

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

In the Matter of:)
)
Karla Shippey,) **Proceeding No. D2012-02**
)
Respondent)
)
_____)

FINAL ORDER UNDER 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. §§ 11.19 and 11.24(d), the Director of the United States Patent and Trademark Office (USPTO or Office) hereby orders that Karla Shippey (“Respondent”) be suspended from the practice of trademark and other non-patent law before the USPTO for one year and be placed on probation for two years, both starting on the date this Final Order is signed, for violation of 37 C.F.R. § 10.23(b)(6) via 37 C.F.R. §10.23(c)(5).

I. BACKGROUND AND PROCEDURAL HISTORY

Respondent is not a registered patent practitioner and is not authorized to practice patent law before the USPTO. Nevertheless, at all relevant times hereto, Respondent has been an attorney in good standing in the State of California and the attorney of record in trademark registration applications filed with the USPTO, including U.S. Trademark Application Nos. 85/303689, 85/243893, 85/221662, 78/746724, and 78/974460.

On July 6, 2011, the Supreme Court of California in *In re Karla Shippey*, Case No. S192462, issued an Amended Order (“Amended Order”), suspending Respondent from the practice of law in California for one year. The Amended Order was based on a “Stipulation Re Facts, Conclusions of Law and Disposition” (“Stipulation”) executed by Respondent, on February 22, 2011, and approved by the State Bar Court of California on April 20, 2011¹ in *In the Matter of Karla C. Shippey*, Case Nos. 09-O-13111, et al. In the Stipulation, Respondent admitted that she

¹ The Order of the State Bar Court of California is stamped “FILED MAR 10 2011.” However, the Court Services Analyst for the California State Bar Court confirmed that the Order was actually filed with the California Supreme Court on April 20, 2011.

violated California Rules of Professional Conduct, rule 3-110(A) and rule 3-700(D)(2). The execution of the one-year period of suspension was stayed and Respondent was placed on probation for two years subject to the following conditions: (1) Respondent was suspended from the practice of law for the first six months of her probation; (2) Respondent was required to comply with the other conditions of the probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on April 20, 2011; and (3) at the expiration of the period of probation, if Respondent complied with all the conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be lifted. *See* Amended Order, p. 1.

The March 10, 2011, Order and July 6, 2011, Amended Order issued by the Supreme Court of California evidence that Respondent violated two California Rules of Professional Conduct. Respondent violated Rule 3-110(A) (proscribing intentionally, recklessly, or repeatedly failing to perform legal services with competence) by: (i) failing to obtain loan modifications or perform any other legal services of value in the representation of seven clients, (ii) failing to respond to a Notice of Missing Parts and other correspondence from the USPTO and causing clients' patent applications to become abandoned, and (iii) failing to forward an issue fee to the USPTO and causing the client's patent application to become abandoned. Respondent also violated Rule 3-700(D)(2) (requiring, in part, that a member whose employment has terminated shall promptly refund any part of a fee paid in advance that has not been earned) by: (i) failing to promptly refund fees paid in advance to Respondent by clients for legal services, despite not having earned the fees, and (ii) failing to promptly refund fees paid by a client in advance to Respondent to cover an issue fee, despite not having forwarded the issue fee to the USPTO.

On January 17, 2012, the Director of the Office and Enrollment and Discipline ("OED Director") served a Complaint for Reciprocal Discipline under 37 C.F.R. § 11.24(a) ("OED Complaint") on Respondent. In the OED Complaint, the OED Director requested that the USPTO

Director impose reciprocal discipline on Respondent for violating 37 C.F.R. § 10.23(b)(6)² via 37 C.F.R. §10.23(c)(5) when she was suspended on ethical grounds by a duly constituted authority of the State of California, namely the Supreme Court of California in *In re Karla C. Shippey*, Case No. S192462. OED Complaint, at p. 4.

On February 1, 2012, the Deputy General Counsel for General Law, on behalf of the USPTO Director, issued a Notice and Order Pursuant to 37 C.F.R. § 11.24 (“Notice and Order”), giving Respondent forty days to file a response “containing all information that Respondent believes is sufficient to establish a genuine issue of material fact that the imposition of discipline identical to that imposed by the California Supreme Court would be unwarranted” based upon any of the grounds permissible under 37 C.F.R. § 11.24(d)(1). *See* Notice and Order, at 1-2.

On March 5, 2012, Respondent filed a “Response To Notice And Order Pursuant To 37 C.F.R. Sec. 11.24” (“Response”). In her Response, Respondent makes essentially three arguments. First, she claims that the Stipulation denied her the opportunity to have a trial or otherwise be heard on the charged violations. *See* Response, pp. 1-2. Second, she claims that she is currently on voluntary inactive status, has not practiced law since July 27, 2011, and has no plans to return to the active practice of law. *Id.* at pp. 1-2. Finally, she claims that the Stipulation that led to the imposition of discipline by the State of California “covered actions related to mortgage negotiations in California only and had no affect whatsoever on any other areas of Respondent’s law practice, including corporate and trademark practice.” *Id.* at p. 1, para. 3.

As discussed below, the Office finds that Respondent has not shown by clear and convincing evidence that there is a genuine issue of material fact with regard to any of the standards set forth in 37 C.F.R. § 11.24(d)(1). Accordingly, the USPTO Director denies Respondent’s objection to the imposition of reciprocal discipline for her violation of 37 C.F.R. § 10.23(b)(6).

² Section 10.23(b)(6) provides that “[a] practitioner shall not . . . [e]ngage in any conduct that adversely reflects on the practitioner’s fitness to practice before the office.”

II. LEGAL STANDARD

Under 37 C.F.R. § 11.24(d), the USPTO, in accordance with *Selling v. Radford*, 243 U.S. 46 (1917), has codified standards for imposing reciprocal discipline based on a state's disciplinary adjudication. 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, (2) an infirmity of proof of the misconduct, or (3) that grave injustice would result from the imposition of reciprocal discipline. 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); *In re Friedman*, 51 F.3d 20, 22 (2nd Cir. 1995). "This standard is narrow, for . . . [a Federal court, or here the USPTO Director is] not sitting as a court of review to discover error in the [hearing judge's] or the [state] courts' proceedings.'" *In re Zdravkovich*, 634 F.3d 574, 578 (D.C. Cir. 2011) (quoting *In re Sibley*, 564 F.3d 1335, 1341 (D.C. Cir. 2009)).

Below is the language of 37 C.F.R. § 11.24(d), which mirrors the standard set forth in *Selling*:

The USPTO Director shall consider any timely filed response and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification 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 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 public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would result in a grave injustice; or
- (iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

The Office reiterates that, to prevent the imposition of reciprocal discipline, Respondent is required to demonstrate that she meets one of these factors by clear and convincing evidence—a task that is particularly difficult for Respondent because she stipulated to the facts and ethical violations as set forth in the February 22, 2011, Stipulation.

III. ANALYSIS

A. Deprivation of Due Process.

Respondent first claims that the Stipulation denied her the opportunity to have a trial or otherwise be heard on the charged violations. *See* Response, p. 1-2. She avers that she “had no choice but to accept the stipulated agreement offered” because she did not “have sufficient funds for counsel”, and “was not permitted to resign from the Bar.” *See* Response, p. 1. Finally, she stated that she “was not able to contest the proceedings in regard to allegations of processing patent applications. . . .” *See id.*, pp. 1-2. This does not clearly and convincingly raise a genuine issue of material fact as to 37 C.F.R. § 11.24(d)(i).

Respondent does not dispute that she agreed to the stipulated agreement or that she engaged in the conduct that led to the imposition of discipline. She does not proffer any documents or other evidence that would demonstrate that there were any legal or factual infirmities associated with the proceedings leading to her discipline by the state of California or that she objected to the stipulated agreement or brought an appeal from it at the time. Finally, she does not identify any evidence to prove that her consent to the stipulated agreement was anything other than voluntary. To the contrary, her arguments seem limited to a statement that, because of her unsupported allegation of insufficient funds, she was not permitted to proceed with her preferred option, that is, to be permitted to resign from the Bar. *See* Response, p. 1.

In sum, Respondent has not shown or attempted to show, let alone “clearly and convincingly demonstrate”, that the process before the Supreme Court of California was so lacking in notice or opportunity to be heard as to constitute deprivation of due process. 37 C.F.R. § 11.24(d)(i). Therefore, Respondent’s allegation of deprivation of due process, it is denied.

B. Voluntary Inactive Status and Intent Not to Practice Law.

Next, Respondent states she is currently on voluntary inactive status, has not practiced law since July 27, 2011, and has no plans to return to the active practice of law. *See Response*, p. 1-2. In her view, there

is no “need, purpose, or basis” for reciprocal discipline. *See* Response, p. 2. However, Respondent is mistaken as to standards applicable to reciprocal discipline cases.

The Director is required to impose reciprocal discipline unless Respondent clearly and convincingly demonstrates, and the USPTO Director finds there is a genuine issue of material fact, as to the standards identified in 37 C.F.R. § 11.24(d). To impose reciprocal discipline based on a state proceeding, the state proceeding must be examined “for consistency with the requirements of due process, adequacy of proof and absence of any indication that imposing discipline would result in grave injustice.” *See In re Robert B. Surrick*, 338 F.3d 224, 231 (3d Cir. 2003) (citing *In re Jacobs*, 44 F.3d 84, 88 (2d Cir.1994) and *Selling v. Radford*, 243 U.S. 46, 51, 37 S.Ct. 377, 61 L.Ed. 585 (1917)). There is no entitlement to a *de novo* review. *See id.* at 232. Rather, the Office need only “determine whether the record underlying the predicate state disbarment reveals the kind of infirmities identified in *Selling*.” *See id.* This review is “extremely limited.” *See id.*

Respondent’s claim that she is currently on voluntary inactive status, has not practiced law since July 27, 2011, and has no plans to return to the active practice of law, is not relevant to the question of whether reciprocal discipline is proper. Respondent’s claims regarding her voluntary inactive status and intent not to practice law does not meet one of the four standards to prevent the imposition of reciprocal discipline contained in 37 C.F.R. § 11.24(d). Consequently, it bears no relevance or weight to her reciprocal discipline decision and Respondent’s argument is denied.

C. Allegation That Basis for Discipline Was State Mortgage Modification Loans.

Lastly, Respondent claims that the Stipulation that led to the imposition of discipline by the State of California “covered actions related to mortgage negotiations in California only and had no affect whatsoever on any other areas of Respondent’s law practice, including corporate and trademark practice.” *See Response*, p. 1-2. As an initial matter, the Office notes that certain conduct that was stipulated to by Respondent, and which now form the basis of this reciprocal discipline, did involve the processing of matters pending before the Office. *See* Stipulation, Patent Matters (case numbers 10-O-01033, 10-O-03437, and 10-O-05954). Regardless, § 11.24 requires

reciprocal discipline when a practitioner before the office is censured, publicly reprimanded, subjected to probation, disbarred or suspended by another jurisdiction. *See* 37 C.F.R. § 11.24(a). The plain language of § 11.24 does not restrict the imposition of reciprocal discipline only to matters where the original censure, public reprimand, probation, disbarment or suspension occurred in connection with a patent or trademark matter.

There is no question that Respondent is a practitioner before the Office in that she was an attorney in good standing who was engaged in practice before the office. 37 C.F.R. §§ 11.1, 11.14(a), 11.19(a). As such, and because she engaged in conduct that violated 37 C.F.R. § 10.23(b)(6), and even stipulated to the same, she is subject to the imposition of reciprocal discipline regardless of the fact that the conduct may have occurred, in whole or in part, during the context of non-patent or non-trademark matters. Additionally, however, Respondent has not averred any fact or allegation that would raise a genuine issue of material fact as to any of the standards set forth in § 11.24(d). Consequently, there is no basis on which to hold that instituting reciprocal discipline on Respondent is improper. This allegation is denied.

D. CONCLUSION

For the reasons discussed above, the USPTO Director denies Respondent's objection to the imposition of reciprocal discipline for her violation of 37 C.F.R. § 10.23(b)(6).

ORDER

ACCORDINGLY, it is:

ORDERED that Respondent is suspended from the practice of trademark and other non-patent law before the USPTO for one year starting on the date the Final Order is signed;

ORDERED that Respondent is placed on probation for two years starting on the date the Final Order is signed;

ORDERED that Respondent be permitted to request reinstatement pursuant to 37 C.F.R. § 11.60 after serving six months of her one-year USPTO suspension. If reinstatement is granted,

Respondent shall be permitted to practice trademark and other non-patent law before the USPTO during the remainder of her probationary period, provided that Respondent otherwise satisfies the conditions of 37 C.F.R. § 11.14(a) and provided that she is not subsequently suspended or excluded from practice before the Office;

ORDERED that (1) in the event the OED Director is of the opinion that Respondent, during the two-year probationary period, fails to comply with any provision of this Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director may:

- (a) issue to Respondent an Order to Show Cause why the USPTO Director should not order that Respondent be immediately suspended for up to an additional six months for the violations set forth in the Final Order;
- (b) send the Order to Show Cause to Respondent where the OED Director reasonably believes that Respondent receives mail; and
- (c) grant Respondent fifteen (15) days to respond to the Order to Show Cause; and

(2) in the event after the 15-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during the two-year probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director may:

(a) deliver to the USPTO Director: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) argument and evidence supporting the OED Director's conclusion that Respondent failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility during the 2-year probationary period; and

(b) request that the USPTO Director immediately suspend Respondent for up to an additional six months for the violations set forth in this Final Order;

ORDERED that nothing shall require the OED Director to take the action(s) described in the prior paragraph if Respondent has not yet been reinstated to practice before the Office; instead,

the OED Director may (a) consider Respondent's purported failure to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility in connection with any request for reinstatement made by Respondent and/or (b) seek discipline against Respondent in accordance with the provisions of 37 C.F.R. §§ 11.34 through 11.57 for Respondent's purported failure to comply with any Disciplinary Rule of the USPTO Code of Professional Responsibility;

and

ORDERED that the OED Director shall make public the following Notice in the Official Gazette:

Notice of Suspension

Karla C. Shippey of Hacienda Heights, California, an attorney licensed in California and authorized to represent others before the United States Patent and Trademark Office ("USPTO") in trademark and non-patent matters. In a reciprocal disciplinary proceeding, Ms. Shippey has been suspended for one year and placed on probation for two years by the USPTO for violating 37 C.F.R. § 10.23(b)(6) via 37 C.F.R. § 10.23(c)(5) by having been suspended on ethical grounds by a duly constituted authority of the State of California. After completing six months of her USPTO suspension, Ms. Shippey may seek reinstatement pursuant to 37 C.F.R. § 11.60. If reinstated, Ms. Shippey will be permitted to practice in trademark and non-patent matters before the USPTO during her probationary period, provided she otherwise satisfies the conditions of 37 C.F.R. § 11.14(a) and is not subsequently suspended or excluded from practice before the Office. Ms. Shippey is not a registered patent practitioner and is not authorized to practice patent law before the USPTO.

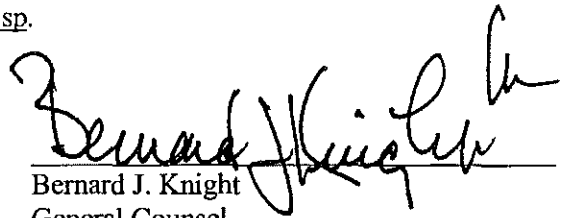
Via the July 6, 2011, Order the Supreme Court of California in *In re Karla C. Shippey*, Case No. S192462, suspended Ms. Shippey for one year, stayed that suspension, placed her on two-year probation, and suspended her for the first six months of her probation. The discipline was predicated upon a determination that Ms. Shippey violated California Rules of Professional Conduct, rule 3-110(A) and California Rules of Professional Conduct, rule 3-700(D)(2). Further, the discipline was predicated on failing to obtain loan modifications or perform any other legal services of value in the representation of seven clients; failing to respond to correspondence from the USPTO and causing clients' patent applications to become abandoned; failing to forward an issue fee to the USPTO and causing the client's patent application to become abandoned; failing to promptly refund fees paid in advance by clients for legal services, despite not having earned the fees; and failing to promptly refund fees paid by a client to cover an issue fee, despite not having forwarded the issue fee to the USPTO.

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.24. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room located at:

<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

JUN 11 2012

Date



Bernard J. Knight
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on behalf of
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