

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

In the Matter of:

RYAN BETHELL,

Respondent.

Proceeding No. D2019-42

November 20, 2023

Appearances:

Sydney O. Johnson, Jr.

Melinda M. DeAtley

Associate Solicitors, United States Patent and Trademark Office

Michael E. McCabe, Jr.

For Respondent

BEFORE: J. Jeremiah MAHONEY, United States Administrative Law Judge¹

INITIAL DECISION AND ORDER

This matter arises from a *Complaint and Notice of Proceedings under 35 U.S.C. § 32* (“Complaint”) filed by the Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) requesting that Ryan Bethell (“Respondent”) be sanctioned for violating its disciplinary rules during his employment by LegalForce RAPC Worldwide (“LegalForce”), an intellectual property protection law firm. The *Complaint* claims, in essence, that Respondent was an Attorney Manager at LegalForce, whose non-practitioner assistants were impermissibly entering client signatures on documents filed with the USPTO. As a result, Respondent is alleged to have failed in his duty to clients as the attorney of record in their trademark filings; failed to supervise practitioners and non-practitioner assistants within the firm; and failed in his duty to the USPTO.

In response, Respondent claims the OED Director failed to prove allegations of an impermissible signature practice by clear and convincing evidence. Respondent also denies that he violated the disciplinary rules regarding the supervision of subordinate attorneys and non-practitioner assistants. Finally, Respondent claims that even if the impermissible signature practice occurred, he lacked the requisite knowledge and intent to be disciplined.

¹ Pursuant to an Interagency Agreement in effect beginning March 27, 2013, Administrative Law Judges of the U.S. Department of Housing and Urban Development (HUD) have been appointed by the U.S. Commerce Secretary and are authorized to hear cases brought by the U.S. Patent and Trademark Office.

The hearing in this matter was held January 27-29, 2020, in Phoenix, Arizona. The testimony of the following witnesses was received: Tanya Amos, Trademark Legal Administrator for the USPTO; Howard Reitz, Staff Attorney for the Office of Enrollment and Discipline at the USPTO; Ruth Khalsa, an attorney at LegalForce; and Respondent. The Court also accepted the testimony of Jessica Tam, who previously worked as an attorney at LegalForce; and Emil Ali, who was hired as Respondent's counsel during the OED's investigation. The testimony of Ms. Tam and Mr. Ali was taken through depositions offered *in lieu* of their in-person appearance at the hearing.

Following the Court's receipt of the transcript on February 13, 2020, the Parties were ordered to file post-hearing briefs and response briefs. After the timely receipt of the Parties' briefs, the record was closed. This matter is ripe for decision.²

APPLICABLE LAW

USPTO Disciplinary Proceedings. The USPTO has the “exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it.” Kroll v. Finnerty, 242 F.3d 1359, 1364 (Fed. Cir. 2001); see Sperry v. Fla. ex rel. Fla. Bar, 373 U.S. 379 (1963) (upholding the USPTO's exclusive authority against challenge from state bar). The Director of the USPTO may suspend or exclude a person from practice before the Patent and Trademark Office if the person is “shown to be incompetent or disreputable, or guilty of gross misconduct,” or if the person violates regulations established by the Office. 35 U.S.C. § 32; see also 37 C.F.R. § 11.19(b)(1)(iv). The practitioner must receive “notice and opportunity for a hearing” before such disciplinary action is taken. 35 U.S.C. § 32. Disciplinary hearings are conducted in accordance with USPTO's procedural rules and with section 7 of the Administrative Procedure Act, 5 U.S.C. § 556, by an impartial hearing officer appointed by the USPTO. 37 C.F.R. §§ 11.39, 11.44.

The USPTO has duly promulgated regulations governing the conduct of persons authorized to practice before the Office. The USPTO Rules of Professional Conduct (37 C.F.R. §§ 11.101 *et seq.*), are based upon the American Bar Association (“ABA”) Model Code of Professional Responsibility and apply to persons who practice before the Office and became effective May 3, 2013. See CHANGES TO REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE, 78 Fed. Reg. 20179 (Apr. 3, 2013) (Final Rule) (codified at 37 C.F.R. §§ 11.101-11.901). The USPTO's purpose for modelling its disciplinary rules after the ABA's Model Code of Professional Responsibility was to “provid[e] attorneys with consistent professional conduct standards, and large bodies of both case law and opinions written by disciplinary authorities that have adopted the ABA Model Rules.” Id. at 20180.

Standard and Burden of Proof. The OED Director has the burden of proving the alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49. Thereafter, Respondent has the burden to prove any affirmative defense by clear and convincing evidence. Id.

² The delay between briefing and the issuance of this ruling was caused by limited government resources, the time taken to consider the parties' respective evidence and positions, and the impact of the COVID-19 pandemic, which necessitated closure and reopening of the Court's physical office during the pendency of this case and disrupted some of the Court's operations and workflow.

The clear and convincing standard is applied “to protect particularly important interests . . . where there is a clear liberty interest at stake.” Thomas v. Nicholson, 423 F.3d 1279, 1283 (Fed. Cir. 2005). This is an intermediate standard “between a preponderance of the evidence and proof beyond a reasonable doubt.” Addington v. Texas, 441 U.S. 418, 424-25 (1979). The standard requires evidence “of such weight that it produces 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.” Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001). “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.’” Foster v. Allied Signal, Inc., 293 F.3d 1187, 1194 (10th Cir. 2002) (citing Ortega v. IBP, Inc., 874 P.2d 1188, 1198 (Kan. 1994), disapproved of by In re B.D.-Y., 187 P.3d 594 (Kan. 2008)).

FINDINGS OF FACT

I. Background

Respondent completed a dual degree Juris Doctorate/Master of Business Administration program at Arizona State University earning his MBA in 2013 and his JD in 2014. Respondent was admitted to practice law in Arizona on July 1, 2015, and is currently an active member in good standing.

After graduating from law school, Respondent worked at the Arizona State University Alumni Law Group (“Law Group”). Respondent left the Law Group in June 2016 to join LegalForce.

LegalForce is an intellectual property law firm, owned by ██████████ that specializes in trademark-related services. LegalForce has offices in Mountain View, California; Tempe, Arizona; India; Poland; and South Africa. Attorneys and legal assistants work in the U.S. offices. The affiliate office in India hosts LegalForce’s “standards team” and a “trademark office action” team (TMOA) both of which consist of non-practitioner assistants who conduct trademark searches, handle document preparation, and perform most of the filings.

II. Respondent’s Role as an Attorney Manager at LegalForce.

In May 2016, Respondent was contacted by ██████████ about a business management position. ██████████ offered Respondent a position as marketing and strategic growth manager, which would enable Respondent to use both his business and law degrees.

Respondent joined LegalForce in June 2016 and was tasked with improving revenue and billing. After receiving training on filing trademark applications from Jessica Tam at the Mountain View office, Respondent established himself in the Tempe office where he oversaw firm operations carrying out tasks such as reviewing time-off requests, conducting performance reviews, evaluating key performance indicators, monitoring employee hours, and tracking billings. Additionally, Respondent managed a monthly marketing budget of \$110,000. In August 2017, Respondent was given the title “Attorney Manager”, and he served as the second

highest ranking employee in the firm after [REDACTED]. However, his functions remained primarily administrative.

Within a few months of Respondent being hired by [REDACTED] Derek Pignatelli, an attorney in the Tempe office, quit. Up until his departure, Mr. Pignatelli was responsible for reviewing the work of junior attorneys in the Tempe office. When Mr. Pignatelli quit, Respondent determined that the firm needed a subject matter expert and recommended Heather Sapp, who was ultimately hired in August of 2016.

While Respondent would continue managing day-to-day operations, Ms. Sapp oversaw the substantive work of the Tempe office's attorneys. She had extensive experience with trademarks prior to joining LegalForce and, once hired, she began to evaluate the legal work of the firm's trademark attorneys. Ms. Sapp also established a program wherein new attorneys received training that involved classroom sessions, and all their work was reviewed until Ms. Sapp was satisfied with the quality and accuracy of the filings being prepared. If Ms. Sapp determined that an attorney's work was not meeting her standards, she would recommend the attorney's termination to Respondent and the firm's Human Resources department.

The non-practitioner assistants in the India office were directly supervised by on-site managers. One such manager was Ashish Upadhye, an advocate in India who managed the TMOA team. Mr. Upadhye and other managers generally reported to Respondent although their interactions were not frequent. Ms. Sapp also provided training to the staff in the India office. And, if an attorney in the Tempe office reported to Ms. Sapp that a non-practitioner's work was deficient, Ms. Sapp would provide additional training or forward the complaint to a manager in India.

III. Respondent's Practice of Trademark Law

Prior to being hired at LegalForce, Respondent's experience in trademark law was limited to having filed one trademark application. After being hired by [REDACTED] Respondent received training on the substantive aspects of preparing a trademark application from Jessica Tam, an associate in the California office. In a little over two years after joining the firm, Respondent had served as the attorney of record in approximately 2,000 trademark applications that had been filed with the USPTO.

A. USPTO Trademark Signature Rules and Filing Methods

The USPTO trademark signature rules, which include 37 C.F.R. § 2.193(a), state that signatures on trademark documents must be "personally entered by the person named as the signatory." The USPTO's Trademark Manual of Examining Procedure ("TMEP") § 611.01(c) states that a "person (e.g., paralegal, legal assistant, or secretary) may not sign the name of a qualified practitioner or other authorized signatory." (citations omitted).

Trademark applications and their supplementing documents are prepared and filed with the USPTO using the Trademark Electronic Application System ("TEAS"). There are three different methods an individual can use to sign a trademark document with the USPTO. The "Direct Sign" ("DIRECT") method is the default signature method, and it occurs when the

trademark document preparer signs the document by typing his or her signature between forward slashes.

The second signature method is the “e-signature” (“ESIGN-ON”) method where TEAS would generate a link that the preparer could send to a third party, such as a client. After the client receives the link from the preparer, the client would enter their signature and the date on the form. Once the form is signed, an email would be sent back to the preparer telling them that the form has been signed and the document is ready to be filed.

The third signature method is the “handwritten” signature method where the signatory signs their own name to the trademark document in pen and ink, and sends it to the preparer (if they are not the same person) to be filed with the USPTO.

B. LegalForce Trademark Filing Processes Prior to June 2018

After a client submitted information through the Trademarkia website and paid to file an application, LegalForce assistants in India reviewed the information and sent a search to an attorney in the U.S. The attorney reviewed the information from the assistants in India and wrote an advisement letter to the client. If the information was approved by the client, the attorney would then send it to India for filing.

With respect to Statements of Use, Responses to Office Actions, and Section 8 Declarations of Use, legal assistants in the U.S. contacted the client, collected information from the client, and then sent it to the attorney. If approved, the attorney would send the information to the TMOA team in India for filing.

Once the application, Statement of Use, Response to Office Action and Section 8 Declaration of Use arrived in India for filing, if the trademark document required a client’s signature, a non-practitioner assistant in India typically signed the document by typing the client’s name between two forward slashes as the client’s signature instead of forwarding an ESIGN-ON link to the client for them to personally sign. After the filing was submitted, the USPTO issued a filing receipt to the filer that included the IP address of the computer that made the submission.

Between June 2017 and May 2018, Respondent was the attorney of record in over fifty (50) filings that required a client’s signature. Those filings included, among others, Section 8 Declarations of Use, Powers of Attorney, and Statements of Use. Each of the trademark filings bore what purported to be the applicant’s DIRECT electronic signature indicating that the client personally entered their signature onto the form from their computer. And, although the clients were primarily located across the U.S., the IP addresses showed that the documents were signed and filed from one of three computers located in India.

At the time these filings were submitted to the USPTO, Respondent assumed that the clients personally signed the trademark documents in their name. However, without being sent an ESIGN-ON link, a client could not enter their signature in the declaration unless they personally prepared the document for filing.

IV. Client Signatures Issue

In June 2018, Respondent was made aware that non-practitioner assistants in India may have had a regular practice of signing the names of LegalForce clients onto trademark documents that were filed with the USPTO. Specifically, [REDACTED] informed Respondent about an email [REDACTED] received wherein Kanchan Vaidya, a non-practitioner assistant in India disclosed, "The declaration portion has not been signed by the client personally. As per our regular practice here also we have signed on behalf of the client."

Respondent and [REDACTED] promptly investigated the matter and temporarily froze all PTO filings. Respondent spoke with Ms. Sapp and other attorneys in the Tempe office who did not think it was the firm's policy for the legal assistants to sign client's names. After speaking with Ms. Vaidya who recanted her statement, Respondent concluded the issue was an isolated one. Nevertheless, Respondent determined it would be appropriate for the attorneys in the office to receive training on the USPTO signature rules. Following that training, employees were required to execute a new "Professional Responsibility Commitment" that confirmed the signature policy of the firm was to have the signatories personally enter their names on documents.

Since the June 2018 incident, Mr. Bethell is unaware of any signature policy deviation. The *Complaint* alleges none.

V. The OED's Investigation

In 2018, the OED began investigating LegalForce's signature practices. During the course of its investigation, the OED sent Respondent three Requests for Information and Evidence ("RFIs") dated September 26, 2018 ("First RFI"), November 30, 2018 ("Second RFI"), and January 11, 2019 ("Third RFI"). Respondent timely responded to each RFI and participated in an in-person interview with OED staff attorneys on February 25, 2019.

A. The First RFI

The First RFI informed Respondent that, according to USPTO's records, he was attorney of record in approximately 2,000 trademark applications. The First RFI specifically identified 22 such applications and requested, in pertinent part, that Respondent describe the process by which the applicant's signature was entered on a trademark document, and that Respondent explain whether the ESIGN-ON method was used to sign the applicant's name. The First RFI also requested Respondent provide all correspondence between his clients and LegalForce "regarding documents to be filed with the Office, including specifically email communications to the applicant (e.g., those transmitting the USPTO's TEAS ESIGN-On link to the applicant)."

Respondent obtained outside ethics counsel to submit his response, which was dated October 25, 2018. Among his responses was his statement that it was LegalForce's policy to have clients personally sign documents in their name. However, Respondent did not explain whether the ESIGN-ON method was used to sign the applicant's name on documents pertaining to the 22 trademark applications identified. Respondent also declined to provide any communications to or from clients, because of attorney-client confidentiality and privilege.

B. The Second RFI

The OED sent Respondent the Second RFI stating that Respondent “may have knowingly engaged in a long-standing pattern, practice, procedure, or policy of routinely allowing persons other than the named signatory to enter the keystrokes constituting the electronic signature of the named signatories in matters for which [he was] the practitioner of record at the time of the filings” The Second RFI specifically identified six filings in which that practice may have occurred and requested information and documentation related to the suspected misconduct.

Respondent investigated the allegation and responded to the Second RFI. In the response dated January 7, 2019, Respondent explained that he had no first-hand knowledge of the exact procedure used by the non-practitioner assistants to obtain a client’s signature. However, he also stated that it was the firm’s policy for paralegals to send ESIGN-ON links to clients when documents require a client signature. And, after the client’s signature has been obtained, the paralegal “is to send the signature link to an attorney for final approval.”

C. The Third RFI

Shortly after Respondent responded to the Second RFI, the OED issued the Third RFI asking, in pertinent part, for Respondent to provide all emails with ESIGN-ON signature links that were sent to clients “from the six-month period from January 1, 2018 through June 30, 2018.”

Respondent again conducted an investigation for his response dated January 17, 2019. Respondent, through counsel, informed the OED that he “was able to find a number of responsive documents; and has selected a reasonable amount to provide to the OED.” The response further stated, “Please note it is impractical for Mr. Bethell to produce six months worth [sic] of documents, as the time and expense involved in creating and redacting the entire dataset would be cost prohibitive.” Additionally, Respondent also noted that neither he nor the firm had access to metadata from the trademark filings that would identify the signature method used. Respondent explained that he and the firm intended to communicate with clients whose trademark applications were implicated by the impermissible signature practice, and requested a list of filings that the OED believes were impermissibly signed.

D. Respondent’s Interview with OED Attorneys.

Respondent met with OED attorneys for an in-person interview on February 25, 2019. During the interview, Respondent clarified that he was only able to locate a few signature links that had been sent to clients. And, to the extent that his prior response suggested that his investigation uncovered numerous signature links being sent to clients, he wished to correct the misunderstanding. During the interview, Respondent’s counsel also reiterated the difficulty Respondent was having trying to verify the information alleged in the RFIs and requested a list of affected filings. That request was denied.

VI. Respondent's Communications with Clients

Around the time OED initiated its investigation of Respondent, other attorneys within the firm also received RFIs identifying potential issues with their clients' signatures on documents filed with the USPTO. In December 2018, [REDACTED] drafted and sent an email to clients who had been identified on RFIs issued to LegalForce's attorneys. That communication was couched as a client satisfaction survey of sorts and did not inform the recipient-clients of the signature issue on their trademark filings. Rather, the email vaguely asked clients to confirm they signed the declaration portion of the filing without any context.

Having been unable to determine which trademark filings were potentially affected by the impermissible signature practice, the firm sent an email to thousands of the clients in March 2019. This new communication informed clients that their signatures were impermissibly signed in their trademark filings, but did not disclose that LegalForce's non-practitioner assistants were at fault. The email vaguely referred to "adverse legal rights" potentially arising from the signature issue and asked clients to ratify their signature. The email also informed clients that the failure to respond would be deemed to be a ratification of their signatures on affected documents. Some clients responded and affirmatively ratified their signatures, and the firm filed those ratifications with the USPTO.

In August 2019, Respondent sent email to clients regarding the signature issue. Although the language of the email was similar to the previous communication, the purpose of this new email was to reach clients who did not respond to the previous inquiry. Additionally, Respondent wanted to explicitly inform the clients about the potential harm to their trademarks and explain that the USPTO suspected the firm was responsible for the impermissible signatures. Legalforce filed the ratifications it received from clients who responded to the August email ratifying their signature.

In October 2019, following the Parties exchange of exhibits in this matter, Respondent emailed the clients identified in the OED Director's September 17, 2019 disclosure. The substance of this email was similar to the one sent in August 2019 and LegalForce filed the ratifications it received in response with the USPTO.

DISCUSSION³

The *Complaint* alleges Respondent engaged in misconduct relating to (I) Respondent's actions or omissions as the attorney of record in trademark filings; (II) Respondent's failure to supervise LegalForce's practitioners and non-practitioner assistants; and (III) Respondent's failure to cooperate with the OED's investigation.

³ The Court has considered all issues raised and all documentary and testimonial evidence both in the record and presented at hearing. Those issues not discussed herein are not addressed because the Court finds they lack materiality or importance to the decision.

I. Misconduct Arising from Respondent’s Representation of LegalForce Clients

Respondent was the attorney of record in approximately 2,000 trademark applications by the time the OED began its investigation of him. In this capacity, Respondent is alleged to have engaged in misconduct because he caused trademark documents to be filed with the USPTO that were impermissibly signed by non-practitioner assistants.

A. Respondent failed to act diligently.

The OED Director claims Respondent failed to act diligently because he did not ensure that his clients’ trademark documents were appropriately signed before they were filed with the USPTO.

Practitioners are required to act with reasonable diligence and promptness in representing a client. 37 C.F.R. § 11.103. A diligent lawyer acts “with commitment and dedication to the interests of the client.” *In re Aquilla*, Proceeding No. D2022-27 at 4 (USPTO Jan. 27, 2023) (quoting MODEL RULES OF PROFESSIONAL CONDUCT r. 1.3 cmt.1 (AM. BAR ASS’N 2018)).⁴ “Reasonable . . . when used in relation to conduct by a practitioner means the conduct of a reasonably prudent and competent practitioner.” *In re Flindt*, Proceeding No. D2016-04 at 20 (USPTO Aug. 4, 2017) (citing 37 C.F.R. § 11.1). Whether a practitioner fails to act reasonably in terms of this rule cannot be resolved by a categorical determination of what constitutes diligence and promptness but must be examined in context of the surrounding circumstances. *In re Pasquine*, Proceeding No. D2019-39 at 11 (USPTO Mar. 28, 2022) (final order).

There is clear and convincing evidence that LegalForce’s non-practitioner assistants were engaged in the impermissible practice of signing clients’ names to trademark filings submitted to the USPTO.⁵ This occurred on numerous filings for which Respondent was the attorney of record. And, although Respondent did not direct non-practitioner assistants to engage in such a practice, Respondent never verified whether or how his clients’ signatures were being entered onto documents he directed to be filed with the USPTO. After the impermissible signature practice came to light, Respondent asked other attorneys at the firm but he never personally confirmed with the very non-practitioner assistants he tasked with that responsibility.

The task of obtaining client signatures is ministerial, but it is nevertheless important because the signatory declares that the facts stated in the document are truthful. Respondent should not have delegated the task unless he could reasonably ensure that it was being carried out as required by law. Accordingly, the Court finds that Respondent failed to act with reasonable diligence in violation of 37 C.F.R. § 11.103. See *Pasquine*, Proceeding No. D2021-04 at 5 (USPTO May 12, 2021) (initial decision finding a practitioner violated § 11.103 by failing to

⁴ USPTO disciplinary decisions cited herein are available at <https://foiadocuments.uspto.gov/oed/>.

⁵ Such evidence includes documents submitted by the OED Director and witness testimony to include Respondent’s own admission that, based on his investigations into the issue, LegalForce’s non-practitioner assistants in India entered client signatures in most applications. Moreover, Respondent’s claim that there was no way to verify which documents were signed via the DIRECT method and which were signed using the ESIGN-ON method without receiving a list from the USPTO is unpersuasive. Had the team in the India office followed the firm’s ESIGN-ON procedures, there would have been outgoing and incoming emails for each filing. That Respondent could only find a handful was telling.

ensure that her client's trademark filings were compliant with the USPTO trademark signature rules.).

B. Respondent did not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The *Complaint* alleges Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation by having non-practitioner assistants submit trademark documents to the USPTO that were not signed by the named signatory.

The USPTO disciplinary rules require that practitioners shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. 37 C.F.R. § 11.804(c). Deceit is dishonest behavior or behavior that is meant to fool or trick someone. *In re Fred Lane*, Proceeding No. D2013-07 at 14 (USPTO Mar. 11, 2014). A misrepresentation is the act of making a false or misleading assertion about something, usually with the intent to deceive, and includes not just written or spoken words but also any other conduct that amounts to a false assertion. *Id.* (citing *Black's Law Dictionary* (9th ed. 2009)).

The Court finds that Respondent did not have the requisite intent necessary for a violation of this disciplinary rule. The record is devoid of evidence that Respondent instructed non-practitioner assistants to sign clients' names to trademark filings. And, notwithstanding the fact that Respondent's lack of diligence was the reason he failed to prevent or even uncover this practice in on cases for which he was the attorney of record, there was no malintent or any intent for that matter. Accordingly, the Court finds Respondent's conduct did not constitute a violation of 37 C.F.R. § 11.804(c). See *In re Piccone*, Proceeding No. D2015-06 at 48 (USPTO June 16, 2016) (finding that the OED Director did not present clear and convincing evidence that a respondent's actions were anything more than negligent, and the most that could be inferred is that the respondent simply did not engage in the necessary due diligence.); *Atty. Griev. Comm'n of Md. v. Ruddy*, 981 A.2d at 665 (finding that an attorney's proffer of incorrect information was not intentional or deceitful, and did not violate the rule because he did not knowingly misrepresent facts to the court").

C. Respondent's conduct was not prejudicial to the administration of justice.

The *Complaint* alleges that, by having non-practitioner assistants file impermissibly signed trademark documents on his behalf, Respondent engaged in conduct prejudicial to the administration of justice.

The USPTO disciplinary rules state that it is misconduct for a practitioner to engage in conduct that is prejudicial to the administration of justice. 37 C.F.R. § 11.804(d). Such misconduct includes "conduct which impedes or subverts the process of resolving disputes" or "frustrates the fair balance of interests or 'justice' essential to litigation or other proceedings." *In re Friedman*, 23 P.3d 620, 628 (Alaska 2001). Generally, an attorney engages in such conduct when his behavior negatively impacts the public's perception of the courts or legal profession or undermines public confidence in the efficacy of the legal system. *Att'y Grievance Comm'n v. Rand*, 981 A.2d 1234, 1242 (Md. 2009). Misconduct that is prejudicial to the administration of

justice does not require a mental state other than negligence. *In re Martinez*, 248 Ariz. 458, 467, 462 P.3d 36, 45 (2020).

Here, Respondent delegated the important responsibility of collecting client signatures to non-practitioner assistants who failed to carry out the task in compliance with the USPTO rules. However, Respondent's conduct only implicates his own lack of diligence and does not undermine the public's perception of the legal profession or the USPTO. Moreover, Respondent's efforts to avoid potential injury to clients by filing ratifications with the USPTO mitigates the potential adverse impact on the administration of justice. Accordingly, the Court finds Respondent did not violate this disciplinary rule. See *In re Kroll*, Proceeding No. D2014-14 at 17 (finding a practitioner's neglect of his duties and failure to conduct an adequate inquiry for his client was not prejudicial to the administration of justice).

D. Respondent reasonably communicated the signature issue with clients.

The *Complaint* alleges Respondent engaged in misconduct because he did not promptly or adequately inform all his clients of their impermissibly signed trademark filings, the actual or potential consequences arising from the impermissible signature practices, or whether corrective action was needed. Respondent disputes the allegations as they are predicated on the disproven theory that Respondent failed to act despite knowing of the impermissible signature practice.

A practitioner is required to "keep the client reasonably informed about the status of the matter." 37 C.F.R. § 11.104(a)(3). In addition, a practitioner must also explain the matter "to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." 37 C.F.R. § 11.104(b).⁶

Respondent testified credibly that he believed non-practitioner assistants were having clients sign trademark documents using the E-SIGN-ON method at the time said documents were being prepared and filed with the USPTO. He also testified credibly that he first understood there were concerns that non-practitioner assistants in the India office had been impermissibly signing clients' names to trademark documents after he received the Second RFI in late November of 2018.

It was not until March 2019, in an email sent by [REDACTED], that clients were first informed of an actual signature issue on their trademark filings.⁷ This communication was not explicit in explaining that the firm's non-practitioner assistants were responsible, and it only referred to potential adverse consequences in general. Therefore, after the *Complaint* was filed, Respondent personally followed up with clients in August 2019 hoping to remedy the deficiencies with prior communications and to encourage clients to respond who had not previously done so.

⁶ The OED Director conflates the requirements of promptness and reasonableness in client communications. The two provisions of this rule that Respondent is alleged to have violated do not explicitly require promptness—only reasonableness. Of course, a consideration of timeliness may be appropriate in determining whether acts or omissions were reasonable. But, that should not be the only consideration.

⁷ [REDACTED] December 2018 communication that was sent to the clients did not satisfy the duty of communication, because the communication did not reasonably inform or advise clients of the signature issue.

The Court finds Respondent's clients were reasonably informed of the signature issue and Respondent sufficiently explained the matter permitting clients to make informed decisions regarding the representation. Although Respondent was not expeditious in informing his clients, his delay was reasonable given he always assumed his clients had personally signed the documents and he had difficulty confirming the OED's allegations of impropriety. After it was evident to Respondent that the impermissible signature issue was more widespread than previously believed, Respondent took steps to notify clients and satisfy his duty of communication. Accordingly, the Court finds Respondent did not violate this disciplinary rule.

E. Respondent did not violate his duty of candor to the USPTO.

The *Complaint* claims Respondent failed to inform the Trademark Operations office that impermissibly signed declarations were filed with the USPTO, and failed to correct the false representation that clients had personally signed the documents.

Practitioners shall not knowingly fail to correct a false statement of material fact or law previously made to the USPTO. 37 C.F.R. § 11.303(a)(1). If a practitioner comes to know that the evidence they offered to the USPTO is false, the practitioner is required to take reasonable remedial measures, which may include disclosure to the USPTO. *Id.* at § 11.303(a)(3). If a practitioner representing a client before the USPTO knows that a person intends to engage in fraudulent conduct, the practitioner shall take remedial measures such as notifying the USPTO. *Id.* at § 11.303(b). Also, in an *ex parte* proceeding, the practitioner is required to inform the USPTO of all material facts known to the practitioner that will enable the USPTO to make an informed decision, regardless of whether the facts are adverse. 37 C.F.R. § 11.303(d).

An essential element of Respondent's duty of candor towards the USPTO is knowledge. Indeed, each of the disciplinary rules cited in the preceding paragraph use some form of the words "know" which is defined as having "actual knowledge of the fact in question." *Id.* § 11.1. The definition further explains that "a person's knowledge may be inferred from the circumstances." *Id.*

As stated *supra*, Respondent believed clients were personally signing documents via the ESIGN-ON method before the documents were filed with the USPTO. He did not have firsthand knowledge that non-practitioner assistants were impermissibly signing clients' names to trademark filings. However, Respondent eventually reached this conclusion when he could not find emails that would indicate non-practitioner assistants were obtaining client signatures via the ESIGN-ON method. Still, Respondent could not definitively determine which filings were impermissibly signed by non-practitioner assistants in order to notify the Trademark Operations office and take other remedial measures. Respondent requested a list of the offending filings from the USPTO on different occasions but was not provided with one. Eventually, Respondent reached out to all clients who may have been affected by the impermissible signature practice so they could ratify their signatures on the documents. This effort resulted in Respondent being able to identify some of the filings that were not appropriately signed and cure such defects by filing the client's ratification. Accordingly, the Court finds Respondent complied with his duty of candor toward the USPTO.

II. Failure to Supervise

The OED Director also claims Respondent violated the disciplinary rules in his capacity as an Attorney Manager at LegalForce. Specifically, Respondent failed to provide proper oversight of LegalForce attorneys and non-practitioner assistants and did not take remedial actions such as timely informing clients and the USPTO when the impermissible signature practice was discovered.

A. Respondent made reasonable measures to reasonably assure the firm's employees complied with the disciplinary rules.

The *Complaint* alleges Respondent failed to provide proper oversight of the firm's attorneys and non-practitioner assistants, because the attorneys did not adequately oversee the assistants to whom the task of submitting filings was delegated, and did not conduct an audit to ensure compliance with the USPTO's signature rules. As such, the OED Director claims Respondent, as the Attorney Manager, violated the disciplinary rules by not assuring measures were in place at the firm to avoid these issues.

A practitioner who possesses managerial authority comparable to that of a partner shall make reasonable efforts to ensure measures are in place reasonably assuring that the conduct of all practitioners in the firm conforms to the disciplinary rules. 37 C.F.R. § 11.501(a). Similarly, measures must also be in place to reasonably assure that the conduct of non-practitioner assistants in the firm is compatible with professional obligations of the practitioner. *Id.* at §11.503(a).

Respondent was the second highest ranking person at the firm after the owner, [REDACTED] [REDACTED] Shortly after he was hired, he began the process of hiring an attorney who could serve as a subject matter expert. In Ms. Sapp, Respondent found a specialist in trademark law who could train and supervise the firm's attorneys and legal assistants and review the quality of the work being done. Respondent believed Ms. Sapp was very detailed and meticulous when reviewing trademark documents prepared by legal staff.

To ensure compliance with the ethics rules, the firm offered training and continuing legal education to its employees and employed procedures for performing conflicts checks. The firm had an IOLTA account and required written engagement agreements.

At all relevant times, LegalForce's policy was to have clients personally sign documents in their name. However, as demonstrated, that policy was not followed by some of the non-practitioner assistants in the India office. When the impermissible signature practice was first suggested, Respondent immediately froze filings with the USPTO until it was determined that non-practitioner assistants understood that clients must personally sign their declarations. Attorneys and legal assistants received additional training on acceptable signature practices and were required to execute an annual Professional Responsibility Commitment, which reinforced the firm's client signature policy. Respondent also hired outside auditors to conduct compliance checks. There is no evidence that the impermissible signature practice continued after these efforts.

Even the best-laid plans go astray. The disciplinary rules (37 C.F.R. §§ 11.501(a) and 11.503(a)) seem to acknowledge this by requiring only *reasonable* efforts that give *reasonable* assurances that practitioners and non-practitioners act ethically. Although the firm's policies and processes were insufficient to prevent certain non-practitioner assistants from violating the USPTO's signature rules, Respondent's efforts were reasonable. Accordingly, the Court finds Respondent did not engage in the misconduct alleged here.

B. Respondent did not have direct supervisory authority over the firm's attorneys or non-practitioner assistants.

The OED Director also claims Respondent violated the disciplinary rules because he had direct supervisory authority over practitioners who failed to oversee the non-practitioner assistants submitting the trademark filings and who failed to conduct an audit of client signatures on the documents. Similarly, the OED Director claims Respondent had direct supervisory authority over non-practitioner assistants who engaged in the impermissible signature practice and, as their direct supervisor, he failed to conduct an audit of the signatures on documents being prepared.

The disciplinary rules require that a practitioner that has direct supervisory authority over another practitioner must make reasonable efforts to ensure that the subordinate practitioner conforms to the USPTO Rules of Professional Conduct. 37 C.F.R. § 11.501(b). Similarly, a practitioner that has direct supervisory authority over a non-practitioner assistant must also make reasonable efforts to ensure that the non-practitioner's conduct is compatible with the professional obligations of the supervising practitioner. *Id.* at § 11.503(b).

The OED Director has not provided clear and convincing evidence that Respondent was the direct supervisor of the trademark attorneys. The record reflects that Respondent generally handled administrative matters and was the manager concerned with the business aspects of LegalForce. As found above, Respondent was instrumental in the hiring of Ms. Sapp who directly supervised the work of trademark attorneys and answered their questions related to the firm's legal work. Shortly after she was hired, Ms. Sapp created a bonus program and personally reviewed the performance of each attorney in the firm. Ms. Sapp determined when attorneys should be terminated and made those recommendations to Respondent who would review the matter with the firm's Human Resources personnel. Certainly, as the second highest ranking employee of the firm, Respondent held supervisory authority over all employees. However, he did not *directly* review or oversee the substantive work of trademark attorneys. Rather, for all intents and purposes, Ms. Sapp was the direct supervisor of the firm's trademark attorneys. Accordingly, the Court finds Respondent did not violate 37 C.F.R. § 11.501(b).

Additionally, the evidence establishes that Respondent was not the direct supervisor of the non-practitioner assistants engaged in the impermissible signature practice. Instead, those assistants were directly supervised by local managers in the India office and Ms. Sapp generally handled their trainings. The record does not reflect that Respondent had day-to-day interaction with the non-practitioner assistants (or their local managers) even when they handled the filing of trademark documents in applications for which Respondent was the attorney of record. As such, Respondent did not have direct supervisory authority over the non-practitioner assistants that

engaged in the impermissible signature practice. Respondent, therefore, did not violate 37 C.F.R. § 11.503(b).

C. Respondent took appropriate remedial action.

The *Complaint* alleges that when the impermissible signature practice was discovered, Respondent, as the Attorney Manager, failed to take reasonable remedial action to include ensuring that clients and the USPTO were timely notified, and that clients' signatures on affected trademark documents could be timely ratified and submitted to the USPTO. As a result, the OED Director claims Respondent is responsible for the misconduct of LegalForce's attorneys and non-practitioner assistants who were implicated in the impermissible signature practice.

A practitioner shall be responsible for another practitioner's violation of the disciplinary rules if the former has managerial authority in the firm and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. 37 C.F.R. § 11.501(c)(2). A practitioner will similarly be responsible for the misconduct of non-practitioner assistants if the practitioner fails to take reasonable remedial action. *Id.* at § 11.503(c)(2).

Respondent consistently and credibly testified that he believed Legal Force's attorneys and non-practitioner assistants were sending clients E-SIGN-ON links to complete their declarations. Later, once Respondent reached the conclusion that non-practitioner assistants were, in fact, engaged in the impermissible signature practice, he attempted to uncover which clients and trademark applications were affected. Respondent's efforts in this regard were not very successful so the firm eventually emailed all clients, who may have been affected, to inform them of the issue and to seek their ratifications for filing with the USPTO. Accordingly, the Court finds that Respondent is not responsible for the misconduct of others arising from the impermissible signature practice because he took reasonable, remedial action.

III. Respondent did not fail to cooperate with the OED's investigation.

Last, the *Complaint* alleges Respondent engaged in misconduct by failing to cooperate with the OED's disciplinary investigation of him. Specifically, the OED Director claims Respondent gave false or misleading responses that impliedly represented to the OED that E-SIGN-ON signature requests were routinely being generated by non-practitioner assistants and sent to clients.

A practitioner, in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, fail to cooperate with an OED investigation, or fail to respond to a lawful demand for information. 37 C.F.R. § 11.801(b).

Following the OED's request that Respondent provide all emails during a six-month period where LegalForce sent an E-SIGN-ON signature link to a client, Respondent conducted a preliminary search for such emails. The search proved to be very time-consuming, because it first required a manual search through individual trademark applications followed by a search of

email databases.⁸ Respondent only found a few, which was far less than there should have been. However, rather than explaining this to the OED, Respondent stated that he found “a number” of responsive documents but was only providing “a reasonable amount” because “the time and expense involved in creating and redacting the entire dataset would be cost prohibitive.”

The Court finds Respondent’s response was disingenuous because the wording and vagueness would reasonably lead a reader to assume precisely what Mr. Reitz did—that there existed too many emails proving E-SIGN-ON signature links were being sent to clients to provide them all. However, there is not clear and convincing evidence that Respondent intended to mislead the OED. And, most importantly, once Mr. Reitz’s interpretation of Respondent’s statements was made known at their in-person interview, Respondent corrected the misunderstanding and later submitted a supplemental response memorializing the clarification he made during the interview. Accordingly, the Court finds Respondent did not violate 37 C.F.R. § 11.801(b).

The OED Director also claims Respondent’s alleged failure to cooperate with the OED resulting from his false statement implicates the USPTO’s disciplinary rules proscribing conduct involving dishonesty, fraud, deceit or misrepresentation (37 C.F.R. § 11.804(c)); and conduct that is prejudicial to the administration of justice (37 C.F.R. § 11.804(d)). However, the Court has found that Respondent did not fail to cooperate with the OED’s investigation. Moreover, there is no evidence that Respondent had the requisite intent to deceive or that the OED’s investigation, or the administration of justice, was prejudiced because Respondent corrected the misunderstanding when it came to his attention.

SUMMARY OF VIOLATIONS FOUND

Based on the foregoing, the Court finds clear and convincing evidence exists to show that Respondent engaged in misconduct in violation of the USPTO disciplinary rules. Specifically, Respondent failed to act with reasonable diligence in violation of 37 C.F.R. § 11.103, because he delegated the important task of obtaining client signatures to non-practitioner assistants without ensuring they were carrying out their duties appropriately.⁹

SANCTIONS

The OED Director requests that the Court sanction Respondent by entering an order imposing a one-year suspension from practice before the Office. Before sanctioning a practitioner, the Court must consider the following four factors:

- (1) Whether the practitioner has violated a duty owed to a client, to the public, to the legal system, or to the profession;

⁸ At the time, Respondent did not know how to determine whether declarations had been signed via the DIRECT method or the E-SIGN-ON method.

⁹ The Complaint also charges multiple violations of 37 C.F.R. § 11.804(i), which is a catchall provision barring “other conduct that adversely reflects on the practitioner’s fitness to practice before the Office.” However, the OED Director has not alleged or provided evidence of “other conduct” and is deemed to have waived these claims.

- (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). When considering if and what sanction is appropriate, “[w]e start from the premise that protection of the public and bar, not punishment, is the primary purpose of attorney discipline and that we must accordingly consider relevant mitigating and aggravating circumstances.” *In re Burmeister*, Proceeding No. D1999-10 at 11 (USPTO Mar. 16, 2004) (quoting *Coombs v. State Bar of California*, 779 P.2d 298, 306 (Cal. 1989)).

1. Respondent violated his duty to his clients.

The practitioner-client relationship is a fiduciary relationship in which the practitioner owes the client a duty to represent his or her interests diligently and in good faith. See *Moatz v. Bender*, Proceeding No. D00-01, at 20 (USPTO Sept. 30, 2003) (“Respondent owed a fiduciary duty individually to each of his clients.”); *Carter v. ALK Holdings, Inc.*, 605 F.3d 1319, 1325 (Fed. Cir. 2010) (referencing patent practitioner’s expected fiduciary duties to clients); see also *In re Petition of Bd. of Law Examiners, Examination of 1926*, 210 N.W. 710, 711 (Wis. 1926) (“An attorney occupies a fiduciary relationship towards his client. It is one of implicit confidence and of trust. . . . There is no field of human activity which requires fuller realization with respect to fiduciary relationship than that which exists between the lawyer and his client.”). 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)).

Respondent breached his duty owed to his clients because he failed to act diligently. Respondent admitted that, during the relevant times in question, he never had first-hand knowledge as to how non-practitioner assistants were obtaining client signatures on trademark documents filed with the USPTO. And yet, he consistently delegated this important task without ever confirming that it was being carried out in compliance with the USPTO’s rules. Rather, Respondent merely assumed non-practitioner assistants were sending clients ESIGN-ON links which resulted in his clients’ trademark filings being deficient. However, after Respondent was informed of the impermissible signature practice, he investigated the matter and eventually reached out to clients in an attempt to cure the defective filings.

The Court does not find that Respondent violated any duty to the public, the legal profession, or the USPTO. Respondent did not have the requisite knowledge required for him to report the defective trademark filings to the USPTO, because he could not independently confirm which trademark filings were impermissibly signed. To the extent that Respondent was able to cure a potentially defective filing with a client’s ratification, he did so. Accordingly, the Court finds Respondent’s misconduct violated his duty to his clients only and did not implicate the legal profession or the USPTO.

2. Respondent's misconduct was negligent.

Respondent's conduct was negligent. "Negligence is the failure to take reasonable care." *In re Flindt*, Proceeding No. D2016-04 at 52. Respondent did not act with reasonable care, because he delegated the important task of obtaining client signatures to non-practitioner assistants without ensuring they would carry out this function appropriately. Although it was the firm's policy for clients to personally sign documents requiring their signature, Respondent never verified that non-practitioner assistants were in compliance. Accordingly, Respondent's conduct was negligent.

3. Respondent's misconduct did not cause actual or potential injury.

There is no evidence of an actual injury to Respondent's clients. However, there is evidence that Respondent's misconduct has the potential to cause actual injury to the clients, because their trademark registrations could be subject to cancellation. Still, the potential injury was minimized to the extent that Respondent took remedial measures by filing ratifications on behalf of some of his clients.

4. Aggravating and mitigating factors exist in this case.

The Court often looks to the ABA's Standards for Imposing Lawyer Sanctions ("ABA Standards") when determining whether aggravating or mitigating factors exist. See *In re Chae*, Proceeding No. D2013-01, slip op. at 4 (USPTO Oct. 21, 2013). A review of the record reveals that an aggravating factor exists but it is offset by the mitigating factors in this case.

Respondent engaged in a pattern of misconduct, which is an aggravating factor. Respondent's lack of diligence spanned nearly a year and impacted not less than fifty trademark filings. The period over which this misconduct occurred demonstrates that Respondent did not have a momentary lapse in judgement. Rather, he continually failed to act diligently in representing his client's trademark matters before the USPTO.

As to mitigating factors, the record reflects that Respondent does not have a prior history of discipline. Additionally, the Court finds Respondent to be remorseful and his regret about not discovering and eliminating the impermissible signature practice sooner was sincere. Finally, Respondent took affirmative steps to rectify the potential consequences of his misconduct by contacting clients who may have been affected and attempting to help them cure the defective signatures.

The Court has considered the factors set forth in 37 C.F.R. § 11.54(b) to include additional aggravating and mitigating factors and determines that a sanction is warranted. Respondent's conduct was negligent, but not egregiously so. And, Respondent had made efforts to mitigate the potential injury to his clients' trademark rights. Accordingly, the one-year suspension sought by the OED Director is not warranted in this case. See *In re Flindt*, Proceeding No. D2016-04 at 57 (The USPTO disciplinary rules must be upheld, but "the penalty assessed should be proportionate to the violation committed."). On the facts of this case, the Court finds a public reprimand will sufficiently serve the purpose of deterring similar conduct and protecting the public. *In re Hill*, Proceeding No. D2001-06 at 12 (USPTO July 26, 2004)

(final order stating, “A public reprimand puts all practitioners on notice of a problem of due care that may be of greater likely consequence to other potential clients than it was to the client here.”).

CONCLUSION AND ORDER

The OED Director met his burden to prove by clear and convincing evidence that by lack of diligence in assuring his clients’ signatures on patent applications were properly made, Respondent engaged in misconduct in violation of the USPTO disciplinary rules. After consideration of the factors set forth in 37 C.F.R. § 11.54(b), the Court finds to be warranted a sanction of **PUBLIC REPRIMAND**.

The OED Director shall publish a notice in the USPTO Official Gazette that is materially consistent with the following:

Notice of Public Reprimand

This notice concerns Ryan Bethell, of Tempe Arizona, a non-registered practitioner, who is hereby publicly reprimanded for violating 37 C.F.R. §§ 11.103. The violations are predicated on non-practitioner assistants electronically signing numerous USPTO trademark filings on behalf of named signatories in violation of the USPTO trademark electronic signature regulations and guidance in trademark matters where Mr. Bethell was the attorney of record. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline’s Reading Room located at: <https://foiadocuments.uspto.gov/oed/>.

So **ORDERED**.


J. Jeremiah Mahoney
United States Administrative Law Judge

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **DECISION AND ORDER** issued by J. Jeremiah Mahoney, Administrative Law Judge, in D2019-42, were sent to the following parties on this 20th day of November 2023, in the manner indicated:



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