

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL
PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re [REDACTED]

Decision on Petition
Under 37 C.F.R. § 11.2(d)

MEMORANDUM AND ORDER

[REDACTED] (Petitioner) seeks review of the decision of the Director of the Office of Enrollment and Discipline (OED Director) disapproving Petitioner's application for registration to practice before the United States Patent and Trademark Office (USPTO or Office) in patent cases. The OED Director disapproved Petitioner's application to be registered as a patent agent under 37 CFR § 11.7(a)(2)(i) because Petitioner failed to demonstrate he has the good moral character and reputation required. For the reasons stated below, the OED Director's decision is **AFFIRMED**.

I. PROCEDURAL HISTORY BACKGROUND

On May 3, 2005, Petitioner submitted his fourth *Application for Registration to Practice Before the United States Patent and Trademark Office*, and subsequently passed the registration exam on June 9, 2005. In his application, Petitioner answered affirmatively to Question 16,

which inquires whether an applicant has "ever been arrested, charged, or held by Federal, State, or other law enforcement authorities for any violation of any Federal or State law, or any county or municipal law, regulation or ordinance." In May 2004, Petitioner was arrested in Baltimore City, Maryland for attempting to solicit a prostitute, a misdemeanor offense in the state of Maryland. The OED initiated its investigation by sending a letter to Petitioner dated June 17, 2005, seeking his position on the arrest. Petitioner replied by letters dated June 23, 2005, and June 25, 2005. In a letter dated October 27, 2005, OED sought Petitioner's position regarding additional information it had received concerning Petitioner's alleged misrepresentation of himself to the public. Petitioner replied by letter dated November 1, 2005. In a letter dated December 9, 2005, OED sought Petitioner's position regarding additional information concerning his psychiatric care and alleged misrepresentations, and Petitioner replied by letter dated January 4, 2006. Petitioner further provided a letter of recommendation dated March 6, 2006, from his employer, [REDACTED] of [REDACTED] Law Offices, Ltd.

The OED Director sent Petitioner a Show Cause Requirement (Show Cause) dated June 1, 2006, giving Petitioner an opportunity to show cause why his application for registration should not be denied on the basis that he had not met his burden of establishing to the satisfaction of the OED Director that he possesses good moral character and reputation. On June 23, 2006, Petitioner filed his Answer to OED's Show Cause Requirement (Answer). Petitioner was informed by letter dated November 15, 2006, that before OED would make a decision, the total application fee of \$1,600 was required by 37 CFR § 1.21(a)(10), and that a balance of \$1,560 was due. Petitioner submitted a check in the amount of \$1,560 on November 21, 2006. On April 12, 2007, the OED Director issued his final decision denying Petitioner's application for

registration to practice before the Office in patent cases. The Petitioner filed a timely Petition for Review of the OED Director's decision that was received June 1, 2007.

II. LEGAL STANDARDS

35 U.S.C. § 2(b)(2)(D) states in pertinent part that the USPTO:

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

Pursuant to the statute, Petitioner bears the burden of showing that he is of good moral character and reputation. In accordance with that statute, the USPTO Director promulgated 37 C.F.R. § 11.7, which states in pertinent part:

- (a) No individual will be registered to practice before the Office unless he or she has:
- (2) Established to the satisfaction of the OED Director that he or she:
 - (i) Possesses good moral character and reputation...

The primary responsibility for protection of the public from unqualified practitioners before the Office rests with the Director of the Office. *Kingsland v. Dorsey*, 338 U.S. 318, 319-20 (1949); *Cupples v. Marzall*, 101 F. Supp. 579, 583, 92 U.S.P.Q. 169, 172 (D.D.C. 1952), *aff'd*, 204 F.2d 58, 97 U.S.P.Q. 1 (D.C. Cir. 1953). The OED Director has been delegated authority to determine if an applicant has made a satisfactory showing of good moral character and reputation. See C.F.R. §§ 11.2(b)(3) and 11.7(a)(2). "Good moral character" denotes "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).

In making a determination whether an applicant presently possesses the required good moral character, the OED Director considers, among other things, evidence presented by the applicant regarding the factors set forth in 37 C.F.R. § 11.7(i).

An individual dissatisfied with the final decision of the OED Director may petition the USPTO Director for review. 37 C.F.R. § 11.2(d). The USPTO Director will consider no new evidence in deciding a petition for review. Id.

III. OPINION

Petitioner argues that he possesses the moral character required by discussing various incidents he has been involved in, and how he is now rehabilitated. ^{For (COJ)} To ease understanding, Petitioner's argument has been reorganized in the following discussion.

Misdemeanor Charge

For the crime of solicitation of prostitution, Petitioner was sentenced to 24 hours of community services and 6 months of unsupervised probation, both of which he completed without incident. Petitioner argues this is not a crime of moral turpitude.

In Petitioner's Brief (Brief), he acknowledges attempting to solicit a prostitute is "a morality-based crime," but went on to say it "pales in comparison, when compared on a moral or ethical basis, to acts which directly harm others, either through financial loss or personal injury." See Brief at 7. Petitioner further compares solicitation of prostitution to the crimes noted in *Konigsberg* (e.g. forgery, practicing law without a license), and concluded "attempted solicitation of a prostitute does not meet the standards set forth in *Konigsberg v. State Bar*." Id. Finally, Petitioner states he is now eligible to have the crime expunged from his record, and has "begun the appropriate process" to do so. See Brief at 6.

Petitioner's arguments are unpersuasive. First, Petitioner misapplies the holding of *Konigsberg*. The Court in *Konigsberg* concluded that 'moral turpitude' is an ambiguous term, and "the question is whether on the whole record a reasonable man could fairly find that there

were substantial doubts about [an applicant's] honesty, fairness and respect for the rights of others and for the laws of the state and nation." *Konigsberg* at 263-4.

In disciplinary and bar admission cases for attorneys, a number of courts have held that conduct concerning prostitution involves moral turpitude. See *Iowa Supreme Court Bd. of Professional Ethics and Conduct v. Lyzenga*, 619 N.W.2d 327 (Iowa, 2000) (holding that attorney's criminal convictions for prostitution constituted illegal conduct involving moral turpitude); *Matter of Wolff*, 490 A.2d 1118, 1120 (D.C. 1985), *aff'd on reh'g*, 511 A.2d 1047 (1986) (en banc) (holding that attorney who accepted payment from undercover police officers to perform acts of sexual self-gratification was guilty of conduct involving moral turpitude); *Richland County Bar Ass'n v. Brightbill*, 564 N.E.2d at 471-72 (holding that conviction for soliciting a prostitute to engage in sexual activity for hire constituted illegal conduct involving moral turpitude); *In re Howard*, 681 P.2d 775, 776 (1984) (accepting and approving attorney's admission that his misdemeanor conviction for paying a fee to engage in sexual conduct constituted "a conviction of a misdemeanor involving moral turpitude"); *Cogdill v. Committee of the Virginia State Bar*, 269 S.E.2d 391, 393 (1980) (holding that conviction for procuring a woman for the purpose of prostitution evidenced violation of DR 1-102(A)(3)); *In re Kosher*, 377 P.2d 988, 990 (1963) (holding that aiding and abetting in the "illicit practice of prostitution" involved moral turpitude).

Even more persuasive is the fact that in an analogous professional licensure case, the Maryland Court of Appeals found the crime of solicitation of prostitution, for the purposes of professional licensing and public appointments, was indeed a crime involving moral turpitude. See *Stidwell v. Maryland State Board of Chiropractic Examiners*, 799 A.2d 444 (Ct. App. Md. 2002).

The OED Director reasonably and correctly concluded the crime of solicitation of prostitution is considered a crime of moral turpitude.

Misrepresenting Himself as a Patent Attorney and Ph.D. Recipient

Petitioner has misrepresented himself as a Patent Attorney and a Ph.D. recipient in numerous ways.

Petitioner admits he claimed to be a Patent Attorney and a Ph.D. recipient on his three published books, and in an interview with the *Baltimore City Paper*. Petitioner also stated he had a Ph.D. on his personal website. Petitioner explains, “publicly lying about [my] educational and career background were meant only as a tool to sell more books and, in [my] private life, to bolster [my] severely lacking self-esteem (as a symptom of [my] previously noted psychological conditions).” Brief at 7.

The OED Director noted Petitioner had not provided objective evidence that the public was informed of the fictional nature of the information about the author, and appropriately concluded Petitioner was motivated by pecuniary gain when he provided false and misleading information about himself in order to promote his books. While Petitioner did provide evidence he removed the “Ph.D.” reference from his personal website, the OED Director noted this was done only after OED inquired what remedial action Petitioner had taken. Also, with regard to the statements on his books and the *Baltimore City Paper* article, the OED Director correctly determined Petitioner was unable to demonstrate that any corrective action had been taken, or otherwise demonstrate remorse or rehabilitation for the misrepresentations.

The file contains evidence of additional misrepresentations by Petitioner on Ms. Sailor’s website and on an alumni page. Petitioner does not deny these representations, but rather he attempts to distinguish these indiscretions from those in *Siegel v. Committee of Bar Examiners*,

514 P.2d 967 (Cal. Sup. Ct. 1973) by saying his misrepresentations are not evidence of a lack of moral character because they did not rise to the level of criminal behavior.

Siegel does not stand for the proposition that behavior must be criminal to show evidence of a lack of moral character, as Petitioner suggests. *Siegel* is a case where criminal behavior was considered lack of moral character, but the case does not suggest this is a threshold test. It has long been held in bar admission cases that “truthfulness, honesty, and candor are necessary characteristics for establishing a bar applicant’s good moral character and hence his or her fitness to practice law.” See *Shochet v. Arkansas Bd. of Law Examiners*, 979 S.W.2d 888 (Ark. 1998). More specifically, the United States Supreme Court in *Kingsland* held, “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.” See *Kingsland* at 318, 319, (ellipses deleted).

Other instances of falsehoods, misrepresentations, and other types of irresponsible conduct *not considered to be criminal in nature* have regularly been held as evidence of an applicant’s poor moral character. See *In re Application of Panepinto*, 704 N.E.2d 564 (Ohio, 1999) (holding an applicant’s false and incomplete answers in application to take bar examination, dishonesty during part of admissions process, and attempts to excuse or minimize such conduct at hearing established present lack of integrity); *In re Application of Valencia*, 757 N.E.2d 325 (Ohio, 2001) (holding evidence that applicant had plagiarized a paper written in law school, and that applicant had failed to reveal the pending plagiarism charge to bar admissions committee warranted denial of application); *In re Knight*, 208 S.E.2d 820 (Ga. 1974) (holding testimony of bar examination

applicant that he offered two law students \$5,000 if they would successfully take examination for him authorized judgment denying application).

On the [REDACTED] Law Office website Petitioner stated he had “8 years experience writing and prosecuting patent and trademark applications.” The OED Director concluded Petitioner had not prosecuted applications, rather he had drafted applications for registered practitioners. Petitioner has since reworded the statement, and now argues the word “prosecute” is not defined in regulation or statute and was not intended to deceive the public. Intentional or otherwise, Petitioner’s statement was clearly misleading.

The OED Director reviewed the evidence regarding Petitioner’s misrepresentations. The OED Director correctly found that it is appropriate to deny registration to a person, such as Petitioner, who repeatedly engages in conduct involving dishonesty and deceit, particularly where there is scant evidence of rehabilitation.

Petitioner’s Psychotherapy

Petitioner submitted letters demonstrating he has been undergoing psychotherapy for bipolar and major depressive disorders. Upon review of the letters, the OED Director concluded no nexus between Petitioner’s depressions and his misrepresentations had been established, and that nothing in the statements of the doctors showed Petitioner’s judgment had been impaired by his psychological condition.

Letters of Recommendation

Petitioner submitted several letters of recommendation. The OED Director reviewed these letters, and noted that while highly supportive of registration by Petitioner, the letters were not dispositive of good morale character. Further, the letters did not demonstrate that the writers had full knowledge by of Petitioner’s behavior.

Rehabilitation

Petitioner submits several examples of what he deems rehabilitation. The OED Director reviewed this evidence, and found that it was unconvincing. One item the OED Director found particularly noteworthy was evidence showing Petitioner continued to misrepresent himself online at the social networking website "Friendster.com," where he indicated he had a law degree and a Ph.D. in physics as late as June 23, 2006, several months after his Answer to the Show Cause Requirement. In his Brief, Petitioner merely comments, "the *Friendster* page has since been removed," but makes no further explanation as to why he continues to publicly misrepresent his credentials. In light of this information, the OED Director concluded this was evidence of a lack of reform and rehabilitation.

Other Considerations

Petitioner argues that because his application to take the examination had evidence that Petitioner was within two years of a conviction, OED should not have accepted petitioner's fee, and that accepting the fee is evidence OED does not strictly enforce the two-year ban for a conviction. Petitioner's argument is plainly wrong. The fee is for consideration of the application and must be paid before OED considers the contents of the application. In other words, the fee is a prerequisite for consideration. Acceptance of the fee is not a determination in any way on the merits of the application or the application of the two-year ban.

IV. CONCLUSION

The record contains ample evidence of Petitioner's lack of good moral character. Petitioner does not dispute the behaviors, rather he attempts to minimize the behavior, rationalize it, or to say that he has since rehabilitated. After consideration of all the evidence, the OED Director very reasonably concluded Petitioner did not have the requisite good morale character, and that

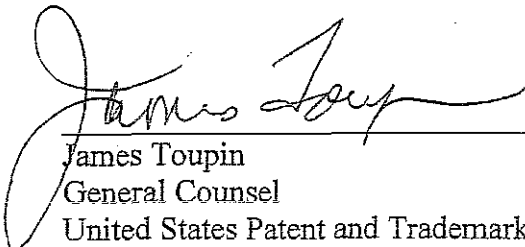
he had not since been sufficiently rehabilitated. The OED Director's decision is well supported by the facts of the case and should be upheld.

ORDER

Upon consideration of the Petition to the USPTO Director for registration to practice before the USPTO in patent cases under 37 CFR § 10.6(a), it is ORDERED that the petition is denied.

On behalf of the Under Secretary of Commerce for
Intellectual Property and Director of the United
States Patent and Trademark Office

September 26, 2007
Date


James Toupin
General Counsel
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cc:

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