

Sign Your Own Name: A Review of Office of Enrollment and Discipline Decisions In 2021

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Numerous individuals have been indicted, convicted, and imprisoned for violating 18 USC 1001, which prohibits lying to government officials. Many, if not most, actions performed before the USPTO are subject to this statute. While prosecutions are rare with respect to the USPTO, and the one conviction I am aware of was overturned for materiality reasons—the peril and applicability of prosecution remains. Indeed, when reviewing the various discipline decisions of the Office of Enrollment and Discipline (OED) for 2021, most cited the applicability 18 USC 1001. So, if you do not want to end up like Martha Stewart, Rod Blagojevich, Scooter Libby, Bernard Madoff, Michael Cohen, Jeffrey Skilling, General Michael Flynn, or Leslie Camic (the one prosecution for lying to the USPTO I am aware of), take care in your actions before the USPTO.

Of the twenty-six decisions published by the OED for 2021, seven (7) were related to representation of foreign trademark clients where the practitioner did not adequately review applications prepared by foreign entities, false specimens were submitted, signatures were entered by someone other than the purported signer, or foreign entities filing applications themselves using the signature of a US based practitioner. Generally, these actions were taken to circumvent the US Counsel Rule, which became effective on August 3, 2019. See 37 CFR 2.11(a) In each of these cases, relation to 18 USC 1001 was discussed. While no criminal proceedings were instituted, discipline resulted in varying degrees of suspension, probation, education, requirements for weekly monitoring of TESS to ensure no additional applications were being filed in the practitioner's name, and/or requirement to identify and inform "clients" of improper signatures and potential adverse results of said improper signatures. Nonetheless, criminal prosecution remains a viable possibility.

Note that in the cases studied, it appears that the OED is using email addresses, mailing addresses, and IP addresses to identify when signatures are not being entered by the purported signer.

In addition to the cases mentioned, other OED decisions related to discipline due to criminal activity unrelated to practice before the USPTO, reciprocal discipline, missing filing dates, non-communication with clients, mishandling fees, unauthorized practice, having a private practice while employed by the Federal Government, conflicts of interest, dishonesty, performing actions without client approval, fabricating emails, fabricating docket entries, and other generally obvious stuff one shouldn't be doing.

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