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

In the Matter of	)	
	)	
Christopher E. Haigh,	)	
	)	**Proceeding No. D2009-05**
Respondent.	)	
	)	

FINAL ORDER UNDER 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24(b), the Director of the United States Patent and Trademark Office (USPTO or Office) issued a Notice and Order Under 37 C.F.R. § 11.24 to Christopher E. Haigh (Respondent) ordering him to file a response containing all information that he believed was sufficient to establish a genuine issue of material fact that the imposition of discipline identical to that imposed by the Supreme Court of Indiana on June 30, 2008 would be unwarranted based upon any of the grounds enumerated under 37 C.F.R. § 11.24(d). On December 30, 2008, Respondent filed a response to the Notice and Order. For the reasons stated below, the USPTO finds the response insufficient, and hereby orders Respondent suspended for a period of two years from the practice of patent, trademark, and other non-patent law before the USPTO for violation of the ethical standards set out in 37 C.F.R. §§ 10.23(b), 10.23(c)(5), and 10.23(d).

I. BACKGROUND AND PROCEDURAL HISTORY

Respondent was admitted to practice law in the State of Indiana on June 9, 2000, and he was registered as a patent attorney with the USPTO on June 26, 2000.

In 2001, Respondent's then-stepson was attending the International School of Indiana

(ISI)—a private educational institution for elementary and secondary school students. Upon Respondent's suggestion, ISI established a Crew Team with Respondent as the Head Coach beginning in approximately February, 2001. Respondent was the Head Coach until he submitted his resignation by a letter dated June 24, 2004. In addition to this letter, Respondent sent an email to the ISI Headmaster on June 28, 2004, indicating that he was concluding his "official involvement with the ISI rowing team," and stating that he remained available to ISI to assist the Crew Team.

(Jane) and (Veronica) joined the ISI Crew Team in 2002. Jane was 14-years-old; Veronica was 15-years-old. Respondent gave Jane a lot of personal attention. He frequently complimented her on her appearance and academic and athletic talents. By the fall of 2003, Respondent also became close to Veronica—they had exchanged numerous emails of a personal nature and arranged outings to spend time alone.

In April, 2004, Respondent moved to Chicago in order to take a position with a new law firm. Respondent continuously asked ISI students and parents to visit him in Chicago, to participate in regattas in the Chicago area, and to stay at his condominium.

From June 20-24, 2004, members of the ISI Crew Team, including 16-year-old Jane and 17-year-old Veronica, attended a rowing camp in Morgantown, West Virginia. All participants met at the ISI campus to begin their trip to West Virginia. Respondent drove his personal vehicle to West Virginia, and Jane and Veronica rode with him. Respondent used the ISI van to transport the other ISI Crew Team members who attended the camp.

During the West Virginia camp, Respondent allowed Jane and Veronica to drink wine from a Gatorade bottle in his room. Respondent purchased the wine in West Virginia during a trip to the grocery store with Jane. In addition, Respondent and Jane engaged in mutual oral sex in

Respondent's room while Veronica slept in the same room.

On June 24, 2004, Respondent and the Crew Team members returned to the ISI campus, at which time Respondent, Jane, and a few other team members went to Respondent's parents' lake cottage in Michigan. While in Michigan, Respondent had unprotected sexual intercourse with Jane.

The group returned to Indiana the next day. Upon their return, Respondent and Jane engaged in sexual activities in Respondent's vehicle before he took her home.

During the summer of 2004, Respondent continued to exchange emails of a very personal nature with Veronica. In July, 2004, Veronica and her father, went to Chicago to participate in a regatta with Respondent, and stayed with Respondent. Early one morning, Mr. C found Veronica collapsed in Respondent's bathroom. She appeared to be intoxicated. Respondent denied any sort of inappropriate relationship with Veronica when Mr. C asked Respondent to distance himself from Veronica. However, Respondent and Veronica kissed for the first time on this weekend, and Veronica said that she fell in love with Respondent at about this time.

In August, 2004, Jane and her mother stayed at Respondent's Chicago condominium at Respondent's invitation. The morning after their first night's stay, Jane's mother awoke early and discovered Jane sitting on top of Respondent on the living room couch where Respondent had spent the night. Both of them were sweating profusely.

Respondent continued to exchange emails with Jane, despite her mother's demand that they not communicate with each other. On August 20, 2004, Respondent asked Jane to stop talking to others, including her physician—whom she told she had been sexually active, because he did not "see much point in putting any of this in writing. It just leaves more stuff for someone to

potentially find." In various further emails to Jane, Respondent continued to instruct her not to tell others about their sexual activity.

For the balance of 2004 and through the summer of 2005, Respondent and Veronica continued to engage in sexual activities while Veronica deceived her parents into believing that her relationship with Respondent had ended. In fact, Respondent and Veronica stayed in constant and secretive contact. Veronica lied to her parents about her whereabouts during these trysts with Respondent's knowing assistance and cooperation. Throughout this period, Veronica's senior year in high school, Respondent advocated her move to Chicago to attend college and bought her gifts, food, and alcohol.

On more than one occasion in 2005, Mr. confronted Respondent regarding the nature of Respondent's relationship with Veronica. On each occasion, Respondent lied to Mr. C and told him that they were just friends. Respondent continued his relationship with Veronica, and 18-year-old Veronica left her home in July, 2005, to live with Respondent in Chicago while she attended college.

On August 19, 2005, Respondent wrote a letter to the Indiana Law School in Indianapolis, where Mr. C was employed. Respondent stated that he had become involved in a C family debate regarding which college Veronica should attend. Respondent asserted that Mr. C was "revengeful," and had made their dispute "more than a personal issue." Further, Respondent stated that Mr. C conduct threatened ISI and its reputation, and that Respondent was ashamed and embarrassed by Mr. C conduct. He also complained that Mr. C had hired counsel in an attempt to further harass him. Respondent never disclosed the nature of his sexual relationship with Veronica or Jane.

On the basis of Respondent's conduct, the Indiana Supreme Court Disciplinary Commission

issued a Verified Complaint for Disciplinary Action. Respondent was charged with violating the Indiana Professional Conduct rules prohibiting commission of criminal acts that reflect adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Subsequently, a hearing was held upon the commission's allegation that Respondent's sexual conduct with and furnishing liquor to the two female students violated federal criminal law and the criminal laws of West Virginia, Michigan, and Illinois.

Based in large part on the "Stipulations of Fact" submitted by the parties, the hearing officer concluded that Respondent violated the laws of West Virginia and Illinois prohibiting furnishing liquor to a minor and the law of West Virginia prohibiting sexual conduct with a child under the age of 18 by a custodian. Upon review of the hearing officer's report and the briefs of the parties, on June 30, 2008, the Indiana Supreme Court concluded that Respondent engaged in professional misconduct as charged and suspended Respondent from the practice of law in the State of Indiana for a period of at least two years beginning August 15, 2008.

A "Notice and Order Under 37 C.F.R. § 11.24" mailed November 26, 2008, (Notice and Order) informed Respondent that the Director of the Office of Enrollment and Discipline (OED Director) had filed a "Complaint for Reciprocal Discipline Under 37 C.F.R. § 11.24" (Complaint) requesting that the USPTO Director suspend Respondent from practice before the USPTO for at least two years. The complaint was based upon the Indiana Supreme Court's "Order Finding Misconduct and Imposing Discipline," wherein the court determined that Respondent violated the laws of West Virginia and Illinois prohibiting furnishing liquor to a minor and the law of West Virginia prohibiting sexual conduct with a child under the age of 18 by a custodian, that these violations reflect adversely upon Respondent's honesty,

trustworthiness, and fitness as a lawyer, and that Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation.

The Notice and Order directed Respondent to file, within 40 days, a response containing all information Respondent believed was sufficient to establish a genuine issue of material fact that the imposition of discipline identical to that imposed by the Indiana Supreme Court would be unwarranted on the basis of any grounds enumerated under 37 C.F.R. § 11.24(d)(1).

On January 2, 2009, the Office of General Counsel received Respondent's "Response to Notice and Order" (Response) in which Respondent asserts that reciprocal discipline should not be imposed.

II. LEGAL STANDARDS

The USPTO has codified standards that were set forth early in the last century for imposing professional discipline based on a state's disciplinary adjudication. *Selling v. Radford*, 243 U.S. 46 (1917). 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 due to lack of notice or opportunity to be heard; (2) an infirmity of proof of misconduct; or (3) that grave injustice would result from the imposition of reciprocal discipline. *Id.* 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).

Specifically, 37 C.F.R. § 11.24(e) states, in pertinent part:

> . . . a final adjudication in another jurisdiction . . . that a practitioner . . . has been guilty of misconduct shall establish a prima facie case by clear and convincing

> evidence that the practitioner violated 37 C.F.R. 10.23, as further identified under 37 CFR 10.23(c)(5) . . . .

Further, 37 C.F.R. § 11.24(d) states, in pertinent part:

> . . . the USPTO Director shall consider any timely filed response and shall impose the identical . . . suspension . . . 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 a 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 . . . suspension . . . by the Office would result in grave injustice; or
>
> (iv) Any argument that the practitioner was not . . . suspended . . . .

III. ANALYSIS

A. Infirmity of Proof

Respondent asserts that reciprocal discipline is not appropriate due to the infirmity of proof of his misconduct. In support of his position, Respondent provides his own timeline of events and some documents, including two deposition excerpts and three emails, to show that the state's disciplinary action is predicated upon weak evidence.

The Indiana Supreme Court's disciplinary action was based in large part upon the Stipulations of Fact submitted by the parties. Accordingly, Respondent fails to clearly and convincingly demonstrate that there is a genuine issue of material fact that there was "such infirmity of proof establishing the conduct" that the USPTO could not accept as final the conclusion that Respondent committed the charged misconduct.

1. *Investigation by state agencies*

Respondent states that "the very same 'proof' that the Indiana Supreme Court relied upon in its Opinion was before at least four other state investigative agencies," and none of these agencies found probable cause of any wrongdoing. Therefore it is "erroneous and counterintuitive that the [Indiana] Supreme Court found 'clear and convincing' evidence of wrongdoing."

Contrary to Respondent's assertion, the state investigative agencies and the Indiana Supreme Court did not rely upon the same evidence. The Indiana Supreme Court relied upon the hearing officer's findings of fact, which were "based in large part on 'Stipulations of Fact' submitted by the parties." The stipulations are dated October 1, 2007, well after the state investigative agencies declined to take action against Respondent.

2. *Respondent's status as a volunteer coach*

Respondent asserts that the Indiana Supreme Court "appears to have confused or misunderstood the timeframe of the alleged incidents." He "could not have been a coach during the time of the alleged incidents" because he moved to Chicago in April, 2004, and the earliest allegation of sexual misconduct was in June, 2004, when he attended the West Virginia rowing camp. Respondent insists that he attended the camp as a "fellow rower" with Jane and Veronica, rather than as a coach, as evidenced by the fact that the camp "was not a school-sponsored event . . . and it was staffed by *third party* (paid) rowing coaches."

While it was established that Respondent moved to Chicago in April 2004, and the first time Respondent had sexual relations with a female student was in June 2004, at the West Virginia rowing camp, Respondent stipulated to facts that establish he was in fact the ISI Crew Coach at

the time.

Most important, Respondent stipulated that he tendered his resignation to ISI by letter dated June 24, 2004, the last day of the West Virginia rowing camp.

The fact that Respondent was not paid to attend the rowing camp as the ISI coach is of no consequence, because he was never paid to attend events as the ISI coach. Although Respondent alleges that coaches at the West Virginia camp were paid, during Respondent's tenure as Crew Coach he never received a salary, wages, or other direct monetary compensation from ISI. All of Respondent's actions, except providing alcohol to Jane and Veronica and having sexual relations with Jane, were consistent with his continuing to be the ISI Crew Team Head Coach. He was, as he had been previously, reimbursed by ISI for travel and lodging expenses associated with the West Virginia trip. Additionally, during previous summer sessions, Respondent made the necessary arrangements for interested ISI Crew Team members to attend summer crew camps in other states, and he attended all such camps with the students. Similarly, for the West Virginia camp, Respondent arranged for the team members to attend the camp, and he used the ISI van to transport the ISI crew team members.

3. *Respondent's status as a "custodian" under West Virginia law*

The Indiana Supreme Court determined that Respondent violated the West Virginia law prohibiting sexual conduct with a child under the age of 18 by a custodian. Respondent alleges it is "simply implausible" that he was a "custodian" under the law of West Virginia. Respondent fails to effectively explain this position, only stating that "the West Virginia code and amendments later added clearly show that the language in place in 2004 did not include a 'person of trust' and certainly would not have considered Haigh a 'custodian.' "

The relevant West Virginia criminal statute in effect at the time of Respondent's misconduct stated:

> In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian or custodian of a child under his or her care, custody or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty years, or fined not less than five hundred nor more than five thousand dollars and imprisoned in the penitentiary not less than ten years nor more than twenty years.

W. Va. Code § 61-8D-5(a) (1998).

A "custodian" was defined as:

> [A] person over the age of fourteen years who has or shares actual physical possession or care and custody of a child on a full-time or temporary basis, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian or custodian, or a person cohabitating with a parent, guardian or custodian in the relationship of husband and wife, where such spouse or other person shares actual physical possession or care and custody of a child with the parent, guardian or custodian.

W. Va. Code § 61-8D-1(4).

As discussed, the stipulated facts establish that Respondent was the ISI Crew Team Head Coach during the West Virginia rowing camp. Respondent fails to proffer any evidence that he was not a custodian within the meaning of the applicable statute, or that the Indiana Supreme Court erroneously determined that he violated the statute when he engaged in oral sex with Jane while he was her coach.

4. *Evidence that Respondent continued to serve liquor to a minor*

Respondent contends that the Indiana Supreme Court's finding that he "continued to furnish

liquor" to Veronica although she was not yet 21 years old is flawed because: it is based solely upon Mr. C oral testimony, is unsupported by the documentary evidence, and is contradicted by Veronica's affidavit in which she "clarifies that it was her father, and not Haigh, who served her alcohol."

Contrary to Respondent's contention, the chronological Stipulations of Fact establish that on February 25, 2005, Veronica turned 18 years old, and she was in her senior year of high school. Furthermore, "unbeknownst to Veronica's parents, Respondent was being intimate with their daughter, he was advocating her move to Chicago, he was advocating that she attend Northwestern University, and he was buying her gifts, food, and alcohol."

The referenced statements in Veronica's affidavit refer to her consumption of alcohol in Chicago in July, 2004, allegedly with her father's knowledge and consent. Accordingly, these statements have no bearing on the weight of the evidence establishing that Respondent "continued to furnish liquor" to Veronica although she was not yet 21 years old.

5. *Evidence that Respondent was dishonest*

Respondent contends that the Indiana Supreme Court erroneously found that he "repeatedly assured" Veronica's parents, Jane's mother, the school, and others "that he had no inappropriate relationship with" Veronica or Jane. Respondent states that the "overwhelming and corroborated documentary evidence establishes" that he did not have an inappropriate relationship with Jane or Veronica "while he was a volunteer coach at the School or while he had continued contact with the parents of the rowers." Therefore, Respondent reasons, he could not have mislead "the school (or anyone else) in his e-mail dated May 17, 2004."

Respondent fails to identify any evidence that he did not have an inappropriate relationship

with Jane or Veronica during the relevant period. In fact, the Stipulations of Fact detail numerous communications and interactions between Respondent and Jane, and Respondent and Veronica, that demonstrate Respondent's relationships with these teenagers were sexual, intimate, personal, and exceedingly inappropriate while he was their coach, as well as while he was in contact with their parents.

And Respondent ignores the stipulated facts that support the court's finding that Respondent "repeatedly assured" Veronica's parents, Jane's mother, "the school, and others that he had no inappropriate relationship" with Jane or Veronica.

For example, by late 2003, Respondent and Veronica were emailing personal messages to each other and had arranged personal outings so they could spend time alone. In July, 2004, Respondent denied to Mr. C that he and Veronica had an inappropriate relationship, yet he and Veronica kissed that weekend. And, one month later, Respondent told Veronica that he loved her and they commenced a relationship that included sexual intercourse. Respondent also admitted that he lied to Mr. C on numerous occasions in 2005 when he told Mr. C that he and Veronica were just friends.

Respondent also stipulated that in the fall of 2003, he appeared at 15-year-old Jane's house when her mother was out of town, and he took Jane and her babysitter to dinner. After dinner, Respondent drove Jane and her babysitter to his house, where they spent the night.

On December 31, 2003, Jane wrote to Respondent, "Sounds like you're a little lonesome . . . sorry I can't keep you company! I would love to! Unfortunately, I am too young and too far away, but I am tempted to go back just to make you less lonely!" By February, 2004, he and Jane continued to exchange frequent and personal emails.

After he moved to Chicago, Respondent planned an ISI crew outing to a Chicago regatta in

May, 2004. Jane was not permitted to attend because her mother was uncomfortable with the fact that the crew team members were staying overnight with Respondent. At this time, Jane told Respondent, "I want our relationship back, I want to be with you. I want to talk to you, hold you, hug you, kiss you. . . . Not being able to see you, just hearing your saddened voice, is killing me. I am heartbroken, I am lost." In response, Respondent told Jane, "We were meant to meet each other and know each other. . . ."

Thereafter, on May 17, 2004, Respondent emailed the ISI Headmaster regarding concerns that Jane's mother expressed about the nature of Respondent's relationship with Jane. Despite his previous personal communications with Jane, Respondent denied to ISI that he encouraged Jane to feel more than friendship for him. He also stated that he had no intentions of being anything more than friends with Jane, and that he had held Jane at the "appropriate distance." Respondent did not disclose the night that Jane slept at his house, or the frequency or nature of their communications. He concluded his email with the statement that he would "likely be more reserved and pensive when interacting with" Jane in the future.

Without explanation, approximately one month after making these representations to ISI, Respondent engaged in oral sex with 16-year-old Jane in West Virginia while Veronica slept in the same room, he had unprotected sexual intercourse with Jane at his parent's cottage in Michigan, and he engaged in sexual activities with her in his car before taking her home to her mother in Indianapolis.

The Indiana Supreme Court relied upon firmly established facts and circumstances to support its finding that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

6. ***Biased and belated oral testimony***

Respondent asserts that the "oral testimony relied upon by the [Indiana] Supreme Court was biased and belated, and should be given little weight." Respondent claims that more weight should be given to the decision of four investigative agencies not to bring charges against him because these agencies considered facts when they were "fresh in everyone's minds." In contrast, the depositions and oral testimony relied upon by the court occurred more than three years after Respondent's misconduct. And, a civil action was pending between the parties; therefore the oral testimony of Jane and Mr. C was biased.

What state investigative agencies do or do not do is irrelevant to this proceeding. The appropriate inquiry is whether there is a genuine issue of material fact that there was an infirmity of the proof, i.e., evidence, establishing Respondent's misconduct.

Respondent's argument regarding the weight to be accorded the oral testimony fails to undermine the incontrovertible evidence establishing Respondent's misconduct, specifically, the parties' Stipulations of Fact.

B. Denial of Due Process

Respondent asserts that he was denied due process when the Indiana Supreme Court "ignored state agency determinations that no probable cause of a crime existed, and instead found clear and convincing evidence of criminal conduct." Respondent also asserts he was denied due process when the executive director of the Indiana Supreme Court Disciplinary Commission "failed to disclose his pre-existing relationship with a chief witness testifying against Respondent."

The appropriate inquiry is whether the state disciplinary proceeding was so "lacking in

notice or *opportunity to be heard* as to constitute a deprivation of due process." 37 C.F.R. § 11.24(d)(1)(i) (emphasis added). This is commonly known as procedural due process.

The Indiana Supreme Court provided Respondent with both notice and an opportunity to be heard. This is evidenced by the facts. Respondent was aware of the proceedings, he participated in the discovery process and the hearing, and he had an opportunity to submit a Request for Correction of the Record in an attempt to modify the discipline imposed. Thus, Respondent fails to clearly and convincingly demonstrate a genuine issue of material fact that the state proceedings were so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.

1. *Finding that Respondent committed a crime*

Respondent states that the "Indiana Supreme Court Disciplinary Commission and the Indiana Supreme Court have accused, even ruled, that Haigh committed crimes. Yet the very state agencies set up to determine whether there was even probable cause of a crime have found differently."

Respondent erroneously relies upon precedent applicable to substantive due process in federal criminal prosecutions to establish that the state deprived him of his liberties when it found him " 'guilty' of crimes that did not even meet the probable cause test of fact-finding agencies." Accordingly, Respondent fails to establish that he was not provided notice of the state disciplinary proceedings, or an opportunity to be heard in the state disciplinary proceedings.

2. *Clear and convincing evidence of misconduct*

Respondent asserts his due process rights were violated when the Indiana Supreme Court

found "clear and convincing evidence of misconduct, ignoring the fact that state investigative agencies failed to find even probable cause of the same charges." Respondent reasons that if four investigative state agencies did not find probable cause, "it is contrary to due process that the [Indiana] Supreme Court found 'clear and convincing' evidence of wrongdoing."

Respondent fails to provide any support for his novel argument that procedural due process is violated when a state administrative body makes findings, based upon a clear and convincing standard, that are contrary to other state bodies' probable cause findings. Therefore, Respondent fails to establish a genuine issue of material fact that the state proceedings denied him notice or an opportunity to be heard.

3. *Failure to disclose a pre-existing relationship*

Respondent asserts he was denied due process when the Indiana Supreme Court Disciplinary Commission failed to disclose to the Indiana Supreme Court that its executive director was a colleague of Mr. C and when it failed to investigate two other attorneys who allegedly committed misconduct similar to that of Respondent. Respondent concludes, "Given the Commission's repeated reluctance to even open an investigation of the other blatant incidences of misconduct, it is impossible to conclude that the Commission's investigation of Haigh was unbiased and warranted, and that the Order finding Misconduct of Haigh resulted from due process."

Respondent fails to explain how the Indiana Supreme Court Disciplinary Commission's alleged failures resulted in the denial of Respondent's due process rights at the state disciplinary proceedings. Accordingly, Respondent fails to establish a genuine issue of material fact that the state proceedings denied him notice or an opportunity to be heard.

C. Grave Injustice

Respondent alleges that imposing reciprocal discipline would result in grave injustice because it would punish "Respondent for crimes for which he never even received a charge," and he and his clients would suffer financial hardship. Respondent also asserts that, since he is not accused of committing acts of dishonesty or misconduct in the practice of law, the USPTO would not be "biased" by allowing him to continue to represent clients before USPTO. None of these arguments establish a genuine issue of material fact that imposing reciprocal discipline would result in grave injustice to Respondent.

1. *Financial hardship*

Respondent states that he is the sole registered patent attorney in hundreds of matters before the USPTO. His fee in many of these matters is a fractional interest in the outcome of the client's product or technology. Respondent claims that this fee agreement saves "small business owners tens of thousands of dollars in up-front costs at the risk of Haigh's earning potential," and suspending Respondent would "take a significant toll" on his short-term income, destroy his "ability to recover future monies from his up-front investment of time," and render his clients "without any way of navigating the USPTO and monetizing their inventions." Respondent specifically asserts that he is the contingency in-house patent interference counsel to a company that would otherwise not have the resources to proceed regarding a multi-million dollar invention associated with a breast biopsy device. If Respondent is suspended, Respondent claims the inventor, Jeffrey Schwindt, will suffer a tremendous injustice.

In support of his position, Respondent submitted an article about his firm that appeared in the January 2009 edition of "Inventors Digest." This article has little weight because

Respondent wrote it knowing that it would be used to support his position in the Response. However, the article reveals that Respondent was deceitful in his Response. For example, in the article Respondent states that his fee is his "firm owning a stake in the invention," or a "percentage of the start-up company." This is contrary to Respondent's statement in his Response that his fee is a "fractional interest in the outcome of the client's product or technology." To illustrate the business model, the article explains that Jeffrey Schwindt is Respondent's business partner in a medical device company. In contrast, Respondent states in his Response that Respondent is "contingency in-house patent interference counsel" to Mr. Schwindt's company.

In addition, Respondent offered Jeffrey Schwindt's affidavit in support of Respondent's claim that if the Office "were to impose discipline on Haigh, Schwindt would suffer a tremendous injustice." Mr. Schwindt's affidavit is dated August 5, 2008, almost two months before the USPTO commenced this disciplinary proceeding. In fact, Respondent submitted Mr. Schwindt's affidavit to the U.S. District Court, Southern District of Indiana, in support of his contention that a grave injustice would result if that court suspended Respondent. The affidavit references a patent infringement action pending in the Southern District of Indiana, and states that Mr. Schwindt has "several more patent applications that should issue over the next two years. [He is] considering adding these new issued patents to the current infringement suit. Chris Haigh wrote these patent applications and a suspension in the Indiana federal courts would greatly hinder my case . . . ."

The affidavit fails to address the impact, if any, to Mr. Schwindt if the Office suspends Respondent. It provides no support for Respondent's contention that grave injustice would result if this Office imposed reciprocal discipline upon Respondent. Furthermore, the issue of grave

injustice that might be caused to Mr. Schwindt is moot—the referenced litigation concluded with an order of dismissal on April 24, 2009.

In any event, the issue is not whether imposing reciprocal discipline would result in grave injustice to Respondent's clients. The issue is whether imposing reciprocal discipline would result in grave injustice to Respondent. Here, Respondent argues that the adverse financial consequences that would result if the Office suspends him is a grave injustice that justifies not imposing reciprocal discipline. Loss of income naturally flows from a suspension and is always present when the Office considers suspending an attorney from the practice of law. Therefore, loss of income is not sufficient to establish, clearly and convincingly, a genuine issue of material fact that grave injustice would result from the imposition of reciprocal discipline.

2. *Reciprocal discipline in other jurisdictions*

Respondent claims that since he is not accused of committing acts of dishonesty or misconduct in the practice of law, he should be permitted to represent clients before USPTO. In support of this assertion, Respondent states "at least two other District Courts have declined to impose reciprocal discipline at this time, despite knowing of Haigh's suspension in Indiana." This assertion is made in Respondent's Response dated December 30, 2008.

In his Response, Respondent fails to fully explain that the U.S. District Court for the Southern District of Indiana issued him an Order to Show Cause regarding the imposition of reciprocal discipline, but, on August 14, 2008, the court indicated that it was in the process of seeking additional public records from the state disciplinary proceeding, it would keep the matter under advisement, and would not impose reciprocal discipline without providing Respondent an opportunity to be heard.

Furthermore, Respondent failed to supplement his December 30, 2008, Response with new information pertaining to his ability to practice law in the Southern District of Indiana. On February 17, 2009, the district court held a hearing on Respondent's Response to the Order to Show Cause. Respondent was allowed an opportunity to argue why the court should not impose reciprocal discipline and to answer questions posed by the court. The court heard Respondent's oral presentation, reviewed his brief and supporting materials, and the record of the disciplinary proceedings at the state level. On June 30, 2009, the court found that the stipulation of facts submitted in the state disciplinary proceeding provided sufficient proof of Respondent's misconduct, and issued an Order Imposing Discipline suspending Respondent from the practice of law before the courts in that district for a period of at least two years.

Respondent also states in his December 30, 2008, Response that the U.S. District Court for the Northern District of Illinois admitted him to the "general bar despite being informed of the impending suspension" in Indiana. However, Respondent failed to explain that he was admitted to the general bar on August 15, 2008, solely based upon his being a member of the bar of the State of Indiana. The certification of his state bar membership presented to the Northern District of Illinois was dated July 28, 2008, approximately one month after the Indiana Supreme Court issued its Order Finding Misconduct and Imposing Discipline, and approximately two weeks before the suspension was to become effective. In his August 15, 2008, Petition for Admission to the General Bar, Respondent answered "No" to the question "Has the petitioner ever been censured, suspended, disbarred or otherwise disciplined by any court?" When Respondent signed the petition, he was fully aware that the two-year suspension imposed by the Supreme Court of Indiana was effective August 15, 2008. Thus, Respondent's status before the Northern District of Illinois was based on misinformation about his standing with the bar of the State of

Indiana and provides no basis for contrary action by the USPTO.

Respondent also failed to supplement his December 30, 2008, Response with new information pertaining to his ability to practice law in the Northern District of Illinois. On June 4, 2009, the court issued an Order denying Respondent's request to waive the imposition of reciprocal discipline, and suspending Respondent from the practice of law in that district for at least two years.

To date, Respondent has also failed to disclose to USPTO any information regarding his ability to practice law in the U.S. District Court for the Northern District of Indiana. On July 9, 2008, the court issued an Order to Show Cause to Respondent commencing a reciprocal disciplinary proceeding. When Respondent failed to respond to the Order to Show Cause, the court imposed reciprocal discipline upon Respondent on August 14, 2008, and deferred ruling on his request for reconsideration on September 16, 2008. On June 26, 2009, the court denied Respondent's motion for reconsideration, finding that the discipline imposed was "well-supported, reasonable, and just."

Despite being informed of his obligation to notify the OED Director within 30 days of being suspended by another jurisdiction, or being disciplinarily disqualified from participating in or appearing before any Federal program or agency, Respondent has not supplemented his Response with this Office, or properly notified the OED Director of the suspensions in the above-referenced federal district courts.

Contrary to Respondent's claims, allowing Respondent to represent clients before USPTO would not be in keeping with USPTO's statutory responsibility to assure that those who represent parties before the Office be of sound moral character and reputation. The facts outlined above show Respondent has been dishonest and evasive with USPTO for his own

purposes.

For all of these reasons, Respondent has failed to demonstrate by clear and convincing evidence that it would amount to a grave injustice for the USPTO to impose by reciprocal discipline the same two-year suspension imposed by the Supreme Court of Indiana.

IV. CONCLUSION

The USPTO Director hereby determines that: (1) there is no genuine issue of material fact under 37 C.F.R. § 11.24(d)(1); and (2) suspension of Respondent from practice before the USPTO for a period of two years is appropriate.

ORDER

ACCORDINGLY, it is:

ORDERED that Respondent is hereby suspended from the practice of patent, trademark, and other non-patent law before the USPTO for a period of two years from the date of this Order;

ORDERED that the OED Director publish the following notice in the Official Gazette:

NOTICE OF SUSPENSION

Christopher E. Haigh, of Chicago, Illinois, is a registered patent attorney, registration number 46,377. In a disciplinary proceeding, the Director of the United States Patent and Trademark Office has ordered Mr. Haigh be suspended from the practice of patent, trademark, and non-patent law before the United States Patent and Trademark Office for a period of two years based

upon Mr. Haigh's two-year suspension from the practice of law by the Indiana Supreme Court for: (1) engaging in conduct that reflects adversely upon Respondent's honesty, trustworthiness, and fitness as a lawyer, specifically, violating the laws of West Virginia and Illinois prohibiting furnishing liquor to a minor, and the law of West Virginia prohibiting sexual conduct with a child under the age of 18 by a custodian; and (2) engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation. The suspension imposed by the Director begins on August 3, 2009. This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. §§ 11.24, 11.59.

ORDERED that Respondent be, and hereby is, granted limited recognition to practice before the Office beginning on the date of this Final Order and expiring thirty (30) days after the date of this Final Order;

ORDERED that Respondent be, and hereby is, directed during the time of his limited recognition to wind up all client business before the Office and to withdraw from employment in all pending proceedings in accordance with 37 C.F.R. § 10.40;

ORDERED that Respondent be, and hereby is, directed not to accept any new clients having business before the Office during the 30 days of limited recognition afforded by this Final Order;

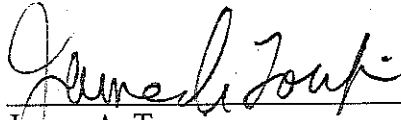
ORDERED that the OED Director shall give notice of this Final Order to the public including: (1) appropriate employees of the USPTO; (2) any interested departments, agencies, and courts of the United States; and (3) appropriate authorities of any State in which Respondent

is known to be a member of the bar;

ORDERED that Respondent shall comply with his duties under 37 C.F.R. § 11.58 as a suspended practitioner except that Respondent shall be eligible to apply for reinstatement under 37 C.F.R. § 11.60 two years from the effective date of the suspension;

ORDERED that Respondent comply with 37 C.F.R. § 11.60 should Respondent seek reinstatement except that Respondent shall be eligible to apply for reinstatement two years from the effective date of the suspension.

3 Aug 09
Date



James A. Toupin
General Counsel
United States Patent and Trademark Office

on behalf of

John Doll
Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office

CERTIFICATE OF SERVICE

I certify that the foregoing Final Order Under 37 C.F.R. § 11.24 was mailed first class certified mail, return receipt requested, this day to the Respondent at the following address provided to the Director of OED pursuant to 37 C.F.R. § 11.11:

Mr. Christopher E. Haigh

AUG 3 2009
Date

United States Patent and Trademark Office
P.O. Box 15667
Arlington, VA 22215