

**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**

In re Lawrence R. Radanovic, Esquire

Respondent

**A Member of the Bar of the
District of Columbia Court of Appeals
Bar Number: 10413
Date of Admission: July 20, 1967**

Bar Docket No. 2014-D422



PETITION FOR NEGOTIATED DISPOSITION

Pursuant to D.C. Bar R. XI, § 12.1 and Board Rule 17.3, Disciplinary Counsel and Respondent Lawrence R. Radanovic, Esquire, respectfully submit this Petition for Negotiated Disposition in the above-captioned matter. Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because Respondent is a member of the Bar of the District of Columbia Court of Appeals.

**I. STATEMENT OF THE NATURE OF THE MATTER BROUGHT TO
DISCIPLINARY COUNSEL'S ATTENTION**

Disciplinary Counsel received a notification from the United States Patent and Trademark Office alleging that Respondent was issued a Notice of Reprimand for violating the USPTO Disciplinary Rules when Respondent undertook the joint representation of two applicants in a patent application.

Disciplinary Counsel's investigation revealed that Respondent undertook representation of two co-inventors, Dr. John McCoy and Mr. Raj Patel, in a patent application without obtaining their consent and without fully disclosing the potential conflicts involved in such co-

representation. During the course of the representation, a dispute arose between the co-inventors. Respondent continued to represent both co-inventors while working with Dr. McCoy, without the knowledge of Mr. Patel, to eliminate Mr. Patel's interest in the patent. Thereafter, Respondent filed a new patent application that named only Dr. McCoy as the sole inventor.

As a result of Respondent representing two clients and taking action directly adverse to the interests of, and to the detriment of one client, he engaged in a conflict of interest.

II. STIPULATION OF FACTS AND RULE VIOLATIONS

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on July 20, 1967, and assigned Bar number 10413.

2. Respondent became a patent agent on June 1, 1966, and a patent attorney on September 28, 1967. Respondent's patent registration number is 23,077. At all times relevant, Respondent was subject to the USPTO Code of Professional Responsibility.

3. On October 28, 2010, Respondent filed U.S. Utility Patent Application No. 12/926,157 ("the '157 Application"), naming Dr. McCoy and Mr. Patel as co-inventors for a patent for harvesting waste vibration energy from railway tracks and converting it into electricity.

4. There was no written fee agreement between the parties.

5. Dr. McCoy and Mr. Patel each granted Respondent Powers of Attorney in the '157 Application.

6. Respondent did not explain to Dr. McCoy and Mr. Patel that potential conflicts could arise from his joint representation of two purported co-inventors of a single invention, nor did he explain what those conflicts might be. Respondent did not obtain informed consent from Dr. McCoy and Mr. Patel to the joint representation at the outset of the representation or any time

thereafter.

7. As early as October 2011, Respondent became aware that Dr. McCoy was concerned about whether Mr. Patel had contributed to the invention. Respondent gave advice to Dr. McCoy regarding inventorship but he did not inform Mr. Patel of his communications with Dr. McCoy regarding inventorship.

8. Despite the fact that Respondent was aware that there was an issue with inventorship, Respondent did not raise this issue with Mr. Patel, did not recommend that either Dr. McCoy or Mr. Patel retain new counsel, and did not withdraw from his joint representation of Dr. McCoy and Mr. Patel.

9. On May 9, 2012, Respondent and Dr. McCoy participated in an examination interview for the '157 Application. Respondent stated during the course of the investigation that after the examiner interview it had become clear to him that Dr. McCoy was the sole inventor.

10. In January 2013, a dispute arose between Dr. McCoy and Mr. Patel. Dr. McCoy claimed that Mr. Patel made no contribution to the invention and alleged that Dr. McCoy was the sole inventor.

11. In February 2013, Respondent hired a third-party patent attorney, Mr. Wray, to investigate and render an opinion on inventorship. However, Respondent did not advise Mr. Patel of this, did not recommend that Dr. Patel seek new counsel, and did not withdraw from the representation of both Dr. McCoy and Mr. Patel.

12. On March 8, 2013, Dr. McCoy sent an email to Mr. Patel informing Mr. Patel that he was seeking the advice of Mr. Wray based on the recommendation of the Respondent.

13. On March 13, 2013, Mr. Patel responded to Dr. McCoy's email, also copying Respondent, and requested copies of all correspondence sent to Mr. Wray, including the scope of work Mr. Wray was to perform.

14. Neither Dr. McCoy nor Respondent responded to Mr. Patel's request.

15. On April 8, 2013, Mr. Wray rendered a "Report and Opinion on Inventorship," concluding that Mr. Patel was not the inventor of any features of the invention and should be removed as co-inventor from the patent application.

16. Shortly thereafter, in April 2013, Dr. McCoy and Respondent discussed how to remove Mr. Patel's name as an inventor on the '157 Application if he did not agree to voluntarily do so.

17. On May 1, 2013, Dr. McCoy sent an email to Respondent and Mr. Wray, discussing the plan to abandon the '157 Application in favor of a continuation application naming Dr. McCoy as the sole inventor. Dr. McCoy did not copy Mr. Patel on this email.

18. Respondent did not consult with his client, Mr. Patel, or advise Mr. Patel that he was going to file a petition to abandon the '157 Application on Dr. McCoy's behalf. Nor did Respondent tell Mr. Patel that he was going to file a continuation patent application that would list Dr. McCoy as the sole inventor.

19. Later on May 1, 2013, Respondent sent Mr. Patel and Dr. McCoy an e-mail whereby he proposed that the clients agree to a binding mediation or arbitration on the inventorship issue. He suggested that the parties allow him to engage with the arbitration or mediation association in advance of the proceedings to assure that the mediator/arbitrator was skilled in intellectual property matters. Dr. McCoy immediately accepted Respondent's proposal. Mr. Patel

did not agree to participate.

20. Accordingly, on or around May 3, 2013, upon instructions from Dr. McCoy, Respondent filed a petition expressly abandoning the patent application and filed a continuation patent application naming Dr. McCoy as the sole inventor. Respondent did not advise Mr. Patel of either filing.

21. Respondent did not withdraw as counsel for either client on May 3, 2013.

22. On May 6, 2013, Mr. Patel, unaware that the '157 Application had been expressly abandoned by Respondent, emailed Respondent regarding the filings of papers with the USPTO in the '157 Application and reiterating his willingness to continue to work towards a resolution of the inventorship issue.

23. On May 8, 2013, Mr. Patel emailed Respondent stating "[n]otwithstanding the Power of Attorney I previously signed, you may no longer file anything with the (US)PTO or any other parties related to the patent purporting to be on my behalf, without my prior written authorization."

24. That same day, Mr. Patel terminated Respondent's representation. However, Respondent continued to represent Dr. McCoy in the new patent application.

25. The abandonment petition was accepted, and the patent application was abandoned on May 10, 2013.

26. On May 10, 2013, Mr. Patel, who had hired a new attorney, filed a petition withdrawing the abandonment and also filed a new patent application for the invention naming both he and Dr. McCoy as co-inventors. Mr. Patel's petition was denied and his patent application was dismissed.

27. Around September 2014, Respondent withdrew as counsel for Dr. McCoy.
28. USPTO undertook an investigation as to the inventorship issue and determined that Dr. McCoy was the sole inventor.
29. Dr. McCoy's patent application was ultimately granted.
30. Under D.C. Rule of Professional Conduct 8.5(b)(2)(i) (Choice of Law), the District of Columbia Rules of Professional Conduct applies. Respondent's conduct violated the following District of Columbia Rules of Professional Conduct:
- a. Rule 1.4(b), in that Respondent failed to consult with Mr. Patel regarding the conflict of interest and his continuing representation of Dr. McCoy;
 - b. Rule 1.5(b), in that he failed to have a written fee agreement with Dr. McCoy and Mr. Patel;
 - c. Rule 1.7(b)(1), in that Respondent continued to represent both Dr. McCoy and Mr. Patel as co-inventors when their interests were directly adverse;
 - d. Rule 1.9, in that Respondent represented Mr. McCoy in a matter after Mr. Patel terminated representation on May 8, 2013, when he previously represented both Dr. McCoy and Mr. Patel as co-inventors in the same matter, Dr. McCoy's claim to be the sole inventor was directly adverse to Mr. Patel's interest, and Mr. Patel did not give informed consent to the representation; and
 - e. Rule 1.16(a)(1), in that Respondent failed to withdraw from the representation of Mr. Patel and Dr. McCoy when his continued representation resulted in the violations of the District of Columbia and the USPTO Rules of Professional

Conduct.¹

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

In connection with this Petition for Negotiated Disposition, Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II, *supra*, other than those set forth above, or any sanction other than that set forth below.

IV. AGREED UPON SANCTION

Disciplinary Counsel and Respondent agree that the sanction to be imposed in this matter is a 30-day suspension, beginning 30 days after the Court issues its Order, fully stayed in favor of a six-month period of probation. Because the agreed upon sanction is fully stayed, the requirements of D.C. Bar Rule XI, § 14 and Board Rule 9.9 should not apply. This Court's order

¹ Respondent's conduct violated the following USPTO Code of Professional Responsibility:

- USPTO Disciplinary Rule 10.66(b) (a practitioner shall not continue multiple employment if the exercise of the practitioner's independent professional judgment on behalf of the client will be or is likely to be adversely affected by the practitioner's representation of another client, or if it would be likely to involve the practitioner in representing differing interests);
- USPTO Disciplinary Rule 11.107(a) (a practitioner shall not represent a client if the representation of one client will be directly adverse to another, or where there is significant risk that the representation of a client will be materially limited by the practitioners' responsibilities to another); and
- USPTO Disciplinary Rule 11.109(a) (a practitioner who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interest are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing).

should include a condition that if probation is revoked, Respondent will be required to serve the 30-day suspension.

During the six-month probation period, Respondent shall not engage in any misconduct in this or any other jurisdiction. Respondent agrees to complete four (4) hours of a continuing legal education course(s) in the area of ethics, pre-approved by Disciplinary Counsel. Respondent must submit proof of attendance within 30 days. If Disciplinary Counsel has probable cause to believe that Respondent has violated the terms of his probation, Disciplinary Counsel may seek to revoke Respondent's probation pursuant to D.C. Bar R. XI, §3 and Board Rule 18.3, and request that Respondent be required to serve the 30 days of suspension previously stayed herein.

Respondent and Disciplinary Counsel have agreed that there are no additional conditions attached to this negotiated disposition that are not expressly agreed to in writing in this Petition.

Relevant Precedent

Under Board Rule 17.5(a)(iii), the agreed-upon sanction in a negotiated discipline case must be "justified, and not unduly lenient, taking into consideration the record as a whole." A justified sanction "does not have to comply with the sanction appropriate under the comparability standard set forth in D.C. Bar Rule XI, § 9(h)." Bd. R. 17.5(a)(iii). The typical sanction for engaging in a conflict of interest is a 30-day suspension. *See In re Butterfield*, 851 A.2d 513. *Cf. In re Cohen*, 847 A.2d 1162 (D.C. 2004) (30-day suspension for conflict of interest violation and failure to supervise firm attorney).

Mitigating Factors

Mitigating circumstances include that Respondent: 1) proactively attempted to have his

clients agree to a binding arbitration/mediation on the issue of inventorship; 2) has no prior disciplinary history in over 51 years of practice; 3) has cooperated with Disciplinary Counsel; and 4) has expressed remorse. Additionally, there was no actual prejudice in that Mr. Patel re-filed the patent application and it was dismissed as the USPTO undertook an investigation to determine the inventor of the patent and concluded that Dr. McCoy was the sole inventor. Also, the USPTO, where Respondent has his principal place of practice, gave him a public reprimand.

Justification of Recommended Sanction

A lighter sanction is justified and not unduly lenient in this case given the nature of Respondent's conflict of interest. Respondent sincerely believed that he was acting in the interest of justice to ensure the ultimate grant of the patent with the correct inventorship and wanted to "avoid the appearance of condoning the grant of an invalid and unenforceable patent." Respondent sought to resolve the issue when he retained a third-party patent attorney to investigate the issue of inventorship. In addition, Respondent actively worked to facilitate an agreement between the two clients by proposing a binding mediation or arbitration. He suggested that the two parties could resolve their differences and asked that they allow him to engage with the arbitration or mediation association to assure that the mediator/arbitrator was skilled in intellectual property matters. His proposal outlined the issues to be resolved and that action to be taken based on the findings.

On the other hand, Respondent's actions were not completely innocent. Respondent undertook representation of two co-inventors in a patent application without obtaining their consent after full disclosure of the potential conflicts involved in such co-representation, and did not revisit the conflict when the clients' diverging interests were clear. Respondent agreed to

represent two co-inventors when it was likely their interests would differ, and they did not consent after full disclosure of the possible effect of such representation. After an inventorship dispute arose, Respondent continued to represent both co-inventors while working with one co-inventor without the knowledge or consent of the other to eliminate the other co-inventor's interest in the patent. Thereafter, Respondent filed a new patent application that named only one of his two clients as the sole inventor.

Disciplinary Counsel has weighed the nature of the misconduct against the mitigating factors in evaluating what sanction is justified. Disciplinary Counsel has also considered the sanction the USPTO imposed, the resources required to prosecute the case, the likelihood of prevailing on the merits if this case went to hearing, and the possible sanctions Respondent might receive if Disciplinary Counsel proved its case. The nature of Respondent's conflict of interest considered in conjunction with the mitigating factors suggests that Respondent is not a risk to the public. He has accepted responsibility for his misconduct, cooperated with Disciplinary Counsel's investigation, and has no prior disciplinary history in over 51 years of practice. Under these circumstances, Disciplinary Counsel suggests that a fully stayed 30-day suspension, in favor of a six-month period of probation, is sufficient to protect the courts, the public and the integrity of the Bar.

V. RESPONDENT'S AFFIDAVIT

In further support of this Petition for Negotiated Discipline, attached is Respondent's Affidavit pursuant to D.C. Bar R. XI, § 12.1(b)(2).

CONCLUSION

Wherefore, Respondent and Disciplinary Counsel request that the Executive Attorney assign a Hearing Committee to review the petition for negotiated discipline pursuant to D.C. Bar R. XI. § 12.1(c).



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