UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of:	)	
	)	
JONATHON L. EDINGTON,	)	Proceeding No. D08-12
	)	
Respondent.	)	
	)	

INITIAL DECISION ON DEFAULT

On March 16, 2009, Harry I. Moatz, Director, Office of Enrollment and Discipline (OED) of the United States Patent and Trademark Office (PTO), filed a Complaint before the undersigned hearing officer pursuant to 35 U.S.C. § 32 and the regulations promulgated thereunder at 37 C.F.R. Part 11 (Rules), against Jonathon L. Edington (Respondent). The Complaint alleges that Respondent is an agent registered to practice before the PTO in patent cases (Reg. No. 54,080). It charges Respondent in three counts with violating the PTO Code of Professional Responsibility and Disciplinary Rules, set forth in 37 C.F.R. Part 10 as a result of his conviction on June 15, 2007 of violating Connecticut General Statutes § 53a-55(a)(1) (manslaughter) for which he was sentenced to a period of 20 years of incarceration.

No answer to the Complaint having been received from the Respondent, the Director of OED filed and served on Respondent a Motion for Default Judgment and Imposition of Discipline (Motion) on May 27, 2009. To date, no response to the Motion has been received.

I. Findings and Conclusions Regarding Service and Default

The Motion and attachments thereto suggest that since at least June 15, 2007, Respondent has been incarcerated at the

). In response to a letter from the OED dated October 23, 2008 regarding his status, the Respondent advised the PTO that due to concerns regarding on-going civil litigation against him, he was unwilling to agree to the OED's settlement proposal, but advised the OED that if it "proceed[ed] with the filing of a complaint, I do not intend to answer the complaint but rather to accept a default judgment and waive any right to hearing." *See,* Motion Ex. 3.

Thereafter, on December 22, 2008, the Director of OED filed with the Director of the PTO a Complaint, Request for Notice of Interim Suspension and Referral for Further Proceedings pursuant to 37 C.F.R. § 11.25. Such provision allows for the expeditious interim

suspension of a practitioner convicted of a serious crime. *See*, 37 C.F.R. § 11.25(a). In response, on January 9, 2009, the Director of the PTO served Respondent and the Director of the OED with a Notice of the OED filings and Order, by first class certified mail, return receipt requested, to the last address for him known to the OED Director, namely at the Institution. *See*, Final Order attached to Complaint filed in the captioned action hereinafter "Final Order"). That Order issued by the PTO Director, gave Respondent 40 days to file a response to the Complaint and alerted him that a default judgment could be entered against him if he failed to do so. Respondent did not timely respond to the PTO Director's Order, although the PTO had received documentation of the prison's receipt of the pleadings on his behalf, as a result of which on March 13, 2009, the Director of the PTO entered a Final Order Under 37 C.F.R. § 11.25(b) excluding him from practice before the PTO on an interim basis and referring the Complaint to a hearing officer for the purpose of conducting a formal disciplinary proceeding. *See*, Final Order.

On March 16, 2009, the OED filed the referred Complaint with the undersigned hearing officer charging Respondent in three counts with violating the PTO Code of Professional Responsibility and Disciplinary Rules, set forth in 37 C.F.R. Part 10 as a result of his conviction on June 15, 2007 of violating Connecticut General Statutes § 53a-55(a)(1) (manslaughter) and the events leading thereto. The OED mailed the Complaint and the Final Order to Respondent by first class certified mail, return receipt requested, to the last address for him known to the OED Director, namely at the on March 13, 2009. *See*, Certificate of Service attached to Complaint. The Motion indicates that the "green card" confirming the Correctional Institution's receipt of the documents was never returned to it. *See*, Motion at 2.

As a result, on April 21, 2009, the OED again re-mailed the Complaint and Final Order to the Respondent at the Correctional Institution. *See*, Motion Ex. 2. It subsequently received a postal notice indicating that the pleadings had been received by the Connecticut Department of Corrections on Respondent's behalf on April 23, 2009. *See*, Motion Ex. 2. To date, no response to the Complaint has been received by the OED or the undersigned. *See*, Motion at 3.

On May 27, 2009, the OED filed a Motion for Default Judgment and Imposition of Discipline based upon Respondent's failure to timely answer the Complaint. To date, no response has been received thereto.

PTO Rule 11.35 provides in pertinent part that -

> (a) A complaint may be served on a respondent in any of the following methods:
>
> * * *
>
> (2) By mailing a copy of the complaint by "Express Mail," first-class mail, or any delivery service that provides ability to confirm delivery or attempted delivery . . . .
>
> (i) A respondent who is a registered practitioner at the address

provided to OED pursuant to § 11.11;

37 C.F.R. § 11.35(a)(2)(i).

On the basis of the foregoing, it is hereby concluded that adequate service of process of the Complaint upon Respondent has been made.

PTO Rule 11.36 provides in pertinent part that -

> (a) *Time for answer.* An answer to a complaint shall be filed within the time set in the complaint but in no event shall that time be less than thirty days *from the date the complaint is filed.*
>
> * * *
>
> (e) *Default judgment.* Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment.

37 C.F.R. § 11.36(a), (e).

The Complaint filed with the undersigned provides on the first page thereof that -

> Within thirty (30) days from *the date of an Order by the USPTO Director referring this Complaint to a hearing officer*, Respondent's written answer shall be filed with the hearing officer and a copy of the answer shall be served on the Director of the Office of Enrollment and Discipline . . . . A decision by default may be entered against Respondent if a written answer is not timely filed.

Complaint at 1.

This notice is consistent with the provisions of the Final Order issued on March 13, 2009, and the date that the Complaint in the captioned action and the Final Order were mailed to Respondent, but is not absolutely consistent with the Rules requiring the 30 day period to run from the date the complaint is "filed." However, in light of the facts of this case the discrepancy is of no significance.

The time provided for Respondent to answer the Complaint has clearly expired. The Motion indicates that Respondent has not served OED with an answer to the Complaint, and to date, this Tribunal has not received an answer to the Complaint. Moreover, to date, Respondent has not filed a response to the Motion for Default mailed to him at the Correctional Institution on May 27, 2009.

Therefore, Complainant's Motion is granted and Respondent is hereby found in default, and is deemed to have admitted all of the allegations in the Complaint.

II. Findings and Conclusions Regarding Violations Charged in the Complaint

The factual allegations of the Complaint to which Respondent has admitted are as follows:

1. On or about August 28, 2006, Respondent's wife informed Respondent by telephone that she believed their 59-year old neighbor, had molested their 2-year old daughter.

2. Soon after receiving his wife's telephone call, Respondent entered house and stabbed him to death.

3. On August 28, 2006, Respondent was arrested on charges of burglary and murder in connection with the homicide.

4. On September 7, 2006, the State of Connecticut charged Respondent with violating §53a-54a of the Connecticut General Statutes (murder) and § 53a-101 (first degree burglary).

5. On June 12, 2007, Jonathan C. Benedict, State's Attorney for the Judicial District of Fairfield, filed a substitute information in the Superior Court of the State of Connecticut, Judicial District of Fairfield, whereby the State charged Respondent with violating § 53a-55(a)(1) of the Connecticut General Statutes (manslaughter in the first degree).

6. At all times relevant to this Complaint, Section 53a-55 of the Connecticut General Statutes provided in pertinent part:

> (a) a person is guilty of manslaughter in the first degree when: (1) With intent to cause serious physical injury to another person, he causes the death of such person or of a third person;
>
> (b) Manslaughter in the first degree is a class B felony.

7. At all times relevant to this Complaint, Section 53a-35a of the Connecticut General Statutes provided in pertinent part:

> For any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence and the term shall be fixed by the court as follows:
>
> * * * *
>
> (5) for a class B felony other than manslaughter in the first degree with a firearm under section 53a-55a, a term not less than one year nor more than twenty years . .

8. On June 15, 2007, Respondent pled guilty to violating § 53a-55(a)(1) of the Connecticut General Statutes.

9. On August 31, 2007, Respondent was sentenced to: (a) 20 years in prison with the execution of the remainder of the prison sentence being suspended after 12 years and (b) five years probation under conditions whereby Respondent is not to initiate contact with the victim's family and is to undergo psychiatric evaluation and treatment.

Based upon those same nine facts, the Complaint alleges three violations of the PTO Disciplinary Rules. Specifically, Count 1 alleges that Respondent engaged in disreputable or gross misconduct in violation of 37 C.F.R. § 10.23(a); Count 2 alleges that Respondent engaged in illegal conduct involving moral turpitude in violation of 37 C.F.R. § 10.23(b)(3); and Count 3 alleges that Respondent engaged in conduct that adversely reflects on his fitness to practice before the Office in violation of 37 C.F.R. § 10.23(b)(6).

PTO Rule 10.23 provides in pertinent part as follows:

(a) A practitioner shall not engage in disreputable or gross misconduct.

(b) A practitioner shall not:

* * * *

(3) Engage in illegal conduct involving moral turpitude.

* * * *

(6) Engage in any *other* conduct that adversely reflects on the practitioner's fitness to practice before the Office.

(c) Conduct which constitutes a violation of paragraphs (a) and (b) of this section includes, but is not limited to:

(1) Conviction of a criminal offense involving moral turpitude, dishonesty, or breach of trust.

37 C.F.R. §§ 10.23(a), (b)(3), (b)(6), (c)(1)(emphasis added).

Black's Law Dictionary defines "moral turpitude" as "conduct that is contrary to justice, honesty or morality" and quotes American Jurisprudence 2nd to the effect that:

> Moral turpitude means, in general, shameful wickedness - so extreme a departure from ordinary standards of honesty, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another or to society in general, contrary to the accepted and customary rule of right and duty between people."

BLACK'S LAW DICTIONARY 1026 (7th ed. 1999).

In the State of Connecticut and elsewhere, voluntary manslaughter is a crime involving

moral turpitude. *Harris v. Deafenbaugh*, 1993 Conn. Super. LEXIS 2578 (Conn. Super. Ct. 1993) citing *Drazen v. New Haven Taxicab Co.*, 95 Conn. 500, 507, 111 A. 861 (1920); *People v. Coad*, 1986 Cal. App. LEXIS 1676 (Cal. App. 1st Dist. 1986)(voluntary manslaughter necessarily involves moral turpitude), *Holloway v. Holloway*, 126 Ga. 459, 460-461 (Ga. 1906)(voluntary manslaughter involves the intentional destruction of human life. . . . the manslayer intends to kill, and carries out the intention in an unlawful manner. . . .. Whenever one intentionally and wrongfully takes human life, he does an act which is base, vile, depraved, and contrary to good morals. That the offense of voluntary manslaughter involves moral turpitude can not admit of serious question."); *Franklin v. INS*, 72 F.3d 571, 589 (8th Cir. 1995)(upholding the INS's definition of moral turpitude as including manslaughter stating "Courts have also consistently held that voluntary manslaughter is a crime involving moral turpitude."). *Cf. Mitchell v. State*, 298 S.C. 186, 189 (S.C. 1989)(voluntary manslaughter is not a crime of moral turpitude in South Carolina).

Based upon the facts, it is hereby found that Respondent's conviction on manslaughter in the first degree is a "conviction of a crime involving moral turpitude" within the meaning of 37 C.F.R. § 10.23(c)(1). As such, it is conduct constituting a violation of both 37 C.F.R. §10.23(a) engaging in disreputable or gross misconduct and §10.23 (b)(3)(engaging in illegal conduct involving moral turpitude.). Therefore, Respondent is hereby found liable on Counts 1 and 2 of the Complaint.

As to Count 3, alleging a violation of subsection (b)(6) of Rule 10.23, that provision provides that "[a] practitioner shall not . . . [e]ngage in any *other* conduct that adversely reflects on the practitioner's fitness to practice before the Office." 37 C.F.R. § 10.23(b)(6)(emphasis added). To give the word "other" significance in the regulation, the facts alleged to constitute a violation of 10.23(b)(6) must be *other* than facts alleged to constitute violation of another provision of Section 10.23(b) charged in a complaint. As stated by the PTO's appellate tribunal, "to be 'other' conduct within the scope [of] Section 10.23(b)(6), conduct must not be prohibited by Section 10.23(b)(1)-(5)." *Moatz v. Colitz*, 68 U.S.P.Q.2d 1079, 1102-1103 (Comm'r Pat & Trademarks, Jan. 2, 2003). Therefore, Respondent cannot be found in this proceeding to have violated *both* 37 C.F.R. § 10.23(b)(3) and 37 C.F.R. § 10.23(b)(6) based on the same facts as alleged in the Complaint. Instead, the facts can only support a violation of 37 C.F.R. § 10.23(b)(3) or 10.23(b)(6). In this case, the facts support a violation of 37 C.F.R. § 10.23(b)(3), and so Count 3 is hereby dismissed.

III. Penalty

PTO Rule 11.20(a) provides in pertinent part that the following types of discipline may be imposed upon a practitioner:

(1) Exclusion from practice before the Office;
(2) Suspension from practice before the Office for an appropriate period of time;

(3) Reprimand or censure; or
(4) Probation. . . .

37 C.F.R. § 11.20(a)(1)-(4).

PTO Rule 11.54(b) provides that in determining any penalty the following four factors "*must be* considered if they are applicable:"

(1) Whether the practitioner has violated a duty owed to a client, to the public, to the legal system, or to the profession;
(2) Whether the practitioner acted intentionally, knowingly, or negligently;
(3) The amount of the actual or potential injury caused by the practitioner's misconduct; and
(4) The existence of any aggravating or mitigating factors.

37 C.F.R. § 11.54(b)((1)-(4).

For the violations found in this case, OED requests issuance of an initial decision excluding Respondent from practice before the PTO. In its Motion, OED asserts that Respondent's exclusion is justified because: (a) Respondent committed a crime involving moral turpitude; (b) Respondent committed a violent crime; and/or (c) Respondent committed a crime causing the death of another person. Motion at 4.

Specifically, OED argues that Respondent pled guilty to violating § 55a-55(a)(1) of the Connecticut General Statutes thereby admitting that, "[w]ith intent to cause serious physical injury to another person," he caused the death of another person. This criminal conduct involves moral turpitude OED asserts, and as such warrants exclusion, citing in support therefor *In re Runyon*, 491 N.E.2d 189 (Ind. 1986)(attorney convicted on three felony counts of possession of unregistered firearms disbarred as conduct involved moral turpitude noting attorney struck and held ex-wife at gunpoint), *State ex. Rel. Oklahoma Bar Ass'n v. Sellye*, 490 P.2d 1095 (Ok. 1971) (attorney disbarred based upon felony conviction involving moral turpitude, *i.e.*, assault and battery with a dangerous weapon and 5 year prison sentence), American Bar Association Standards for Imposing Lawyer Sanctions §5.11(a)(2005)("Disbarment is generally appropriate when . . . a lawyer engages in . . . the intentional killing of another"), accessible at http://www.abanet.org/cpr/regulation/standards_sanctions.pdf.

Alternatively, the OED urges exclusion of the Respondent because he committed a violent crime citing *In re Nevill*, 704 P.2d 1332 (Cal. 1985). Motion at 5. In *Nevill*, the attorney was convicted of the manslaughter in the death of his wife. Both he and the state bar association recommended a suspension citing as mitigating factors his drug addition, his wife's extramarital relationship, his eight-year prison sentence, his lack of prior discipline, and the fact that the offense was unrelated to his legal practice. *Nevill*, 704 P.2d at 1335. However, the Court overrode the recommendation in favor of disbarment in recognition of its duty to the protect the

public and the profession, explaining that the defendant's actions:

> displayed a dangerous volatility which might well prejudice his ability to effectively represent his clients' interest given the pressures associated with the practice of law....While we are not insensitive to the personal and professional problems that frequently besiege the practitioner, it is our duty to protect the public from those attorneys who, for whatever reason, are unable to cope with pressure and adversity. The safety of the public, and the integrity of the profession require no less." *Id.* at 1336.

Further, the Court held disbarment was appropriate because "the degree [of sanction] ultimately imposed must, of necessity, correspond to some reasonable degree with the gravity of the misconduct at issue." *Id.*

The third basis upon which OED argues for exclusion is that Respondent's crime resulted in the death of another person, stating that even where "intent to harm" is not present, recklessly causing a death has been found as a basis for exclusion, citing in support *Oklahoma Bar Ass'n v. Wyatt, 32* P.3d 858 (Ok. 2001)(attorney disbarred for manslaughter conviction caused by intoxicated driving), *Office of Disciplinary Counsel v. Patchel*, 653 A.2d 625 (Pa. 1995)(attorney given 4-year suspension for vehicular homicide and hit and run), and *In re Runyon*, 491 N.E.2d 189, 190 (Ind. 1986)("Whatever Respondent's motivation, intentional or irrational, his actions during this incident remain heinous. It is our responsibility to safeguard the public from unfit lawyers, whatever the cause of the unfitness may be."). *Motion at 6.*

It is noted that there has not been a record developed respecting all of the circumstances surrounding the misconduct in this case, including whatever mitigating circumstances might be applicable. The Respondent's default has prevented such an inquiry. However, the record adequately documents that by his actions, Respondent violated a duty he owed to society, acted intentionally and knowingly, and caused a death. As such, the sanction of exclusion is found warranted.

ORDER

After careful and deliberate consideration of the above facts and conclusions as well as the factors identified in 37 C.F.R. § 11.54(b),

IT IS HEREBY ORDERED, that Respondent, **Jonathon Edington**, (

be excluded from practice as an attorney before the Patent and Trademark Office.

The Respondent's attention is directed to 37 C.F.R. § 11.58 regarding responsibilities in the case of exclusion, and 37 C.F.R. § 11.60 concerning petition for reinstatement.

The facts and circumstances of this proceeding shall be fully published in the Patent and Trademark Office's official publication.

Susan L. Biro
Chief Administrative Law Judge

Dated: July 9, 2009
Washington, D.C.

Pursuant to 37 C.F.R. § 11.55, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 11.54, must be filed with the Director of the Office of Enrollment and Discipline, U.S. Patent and Trademark Office, at the address provided in 37 C.F.R. § 1.1(a)(3)(ii) within 30 days after the date of this Decision. Such appeal must include exceptions to the Administrative Law Judge's Decision and supporting reasons therefor. Failure to file such an appeal in accordance with § 11.55, above, will be deemed to be both an acceptance by the Respondent of the Decision and that party's waiver of rights to further administrative and judicial review.

In the Matter of Jonathon L. Edington, Respondent
Proceeding D08-12

CERTIFICATE OF SERVICE

I hereby certify that a true copy of **Initial Decision On Default**, dated July 9, 2009, was sent this day in the following manner to the addressees listed below:

Maria Whiting-Beale
Staff Assistant

Dated: July 9, 2009

Copy by Regular Mail to:

U.S. Patent and Trademark Office
Ronald K. Jaicks
Sydney Johnson, Jr.
Associate Solicitors
P.O. Box 15667
Arlington, VA 22215

Certified Mail Return Receipt To:

Jonathon L. Edington