

**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)

File Number E)

) Decision on Petition Under
) 37 C.F.R. §§ 11.2(d) and 11.3

MEMORANDUM AND ORDER

(Petitioner) seeks review of the June 16, 2009, Final Decision and Memorandum Opinion (Final Decision) of the Director of the Office of Enrollment and Discipline (OED Director) denying Petitioner's application for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases. The OED Director denied Petitioner's request to be registered as a patent practitioner under 37 C.F.R. §11.7(a)(2)(i) because Petitioner failed to demonstrate he presently has the good moral character and reputation required to represent applicants before the USPTO. For the reasons stated below, the OED Director's June 16, 2009, Final Decision is **AFFIRMED**.

Petitioner also seeks suspension of the rules under 37 C.F.R. § 11.3. For the reasons discussed below, Petitioner's request for suspension of the rules is **DENIED**.

I. BACKGROUND AND PROCEDURAL HISTORY

Petitioner submitted an Application for Registration to Practice Before the United States Patent and Trademark Office (Application for Registration), dated June 23, 2008, and passed the registration exam on January 10, 2009. On January 22, 2009, the Office

of Enrollment and Discipline (OED) requested further information based on Petitioner's disclosure in his Application for Registration of multiple arrests and charges for violations associated with his separation and divorce proceedings. Petitioner subsequently submitted documentation in response.

On March 3, 2009, Petitioner was found guilty of two misdemeanors: 1) Criminal Trespass and 2) Interference with an Officer – Resisting Arrest. For the conviction of Criminal Trespass, Petitioner was sentenced to six months jail, execution suspended after 45 days, probation for one year. For the conviction of Interference with an Officer – Resisting Arrest, Petitioner was sentenced to six months jail, execution suspended after 90 days, probation for one year. On April 24, 2009, Petitioner's sentence was modified for time served, with one-year probation.

On May 13, 2009, the OED Director sent Petitioner a Show Cause Requirement requiring Petitioner to show cause why his application for registration to practice before the USPTO should not be denied. During May and June 2009, Petitioner submitted additional documentation and responses including a letter filed May 28, 2009, giving his account of, inter alia, the incidents leading to his misdemeanor convictions.

On June 16, 2009, the OED Director issued a Final Decision and Memorandum Opinion denying Petitioner's Application for Registration due to Petitioner's failure to meet his burden of establishing to the satisfaction of the OED Director that he presently possesses the good moral character and reputation required to practice patent law before the USPTO.

On July 15, 2009, Petitioner filed a request for an extension of time to appeal the OED Director's Final Decision, pending a hearing and decision by the State of

Connecticut Board of Pardons and Parole as to Petitioner's motions for pardon and termination of probation.

On July 23, 2009, a decision was issued denying the extension of time because, under 37 C.F.R. § 11.7(h)(1)(i), Petitioner would not be eligible to apply for registration for two years after sentence completion or probation.

On August 17, 2009, Petitioner filed the present petition for review of the Final Decision urging that the Director reverse the Final Decision because the evidence, considered by the OED Director, demonstrates that Petitioner has been rehabilitated as evidenced by two years of good behavior since his arrest on October 23, 2007, a letter from Petitioner's psychologist explaining he has accepted his divorce and has improved in his ability to handle frustration and consider the point of view of another even if it differs from his own, and the fact that his sentence was modified for good cause. Additionally, Petitioner argues that this is an extraordinary circumstance warranting a waiver, under 37 C.F.R. § 11.3, of the normal requirements of 37 C.F.R. § 11.7(h)(1)(i) that applicants wait two years after the date of completion of probation before applying for registration, relying, at least in part, on new evidence that he filed a motion to terminate his probation and an application to obtain a pardon.

As a further basis for waiving the two-year waiting period, Petitioner supplemented his petition on August 17, 2009, with additional new evidence that he filed a motion to have the Court find that his misconduct involved no moral turpitude. For similar reasons, Petitioner again supplemented his petition on October 6 and 19, 2009, by providing, *inter alia*, a copy of a State of Connecticut Superior Court sentence

modification order, dated October 5, 2009, terminating Petitioner's probation as well as a copy of a transcript of the judge's comments from the related hearing.

II. LEGAL STANDARD

The Director of the USPTO requires agents, attorneys, or other persons being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation prior to registration. 35 U.S.C. § 2(b)(2)(D); 37 C.F.R. § 11.7(a)(2)(i).

The OED Director receives and acts on applications for registration, including investigations into moral character and reputation. 37 C.F.R. §§ 11.2(b)(2)-(b)(3). An individual dissatisfied with the final decision of the OED Director may petition the USPTO Director for review. The petition must be limited to the facts of record and the Director will consider no new evidence. 37 C.F.R. § 11.2(d).

III. OPINION

A. The OED Final Decision is sound regarding lack of rehabilitation.

The Final Decision summarizes the history of Petitioner's criminal charges, arrests, trial, and confinement. The initial arrest occurred October 26, 2007. The final phase of sentencing, one-year probation, was not, at the time of issuance of the Final Decision, scheduled to terminate until April 24, 2010.

Petitioner argues that he has proven the rehabilitation of his moral character by his behavior during the past two years. However, as stated in an April 2003, decision

upon petition under 37 C.F.R. § 10.2(c)¹ for review of another decision of the OED Director, “It is not enough that petitioner kept out of trouble while being watched on probation; he must affirmatively demonstrate over a prolonged period his sincere regret and rehabilitation.”^{2 3} Petitioner has the burden of establishing rehabilitation.

Community service and achievements are relevant in determining whether sufficient rehabilitation has occurred.⁴ Petitioner has not demonstrated, under this criterion, that he has done anything more than the minimum required of any individual. In other words, he has not rebuilt the trust needed for a practitioner responsible for the intellectual property rights of clients. The psychologist’s letter, filed June 15, 2009, opining that he has now accepted his divorce and has improved in his ability to handle frustration and consider the point of view of others carries little weight, relative to Petitioner’s legal burden of proof.

The modification of Petitioner’s sentence also fails to establish rehabilitation because the judge maintained the one-year probation, including requirements that Petitioner “make the probation department aware exactly of your whereabouts and your travel plans and determine how long and when and the extent of the travel and adhere to (those) travel plans...”⁵ The court also imposed a protective order regarding Petitioner’s contact with his wife. That the judge imposed these conditions upon Petitioner supports the conclusion that his rehabilitation has not been established.

¹ 37 C.F.R. § 10.3(c) is a predecessor to the current 37 C.F.R. § 11.2(d).

² Moral 04 @ 7 (April 11, 2003) (OED Reading Room) (citing *Seide v. Committee of Bar Examiners*, 782 P.2d 602 (Calif. 1989)). Moral 04 is accessible at the following web address: http://des.uspto.gov/Foia/ReterivePdf?system=OED&flNm=0131_MOR_2003-04-11.

³ See also *Statewide Grievance Committee v. Toro*, 2008 WL 5219433 (Conn. Super.) (explaining that mere compliance with the terms of sentencing is insufficient to establish rehabilitation); *In re Cason*, 294 S.E. 2d 520, 522 (Ga 1982) (stating that “service of the sentence imposed, and not committing further crimes, standing alone, do not prove rehabilitation. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society.”)

⁴ Moral 04 @ 7 (citing *In re Loss*, 518 N.E.2d 981, 985 (Ill. 1987)).

⁵ *State of Connecticut v.*

The applicable USPTO regulation is a codification of the recognition that, in general, time, after sentence completion, is necessary for a petitioner to accumulate a record of positive action. This policy consideration underlies the two-year waiting period following completion of a sentence or probation for conviction of a misdemeanor involving, among other grounds, moral turpitude or interference with the administration of justice.⁶ Under this rule, absent an accepted showing of extraordinary circumstances justifying waiver of the rule, Petitioner will not be qualified to reapply for registration until October 5, 2011⁷.

B. No new evidence considered in review of Final Decision.⁸

As set forth in the procedural history, above, the OED Director's Final Decision issued June 16, 2009. In accordance with 37 C.F.R. § 11.2(d), no new evidence is considered upon review of the Final Decision of the OED Director. Nonetheless, Petitioner submitted the following new evidence: a letter of recommendation from his landlord, filed June 22, 2009; a copy of the State of Connecticut Superior Court sentence modification order, dated October 5, 2009, terminating Petitioner's probation, filed October 7, 2009; and a portion of the related court transcript including the judge's remarks in granting the motion to terminate probation, filed October 21, 2009. This new evidence has not been considered with respect to review of the Final Decision of the OED Director.⁹

⁶ 37 C.F.R. §11.7(h)(1)(i).

⁷ The State of Connecticut Superior Court sentence modification order terminating Petitioner's probation was granted October 5, 2009. Accordingly, the two-year time period under 37 C.F.R. § 11.7(h)(1)(i) expires October 5, 2011.

⁸ 37 C.F.R. § 11.2(d).

⁹ *Id.*

C. The early termination of probation does not amount to an extraordinary circumstance¹⁰ warranting waiver of the regulatory two-year waiting period following the date of completion of the probationary period.¹¹

Although the new information evidencing the early termination of Petitioner's probation is not considered on appeal¹², Petitioner seeks consideration of this new information with regard to his request for a waiver¹³ of the two-year waiting period following the date of completion of the period of probation¹⁴. The evidence of early termination of probation does not constitute an extraordinary circumstance,¹⁵ such as when a conviction is overturned,¹⁶ warranting waiver of the two-year waiting period. The judge's comments from the hearing related to the sentence modification order terminating probation indicate that the Petitioner has satisfied the judge's requirements regarding rehabilitation. In explaining his determination, the judge points out that it has been two years since the incidents leading to the misdemeanor convictions. In addition, the judge further explains that Petitioner has become focused on his career, has maintained counseling, and has abided by the court order regarding contact with his wife. While Petitioner's compliance with the terms of his probation, his continued participation in counseling, and his recent focus on building a new career are commendable and while it has been over two years since the occurrence of the incidents upon which his convictions are based, these facts do not amount to an extraordinary situation wherein

¹⁰ 37 C.F.R. § 11.3.

¹¹ 37 C.F.R. 11.7(h)(1)(i).

¹² 37 C.F.R. § 11.2(d).

¹³ 37 C.F.R. § 11.3.

¹⁴ 37 C.F.R. § 11.7(h)(1)(i).

¹⁵ 37 C.F.R. § 11.3.

¹⁶ Changes to Representation of Others Before the United States Patent and Trademark Office, 69 Fed. Reg. 35428, 35431 (June 24, 2004).

justice would require a waiver of the regulatory two-year waiting period following completion of probation.¹⁷

Petitioner's divorce and the attendant domestic disturbances also do not present an "extraordinary situation". Separation and divorce in this country and era are not unusual. That Petitioner reacted to this stress, by violating a pendente-lite order¹⁸ and interfering with the administration of justice by fleeing the police¹⁹ and thus resisting arrest, is not supportive of a conclusion that the Office should in any way alter its normal standards for making findings concerning moral character. The circumstances do not constitute the type of "extraordinary situation" contemplated by the drafters of the regulation²⁰.

The two-year delay for reapplying for registration provides Petitioner an opportunity to reestablish his reputation and moral character that would not be afforded by immediate reapplication following probation waiver. The two-year waiting period also serves to maintain public confidence in those registered to practice before the USPTO. Justice is served, in this instance, by following the rule.

IV. CONCLUSION

For the foregoing reasons, the Final Decision of the OED Director should be **AFFIRMED** and Petitioner's request, under 37 C.F.R. § 11.3, for suspension of the rules should be **DENIED**. This disposition is without prejudice to any reapplication for

¹⁷ 37 C.F.R. § 11.7(h)(1)(i).

¹⁸ Petitioner's letter of May 28, 2009, at 2-3.

¹⁹ *Id.*

²⁰ 37 C.F.R. § 11.3.

registration for practice before the USPTO that applicant may file in accordance with the provisions of 37 C.F.R. § 11.7(k).

ORDER

Upon consideration of the petition to the USPTO Director for registration to practice before the USPTO in patent cases, it is **ORDERED** that the petition is **DENIED**.

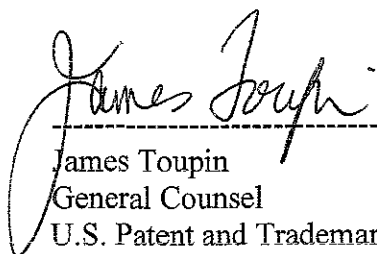
On behalf of

David Kappos

Under Secretary of Commerce for
Intellectual Property and Director of
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DEC - 3 2009

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