

In the Matter of
Charles E. Cohen,
Respondent

FINAL ORDER

The Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below, is hereby approved. This Final Order sets forth the parties' stipulated facts, legal conclusions, and sanctions found in the Agreement.

1. At all times relevant hereto, Respondent of Indianapolis, Indiana, has been a registered patent attorney (Registration No. 34,565) and subject to the USPTO Code of Professional Responsibility¹ or the USPTO Rules of Professional Conduct.
2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.19.

Background

¹ Both the USPTO Code of Professional Responsibility and the USPTO Rules of Professional Conduct are applicable in this investigation. See 37 C.F.R. §§ 10.20-10.112 and 37 C.F.R. §§ 11.101-11.901. The Code applies to conduct prior to May 3, 2013 and the Rules apply to conduct on or after May 3, 2013.

State Discipline

4. By order dated October 20, 2014, in *In the matter of Charles E. Cohen* (Indiana Supreme Court Cause No. 49S00-1304-DI-282), the Indiana Supreme Court suspended Respondent for ninety (90) days from the practice of law in Indiana, effective December 1, 2014. The order states that Respondent, upon leaving his employment as in-house attorney with Eli Lilly and Company (“Lilly”) in 2009, copied and retained confidential information that was the property of Lilly and that he was not authorized to possess or control.

5. The October 20, 2014, order was based on the stipulation of agreed facts and proposed discipline by the Indiana Supreme Court Disciplinary Commission and Respondent. The parties agreed that Respondent violated Indiana Professional Conduct Rules 8.4(c) by engaging in conduct involving dishonesty by taking and retaining data belonging to Lilly, his former employer, knowing that he was not authorized to possess or control the data after he left the employment, and 1.16(d) by failing to protect a client’s interests upon termination of representation.

Additional Considerations

6. On November 17, 2014, Respondent notified OED of the discipline imposed on him in *In the matter of Charles E. Cohen* (Indiana Supreme Court Cause No. 49S00-1304-DI-282).

7. Respondent voluntarily ceased all activities related to practice before the Office and complied with all provisions of 37 C.F.R. § 11.58, on or before December 22, 2014.

8. The Indiana Supreme Court Disciplinary Commission and Respondent stipulated that, *inter alia*, (a) Respondent had no intent to harm the client, (b) Respondent returned the confidential information to Lilly upon request and did not intend to share it with third parties, (c) Respondent believed that the information he took was either already in the public domain or would become public in the near future, and (d) Respondent expressed that breach of his employment agreement was not intentional.

9. Respondent has no prior disciplinary history before the Office during the nearly twenty-four (24) years he has been registered as a patent practitioner.

10. Respondent fully cooperated with the Office of Enrollment and Discipline during the investigation and resolution of this matter.

Joint Legal Conclusions

11. Respondent acknowledges that, based on the information contained in the stipulated facts, above, his conduct violated the following provisions of the USPTO Code of Professional Responsibility: 37 C.F.R. §§ 10.23(b)(4) (proscribing dishonesty, fraud, deceit, or misrepresentation) and 10.40(a) (requiring a practitioner to deliver to the client all property to which the client is entitled upon withdrawing from employment).

12. Respondent acknowledges that, based on the information contained in the stipulated facts, above, his conduct also violated the following provision of the USPTO Rules of Professional

Conduct: 37 C.F.R. § 11.804(h) (proscribing being publicly disciplined on ethical or professional misconduct grounds by a duly constituted authority of a State).

Sanction

13. Respondent agreed, and it is ORDERED that:

- a. Respondent be, and is hereby, suspended from practice before the Office in patent, trademark, and other non-patent matters for a period of ninety (90) days commencing *nunc pro tunc* on December 22, 2014;
- b. The USPTO shall promptly dissociate Respondent's name from all USPTO Customer Numbers and Public Key Infrastructure ("PKI") certificates;
- c. Respondent shall not apply for or obtain a USPTO Customer Number or a PKI certificate unless and until he is reinstated to practice before the USPTO;
- d. Respondent shall remain suspended from practice before the Office in patent, trademark, and non-patent matters until the OED Director grants a petition requesting Respondent's reinstatement pursuant to 37 C.F.R. § 11.60;
- e. The OED Director shall comply with 37 C.F.R. § 11.59;
- f. The OED Director shall electronically publish this Final Order at the OED's electronic FOIA Reading Room that is publicly accessible through the Office's website at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;
- g. The OED Director shall publish a notice materially consistent with the following Notice of Suspension in the *Official Gazette*:

Notice of Suspension

This notice concerns Charles E. Cohen of Indianapolis, Indiana, a registered patent attorney (Registration No. 34,565). In a disciplinary proceeding, the Director of the United States Patent and Trademark Office has ordered the ninety (90) day suspension of Mr. Cohen from practice before the United States Patent and Trademark Office in patent, trademark, and other non-patent matters for violating 37 C.F.R. §§ 10.23(b)(4) (proscribing dishonesty, fraud, deceit, or misrepresentation) and 10.40(a) (requiring a practitioner to deliver to the client all property to which the client is entitled) of the USPTO Code of professional Responsibility and 37 C.F.R. § 11.804(h) (proscribing being publicly disciplined on ethical or professional misconduct grounds by a duly constituted authority of a State) of the USPTO Rules of Professional Conduct. The suspension is effective *nunc pro tunc* on December 22, 2014.

Upon leaving his employment as in-house counsel in 2009, Mr. Cohen copied and retained confidential information, which was the property of his corporate client, knowing that he was not authorized to possess or control the information.

Factors reflected in the agreed upon resolution of this disciplinary matter include: (i) Mr. Cohen has no prior disciplinary history before the Office during the nearly 24 years he has been registered as a patent practitioner, (ii) Mr. Cohen represented that he had no intent to harm the client, (iii) Mr. Cohen returned the confidential information to the client upon request, and did not intend to share it with third parties, and (iv) Mr. Cohen fully cooperated with the Office of Enrollment and Discipline during the investigation and resolution of this matter.

This action is the result of a settlement agreement between Mr. Cohen and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19, 11.26, and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room accessible at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

- h. Nothing in the Agreement or the Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including the Final Order: (1) when addressing any further complaint or evidence of the same or similar misconduct concerning Respondent brought to the attention of the Office; (2) in any future disciplinary proceeding against Respondent (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed, and/or (ii) to rebut any statement or representation by or on Respondent's behalf; and
- i. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of the Agreement and the Final Order.

APR 17 2015

Date



JAMES O. PAYNE
Deputy General Counsel for General Law
United States Patent and Trademark Office

on behalf of

Michelle K. Lee
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

cc:

Director of the Office of Enrollment and Discipline
United States Patent and Trademark Office

Mr. Charles E. Cohen
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