



received adverse information regarding his conduct and moral character. In response to this information, OED began an investigation regarding petitioner's conduct and moral character.

As a result of this inquiry, on \_\_\_\_\_ OED issued an Order to Show Cause to petitioner to explain why his application should not be disapproved because of his failure to establish that he possesses good moral character and repute. On \_\_\_\_\_ petitioner filed a Response to the Order to Show Cause.

\_\_\_\_\_ the Director issued her decision denying petitioner enrollment pursuant to 35 U.S.C. § 31 and 37 C.F.R. § 10.7(a)(2)(i) because he had failed to sustain his burden of establishing that he is of good moral character and repute. The Director based her decision on numerous considerations including petitioner's repeated disregard for the rules governing attorney conduct.

Specifically, the Director determined that over approximately a three-year period petitioner violated various rules of attorney practice and conduct. Moreover, petitioner continued to violate various rules of practice after such conduct was called to his attention by OED. Finally, the Director determined that petitioner had failed to establish sufficient reform and

rehabilitation. Petitioner seeks review by the Commissioner of the Director's Decision.

## OPINION

### Legal Standards

Section 31 of 35 U.S.C. states in pertinent part that:

"The Commissioner . . . may require [agents, attorneys, or other persons representing applicants or other parties before the Patent and Trademark Office], before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation . . . ."

Id. (emphasis added). Pursuant to the statute, petitioner bears the burden of showing that he is of good moral character and reputation.

In accordance with the statute, the Commissioner promulgated 37 C.F.R. § 10.7 which states in pertinent part:

"(a) No individual will be registered to practice before the Office unless he or she shall:

. . . .  
(2) Establish to the satisfaction of the Director [of OED] that he or she is:

(i) Of good moral character and repute . . . ."

This regulation effectuates the Commissioner's recognized duty to ensure that those representing members of the public before the PTO in patent cases will do so with the highest degree of candor and good faith in order to protect the public.

"By reason of the nature of an application for patent, the relationship of attorneys to the Patent Office requires the highest degree of candor and good faith. In its relation to applicants, the Office . . . must rely upon their integrity and deal with them in a spirit of trust and confidence . . . . It was the Commissioner, not the courts, that Congress made primarily responsible for protecting the public from the evil consequences that might result if practitioners should betray their high trust."

Kingsland v. Dorsey, 338 U.S. 318, 319-20 (1949) (quoting with approval from Dorsey PTO case). Accord Cupples v. Marzall, 101 F. Supp. 579, 583, 92 USPQ 169, 172 (D.D.C. 1952) ("primary responsibility for protection of the public from unqualified practitioners before the Patent Office rests in the Commissioner of Patents"), aff'd, 204 F.2d 58, 97 USPQ 1 (D.C. Cir. 1953), quoted with approval in Gager v. Ladd, 212 F. Supp. 671, 673, 136 USPQ 627, 628 (D.D.C. 1963).

Having "good moral character" has historically required: .

"an absence of proven conduct or acts which have been historically considered as manifestations of 'moral turpitude.'"

Konigsberg v. State Bar of California, 353 U.S. 252, 263 (1957)

(quoting from an unidentified California court decision).

Neglect of professional obligations, neglect of financial responsibility, misrepresentations, adverse disciplinary action and intentional omissions are among the several recognized

grounds for finding that an applicant for admission lacks the requisite good moral character. Comprehensive Guide to Bar Admission Requirements 1995-96, ABA Sec. Legal Educ. & Nat'l. Conf. of Bar Examiners, viii (referring to the American Bar Association Code of Recommended Standards for Bar Examiners), reprinted in ABA/BNA Lawyers' Manual on Professional Conduct 21:702 (1995). Evidence of each of these grounds is present in petitioner's application and is discussed separately below.

#### **Neglect of Professional Obligations**

Petitioner has practiced before the PTO in trademark cases and is therefore bound by the PTO Code of Professional Responsibility, set forth in 37 C.F.R. §§ 10.20-10.112. Accordingly, he has had the professional obligation to indicate the jurisdictions in which he is licensed to practice when using letterhead from another jurisdiction in which he is not licensed to practice. 37 C.F.R. §§ 10.31(a) and 10.35(a) (practitioners shall not deceive or mislead the public by letter or advertising). Accord American Bar Association Model Rule of Professional Conduct 7.5(b) (requiring that appropriate jurisdictional limitations be expressly recited).

On \_\_\_\_\_, OED notified petitioner that he had used letterhead from his \_\_\_\_\_ office without reciting the jurisdictions in which he is licensed, i.e.,

App. 76.<sup>2</sup> On \_\_\_\_\_ petitioner acknowledged OED's concern over the proper use of letterhead. App. 86. Yet, despite actual knowledge of the requirement to identify his jurisdictional limitations, on \_\_\_\_\_ petitioner again used letterhead without reciting these limitations. App. 154. Petitioner used such inappropriate letterhead again on \_\_\_\_\_ App. 162. Petitioner has not explained why he persisted in this inappropriate conduct in spite of being warned against this type of behavior.

Petitioner has also violated 37 C.F.R. § 10.32(c) by failing to include his name in advertising his services. Accord American Bar Association Model Rule of Professional Conduct 7.2(d) (advertising "shall include the name of at least one lawyer responsible for its content"). On \_\_\_\_\_, OED notified petitioner of this failure. App. 17. On \_\_\_\_\_ petitioner acknowledged that he had failed to comply with this obligation and informed OED that he had ceased placing such

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<sup>2</sup> "App." refers to the bates numbered Appendix pages attached to the Director's Decision.

advertisements. App. 24 ("I now understand that the name of at least one practitioner should have been included in the advertisements. Once I discovered this oversight, I immediately contacted the \_\_\_\_\_ in an effort to rectify the problem. I have placed no advertisements since then.").

However, the record shows that the same type of improper advertisements for " \_\_\_\_\_ " still appeared without his name during \_\_\_\_\_ App. 273-76. Petitioner states that the \_\_\_\_\_ advertisements appeared because of the two respective directory services, not because of him, and that he is seeking relevant information from those businesses. Petition at 3-4. Despite this assertion, however, the record currently shows that these advertisements concern petitioner and appeared after he had been warned that such advertisements are improper.

In view of the above, petitioner neglected professional obligations.

#### **Neglect of Financial Responsibility**

Petitioner has had the obligation to "[m]aintain complete records of all funds . . . of a client." 37 C.F.R. § 10.112(c)(3). Cf. In re Godfrey, 583 A.2d 692, 693 n.1 (D.C. 1990) (the failure to maintain complete records of all

client funds was a basis for imposing disciplinary action).  
Petitioner admits that he does not have a complete record of  
certain funds he received from a client named  
App. 212 ("I paid the remaining to [a registered  
patent practitioner] in cash, and consequently I do not have a  
record of the payment"). Accordingly, petitioner neglected a  
financial responsibility.

### **Misrepresentations**

A "misrepresentation" has been simply defined as "[a]n  
untrue statement of fact." Black's Law Dictionary 518 (5th  
abr. ed. 1983). As discussed above, as of  
petitioner had direct knowledge of OED's concern over the  
accuracy of information conveyed on legal stationery and  
communications. Yet, even after his direct knowledge, on  
petitioner communicated with a client by representing that  
there was a " Law Firm" when there was no firm of  
attorneys. App. 153. On and on  
he again represented that there was a firm of attorneys.  
App. 157, 162, 163. During this same time frame, petitioner also  
styled his letterhead as "ATTORNEYS AT LAW" (emphasis added)  
and/or " & ASSOCIATES." App. 149, 154, 162, 163.



Petitioner also repeatedly represented that there were  
" LAW OFFICES" (emphasis added) when there was only one  
office. App. 149, 154, 155. This misrepresentation occurred as  
recently as \_\_\_\_\_ more than a year and a half after he  
had been warned by OED to not use misleading information.  
App. 258 ("LAW OFFICES"). Additionally, in his

Response to the Director's Order to Show Cause, petitioner  
included as Exhibit 16 an undated advertising brochure that  
repeatedly represents that there are "LAW OFFICES" (emphasis  
added). App. 266-67. These continual misrepresentations in  
light of OED's express concern over the proper use of letterhead  
demonstrate petitioner's repeated disregard for candor.

#### **Adverse Disciplinary Action**

As noted above, adverse discipline is also probative on the  
question of good moral character. Comprehensive Guide to Bar  
Admission Requirements 1995-96, ABA Sec. Legal Educ. & Nat'l.  
Conf. of Bar Examiners, viii., reprinted in ABA/BNA Lawyers'  
Manual on Professional Conduct 21:702 (1995).

petitioner did not permit

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1. App. 122. As a result, he received  
Director decision at 43.

## Intentional Omission

In his application for registration to practice before the PTO in patent cases, petitioner left the business name section of the application form blank. App. 204.<sup>3</sup> At that time, however, he worked for the law firm of \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_ App. 99. Thus, petitioner omitted the name of the business with which he was clearly affiliated when he signed his application.

With regard to why petitioner made the omission, the record shows in part:

"Within the first one to two months with the firm, [petitioner] realized that the firm was not happy with the rate at which [he] was producing work. . . . [He] had encounters with the firm's senior attorneys [concerning his performance] . . . . By the end of [he] was anticipating that [he] would be let go by the firm at any time."

App. 204 (petitioner's statement dated \_\_\_\_\_).

Thus, even though petitioner's frame of mind on \_\_\_\_\_ cannot be established with certainty, there is evidence that he had reason not to name the law firm he was then currently working for in order to prevent contact with it because of his performance problems. An intent to deceive need not be expressly

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<sup>3</sup> Sometime after \_\_\_\_\_ not relevant here, petitioner wrote "unemployed" on the application. App. 3.

proven. See Paragon Podiatry Lab. v. KLM Lab., 984 F.2d 1182, 1189-90, 25 USPQ2d 1561, 1567 (Fed. Cir. 1993) ("'smoking gun' evidence is not required in order to establish an intent to deceive . . . [which] must generally be inferred from the facts and circumstances surrounding the applicant's overall conduct"). Hence, petitioner's argument that his omission was accidental (see, e.g., Response to Order to Show Cause at 29-30) is not persuasive. Based on the facts of this case, there is sufficient evidence to infer his omission was intentional.

#### **A Pattern of Misconduct**

As shown above, petitioner has demonstrated a pattern of misconduct in that he neglected professional obligations, neglected a financial responsibility, made several misrepresentations to clients and potential clients, was the recipient of adverse disciplinary action and intentionally omitted information from his application for registration. Although these incidents alone might not necessarily demonstrate a lack of good moral character, when taken together over an extended period of time, they show a lack of good moral character especially when committed subsequent to specific express warnings by OED.

In view of the above findings of misconduct over an extended period of time, petitioner has failed to meet his burden of demonstrating that he possesses good moral character.

#### **Lack of Sufficient Rehabilitation**

Petitioner has not demonstrated sufficient rehabilitation to establish good moral character and reputation. With regard to applying for admission to a bar and the question of whether sufficient rehabilitation has occurred, it has been held that the following criteria are relevant:

"(1) [C]ommunity service and achievements, as well as the opinions of others regarding present character; (2) candor before the court; (3) the age of the applicant at the time of the offenses; (4) the amount of time which has passed since the last offense; (5) the nature of the offenses; and (6) the applicant's current mental state."

In re Loss, 119 Ill.2d 186, 196, 518 N.E.2d 981, 985 (1987),  
quoted with approval in In re Childress, 138 Ill.2d 87, 100,  
561 N.E.2d 614, 620 (1990). Accord In re Application of  
G. L. S., 292 Md. 378, 397-98, 439 A.2d 1107, 1117-18 (1982).

Petitioner has submitted some evidence to show a certain degree of rehabilitation. App. 220-23, 258, 268-69. However, based on the above discussed pattern of his misconduct, the evidence is not sufficient to show that he now possesses the requisite good moral character. For example, the letters of

recommendation he submitted are silent as to whether he has ceased the above behavior and instituted affirmative steps to assure that similar conduct does not recur in the future. App. 220-23, 268-69. In fact, it is unclear whether the authors of the letters were aware of petitioner's above behavior. Evidence of corrective action is necessary at this point and has not been provided.

As the record clearly illustrates, petitioner has violated various rules governing his practice as an attorney and his trademark practice before the PTO. He apparently routinely acts prior to considering the rules governing his conduct. Petitioner provided little objective evidence that this pattern of conduct has ceased. For example, he did not submit the various forms of letterhead that he has used most recently and is currently using. Likewise, he did not submit objective evidence that he has ceased inappropriate advertising, or that at a minimum, he has taken all necessary steps to do so. Finally, given the various rules violated by petitioner related to his practice as an attorney, he did not submit sufficient objective evidence to assure the Commissioner that such types of conduct will not recur in the future.<sup>4</sup>

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<sup>4</sup> For example, such types of evidence might include certification that he has completed a course in attorney ethics

### **Vacation of Other Grounds for Denying Enrollment**

The Director relies on additional bases for denying petitioner enrollment including his alleged unauthorized practice of law in states where he was not a member of the bar. Since petitioner's other conduct discussed above shows that he has not met his burden of demonstrating good moral character, there is no need to address these additional bases in order to deny enrollment in this case. Therefore, because of the extensive prosecution of this case and in the interest of bringing closure to it expeditiously, the Director's additional bases for denying enrollment are withdrawn and will not be reconsidered in this case.

### **CONCLUSION**

As discussed above, since petitioner has failed to meet his burden of demonstrating that he is of good moral character and repute, the petition is denied. Petitioner may resubmit his application for registration when he can convincingly demonstrate by way of objective evidence that (1) for a sufficient period of

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and professional responsibility; certification that he has completed a course directed to the rules governing an attorney employed as a sole practitioner; and evidence that he has consulted with various sole practitioners regarding rules governing his type of practice.

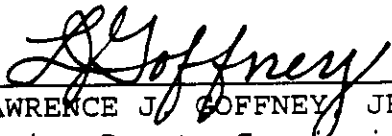
time his inappropriate conduct has ceased; and (2) affirmative steps have been taken to assure that such conduct will not occur in the future.

**ORDER**

Upon consideration of the petition to the Commissioner for registration to practice before the PTO in patent cases, it is

ORDERED that the petition is denied.

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
LAWRENCE J. GOFFNEY JR.  
Acting Deputy Commissioner  
of Patents and Trademarks

cc: