

**BEFORE THE DIRECTOR OF THE
UNITED STATES PATENT AND
TRADEMARK OFFICE**

In the Matter of:)	
)	
Jordan M. Meschkow,)	Proceeding No. D2014-38
)	
Respondent)	
_____)	

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24, the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) hereby orders the public reprimand and placement on probation for a period of two (2) years of Jordan M. Meschkow (“Respondent”) for violation of 37 C.F.R. § 11.804(h).

I. BACKGROUND AND PROCEDURAL HISTORY

At all times relevant to these proceedings, Respondent has been registered to practice in patent matters before the USPTO. (Exhibit 3). Respondent’s USPTO Registration Number is 31,043. (*Id.*).

On June 13, 2014, the Supreme Court of the State of Arizona issued a Final Judgment and Order and Report Accepting Consent for Discipline (“Final Judgment”) in *In re a Member of the State Bar of Arizona, Jordan M. Meschkow, State Bar No. 12-3144*, reprimanding Respondent and placing him on probation for two (2) years in Arizona on ethical grounds. (Exhibit 2). The Final Judgment incorporated an Agreement for Discipline by Consent (“Agreement”) that had been entered into between Respondent and the State Bar of Arizona. (Exhibits 1, 2). In accordance with that Agreement, Respondent admitted to violating Rule 42, Rules of the Arizona Supreme Court, specifically Ethical Rule (“ER”)

1.5 (Fees), ER 1.16 (Termination of Representation), ER 3.1 (Meritorious Claims and Contentions), ER 4.4 (Respect for the Rights of Others), and ER 8.4(d) (Misconduct Prejudicial to the Administration of Justice). (Exhibit 1, pages 2 and 9). In particular, Respondent admitted to not returning a client's file promptly and inappropriate billing practices, including billing time to "wait and see" if opposing counsel filed any documents. (Exhibit 1 at pages 8, 9).

On October 30, 2014, the Director of the Office of Enrollment and Discipline of the USPTO ("OED Director") served a "Complaint for Reciprocal Discipline Under 37 C.F.R. § 11.24" ("OED Complaint") on Respondent. (Exhibit 3). The OED Director requested that the USPTO Director impose reciprocal discipline upon Respondent for violating 37 C.F.R. § 11.804(h) by being publicly reprimanded and placed on probation for two (2) years on ethical grounds by a duly constituted authority of a State. (*Id.*). The OED Director also filed a Request for Notice and Order Pursuant to 37 C.F.R. § 11.24 asking that the USPTO Director serve a Notice and Order on Respondent. (Exhibit 4).

On November 13, 2014, the Deputy General Counsel for General Law, on behalf of the USPTO Director, issued an Order giving Respondent 40 days to file a response "containing all information that Respondent believes is sufficient to establish a genuine issue of material fact that the imposition of the discipline identical to that imposed" by the Supreme Court of Arizona in *In re a Member of the State Bar of Arizona, Jordan M. Meschkow, State Bar No. 12-3144*, would be unwarranted based upon any of the grounds permissible under 37 C.F.R. § 11.24(d)(1). (Exhibit 5).

On November 17, 2014, Respondent filed a Response to the Notice and Order ("Response"). (Exhibit 6). Respondent does not deny his conduct violated Rule 42, Rules of the

Arizona Supreme Court. In the state proceeding, Respondent had agreed to a disciplinary decision which considered his physical and mental illness as mitigating factors, and imposed a public reprimand and two-year probation. In his Response in this proceeding, he argues that his illness should make reciprocal discipline unwarranted. Respondent adds that he is “less” ill at present. (*Id.* at page 3). He also asserts his counsel convinced him to sign the Agreement in the state proceeding and “got the original dates I was ill incorrect (he was at least a year late).” (*Id.*).

II. LEGAL STANDARD

Pursuant to 37 C.F.R. § 11.24(d), and in accordance with *Selling v. Radford*, 243 U.S. 46 (1917), the USPTO has codified standards for imposing reciprocal discipline based on a state’s disciplinary adjudication. Under *Selling*, state disbarment creates a federal-level presumption that imposition of reciprocal discipline is proper, unless an independent review of the record reveals: (1) a want of due process; (2) an infirmity of proof of the misconduct; or (3) that grave injustice would result from the imposition of reciprocal discipline. *Selling* at 51. Federal courts have generally “concluded that in reciprocal discipline cases, it is the respondent attorney’s burden to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline.” *In re Kramer*, 282 F.3d 721, 724 (9th Cir. 2002); *In re Friedman*, 51 F.3d 20, 22 (2d Cir. 1995). “This standard is narrow, for ‘[a Federal court, or here the USPTO Director, is] not sitting as a court of review to discover error in the [hearing judge’s] or the [state] courts’ proceedings.” *In re Zdravkovich*, 634 F.3d 574, 578 (D.C. Cir. 2011) (quoting *In re Sibley*, 564 F.3d 1335, 1341 (D.C. Cir. 2009)).

The USPTO’s regulation governing reciprocal discipline, 37 C.F.R. § 11.24(d)(1),

mirrors the standard set forth in *Selling*:

[T]he USPTO Director shall consider any timely filed response and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification unless the practitioner clearly and convincingly demonstrates, and the USPTO Director finds there is a genuine issue of material fact that:

- (i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute deprivation of due process;
- (ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;
- (iii) The imposition of the same public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would result in a grave injustice; or
- (iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

To prevent the imposition of reciprocal discipline, Respondent is required to demonstrate that he meets one of these criteria by clear and convincing evidence. *See* 37 C.F.R. § 11.24(d)(1). As discussed below, however, Respondent has not satisfied, by clear and convincing evidence, any of the factors set forth in 37 C.F.R. § 11.24(d)(1).

III. ANALYSIS

A. Imposition of a Reprimand and Placement on a Two (2)-Year Probation Would Not Result in a Grave Injustice.

A state disciplinary action creates a federal-level presumption that imposition of reciprocal discipline is proper. *See Selling, supra*. A respondent may seek to defeat that presumption by showing by clear and convincing evidence that a “grave injustice” would result under 37 C.F.R. § 11.24(d)(1)(iii). Respondent does not explicitly refer to any of the factors set forth in 37 C.F.R. § 11.24(d)(1) in his Response, but his claim that imposition of reciprocal discipline would be unwarranted because of his illness will be considered under the “grave injustice” criteria of 37 C.F.R. 11.24(d)(1)(iii).

Respondent has not shown by clear and convincing evidence that a reciprocal

reprimand and probation would be a grave injustice. The grave injustice analysis focuses on whether the severity of the punishment “fits” the misconduct. *See In re Thav*, 852 F. Supp. 2d 857, 861-62 (E.D. Mich. 2012); *see also In re Kramer*, 282 F.3d at 727 (on challenge to imposition of reciprocal discipline, “we inquire only whether the punishment imposed by [the first] court was so ill-fitted to an attorney’s adjudicated misconduct that reciprocal disbarment would result in grave injustice”); *In re Attorney Discipline Matter*, 98 F.3d 1082, 1088 (8th Cir. 1996) (no grave injustice where disbarment imposed by the state court “was within the appropriate range of sanctions”); *Matter of Benjamin*, 870 F. Supp. 41, 44 (N.D.N.Y. 1994) (public censure within range of penalties for misconduct and thus censure was not a grave injustice).

Here, Respondent admitted committing misconduct and agreed with the sanction of a reprimand and two year probation imposed upon him by the Supreme Court of Arizona. (Exhibit 1, pages 2, 9, and 10). In addition, the Arizona disciplinary standards make clear that a reprimand and probation are within the range of available sanctions for attorney misconduct in this case. *See Arizona Supreme Court Rule 60(a)(3) and (a)(5)*.

While Respondent contends that he was physically and mentally ill at the time of his misconduct, his illness was considered during the course of disciplinary proceedings in Arizona. The Agreement that Respondent entered into with the State Bar of Arizona, and that was subsequently incorporated into the Final Judgment from the Supreme Court of Arizona, specifically references his being diagnosed with an illness in the Fall of 2009. (Exhibit 1 at page 4). The Agreement notes that “personal or emotional problems resulting in a reduction of Respondent’s work schedule and access to clients” was a matter in mitigation. (*Id.* at page 12). Given that Respondent’s illness was raised in mitigation during

the course of the proceedings in Arizona, it is not a grave injustice for the USPTO to impose reciprocal discipline based upon the Arizona judgment. *See, e.g., In re Kornfeld*, 62 So.3d 62, 63 (La. 2011) (imposing reciprocal discipline and noting attorney's medical condition already had been "raised in mitigation in the consent discipline proceedings in Pennsylvania").

Respondent asserts that his counsel made a mistake in identifying when Respondent was ill in the Agreement, but he does not provide support for this claim or explain its significance. Moreover, the record here does not support the claim. Respondent claims his counsel "got the original dates I was ill incorrect (he was at least a year late)." (Exhibit 6 at page 3). The Agreement stated Respondent was diagnosed with his illness in the Fall of 2009. (Exhibit 1 at page 4). The Agreement is consistent with other references to dates in the record here. For example, in his Response Respondent states he was diagnosed with his illness in November 2009. (Exhibit 6 at page 1). Respondent also provided documentation from a physician who indicated he has treated Respondent for his illness beginning in December 2009. (Exhibit 6, Exhibits A and B therein). These references to Respondent being first diagnosed with his illness in November 2009 and treated by a physician since December 2009 support the accuracy of the statement in the Agreement that Respondent was diagnosed with his illness in the Fall of 2009. Moreover, assuming, *arguendo*, that there had been a misstatement, Respondent does not offer an explanation as to its relevance. Finally, it is noted that the Arizona State Bar Counsel provided Respondent with notice of the Agreement and five (5) business days to file a written objection to it with the Arizona State Bar. (Exhibit 2, page 1 of the Report Accepting Consent for Discipline therein). Respondent did not file an objection. (*Id.*)

In sum, Respondent voluntarily agreed to the discipline of a reprimand and two year probation imposed by the State of Arizona. This discipline was based in part on consideration of his illness and was within the range of allowable penalties for his misconduct. Respondent's claim that his counsel incorrectly recorded the starting date of his illness in the Agreement is not supported in this record. Nor does Respondent offer an explanation for the relevance of this claim. Respondent did not object to the Agreement when provided the opportunity to do so during the course of disciplinary proceedings in Arizona. Respondent has not shown by clear and convincing evidence that imposition of a reciprocal reprimand and placement on a two year probation would be a grave injustice.

ORDER

ACCORDINGLY, it is:

1. ORDERED that Respondent be, and hereby is, publicly reprimanded.
2. Respondent shall serve a two (2) year probationary period commencing on the date of this Final Order.
3. Regarding Respondent's probation:
 - (A) In the event that the OED Director is of the opinion that Respondent, during the probationary period, failed to comply with any provision of this Final Order, the OED Director shall:
 - (1) issue to Respondent an Order to Show Cause why the USPTO Director should not order that Respondent be immediately disciplined for his failure to comply with any provision of this Final Order;
 - (2) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11(a); and
 - (3) grant Respondent fifteen (15) days to respond to the Order to Show Cause;

and

(B) in the event after the 15-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during the probationary period, failed to comply with any provision of this Final Order, the OED Director shall:

(1) deliver to the USPTO Director: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) argument and evidence supporting the OED Director's conclusion that Respondent failed to comply with a provision(s) of this Final Order, and

(2) request that the USPTO Director immediately suspend Respondent for an appropriate period of time for failing to comply with a provision(s) of this Final Order;

4. In the event that the USPTO Director enters an order pursuant to the preceding paragraph disciplining Respondent, and Respondent seeks a review of such order, any such review of the order shall not operate to postpone or otherwise hold in abeyance the discipline;

5. The OED Director publish the following Notice in the Official *Gazette*:

Notice of Reprimand and Probation

This notice concerns Jordan M. Meschkow of Mesa, Arizona, who is a registered patent attorney (Registration Number 31,043). In a reciprocal disciplinary proceeding under 37 C.F.R. § 11.24, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Meschkow be reprimanded and placed on probation for two years for violating 37 C.F.R. § 11.804(h) based on having been publicly reprimanded and placed on probation on ethical grounds by a duly constituted authority of a State.

On June 13, 2014, the Supreme Court of the State of Arizona reprimanded Mr. Meschkow and placed him on probation for two (2) years for conduct that violated Arizona Ethical Rules §§ 1.5 (Fees), 1.16 (Termination of Representation), 3.1 (Meritorious Claims and Contentions), 4.4 (Respect for the Rights of Others), and 8.4(d) (Misconduct Prejudicial to the Administration of Justice). Mr. Meschkow represented a client in a trademark registration matter. The client contested Mr. Meschkow's fees, and civil litigation between Mr.

Meschkow and the client ensued. Mr. Meschkow acknowledged during a deposition that he did not promptly return his client's file and that he engaged in inappropriate billing practices, including billing time to "wait and see" if opposing counsel filed any documents.

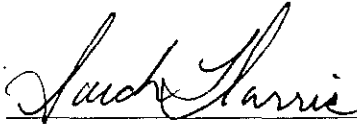
This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.24 and 11.59. Disciplinary decisions are available for public review at the Office of Enrollment and Discipline's Reading Room available at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

and

6. The OED Director give notice pursuant to 37 C.F.R. § 11.59 of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public.

2/13/15

Date



Sarah Harris
General Counsel
United States Patent and Trademark Office

on behalf of

Michelle K. Lee
Deputy Under Secretary of Commerce for Intellectual
Property and Deputy 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. Jordan M. Meschkow
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Respondent