to Respondent was not delivered.

260. As of the date of the filing of the Complaint, Respondent had not responded to Mr. Jaicks' July 23, 2019 telephone message or email.

261. Based upon the foregoing, it is found that Respondent willfully –

- A. failed, in connection with a disciplinary matter, to cooperate with OED in an investigation of any matter before it or knowingly failed to respond to a lawful demand or request for information from a disciplinary authority by, *inter alia*, failing in multiple instances to cooperate in OED's investigation and knowingly failing to respond to the lawfully issued RFIs, in violation of 37 C.F.R. § 11.801(b) of the USPTO Rules of Professional Conduct.

E. SANCTIONS

Upon a finding of violation, this Tribunal is authorized by the Rules to impose an order of suspension, exclusion, reprimand and/or probation and “also may impose any conditions deemed appropriate under the circumstances.” 37 C.F.R. § 11.54(a)(2). In determining the appropriate sanction to be imposed, the following four factors “must” be considered, if applicable:

- (1) Whether the practitioner has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the practitioner acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the practitioner's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

37 C.F.R. § 11.54(b); *see Schroeder*, PTO Proceeding No. D2014-08, slip op. at 10 (May 18, 2015) (Initial Decision on Default Judgment). The analysis of these four factors is interrelated. *Burmeister*, PTO Proceeding No. D1999-10, slip op. at 10 (Mar. 16, 2004) (Initial Decision).

The ABA Standards for Imposing Lawyer Sanctions, (adopted Feb. 1986, amended Feb. 1992, reaffirmed Sept. 18, 2014) (“ABA Standards”)¹¹ provide guidance as to the aggravating

¹¹ The ABA Standards, as reaffirmed in 2014, are available on the ABA's website at: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/sanction_standards.authcheckdam.pdf.

and mitigating factors in deciding upon the appropriate sanction to impose.¹² *See Schroeder*, slip op. at 12; *see also Chae*, PTO Proceeding No. D2013-01, slip op. at 4 (Oct. 21, 2013) (Final Order). According to the ABA Standards, aggravating factors which may justify an increase in the degree of discipline to be imposed are as follows:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution; and
- (k) illegal conduct, including that involving the use of controlled substances.

ABA Standards § 9.22.

Similarly, mitigating factors that may justify a reduction in the degree of discipline to be imposed are as follows:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical disability;
- (i) mental disability or chemical dependency . . .;
- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse; and
- (m) remoteness of prior offenses.

¹² While this Tribunal recognizes that Respondent is a patent practitioner and not a patent attorney the applicable USPTO Disciplinary Rules are the same. 37 C.F.R. §11.19 (All USPTO practitioners are subject to OED jurisdiction). As such, the ABA Standards regarding applicable aggravating and mitigating factors seem analogous.

ABA Standards § 9.32.

The ABA further indicates that the following factors should not be considered as either aggravating or mitigating:

- (a) forced or compelled restitution;
- (b) agreeing to the client's demand for certain improper behavior or result;
- (c) withdrawal of complaint against the lawyer;
- (d) resignation prior to completion of disciplinary proceedings;
- (e) complainant's recommendation as to sanction; and
- (f) failure of injured client to complain.

ABA Standards § 9.4.

“The ultimate issue to be decided in disbarment proceedings is whether the respondent is fit to practice.” *Greiner*, PTO Proceeding No. D2012-25, slip op. at 13 (Oct. 18, 2012) (Initial Decision) (citing *Harary v. Blumenthal*, 555 F.2d 1113, 1116 (2d Cir. 1977) (upholding disbarment of certified public accountant from practice before the Internal Revenue Service)). Another important function of disciplinary sanctions is to deter others from similar conduct, and general deterrent effects should be considered when analyzing misconduct. *Hill*, PTO Proceeding No. 2001-06, slip op. at 12 (July 26, 2004) (Final Decision). Indeed, “[w]e start from the premise that protection of the public and bar, not punishment, is the primary purpose” of practitioner discipline. *Burmeister*, slip op. at 11 (quoting *Coombs v. State Bar of California*, 779 P.2d 298, 306 (Cal. 1989)) (internal quotation marks omitted).

OED'S POSITION REGARDING PENALTY

As to the sanction, based upon his consideration of the four required factors, the Director requests an entry of an Order pursuant to 37 C.F.R. § 11.54 excluding Respondent from practice of patent law before the U.S. Patent and Trademark Office and “awarding all other reasonable relief that the Tribunal deems appropriate and within its authority to enter.” Mot. at 48.

As to the first factor, the Director argues that Respondent violated duties to her clients, the profession, and the legal system. Mot. at 38-40. The Director asserts Respondent violated fiduciary duties to her clients “[b]y systematically and repeatedly collecting client payments from numerous individuals without performing the work agreed upon, [and] ignoring her obligations to communicate with and repay to the clients the monies that she did not earn.” Mot. at 39. Together with these actions, the Director contends, Respondent violated her duties to the legal profession by engaging in various other instances of dishonest conduct, such as withholding payments from contractors, that disgraces the patent bar and decreases the public's confidence in the integrity and trustworthiness of patent practitioners. *Id.* Further, the Director asserts, Respondent violated duties owed to the legal system when she flouted her oath or affirmation to “observe the laws and rules of practice of the Office” and her obligation to cooperate with the OED investigation. Mot. at 40.

As to the second factor, the Director asserts that Respondent's acts and omissions were

intentional and knowing because she willfully disregarded numerous attempts by clients, contractors, and the OED to contact her. Mot. at 40-41. Evidenced by her attempts to negotiate away clients' complaints and one-time response to an OED email, Respondent was aware of the issues in her clients' cases and the OED investigation but failed to cooperate with either her clients or the OED to remedy said issues, the Director states. *Id.* The Director asserts that Respondent continues to evade attempts to address her pattern of "bilking" clients and contractors. Mot. at 41.

As to the third factor, the Director argues that Respondent's actions resulted in actual injuries to numerous clients for her neglect and dishonest conduct and to her contractors for unpaid compensation. Mot. at 41-42. The Director notes that clients have (1) lost money paid to Respondent that she did not earn or return, (2) paid additional expenses to address the results of her neglect, and (3) potentially lost intellectual property rights and opportunities due to her abandonment of patent applications. *Id.*

As to the fourth factor, the Director asserts that seven aggravating factors set forth in the ABA Standards are present here: dishonest or selfish motive; a pattern of misconduct; the commission of multiple offenses; bad faith obstruction of the disciplinary proceeding; refusal to acknowledge wrongful nature of conduct; the vulnerability of victims; and indifference to making restitution. Mot. at 42-47. In support, he opines that Respondent engaged in a series of actions harmful to her clients and contractors that she made no effort to cure. Mot. at 45. Respondent ignored the consequences of keeping unearned monies from clients and has failed to repay any sums to clients or contractors, according to the Director. Mot. at 46-47. Again, citing the Standards, the Director asserts that the absence of any prior disciplinary record is the only applicable mitigating factor found in Standard § 9.32 applicable here.

DISCUSSION, FINDINGS AND CONCLUSIONS ON PENALTY

After extensive consideration of the totality of the record and the OED Director's arguments, I conclude that exclusion from practice before the USPTO and restitution are appropriate sanctions for all of the violations discussed above upon which Respondent was found liable.¹³ 37 C.F.R. § 11.20 (granting this Tribunal broad authority to issue sanctions). The basis for the assessment of this particular penalty is as follows:

1. Respondent violated duties owed to a client, the public, the legal system, or to the profession

The finding of liability on the ten counts set forth above clearly evidences that Respondent violated myriad duties she owed to her clients, the legal system, and the profession, as the OED asserts. Specifically, Respondent –

- failed to act with reasonable diligence and promptness in representing clients, in

¹³ An excluded practitioner shall be eligible to apply for reinstatement no earlier than at least five years from the effective date of the exclusion. 37 C.F.R. § 11.60(b).

violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct;

- failed to reasonably consult with clients, in violation of 37 C.F.R. § 11.104(a)(2) of the USPTO Rules of Professional Conduct;
- failed to keep clients reasonably informed, in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct;
- failed to explain matters to the extent reasonably necessary to permit clients to make informed decisions, in violation of 37 C.F.R. § 11.104(b) of the USPTO Rules of Professional Conduct;
- failed to promptly deliver to client funds or other property that the clients are entitled to receive, in violation of 37 C.F.R. § 11.115(d) of the USPTO Rules of Professional Conduct;
- failed, upon termination of representation, to take steps to protect her clients' interests, in violation of 37 C.F.R. § 11.116(d) of the USPTO Rules of Professional Conduct;
- failed to cooperate with an OED investigation and respond to RFIs in violation of 37 C.F.R. § 11.801(b) of the USPTO Rules of Professional Conduct;
- engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of 37 C.F.R. § 11.804(c) of the USPTO Rules of Professional Conduct; and
- engaged in other conduct that adversely reflects on her fitness to practice before the Office, in violation of 37 C.F.R. § 11.804(i) of the USPTO Rules of Professional Conduct;

The practitioner-client relationship is a fiduciary relationship. *See Bender*, PTO Proceeding No. D2000-01, slip op. at 20 (Sept. 30, 2003) (Initial Decision) (“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). In a fiduciary relationship “there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence.” *McCants v. Nat’l Collegiate Athletic Ass’n*, 201 F. Supp. 3d 732, 747 (M.D.N.C. 2016) (quoting *Dalton v. Camp*, 353 N.C. 647, 548 S.E.2d 704, 707–08 (2001)). “Common to all [fiduciary] relationships is a heightened level of trust and the duty of the fiduciary to act in the best interests of the other party.” *Id.* (quoting *Dallaire v. Bank of Am., N.A.*, 367 N.C. 363, 760 S.E.2d 263, 266 (2014)).

Here, Respondent clearly violated fiduciary duties to her clients by generally not acting in good faith and in the best interest of her clients. Rather, she acted in her own interest. Among other things, Respondent failed to perform the work for which she was explicitly retained by her clients, including failing to timely prepare and file patent applications, amended applications,

and appeals. She did not adequately inform her clients regarding the status of the work, or lack thereof, she was retained to perform on their behalf. She did not inform, or timely inform, her clients of the current status of their applications and/or appeals, including failing to notify them of Office Actions and Notices of Abandonment issued by the USPTO. She did not adequately communicate and advise her clients regarding their options as to the type of patent to be sought to achieve their goals or responses available to USPTO notices. Without appropriate notice, Respondent simply ceased communicating with her clients without making provision to return their property, including fees and costs advanced for work not done, abruptly abandoning them and terminating the relationship. In at least two instances, Respondent explicitly mislead her clients as to the actions she would undertake on their behalf.

As the OED suggests, neglect of client matters and abandonment of a client are serious ethical violations. *See Comm. on Prof'l Ethics and Conduct of Iowa State Bar Ass'n 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.”); *In re Gardner*, 39 A.D.2d 84, 85 (N.Y. 1972) (“[N]eglect of a client’s interests is a most serious dereliction.”); *Shippey*, PTO Proceeding No. D2011-27, slip op. at 12 (Oct. 14, 2011) (Initial Decision) (“Abandonment of a case or client after being paid for legal services is a significant ethical violation for which attorneys have been disbarred.”). Failing to return advance client fees for work not undertaken is also a very significant deviation from expected conduct warranting severe sanction. *See, e.g., Morishita*, PTO Proceeding No. D2017-25, slip op. at 12 (Oct. 14, 2011) (Initial Decision on Default) (Practitioner excluded for accepting clients’ funds, not performing the work, and not returning the funds to the client); *Chandler*, PTO Proceeding No. D2011-31 (Dec. 6, 2011) (Initial Decision on Default) (same). Engaging in misrepresentation or other dishonest conduct in regard to a client is certainly most serious. *Bang-er Shia*, PTO Proceeding No. D2014-31 (Mar. 4, 2016) (Final Decision) (Excluding practitioner for, *inter alia*, dishonest conduct).

Respondent also violated duties she owed to the profession in that she contracted for services in her capacity as a patent practitioner and then failed to pay for the services provided. I agree with the OED that such behavior “disgraces the patent bar and decreases the public’s confidence in the integrity and trustworthiness of patent practitioners.” Mot. at 39. *See In re Lundeen*, 811 N. W.2d 602 (Minn. 2012) (attorney disbarred for, *inter alia*, failing to pay court reporting services despite court judgment obtained against him in violation of Minnesota Rules of Professional Conduct 3.4(c), 8.4(c), and 8.4(d)); *In re Swokowski*, 796 N. W.2d 317 (Minn. 2011) (attorney disbarred for, *inter alia*, failing to pay a judgment for court-reporting services); *The Fla. Bar v. Nowacki*, 697 So. 2d 828 (Fla. 1997) (ninety-one day suspension where attorney, *inter alia*, engaged in conduct involving dishonesty by failing to pay former associate and blocking her phone calls so she could not contact the attorney about salary dispute); *In re Pokorny*, 453 N. W.2d 345, 348 (Minn. 1990) (attorneys “who flagrantly disregard the rights of others and default on serious financial obligations ... are lacking in good moral character if the default is neglectful, irresponsible, and cannot be excused by a compelling hardship that is reasonably beyond the control of the [attorney]”) (citing and quoting *In re Gahan*, 279 N.W.2d

826, 831 (Minn. 1979)); *People v. Galindo*, 908 P.2d 77 (Colo. 1995) (failure to pay expert despite local legal committee order to do so constituted conduct prejudicial to the administration of justice); *People v. Stauffer*, 745 P.2d 240 (Colo. 1987) (failure to pay expert in personal injury case was conduct that adversely reflects on fitness to practice law).

Furthermore, Respondent also violated duties she owed to the USPTO legal system by failing to timely pay to it the costs due for filings fees which she had received in advance from her clients and allowing her client patent matters to go abandoned without her clients' consent. *In re Perkowski*, 94 A.D.3d 122, 123 (N.Y. App. Div. 2012) (upholding 24-month suspension by USPTO of practitioner who submitted checks drawn on insufficient funds as conduct prejudicial to the administration). Such actions caused the USPTO patent system to operate less effectively and efficiently, by necessitating additional work by the USPTO staff and other registered practitioners to correct. Finally, Respondent violated the legal and ethical duties she owed to the legal system by not cooperating with the OED's investigation by responding to any of the RFIs sent to her.

2. Respondent acted knowingly.

Due to Respondent's failure to participate in this action, the evidence as to Respondent's exact mental state at the time of the violations is unclear. However after a great deal of consideration, I have concluded that Respondent's violative acts breaching her duties set forth in the Complaint were, at least, "knowingly" committed, in that the weight of the evidence suggests that Respondent was consciously aware "of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." ABA Standards for Imposing Lawyer Sanctions at 7.

I base my conclusion on the significant number and variety of violations set forth in the Complaint, that the violations were committed over an extended period of time (2016-2019), and that they involved at least eight clients, two contractors, and multiple RFIs. On a number of occasions, the clients reached out to Respondent by phone and email, and even indirectly, such as through the BBB complaint. On the occasions they were able to reach Respondent, she often made promises she did not keep, such as promising to file on Dr. Alshear's behalf so as to retain her priority date or to pay the costs to the USPTO due on the application she filed for Mr. Joshi. As such, the circumstances strongly suggest that Respondent knowingly committed the violations.¹⁴

3. Respondent caused serious financial injury.

Respondent's violations, in particular her neglect, dishonest conduct, and disregard for the interests of others, resulted in clear tangible harm. This concrete harm includes the loss of money that Respondent's clients paid to her that she neither earned nor returned, as well as the additional expenses those clients incurred in an effort to remediate the results of her neglect, and/or the loss of their intellectual property rights and opportunities due to abandoned

¹⁴ This Tribunal hesitates on the limited record in this case to find Respondent acted intentionally due to the statement Respondent made to Dr. Alshear in early 2019 suggesting she was dealing with a "family emergency."

applications. It also includes the contractors' loss of income from providing services to Respondent for which they were never paid. The sum of these monetary losses for these victims and gains for Respondent exceed \$40,000. In addition, Respondent's actions resulted in a waste of government resources, time, and money, expended in its series of unsuccessful efforts to obtain relevant information from Respondent, a registered USPTO patent practitioner.

4. Aggravating and Mitigating Factors.

From the list contained in the ABA Standards § 9.22, the OED Director has properly identified seven aggravating factors applicable in this case.

As indicated above, the evidence in the record as to Respondent's motive for her violative conduct is slim. However, the circumstantial evidence paints a picture of a practitioner who appears to have acted with a "dishonest or selfish motive." ABA Standards § 9.22(b); *Morishita*, No. D2017-25, at 12 (respondent acted with a dishonest or selfish motive when he engaged in a pattern of deceit and deception to string along the clients, continuing to extract funds from them while knowing that the application was abandoned). Among Respondent's offenses is her repeated receipt of advances for services and costs from clients, over a period of several years, which despite being unearned, she retained to her financial or personal gain.

The evidence further demonstrates "a pattern of misconduct." ABA Standards § 9.22(c); *Oklahoma Bar Ass'n v. Bolton*, 880 P.2d 339, 345 (Okla. 1994) ("The public's interest in maintaining competent legal representation is best served by examination of a [patent] practitioner's performance over a span of time and an inquiry into one's professional history. If that history should reveal a pattern of misconduct, it will be a factor in tailoring the appropriate discipline."); *People v. Shafer*, 765 P.2d 1025, 1027 (Colo. 1988) (lawyer's conversion of a client's funds over a period of years represents a pattern of misconduct); *Hawes v. State Bar*, 51 Cal. 3d 587, 592 (1990) (lawyer's failure to use reasonable diligence to accomplish the purpose for which he was employed, withdrawing from employment without taking reasonable steps to avoid foreseeable prejudice to clients, failure to return unearned fees, and failure to cooperate in the Bar investigation demonstrated a pattern of misconduct). As in the *Hawes* case, here too, the Respondent engaged in a pattern of misconduct by, among other things, in regard to various clients over a period of years, failing to use reasonable diligence to accomplish the purpose for which she was employed by multiple clients, withdrawing from employment without taking reasonable steps to avoid foreseeable prejudice to her clients, failing to return unearned fees, and failing to cooperate in the Bar investigation.

The third aggravating factor present is the commission of "multiple offenses." ABA Standards § 9.22(d); *Warnock*, PTO Proceeding No. D2016-08, slip op. at 13 (Apr. 22, 2016) (Initial Decision on Default Judgment) (Respondent excluded for neglecting 32 patent applications and 133 trademark applications and noting, "Respondent's neglect of the numerous legal matters his clients entrusted to him harms the clients", and possibly the public's, confidence in attorneys and members of the patent bar."). Here, Respondent was found to have engaged in multiple offenses, specifically more than 30 violations involving at least eight clients and at least that many separate patent matters.

The fourth aggravating factor is Respondent's "bad faith obstruction of the disciplinary proceeding." ABA Standards § 9.22(e). The record clearly demonstrates that Respondent ignored all of the OED's RFIs and her ethical obligation to cooperate with the OED investigations into the numerous client complaints. She also obstructed the efficient litigation portion of this disciplinary proceeding in that she did not file an Answer to the Complaint or file any response to any motion. Her failure to participate resulted in the expenditure of a great deal of unnecessary time and effort by OED and this Tribunal. If Respondent did not wish to contest this proceeding and/or maintain her registration, she could have simply acted in good faith and voluntarily relinquished her license to the USPTO.¹⁵

The fifth aggravating factor is Respondent's "refusal to acknowledge [the] wrongful nature of [her] conduct." ABA Standards § 9.22(g). There is no evidence in the record that Respondent ever acknowledged to any of her clients, her contractors, the OED, or this Tribunal the error of her actions. This failure is a weighty factor in aggravation. *See, e.g., Flindt*, No. D2016-04, at 55; *Weber v. State Bar of Cal.*, 764 P.2d 701 (Cal.1988); *In re Disciplinary Action against Kalla*, 811 N.W.2d 576 (Minn. 2012); *Dayton Bar Ass'n. v. Hunt*, 987 N.E.2d 662 (Ohio 2013).

The sixth aggravating factor is the vulnerability of Respondent's victims. ABA Standards § 9.22(h). At least two of Respondent's clients from whom she collected advances and failed to repay, Ms. Bates and Ms. Getchas, appear to be people of limited financial means. One of the contractors Respondent failed to pay, Ms. Purol, indicated that she is retired and that she was "counting on" the unpaid sum of \$7,150 to be able to meet her personal family expenses. This Tribunal takes a harsh view of a registered patent professional who takes advantage of people of limited financial means. *See, e.g., People v. Fischer*, 237 P.3d 645, 649 (Colo. O.P.D.J. 2010); *In re Woodring*, 210 P.3d 120, 126 (Kan. 2009); *In re Trahant*, 108 So. 3d 67, 74 (La. 2012); *Lorain Cty. B. Assn. v. Godles*, 943 N.E.2d 988, 992 (Ohio 2010).

The seventh aggravating factor is Respondent's "indifference to making restitution." ABA Standards § 9.22(j). The record amply demonstrates that Respondent consistently failed to reimburse her clients for the sums they paid her for services or expense never provided or paid, despite legitimate demands being made. Moreover, such sums wrongfully withheld were not nominal, they ranged from approximately \$1,800 to over \$5,000. The same is true for the unpaid contractors, who are each owed over \$7,000. She has also made no effort to compensate her clients for the additional costs they incurred by having to hire other practitioners to file to revive their applications which went abandoned, or otherwise undo the negative outcomes from Respondent's neglect. *See Lau*, PTO Proceeding No. D2016-37, slip op. at 9 (May 1, 2017) (Initial Decision and Order Granting Default Judgment); *Halvorson*, PTO Proceeding No. D2016-33, slip op. at 20 (Oct. 12, 2016) (Initial Decision on Default Judgment) ("Respondent did not refund any portion of the \$12,000.00-\$13,000.00 in unearned fees to Mr. Moore, or the \$1,850.00 in unearned fees to Mr. [Redacted]. Such misconduct demonstrates a selfish or dishonest motive, or at least an indifference toward making restitution. . . . These aggravating factors support the imposition of a more severe sanction than might otherwise be warranted."); *In re Ward*, 726 N.W.2d 497 (Minn. 2007) (court rejected a stipulated one-year suspension in favor

¹⁵ As noted above Respondent is currently represented by counsel in two other pending legal matters.

of an indefinite suspension when lawyer's failure to make restitution to former client after entering into unfair business transaction was aggravating factor). *See also In re Pennington*, 713 S.E.2d 261 (S.C. 2011) (disbarring lawyer and ordering restitution to clients and third parties based on several instances of mishandling client funds, as well as failure to remit funds owed to third parties, to refund unearned fees, and to protect client interests upon lawyer's initial suspension).

Finally, while the OED did not identify "substantial experience in the practice" as an additional aggravating factor, I find it to be one here. The record evidences that Respondent was registered as a patent agent by the USPTO 13 years ago, on November 26, 2007. That registration date suggests that Respondent had approximately a decade of experience practicing before the violations occurred, and was not such a novice as to not be well aware of basic ethical and legal obligations, such as performing the work for which she was retained, communicating honestly with her clients, and returning money she did not earn. As such, I find this an aggravating factor, if only a modest one, as to the sanction to be imposed.¹⁶

The OED identified only the "absence of a prior disciplinary record" as a mitigation factor. ABA Standards § 9.32(a). I agree with the OED that this is a factor in mitigation, and the only such factor. Further, I find the mitigating impact of this factor modest in light of the limited time of approximately 10 years during which Respondent practiced prior to engaging in the violations found here.

The ABA Standards suggest that disbarment is generally appropriate when a practitioner knowingly converts client property and causes injury or potential injury to a client. ABA Standards § 4.11. Disbarment is also the appropriate sanction when a practitioner knowingly fails to perform services for a client, engages in a pattern of neglect with respect to client matters and/or abandons her practice, causing serious or potentially serious injury to a client. ABA Standards § 4.11. In this case, on multiple occasions, Respondent knowingly converted client property, specifically unearned advanced fees and unspent costs, to her own, causing financial injury to her clients. On multiple occasions she also knowingly failed to perform promised professional services, neglected to communicate with her clients, and abandoned them, causing them serious harm. She engaged in other violative contact including improperly failing to deliver client funds upon proper demand, failing to pay contractors she engaged in a professional capacity, making various misrepresentations, and not cooperating in the slightest with OED's investigations. Besides the numerous serious violations, in regard to myriad clients, there are a large number of aggravating factors suggestive of imposing a more severe penalty, and only a single mitigating factor. Based upon the foregoing, it is concluded that an order of exclusion is appropriate, accompanied by an order of restitution.

ORDER

After careful and deliberate consideration of the above facts and conclusions, as well as the factors identified in 37 C.F.R. § 11.54(b), **IT IS HEREBY ORDERED** that Respondent,

¹⁶ The record does not support a finding as to the other aggravating factors identified in ABA Standards § 9.22 (prior disciplinary offenses, submission of false evidence, and illegal conduct).

RACHEL E. GILBOY, USPTO Registration No. 61,510, be **EXCLUDED** from the practice as a patent agent before the U.S. Patent and Trademark Office.

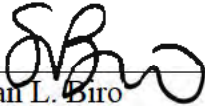
Further, within 90 days of the issuance of this Decision, Respondent shall make restitution as follows:

- A. in the amount of one thousand, six hundred and fifty dollars (\$1,650.00) to Dino Hoxha;
- B. in the amount of three thousand dollars (\$3,000.00) to Carey Leon Jones;
- C. in the amount of five thousand, one hundred and eighty dollars (\$5,180.00) to Eron Broughton;
- D. in the amount of three thousand, two hundred dollars (\$3,200.00) to Yvonne Bates;
- E. in the amount of one thousand, eight hundred and seventy-five dollars (\$1,875.00) to Dr. Hind Alshear;
- F. in the amount of two thousand dollars (\$2,000.00) to Elaine Getchas;
- G. in the amount of three thousand, four hundred and fifty dollars (\$3,450.00) to Dharmesh Joshi;
- H. in the amount of seven thousand, one hundred and fifty dollars (\$7,150.00) to Sarah Puroi; and
- I. in the amount of eight thousand, ninety-two dollars and fifty cents (\$8,092.50) to Alfonso Martinez;

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

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

This is an Initial Decision issued under 37 C.F.R. § 11.54. Pursuant to 37 C.F.R. § 11.55, any appeal by Respondent from this Initial Decision must be filed with the U.S. Patent and Trademark Office at the address provided in 37 C.F.R. § 1.1(a)(3)(ii) within 30 days after the date of this Initial Decision. Such appeal must include exceptions to the Administrative Law Judge's Decision and supporting reasons for those exceptions. Failure to file such an appeal in accordance with 37 C.F.R. § 11.55 will be deemed both an acceptance by Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.



Susan L. Biro
Chief Administrative Law Judge¹⁷
U.S. Environmental Protection Agency

Dated: July 20, 2020
Washington, D.C.

¹⁷ The Administrative Law Judges of the Environmental Protection Agency are authorized to hear cases pending before the United States Department of Commerce, Patent and Trademark Office, pursuant to an Interagency Agreement effective for a period beginning March 22, 1999.