

BEFORE THE HEARING BOARD  
OF THE  
ILLINOIS ATTORNEY REGISTRATION  
AND  
DISCIPLINARY COMMISSION

In the Matter of:

MARK A. HAMILL,  
  
Attorney-Respondent,  
  
No. 6206975.

Commission No. 2021PR00016

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Tammy L. Evans, pursuant to Supreme Court Rule 753(b), complains of Respondent, Mark A. Hamill, who was licensed to practice law in Illinois on November 7, 1991, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I

*(Lack of diligence, failure to communicate, failure to return unearned fee and false statement to a client— Linda Curcio)*

1. Respondent was registered as a patent attorney with the United States Patent and Trademark Office (“USPTO”) on October 8, 1993. On December 4, 2019, Respondent was excluded from the practice of patent, trademark, and non-patent law before the USPTO for engaging in misconduct. Respondent is eligible to file for reinstatement no earlier than at least five years from the effective date of exclusion, and must establish full compliance with the conditions set forth in § 11.58 of Title 37 of the Code of Federal Regulations.

2. At all times related to this complaint, a provisional patent application allowed an inventor to quickly protect their invention while giving them an opportunity to conduct more

research or finish the invention before filing a nonprovisional utility patent application. A provisional patent application does not get reviewed by the USPTO. An inventor has one year from the date of filing a provisional patent application to convert the application to a nonprovisional utility patent application. Once a nonprovisional utility patent application is filed, the USPTO will review the application and determine whether to grant a patent to the inventor.

3. On or about March 16, 2015, Respondent and Linda Curcio (“Curcio”) agreed that Respondent would represent Curcio to conduct a patentability search and file a provisional patent application for Curcio’s collapsible food storage container invention. Respondent and Curcio agreed that Curcio would pay Respondent a flat fee of \$750 to conduct the patentability search and would send invoices to Curcio for any additional work he performed for her. On March 16, 2015, Curcio paid Respondent \$750.

4. On April 10, 2015, Respondent sent Curcio an email with a copy of the patentability search results. On or after April 10, 2015, Respondent and Curcio agreed that Respondent would file a provisional patent application for Curcio’s invention.

5. On or before November 2, 2015, Respondent sent an invoice to Curcio for \$500 for work he performed on the provisional patent application. On November 2, 2015, Curcio paid Respondent \$500.

6. On December 4, 2015, Respondent filed a provisional patent application for Curcio’s invention with the USPTO. The patent application named Curcio as the sole inventor and owner of the invention.

7. On or before February 5, 2016, Respondent sent an invoice to Curcio for \$500, which included filing fees for the application and the work Respondent performed on her provisional patent application. On February 5, 2016, Curcio paid Respondent \$500.

8. On or before May 25, 2016, Respondent sent an invoice to Curcio for \$2,100 for work he performed in relation to her provisional patent application, including final corrections to the application, and updates and corrections to the drawings that he submitted to the USPTO with her application. On May 25, 2016, Curcio paid Respondent \$2,100.

9. On or before November 14, 2016, Respondent sent an invoice to Curcio for \$770 for additional work he performed on her provisional patent application. On November 14, 2016, Curcio paid Respondent \$770.

10. On December 1, 2016, Curcio contacted Respondent and spoke to him about converting her provisional patent application to a nonprovisional utility patent application. On December 2, 2016, Respondent's assistant sent Curcio an email confirming that Respondent would begin working on the conversion of Curcio's provisional patent application to a nonprovisional utility patent application, and that the fee for the legal work would be between \$2,500 and \$3,000.

11. On December 5, 2016, Respondent filed a nonprovisional utility patent application on behalf of Curcio with the USPTO. The application named Curcio as the sole inventor and owner.

12. On December 8, 2016, Respondent sent Curcio a letter informing her that the application had been filed. Respondent provided Curcio with a copy of the nonprovisional utility patent application, electronic filing acknowledgment receipt, application data sheet, power of attorney, declaration, nonprovisional utility patent application transmittal, and the USPTO electronic acknowledgement receipt. Respondent's letter informed Curcio that she would need to provide Respondent with an executed declaration and a new power of attorney form, and pay the statutory basic filing fee, which Respondent said should total about \$850. In his letter, Respondent

stated that he would inform Curcio of the exact amount when he received the notice from the USPTO.

13. On January 23, 2017, the USPTO issued a notice to file missing parts in the application that Respondent filed for Curcio. The notice was sent to the address to which Respondent authorized the USPTO to send correspondence pertaining to the application, which was Respondent's business address, 788 Willis Street in Glen Ellyn, Illinois. The notice advised Respondent that a payment of \$800 in filing fees was required to avoid abandonment of the application, and that there was a shortened statutory period of two months to respond but that an extension of time may be obtained by filing a petition with the USPTO. The notice further advised that Curcio's application required replacement drawings and a properly executed inventor's oath or declaration. Respondent received the USPTO's notice to file missing parts regarding Curcio's application.

14. At no time did Respondent inform Curcio about the notice to file missing parts that he received from the USPTO or advise her as to the potential consequences of not responding to the notice. Respondent did not file a response to the notice he received from the USPTO and did not file a petition to request an extension of time to respond as set forth in the notice he received from the USPTO.

15. On or before April 28, 2017, Respondent sent an invoice to Curcio for \$2,975 for additional changes that Respondent made to Curcio's patent application and application renewal fees, both of which, according to Respondent, were requested by the USPTO. On April 28, 2017, Curcio paid Respondent \$2,975.

16. Between December 8, 2016 and April 28, 2017, Respondent did not perform any legal work that he agreed to do for Curcio, and did not pay any filing fees to the USPTO.

17. On September 25, 2017, the USPTO issued a notice of abandonment of Curcio's application to Respondent. The USPTO mailed the notice to Respondent at the address to which Respondent had authorized the USPTO to send correspondence pertaining to the application, which was Respondent's business address, 788 Willis Street in Glen Ellyn, Illinois. Respondent received the USPTO's notice of abandonment of Curcio's application.

18. At no time did Respondent inform Curcio about the notice of abandonment that he received from the USPTO, or advise her of her potential courses of action to respond to the notice of abandonment, or the potential consequences if no response was filed. Respondent did not file a response to the notice of abandonment and did not inform Curcio that he did not file a response to the notice.

19. In March 2018, Curcio contacted Respondent about the status of her patent application. At no time during that conversation did Respondent inform Curcio that he had received a notice of abandonment from the USPTO or advise her of her potential courses of action. Instead, Respondent informed Curcio that her patent application was still pending.

20. Respondent's statement to Curcio that her patent application was still pending was false because he had received a notice of abandonment of Curcio's application from the USPTO six months earlier.

21. At the time Respondent made the statement to Curcio that her patent application was still pending, he knew the statement was false.

22. Between July 2018 and January 2019, Curcio left Respondent several voicemail messages, sent numerous emails to Respondent, and attempted to contact him via social media requesting information on the status of her patent application. At no time did Respondent return Curcio's voicemail messages or respond to her emails or social media contacts.

23. As of the date this complaint was filed, Respondent has not refunded any portion of the fee that he received from Curcio.

24. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonable diligence and promptness in representing a client by conduct including failing to respond to the notice of missing parts, and the notice of abandonment that he received from the USPTO, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failing to keep the client reasonably informed about the status of the matter, by conduct including failing to inform Curcio about the two notices he received from the USPTO when he spoke to her in March 2018, and failing to respond to Curcio's emails, voicemail messages, and social media contacts regarding the status of her case, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);
- c. failing to promptly comply with reasonable requests for information, by conduct including failing to respond to Curcio's emails, voicemail messages, and social media contacts regarding the status of her case, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010);
- d. failing to refund an unearned fee, by conduct including failing to return any portion of the fee that Respondent received from Curcio in connection to her patent application, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010); and
- e. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including making the false statement to Curcio that her patent application was still pending when Respondent knew the application had been abandoned by the USPTO because he received a notice of abandonment of application six months earlier, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II  
*(Failure to cooperate with a disciplinary investigation)*

25. On or about January 22, 2019, Curcio submitted a request for investigation to the Administrator regarding Respondent's conduct with respect to his representation of her.

26. On January 29, 2019, the Administrator sent Respondent a letter pursuant to Commission Rule 53, requesting that Respondent send a letter to the Administrator setting forth the material facts related to Curcio's request for investigation within 14 days.

27. At no time did Respondent submit a written response to the Administrator's January 29, 2019 letter.

28. On February 26, 2019, the Administrator sent a second letter to Respondent requesting the information specified in the January 29, 2019 letter. The second letter reminded Respondent of his obligations to provide such information to the Administrator pursuant to Commission Rule 53 and Rule 8.1(b) of the Illinois Rules of Professional Conduct (2010).

29. At no time did Respondent submit a written response to the Administrator's February 26, 2019 letter.

30. On March 26, 2019, Karyn Bart ("Bart"), counsel for the Administrator, sent Respondent an email at the email address Respondent registered with the ARDC. In her email, Bart informed Respondent that the Administrator had attempted to contact him by United States mail and telephone at his registered business address and telephone number, and asked that he contact her immediately. Bart provided Respondent with her telephone number.

31. At no time did Respondent reply to Bart's March 26, 2019 email or contact her by telephone.

32. On April 15, 2019, Bart sent an email to Respondent at the email address that Respondent registered with the ARDC. In her email, Bart informed Respondent that she was

preparing a subpoena for him to appear for a sworn statement in the Commission's Chicago office, and asked that he contact her immediately. On April 15, 2019, Respondent sent Bart an email acknowledging receipt of her email and stated that he would call her the following day.

33. On April 16, 2019, Respondent contacted Bart, and, after their conversation, Bart memorialized their discussion in an email to Respondent. Bart included a copy of Curcio's request for investigation and a copy of the Administrator's January 29, 2019 letter in her email to Respondent, and asked Respondent to submit a written response with the information requested in the letter within 14 days.

34. At no time did Respondent submit a written response to Bart as requested in her April 16, 2019 email.

35. On June 19, 2019, the Administrator served Respondent with a subpoena to appear for a sworn statement by email to the email address Respondent registered with the ARDC. The subpoena commanded Respondent to appear in the Commission's Chicago office on June 26, 2019, at 10:00 a.m. Respondent received the subpoena but did not appear for the sworn statement.

36. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. knowingly failing to respond to a lawful demand for information from a disciplinary authority, by conduct including failing to respond to Bart's March 26, 2019 and April 16, 2019 emails, and failing to appear for his June 26, 2019 sworn statement, in violation of Rule 8.1(b) of the Illinois Rules of Professional Conduct (2010).



WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator  
Attorney Registration and  
Disciplinary Commission

/s/ Tammy L. Evans  
Tammy L. Evans

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