

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

In the Matter of:)	
)	
Christopher L. Persaud,)	Proceeding No. D2014-34
)	
Respondent)	
)	

FINAL ORDER UNDER 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24, the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) hereby excludes Christopher L. Persaud (“Respondent”) from the practice of patent, trademark, and other non-patent matters before the Office for violation of 37 C.F.R. § 11.804(h). This exclusion is reciprocal discipline for his disbarment in the State of California, as discussed below.

I. BACKGROUND AND PROCEDURAL HISTORY

At all times relevant to these proceedings, Respondent has been registered to practice in patent matters before the USPTO. (Exhibit to Final Order (“Exhibit”) 4, p. 1)). Respondent’s USPTO Registration Number is 63,738. (*Id.*). As a registered patent agent, Respondent is bound by the USPTO Rules of Professional Conduct, found at 37 C.F.R. § 11.101 *et seq.* (Exhibit 4, p. 1-2).

State Disciplinary Proceedings

Respondent became licensed to practice law in the State of California on March 25, 2009. (Exhibits 1, 3). On July 28, 2012, Respondent was suspended for three years from the practice of law in California, which suspension was stayed, and he was placed on three years of probation with a two-year actual suspension and until he proved his rehabilitation and made restitution. (Exhibit 3). Respondent was also ordered to take the Multistate Professional Responsibility Examination (MPRE) and to comply with Rule 9.20 of the California Rules of Court. (*Id.*).

By Order dated July 24, 2013, the Supreme Court of California disbarred Respondent from the practice of law in California. (*In re Christopher Leslie Persaud*, Case Number S210771) (Exhibit 2). The July 24, 2013 Order relied on a “Stipulation Re Facts, Conclusions of Law and Disposition and Order

Approving; Order of Involuntary Inactive Enrollment – Disbarment” of March 27, 2013. (“Stipulation”) (Exhibit 1). By his signature, Respondent signified his “agreement with each of the recitations and each of the terms and conditions of [the] Stipulation Re Facts, Conclusions of Law, and Disposition,” including the disposition that “disbarment is warranted.” (Exhibit 1, p. 13, 16). Pursuant to the Stipulation, “Respondent admit[ted] to committing acts of professional misconduct as to 47 different clients and involving violations of five separate rules and/or statutes.” (Exhibit 1, p. 12). The bases for the California disbarment, to which Respondent stipulated, consisted of “(1) failing to perform competently on behalf of his clients; (2) failing to communicate adequately with his clients; (3) improper withdrawal from employment with his clients; (4) the unauthorized practice of law; (5) collecting illegal fees; (6) failing to return unearned or illegal fees totaling approximately \$300,000; (7) failing to comply with Rule 9.20(c) of the California Rules of Court; and (8) making multiple representations of fact in several of his Rule 9.20(c) Compliance Declarations.” (Exhibit 1, p. 13).

One basis of Respondent’s disbarment was his failure to comply with Rule 9.20 of the California Rules of Court concerning his July 28, 2012 suspension. (Exhibit 1, pp. 9-10). Under that rule, Respondent was required to take certain steps to notify clients and co-counsel of the suspension, return property and unearned fees to clients, and file a Compliance Declaration with the Clerk of the State Bar Court demonstrating compliance with these requirements.¹ (*Id.*). Respondent submitted Compliance Declarations but, in them, Respondent made various misrepresentations that he had taken the steps required by Rule 9.20 when in fact he had not done so. (Exhibit 1, p. 10). These misrepresentations, which Respondent admitted, are part of the misconduct on which his California disbarment is based. (Exhibits 1, 2).

¹ Rule 9.20(c) of the California Rules of Court states that “[w]ithin such time as the order may prescribe after the effective date of the member’s disbarment, suspension, or resignation, the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered under this rule.” Further, “[a] suspended member’s willful failure to comply with the provisions of this rule [“rule 9.20”] is a cause for disbarment or suspension and for revocation of any pending probation. Additionally, such failure may be punished as a contempt or a crime.” Ca. Rules of Court, Rule 9.20(d).

Another basis for Respondent's California disbarment involved his improper advanced fee structure for client loan modifications services. Under California law, "it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to . . . claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform." Cal. Civil Code § 2944.7(a)(1). Respondent represented clients for whom he was hired to provide loan modifications services. (Exhibits 1, pp. 6-7; 2). Respondent accepted fees for services in advance of performing those services, in violation of this state law. (Exhibits 1, pp. 6-7; 2). Respondent also failed to return \$146,610 in unearned advanced attorney fees to forty-five clients, failed to notify these clients that he had terminated his employment with them, and failed to take reasonable steps to avoid reasonably foreseeable prejudice to these clients, in willful violation of Rules 3-700(A)(2) and 3-700(D)(2) of the California Rules of Professional Conduct. (Exhibits 1, pp. 7-9; 2). The disbarment order includes a requirement that Respondent make restitution to 46 of these clients. (Exhibits 1, 2). These actions, which Respondent admitted, are part of the misconduct on which his California disbarment is based. (Exhibits 1, 2).

USPTO Disciplinary Proceedings

On July 15, 2014, the Director of the USPTO's Office of Enrollment and Discipline ("OED Director") served a "Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24" ("OED Complaint") on Respondent. (Exhibit 4). The OED Director requested that the USPTO Director impose reciprocal discipline on Respondent using the procedures set forth in § 11.24 for violating 37 C.F.R. § 11.804(h), by being publicly disciplined on ethical grounds by a duly constituted authority of a State. (Exhibit 4, p. 2).

On July 23, 2014, the Deputy General Counsel for General Law, on behalf of the USPTO Director, issued an Order giving Respondent 40 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 Supreme Court of California in *In re Christopher Leslie Persaud*, Case Number S210771, would be unwarranted and the reasons for such claim.” (Exhibit 5) (Notice and Order Pursuant to 37 C.F.R. § 11.24 pp. 1-2).

On August 25, 2014, Respondent filed a response to the Notice and Order, contesting the imposition of a reciprocal exclusion. (Exhibit 6). First, Respondent proffered several documents and explanations that he believes show mitigation of the misconduct or his rehabilitation such that a reciprocal exclusion would be a grave injustice under § 11.24. (*Id.*). Respondent cites to his medical treatment, his volunteer work and pro bono work related to the USPTO’s mission, his involvement with the American Intellectual Property Law Association (“AIPLA”), his efforts to seek mentors in the field of patent law, and his authorship of an article to contribute to the patent law community, all of which Respondent began after his California disbarment. (*Id.*). As to his misconduct involving illegal collection of advanced payments for loan work, Respondent states that he believed at the time that he was acting lawfully, and further states that several of the former clients have provided statements that they do not seek Respondent’s further punishment. (*Id.*). Respondent contends that excluding him from the practice of patent law would be a grave injustice to the former clients he has yet to repay, because he would be less able to repay them. (*Id.*).

Respondent also contends that certain circumstances surrounding his misconduct render his reciprocal exclusion a grave injustice. (Exhibit 6). For example, Respondent points to his inexperience, lack of mentors, and the criminal actions taken by an employee around the time of the misconduct. Respondent also asserts that there were inadequate opportunities for new attorneys to get the training they needed from the California Bar Association at the time he committed his misconduct. (*Id.*). In light of these asserted mitigating factors, Respondent argues that “[e]xcluding [him] from practice before the USPTO would serve no useful purpose, and would be a grave injustice as defined in 37 C.F.R. § 11.24.” (*Id.*).

Second, Respondent argues that the California Supreme Court’s disbarment proceedings were lacking in due process. (Exhibit 6). In support, Respondent asserts that Cal. Civ. Code § 2944.7, which prohibits attorneys from charging and collecting advanced fees for loan modification services, and to which

Respondent admits to violating, is vague and its meaning was unclear at the time he committed his misconduct. (*Id.*).

Respondent also contends that if USPTO were to exclude him from practice before USPTO, then USPTO should revise its proposed Notice of Exclusion to remove the statements that Respondent committed “unauthorized practice of law” in California and that Respondent failed to return approximately \$300,000 in unearned or illegal fees. (Exhibit 6).

On December 1, 2014, the General Counsel, on behalf of the Director of the USPTO, issued a Final Order Under 37 C.F.R. § 11.24 excluding Respondent from the practice of patent, trademark, and other non-patent law before the USPTO.

On December 31, 2014, Respondent petitioned the United States District Court for the Eastern District of Virginia for review and reversal of the Final Order. (Exhibit 7) (*Christopher Persaud v. Director, United States Patent and Trademark Office*, No. 1:14-cv-1790 (E.D. Va.)). On July 22, 2015, the District Court entered an Agreed Order dismissing the action without prejudice so that the USPTO Director could “review and, if necessary, clarify USPTO’s December 1, 2014 ‘Final Order Under 37 C.F.R. § 11.24.’” (Exhibit 8) (*Persaud*, No. 1:14-cv-1790 (July 22, 2015)). In accordance with 37 C.F.R. § 11.24 and that Agreed Order, on September 2, 2015, the Deputy General Counsel for General Law, on behalf of the USPTO Director, provided notice to Respondent and the OED Director that the USPTO Director shall review and, if necessary, clarify its Final Order. (Exhibit 9, Notice and Order Pursuant to 37 C.F.R. § 11.24).

With that supplemental Notice and Order, the USPTO Director permitted Respondent to file a supplemental response containing any additional information that Respondent believes clearly and convincingly demonstrates, and would permit the USPTO Director to find there is a genuine issue of material fact that the imposition of discipline identical to that imposed by the Supreme Court of California in *In re Christopher Leslie Persaud*, Case No. S210771, would be unwarranted, and the reasons for such claim. (Exhibit 9).

In Respondent’s supplemental response, received on October 14, 2015, and his further supplement

thereto, received on November 2, 2015, Respondent provided updates and documentary evidence regarding his continued rehabilitative efforts, including his ongoing medical treatment, his efforts to satisfy his restitution obligations to his former clients, and his efforts to advance his knowledge of, and involvement in, patent law. (Exhibits 10, 11). This evidence includes medical records documenting Respondent's treatment since the original response, documents evidencing his payments to additional former clients, additional statements from former clients who attest that they do not wish for Respondent to be excluded from the practice of patent law, an additional patent law article which Respondent has co-authored since his original response, documentation of Respondent's continued involvement with the AIPLA, and an email in which he volunteers to participate in the USPTO's pro bono program. (Exhibits 10, 11). Citing this evidence, Respondent argues that allowing him to continue practicing patent law would be more beneficial to himself, the USPTO, the public, and his former clients, and that his exclusion from the practice of patent law would be a grave injustice. (Exhibits 10, 11).

Newly in this supplemental response, Respondent also cites internal administrative problems within the California Bar Association, arguing that the "deeply dysfunctional culture within the administrative arm of the California Bar . . . taints the actions of its office of Chief Trial Counsel[.]" (Exhibit 10, p. 6-7). In particular, Respondent contends that California Bar personnel declined to give him advice on the Office of Chief Trial Counsel's view of "certain of my plans to start a 'Precision Law Center' DBA." (Exhibit 10, p. 7). Respondent also contends that attorneys teaching a California Bar-sponsored ethics school in August 2012 gave him "*erroneous* advice concerning compliance with Rule 9.20," which was "one of the key reasons for the California State Bar's later accusations that I had failed to comply with Rule 9.20." (Exhibit 10, p. 7, emphasis in original). According to Respondent, these internal problems also lend weight to his contention that the California Bar Association was unable to train new attorneys effectively. (Exhibit 10, p. 7).

Respondent also reasserts the argument in his original response that he should not be excluded based on his violations of Cal. Civ. Code § 2944.7, a statute which he asserts is unclear. (Exhibit 10, p. 7). In support, Respondent's supplemental response attaches news articles reporting on graft charges brought

against former state Senator Ronald Calderon, whom Respondent contends sponsored the relevant amendments to § 2944.7. (Exhibit 10, p. 7-8 & Exhibit G). According to Respondent, these graft charges provide “evidence that Senator Calderon sponsored statutory amendments that were poorly constructed,” and therefore provide evidence that the meaning of § 2944.7(a)(1) was unclear at the time Respondent accepted money for loan modifications. (Exhibit 10, p. 8).

In addition, Respondent continues to maintain that the Notice proposed by the Director is inaccurate because it states Respondent was ordered to repay “approximately \$300,000” in unearned or illegal fees, which Respondent argues is more than the “about \$ 274,000” that he contends he owes. (Exhibit 10, pp. 8-9).

II. LEGAL STANDARD

Pursuant to 37 C.F.R. § 11.24(d), and in accordance with *Selling v. Radford*, 243 U.S. 46 (1917), the USPTO 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 (2d 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)).

The USPTO’s regulation governing reciprocal discipline, 37 C.F.R. § 11.24, mirrors the standard set forth in *Selling*:

[T]he 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 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 public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would result in grave injustice; or
- (iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

To prevent imposition of reciprocal discipline here, Respondent is required to clearly and convincingly demonstrate that there is a genuine issue of material fact as to one of the four factors identified at 37 C.F.R. § 11.24(d)(1). As discussed below, however, Respondent has not satisfied this burden and the USPTO Director has not found that a genuine issue of material fact exists as to the factors in § 11.24(d)(1).

II. ANALYSIS

A. Imposition of a Reciprocal Disbarment Would Not Result in a Grave Injustice under 37 C.F.R. § 11.24(d)(1)(iii).

A state disbarment creates a federal-level presumption that imposition of reciprocal discipline is proper. *See Selling, supra*. A respondent may seek to defeat that presumption by showing by clear and convincing evidence that a genuine issue of material fact exists as to whether a “grave injustice” would result under 37 C.F.R. § 11.24(d)(1)(iii). Respondent raises rehabilitative steps he has taken since the imposition of his disbarment in California and certain mitigating circumstances surrounding his

misconduct to argue that his reciprocal exclusion under § 11.24 would be a grave injustice, including with materials provided in his supplemental responses of October and November 2015.

Respondent, including through his supplemental responses, has not shown by clear and convincing evidence that a reciprocal exclusion would be a grave injustice. The “grave injustice” showing required to avoid reciprocal discipline is a high standard. *See In re Thav*, 852 F. Supp. 2d 857, 861 (E.D. Mich. 2012). Reciprocal discipline proceedings do not provide Respondent with an opportunity for a de novo review of what sanction should have been imposed in California. *See, e.g., In re Roman*, 601 F.3d 189, 194 (2d Cir. 2010) (declining, in context of reciprocal discipline, to review de novo what sanction should have been imposed by the originating jurisdiction); *In re Kramer*, 282 F.3d at 727 (“In reviewing a reciprocal disbarment, we do not re-try an attorney for misconduct.”). Instead, the grave injustice analysis focuses on whether the severity of the punishment “fits” the misconduct. *See In re Thav*, 852 F. Supp. 2d at 861-62; *see also In re Kramer*, 282 F.3d at 727 (on challenge to imposition of reciprocal discipline, “we inquire only whether the punishment imposed by [the first] court was so ill-fitted to an attorney’s adjudicated misconduct that reciprocal disbarment would result in grave injustice”); *In re Attorney Discipline Matter*, 98 F.3d 1082, 1088 (8th Cir. 1996) (no grave injustice where disbarment imposed by the state court “was within the appropriate range of sanctions”); *Matter of Benjamin*, 870 F. Supp. 41, 44 (N.D.N.Y. 1994) (public censure within range of penalties for misconduct and thus censure was not a grave injustice).

Here, Respondent stipulated to the misconduct and disbarment. (Exhibit 1). The stipulated misconduct involved “misconduct as to 47 different clients” and violations of court rules demonstrating as a whole that “[s]ince becoming a member of the State Bar, Respondent has been unable to conform his conduct to the ethical strictures of the profession.” (Exhibit 1, pp. 11, 13). Respondent’s disbarment is in addition to Respondent’s previous suspension.

In addition, the California disciplinary standards are clear that disbarment is within the range of allowable penalties for the attorney misconduct at issue in this case. The Standards for Attorney Sanctions for Professional Misconduct, which set forth a means for determining the appropriate disciplinary

sanction in a particular case and help ensure consistency across cases dealing with similar misconduct and surrounding circumstances, state that disbarment is a sanction available upon a finding of misconduct. *See* Standards for Attorney Sanctions for Professional Misconduct, §§ 1.1, 1.3(a). Where, as here, an attorney has a prior record of discipline, the sanction typically must be greater than the previously imposed sanction. *See* Standards for Attorney Sanctions for Professional Misconduct, Standard 1.8(a). Respondent already had a three-year suspension, stayed, with three years of probation and a two-year actual suspension and until he proves his rehabilitation and makes restitution.

In sum, Respondent voluntarily agreed to his California disbarment, including the predicate findings. (Exhibit 1). The disbarment was within the allowable range of penalties for his repeated, serious misconduct, particularly since Respondent had a prior disciplinary record. As a result, Respondent's disbarment was not a grave injustice and his reciprocal exclusion under § 11.24 is warranted.

Moreover, while Respondent has documented, including through his supplemental responses, several personal and professional activities undertaken since the imposition of his disbarment in California — such as his efforts to comply with his restitution obligations, his medical treatment, his authorship of patent law articles, and his involvement with the AIPLA — he has failed to clearly and convincingly demonstrate that there is a genuine issue of material fact as to whether these rehabilitative efforts render his reciprocal exclusion from the practice of patent law a grave injustice.

Respondent's contention is essentially that there is no longer any reason to exclude him from practice before this Office because of his ongoing rehabilitative efforts and that his exclusion would serve no useful purpose at this point. (Exhibits 6, 10, 11). While rehabilitative steps can, in some circumstances, be a factor to consider when an excluded person is applying for reinstatement after a five-year waiting period under 37 C.F.R. § 11.60, they do not bear on a reciprocal discipline such as here. Before imposing reciprocal discipline, this Office need only undertake an "extremely limited" review to "determine whether the record underlying the predicate state disbarment reveals the kind of infirmities identified in *Selling*." *In the Matter of Shippey*, No. D2012-02, at 7 (USPTO Dir. June 11, 2012) (quoting *In re Robert B. Surrick*, 338 F.3d 224, 231 (3d Cir. 2003)); *see also Selling*, 243 U.S. at 50 (determining that state

court judgment should be recognized unless “an intrinsic consideration of the state record” reveals one of the identified infirmities). Because Respondent’s arguments in this regard do not reveal any infirmities in the California disbarment, they do not clearly and convincingly demonstrate a genuine issue of material fact as to whether a grave injustice would result if reciprocal discipline were imposed.

Even if Respondent’s rehabilitative efforts undertaken since the imposition of the California disbarment were within the purview of this Office’s limited reciprocal discipline review, they would be insufficient. Respondent has “admit[ted] to committing acts of professional misconduct as to 47 different clients and involving violations of five separate rules and/or statutes.” (Exhibit 1, p. 12). Respondent’s rehabilitative efforts simply do not clearly and convincingly demonstrate a genuine issue of material fact that the imposition of reciprocal discipline based on his repeated, serious misconduct would result in a grave injustice.

Respondent cites three cases in support of his argument that his reciprocal discipline would be a grave injustice because of his ongoing medical treatment, but all are readily distinguishable. Two cases do not involve reciprocal discipline and the misconduct involved was of a very different nature (sex offenses involving minors). See *In re Safran*, 18 Cal.3d 134, 554 P.2d 329, 133 Cal. Rptr. 9 (Cal. 1976); *Office of Disciplinary Counsel v. Christie*, 536 Pa. 394, 639 A.2d 782 (Pa. 1994). In the third, *Theard v. U.S.*, 354 U.S. 278, 280 (1957), the Supreme Court applied the grave injustice prong of *Selling* to determine that a federal court was not required to reciprocally disbar a practitioner eighteen years after he had engaged in forgery where “at the time of the fateful conduct he was concededly in a condition of mental irresponsibility so pronounced that for years he was in an insane asylum under judicial restraint.” By contrast, there is no suggestion in the record that Respondent lacked the mental capacity to be held responsible for his misconduct. And, while the Court also noted that the practitioner in *Theard* recovered his capacity and practiced law without incident for the six years preceding his disbarment, *Theard* does not clearly and convincingly demonstrate a genuine issue of material fact as to whether Respondent’s reciprocal exclusion would be a grave injustice simply because Respondent has sought medical treatment and taken other rehabilitative steps since his disbarment.

Respondent's assertions regarding certain circumstances surrounding his misconduct, such as his asserted lack of experience and mentors, bad advice he alleges he received, and his assertions against a former colleague, are similarly unpersuasive. As noted above, this reciprocal discipline proceeding does not give Respondent an opportunity for de novo review of his misconduct or his disbarment sanction. *See, e.g., In re Roman*, 601 F.3d at 194; *In re Kramer*, 282 F.3d at 727. The time to raise these allegedly mitigating circumstances would have been in the California disbarment proceeding, not after Respondent knowingly stipulated to the misconduct and agreed that his disbarment was warranted. (Exhibit 1). Moreover, Respondent has not adequately explained how circumstances such as the wrongdoing of others, his lack of experience or mentors, or insufficient training mitigate his particular misconduct. Respondent also fails to provide factual support for his allegations that the California Bar Association's alleged dysfunction or Respondent's attendance at a California Bar-sponsored ethics school caused or contributed to his misconduct. Respondent, therefore, has failed to clearly and convincingly demonstrate a genuine issue of material fact as to whether these allegedly mitigating circumstances render his reciprocal exclusion a grave injustice.

B. Respondent Has Not Suffered A Deprivation of Due Process under 37 C.F.R. § 11.24(d)(1)(i).

As indicated above, a state disbarment creates a federal-level presumption that imposition of reciprocal discipline is proper. *See Selling, supra*. A respondent may also seek to defeat that presumption by showing that the state proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process under 37 C.F.R. § 11.24(d)(1)(i). Respondent, including through his supplemental responses, has not made this showing.

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation omitted)). In disciplinary proceedings, an attorney is entitled to due process, such as reasonable notice of the charges before the proceedings commence. *See In re Ruffalo*, 390 U.S. 544, 551 (1968). Due process requirements are satisfied where a respondent “attended and participated actively in the various hearings, and was

afforded an opportunity to present evidence, to testify, to cross-examine witnesses, and to present argument.” *In re Squire*, 617 F.3d 461, 467 (6th Cir. 2010) (citing *Ginger v. Circuit Court for Wayne County*, 372 F.2d 620, 621 (6th Cir. 1967)); *see also In re Zdravkovich*, 634 F.3d 574 (D.C. Cir. 2011) (stating that attorney could not satisfy claim of due process deprivation where he was given notice of the charges against him, was represented by counsel, and had hearing at which counsel had the opportunity to call and cross-examine witnesses, make arguments, and submit evidence). Due process requirements are also met where a respondent is given “an opportunity to respond to the allegations set forth in the complaint, testify at length in [his] own defense, present other witnesses and evidence to support [his] version of events . . . , [and is] able to make objections to the hearing panel’s findings and recommendations.” *In re Squire*, 617 F.3d at 467 (citing *In re Cook*, 551 F.3d 542, 550 (6th Cir. 2009)).

Here, Respondent participated fully in the state level proceedings. Respondent was represented by counsel, as plainly indicated on the March 27, 2013 Stipulation. (Exhibit 1). Knowingly, and with the participation of his counsel, Respondent agreed to the March 27, 2013 Stipulation that admitted misconduct consisting of “(1) failing to perform competently on behalf of his clients; (2) failing to communicate adequately with his clients; (3) improper withdrawal from employment with his clients; (4) the unauthorized practice of law; (5) collecting illegal fees; (6) failing to return unearned or illegal fees totaling approximately \$300,000; (7) failing to comply with Rule 9.20(c) of the California Rules of Court; and (8) making multiple representations of fact in several of his Rule 9.20(c) Compliance Declarations.” (Exhibit 1). Respondent also knowingly stipulated that his “disbarment is warranted.” (Exhibit 1). That Stipulation and the case were independently reviewed and approved by the State Bar Court² and the disbarment was subsequently ordered by the Supreme Court of California. (Exhibit 1, p. 17; Exhibit 2). There is no indication that Respondent appealed or sought reconsideration of the state discipline. Thus, having participated fully in the state proceedings with the assistance of counsel, having voluntarily

² Rule 5.58 of the Rules of Procedure of the State Bar of California states that stipulations as to facts, conclusions of law, and disposition require court approval to determine whether the Stipulation is fair to the parties and adequately protects the public.

entered into a Stipulation of misconduct with a sanction of disbarment, and having been afforded all rights of review, Respondent has not shown any deprivation of due process.

Respondent argues that he was deprived of due process when he was charged with violating Cal. Civ. Code § 2944.7(a)(1). (Exhibit 6). Respondent argues that this statute “did not give reasonable opportunity for attorneys to know what was prohibited[.]” (Exhibit 6). In support, Respondent argues he was not the only attorney who interpreted § 2944.7(a)(1) incorrectly. (Exhibit 6, 10). Respondent, however, was represented by counsel when he knowingly stipulated to violating § 2944.7(a)(1). Respondent reiterated those admissions in his Response. (Exhibit 6) (“I admit that I should not have accepted advanced fees from clients for loan modification work. . . .”). Respondent had an opportunity to litigate his challenge to § 2944.7(a)(1) during the California proceedings, and he instead admitted to a violation of it. In any event, Respondent’s receipt of advanced fees from clients for loan modification services plainly violated the clear language of § 2944.7(a)(1), which prohibits “any compensation” from being claimed, demanded, charged, collected, or received “until after the person has fully performed *each and every* service the person contracted to perform or represented that he or she would perform.” Cal. Civil Code § 2944.7 (emphasis added).

In his supplemental response, Respondent cites news articles from 2014 reporting on graft charges brought against former state Senator Ronald Calderon. According to Respondent, these graft charges provide “evidence that Senator Calderon sponsored statutory amendments that were poorly constructed, and therefore evidence that at the time that [Respondent] accepted money for loan modifications, the meaning of Civil Code § 2944.7, and the types of conduct it prohibited, were unclear.” (Exhibit 10, p. 7-8 & Exhibit G). Respondent, however, does not even attempt to explain how the clear language of Cal. Civil Code § 2944.7 is rendered unclear by unrelated graft charges pending against the sponsoring senator. Respondent’s arguments in this regard are without merit.

Respondent also contends that, if the USPTO were to exclude him from practice before USPTO, then USPTO should revise its proposed Notice of Exclusion to remove statements that Respondent committed “unauthorized practice of law” in California and that Respondent received approximately \$300,000 in

unearned or illegal fees. (Exhibit 6). He claims that there is no support for these statements. In the March 27, 2013 Stipulation, however, Respondent admitted to misconduct that consisted of “(4) the unauthorized practice of law; . . . [and] (6) failing to return unearned or illegal fees totaling approximately \$300,000.” (Exhibit 1, p. 13). In his supplemental response, Respondent continues to challenge the veracity of the “approximately \$300,000” language in the proposed Notice of Exclusion, but acknowledges that he stipulated to this phrase in the March 27, 2013 Stipulation. (Exhibit 10, p. 8-9, *see also* Exhibit 1, p. 13). Respondent contends that the sum of the “actual amounts of restitution” listed in his two stipulations with the California Bar Association totals “about \$274,000,” which is less than “approximately \$300,000.” (Exhibit 10, p. 8-9). It appears Respondent’s restitution figure does not include the interest that he agreed to pay his former clients. (*See, e.g.*, Exhibit 2). In any event, because Respondent stipulated to the challenged language, the proposed Notice of Exclusion is amply supported by the findings in the state proceedings.

Respondent has not shown by clear and convincing evidence that there is any genuine issue of material fact that a “grave injustice” under 37 C.F.R. § 11.24(d)(1)(iii) would result if reciprocal discipline were imposed or that the state proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process under 37 C.F.R. § 11.24(d)(1)(i).

ORDER

ACCORDINGLY, it is:

ORDERED that Respondent is excluded from the practice of patent, trademark, and other non-patent law before the USPTO effective the date of this Final Order; and

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

Notice of Exclusion

This notice concerns Christopher Leslie Persaud of Winnetka, California, who is registered to

practice in patent matters (Registration Number 63,738) before the United States Patent and Trademark Office (“USPTO”) and was licensed as an attorney in California. In a reciprocal disciplinary proceeding, the Director of the USPTO has ordered that Mr. Persaud be excluded from practice before the USPTO in patent, trademark, and other non-patent matters for violating 37 C.F.R. § 11.804(h) by being disbarred from the practice of law by a duly constituted authority of a State.

Mr. Persaud was disbarred from the practice of law in California by Order of the Supreme Court of California dated July 24, 2013, *In re Christopher Leslie Persaud* (No. S210771). The Order was based upon Mr. Persaud: (1) failing to perform competently on behalf of clients; (2) failing to communicate adequately with clients; (3) improperly withdrawing from employment with clients; (4) the unauthorized practice of law; (5) collecting illegal fees; (6) failing to return unearned or illegal fees totaling approximately \$300,000; (7) failing to comply with Rule 9.20(c) of the California Rules of Court; and (8) making multiple misrepresentations of fact in several of California Rule 9.20(c) Compliance Declarations, as Mr. Persaud stipulated to having violated Section 2944.7(a)(1) of the California Civil Code, Sections 6106 and 6106.3 of the California Business and Professions Code, Rules 3-700(A)(2) and 3-700(D)(2) of the California Rules of Professional Conduct, and Rule 9.20 of the California Rules of Court. Mr. Persaud, prior to his disbarment, had been suspended from the practice of law for three years by Order of the California Supreme Court dated June 28, 2012, *In re Christopher Leslie Persaud* (No. S200588).

This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.24. Disciplinary decisions are available for public review at the Office of Enrollment and Discipline’s FOIA Reading Room, located at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

ORDERED that the OED Director give notice pursuant to 37 C.F.R. § 11.59 of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;

ORDERED that the USPTO dissociate Respondent’s name from any Customer Numbers and the public key infrastructure (“PKI”) certificate associated with those Customer Numbers; and

ORDERED that Respondent shall not apply for a USPTO Customer Number, shall not obtain a USPTO Customer Number, nor shall he have his name added to a USPTO Customer Number, unless and until he is reinstated to practice before the USPTO.

Pursuant to 37 C.F.R. § 11.57(a), review of this final decision by the USPTO Director may be had by a Petition filed with the U.S. District Court for the Eastern District of Virginia under 35 U.S.C. § 32 “within 30 days after the date of the order recording the Director’s action.” *See* E.D.Va. Local Civil Rule 83.5.

MAR 3 1 2016

Date



Sarah Harris
General Counsel
United States Patent and Trademark Office

on behalf of
Michelle K. Lee
Under Secretary of Commerce for
Intellectual Property and Director of
United States Patent and Trademark Office

cc:
Director
Office of Enrollment and Discipline
Mailstop OED
USPTO
P.O. Box 1450
Alexandria, VA 22313-1450

Christopher Persaud
20239 Arminia St.
Winnetka, CA 91306



Respondent