

**IN RE: MAUREEN STRETCH****NO. BD-2012-091****S.J.C. Order of Term Suspension entered by Justice Lenk on October 2, 2012.¹****SUMMARY²**

The respondent received a six-month suspension with conditions for her misconduct as set forth below in two counts.

In Count One, the respondent registered as a patent attorney with the United States Patent and Trademark Office (USPTO) on June 21, 1979, and had remained registered in that capacity since that time. In order to register initially, she was required to be a member in good standing of a state bar. The respondent has never been admitted to practice law in any other jurisdiction besides the Commonwealth of Massachusetts and the USPTO.

For the billing period commencing June 1, 2002, the respondent failed to timely pay her annual attorney registration fee to the Board of Bar Overseers. The respondent intentionally allowed her active registration to lapse. On March 4, 2003, the respondent was administratively suspended from the practice of law in Massachusetts pursuant to S.J.C. Rule 4:03(2) for her failure to pay her annual attorney registration fee. The respondent failed after April 5, 2003, to comply with the provisions of S.J.C. Rule 4:01, § 17, as required by S.J.C. Rule 4:03, § 3. Despite receipt of notices from bar counsel, she failed to close her IOLTA account and to file with bar counsel an affidavit of compliance. The respondent has been suspended continuously from March 2003, and she has not closed out her IOLTA account or filed compliance forms.

After March 4, 2004, the respondent held herself out orally, on letterhead, and in billings as an attorney with an office in Massachusetts without any limitation to the area of patent law and without any disclosure that she was not permitted to practice in Massachusetts.

By failing to comply with the requirements of S.J.C. Rule 4:01, §17, and by holding herself out as an attorney at law authorized to practice in Massachusetts after her administrative suspension, the respondent violated Mass. R. Prof. C. 3.4(c), 7.1, 7.5(a) and 8.4(c), (d) and (h).

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

² Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

In Count Two, on March 23, 2004, a client contacted the respondent about a patent she wished to obtain. The client retained the respondent on the basis of an oral fee agreement to review a card-based data storage system that the client had created and to make a preliminary determination whether the system could be patented. The respondent agreed to perform this work for \$900.

The respondent informed the client that she was a “licensed attorney in the State of Massachusetts.” The respondent did not inform the client that she was administratively suspended from the practice of law in Massachusetts.

At all relevant times, it was the policy of the Office of Enrollment and Discipline at the USPTO that an attorney who was administratively suspended by a state court from the practice of law for a non-disciplinary matter could still act in the capacity of a licensed patent attorney.

The respondent reviewed the client’s invention and made a preliminary determination that it could be patented. The client and the respondent agreed that the respondent would prepare, file, and prosecute a patent application for the client and would charge for these services at the rate of \$175 per hour. The respondent estimated that the cost would be no more than \$12,000 to \$13,000. Between March 24, 2004, and November 24, 2004, the client paid the respondent in periodic payments a total fee, inclusive of the \$900 of \$13,450, which included a USPTO fees of \$1,145.

On July 6, 2004, the respondent filed with the USPTO an application for a patent on the client’s invention and other documents. Due to a mathematical miscalculation or a miscounting of the number of claims submitted with the application, the respondent failed to include with the application all of the fees the application required. The respondent’s payment of \$1,145 of fees was \$27 short.

On July 19, 2004, the respondent sent a letter to the client advising her that the patent application had been filed. The respondent headed the letter “Attorney at Law” and stated that the contents were “subject to attorney-client privilege.” The letter assured the client that the respondent would inform the client whenever she received documents or communications from the patent office and would send her copies. The respondent correctly told the client in the letter that there was a substantial backlog of applications for software patents in the patent office and that it could be more than a year, or even two years, before the USPTO would start to process her application. On August 24, 2004, the USPTO notified the respondent that her application required an additional fee payment of \$27 and afforded an extendable two-month period to pay. The respondent did not see the notice. Nevertheless, between August 2004 and April 2008, the respondent did not take appropriate actions reasonably calculated to monitor the progress or status of the application or to determine the cause of the increasingly unusual

delay. During this time, the respondent also failed to return the client's calls inquiring about the status of the application.

On January 12, 2006, the USPTO sent the respondent a "Notice of Publication of Application" to inform the respondent that the client's application had been electronically published on the USPTO's Patent Application Information Retrieval (PAIR) website, making the application and its transaction history available to the public. The respondent received this notice and placed it in a portion of her file. Based on her experience with prior USPTO electronic systems, the respondent did not trust the reliability of the PAIR system. Nevertheless, the respondent failed, even with a disclaimer, to inform the client of this notice and failed to advise the client that the client could monitor the PAIR website regarding the status of her patent application. No later than January 12, 2006, the public PAIR website listed a docket entry dated August 30, 2004, "notice mailed-application incomplete..."

In May 2006, a general practice lawyer the client knew arranged a conference call with the respondent and the client for May 12, 2006. The respondent told the client during the phone call that the patent office had not taken any action on the client's application as of that date and that she would let her know when it was assigned to an examiner. The respondent did not check the PAIR system or otherwise follow up on the status of the application either before or after this telephone call, and she did not tell the client, even with whatever disclaimer she deemed appropriate, about the PAIR system or that they could check on the progress of the client's application themselves by using the PAIR system.

In or before May 2007, the USPTO deemed the client's patent application abandoned because it had not received a response to the August 30, 2004 notice sent to the respondent.

On May 2, 2007, the USPTO mailed to the respondent's address of record and her then residence a notice of abandonment of the patent application pursuant to 37 CFR 1.53(f), which provides that fee deficiencies in a patent application must be timely paid to avoid abandonment. The notice was mailed to the correct address and was not returned to the USPTO, but the respondent did not see it.

On February 20, 2008, the client sent an e-mail to the respondent asking about the status of her case. The respondent responded that she was going to Houston and would check into the status when she returned "next week." The client did not hear from the respondent the following week and on April 4, 2008, called her cell phone and land line and left messages stating that she was anxious. The respondent did not return the calls.

On April 28, 2008, the client sent the respondent an e-mail requesting another conference call with another attorney. In an e-mail to the client on that same day, the

respondent reported that she had contacted the USPTO and had been told that the client's patent application had been deemed abandoned by the USPTO. The respondent told the client that the patent office had made a mistake by claiming that the patent had been abandoned when she had not abandoned it. The respondent did not disclose to the client that the respondent had miscalculated the filing fee.

Later in the day of April 28th, the client caused an e-mail to be sent to the respondent asking for specific information about when she first learned that the USPTO had made the abandonment determination and the consequences of that determination and also asked for a complete copy of her file. The respondent did not respond to this e-mail and she did not provide a copy of the client's file to the client.

On April 29, 2008, the respondent told the client in an e-mail that she would contact the USPTO about the file and, if calling did not resolve the abandonment, that she would file a petition to revive the application. The respondent stated in her e-mail that the Patent Office had made a "mistake," that the matter could be fixed "quickly," that she thought it would be easy to rectify, and again referred to the Patent Office's error. The respondent did not disclose that she was the cause of the error. After April 29, 2008, the respondent decided that she would have no further involvement because, in her opinion, it would not help the client revive the application.

After April 29, 2008, the respondent failed to inform the client that she had not and would not take any further steps to attempt to revive the patent application. On or about September 13, 2008, the client called the respondent and left a message asking the respondent to inform her of the status of corrective action and to please return the call. The respondent did not return the call.

In February 2009, an attorney assisting the client informed the client that her application had been deemed abandoned due to the respondent's error and lack of follow-up. This was the first that the client learned that the cause of the abandonment was not the mistake of the USPTO as represented by the respondent.

On March 16, 2009, the client, through counsel, wrote to the respondent and stated that she would pursue a legal malpractice action if corrective action was not undertaken. The respondent deemed this to be a notice of discharge, but she did not, upon discharge, return the client's file or inform her that she was not going to take any corrective action.

On or about April 2009, The client retained successor counsel to prepare and file a petition to revive her patent application with the USPTO. In September 2009, counsel filed a petition. By decision dated March 24, 2010, the petition was denied. The USPTO denied the

client's petition on March 24, 2010, in part, because the client's petition did not include any statements from the respondent, who had first-hand knowledge of the circumstances surrounding the lack of reply to the outstanding notice. The patent office demanded an explanation from the attorney of record (the respondent) as to why the client's application had been abandoned and what efforts she had made to remedy the situation.

In May 2010, both the client and counsel tried to contact the respondent to obtain an affidavit or "declaration" for submission to the patent office. The respondent did not return calls or communicate in any way. The client, *pro se*, was ultimately able to get the application revived and before an examiner. After an adverse finding by the examiner dated May 13, 2011, she ultimately abandoned the process for lack of funds.

By misrepresenting to her client that she was licensed in Massachusetts and failing to inform her client that she was administratively suspended, the respondent violated Mass. R. Prof. C. 1.4, 7.1, and 8.4(c) and (h). By failing to adequately respond to her client's inquiries and to keep her client reasonably informed about the status of her case, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 1.4. By failing to diligently monitor the status of the application, the respondent violated Mass. R. Prof. C. 1.1, and 1.3. By informing her client that the patent office had made a mistake in deeming the application abandoned, and by failing to inform her client that she (the respondent) had made the initial error by failing to pay the appropriate fee, the respondent violated Mass. R. Prof. C. 1.4 and 8.4(c) and (h). By failing upon her client's request to timely turn over the client's file and by failing to take reasonable steps to protect her client's interests upon discharge including failing to cooperate with a request for the preparation of an affidavit, the respondent violated Mass. R. Prof. C. 1.16(d) and (e) and 8.4(h).

There were no factors in mitigation or aggravation of discipline.

This matter came before the board on a stipulation of facts and disciplinary violations and a joint recommendation for a six-month suspension with a requirement that the respondent satisfy certain conditions before readmission. The parties stipulated that prior to seeking reinstatement, the respondent shall reimburse the client the sum of \$6,500 that the client spent to get her case reactivated and comply with the terms of her administrative suspension, including the payment of all fees to resume active status and the filing of complete compliance forms. The parties further agreed that if the respondent resumes practice, she will make a good faith effort to obtain malpractice insurance and to maintain it for a minimum of two years. On September 10, 2012, the board accepted the parties' recommendation and voted to file an information with the Supreme Judicial Court. On October 2, 2012, the Court suspended the respondent for six months with the recommended conditions, effective immediately upon entry of the order.