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

In the Matter of:	)	
Naren Chaganti,	)	**Proceeding No. D2015-10**
Respondent	)	

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24, Naren Chaganti ("Respondent") is hereby suspended indefinitely from the practice of patent, trademark, and other non-patent matters before the United States Patent and Trademark Office ("USPTO" or "Office"), with no petition for reinstatement to be entertained for a period of one year, for violation of 37 C.F.R. § 11.804(h) for having been disciplined on ethical or professional misconduct grounds by the duly constituted authority of a state.

I. Background and Procedural History

At all times relevant to these proceedings, Respondent has been registered to practice in patent matters before the USPTO as an attorney (Registration No. 44,602). (Ex. 2) (disciplinary complaint). As a registered patent attorney, Respondent is bound by the USPTO Rules of Professional Conduct, found at 37 C.F.R. § 11.101 *et seq.*, which became effective May 3, 2013. (*Id.*)[1]

Background Litigation[2]

Respondent is the sole owner and officer of Whispering Oaks RCF Management Company, Inc. ("Whispering Oaks"), a corporation registered with the Secretary of State of Missouri. (Ex. 7, pp. 17, 415, 651).[3] In the spring of 2009, Lafayane Manse, a special inspector with Ameren UE ("Ameren") was on

[1] Prior to May 3, 2013, the USPTO Code of Professional Responsibility was in effect. *See* 37 C.F.R. §§ 10.20 *et seq.*

[2] Respondent's state discipline, and the instant reciprocal matter, stem from Respondent's conduct in connection with dispute between Respondent and a contractor regarding work performed. A comprehensive recitation of all the facts is not included in this final order. Rather, a summary of that history, based on Respondent's response and accompanying exhibits, is provided.

[3] Respondent submitted over 700 pages of documents with his Response. Those documents are attached as Exhibit 7 and are sequentially numbered for ease of reference.

the Whispering Oaks property to provide repairs to several of the air conditioning units at the facility. (Ex. 7, pp. 245, 395, 729). Mr. Manse is also a licensed HVAC contractor with his own business, Manse Heating and Cooling, which is a business independent of his work with Ameren. (Ex. 7, pp. 244, 395). About a week later, Whispering Oaks and Manse Heating and Cooling entered into a maintenance contract for purposes of providing services for Whispering Oaks' air conditioning units. (Ex. 7, pp. 245, 729). However, after several of the air conditioning units failed, a dispute arose over Mr. Manse's work for Whispering Oaks. (Ex. 7, pp. 244-246, 396, 729).

On July 31, 2009, Respondent filed a lawsuit on behalf of Whispering Oaks in St. Louis County Associate Circuit Court, *Whispering Oaks RCF Management Co., Inc. v. Lafayane Manse and Manse Heating and Cooling*, Case No. 09SL-AC26857. (Ex. 7, p. 244-251). Respondent was not himself a party to the lawsuit. (Ex. 7, pp. 251, 416). Rather, Respondent signed the Petition and subsequent pleadings before the court as "Attorney for Petitioner." (Ex. 7, pp. 161, 162, 182, 184, 206, 251, 416). The lawsuit asserted six counts, including breach of contract and negligence, against Mr. Manse and Manse Heating and Cooling. (Ex. 7, pp. 7; 244-251). Respondent did not name Ameren, Manse's employer, in the lawsuit. (Ex. 7, pp. 244-251). Mr. Manse hired Thomas DeVoto, an attorney, to represent him in the lawsuit filed by Whispering Oaks. (Ex. 7, pp. 252, 375, 396). Respondent communicated with Mr. DeVoto on his attorney letterhead. (Ex. 7, p. 209).

Ultimately, the Whispering Oaks lawsuit was dismissed without prejudice for failure to prosecute. (Ex. 7, p. 163). Thereafter, Respondent filed a motion to set aside the dismissal, which was denied at a hearing held on October 31, 2012. (Ex. 7, pp. 155, 377). At the end of the October 31, 2012 hearing to set aside the dismissal, Respondent approached Mr. DeVoto and stated his intention to contact Mr. Manse directly about resolving the dispute between them. (Ex. 7, pp. 377, 625). Respondent stated that in his view, since the lawsuit was over, Mr. Manse was no longer represented by counsel. (Ex. 7, pp. 377, 625). During that encounter, Mr. DeVoto informed Respondent that he did not have permission to contact Mr. Manse, his client, directly. (Ex. 7, pp. 377, 625). Further, Mr. DeVoto stated that he would report Respondent to the Missouri Bar Association if he tried to speak directly with Mr. Manse. (Ex. 7, pp. 377,

625). During the discussion, Respondent threated to re-file the Whispering Oaks lawsuit, and take the deposition of personnel at Ameren in order to "hook" Ameren for Mr. Manse's private business on the side, which Mr. DeVoto viewed as a "veiled threat to cause harm to [Mr. Manse]." (Ex. 7, pp. 3778; 625). Later on October 31, 2012, after the encounter, Mr. DeVoto memorialized the confrontation with Respondent in a File Memorandum that same day after the encounter with Respondent, including Mr. DeVoto's statement about continuing to represent Mr. Manse. (Ex. 7, pp. 378, 625).

The next day, November 1, 2012, Respondent followed through on his stated intention and mailed a letter bearing Respondent's law firm letterhead directly to Mr. Manse. (Ex. 7, pp. 396, 420, 630, 642). Mr. DeVoto was not copied on the correspondence. (Ex. 7, p. 630, 642). In the letter, Respondent informed Mr. Manse that he intended to re-file the lawsuit, adding Mr. Manse's employer, Ameren, as a defendant. (Ex. 7, pp. 420, 630, 642). Respondent urged Mr. Manse to discuss settlement of the claim to avoid another lawsuit. (Ex. 7, p. 630, 642). Respondent implicitly acknowledged his role as attorney for Whispering Oaks in the correspondence when he acknowledged that he "could not contact you until the suit was dismissed in view that your attorney refused to permit direct discussions between us to settle the suit." (Ex. 7, p. 630).

Upon receipt of Respondent's letter, Mr. Manse felt as though he was being "harassed and threatened." (Ex. 7, pp. 398-399, 629, 643). Mr. Manse contacted Mr. DeVoto. (Ex. 7, p. 629, 643). Also, "because the letter threatened to include [Ameren] in a lawsuit," Mr. Manse provided a copy of the November 1, 2012 letter to Ameren and self-disclosed to Ameren his solicitation of Whispering Oaks' business while working for Ameren.[4] (Ex. 7, pp. 397, 407, 644, 646).

As promised, on November 16, 2012, Mr. DeVoto filed a report with the Office of Chief Disciplinary Counsel. (Ex. 7, pp. 626-628). Mr. DeVoto's letter recited the fact that Respondent contacted his client without his consent, attached a copy of Respondent's November 1, 2012 letter to Mr. Manse, and charged

[4] As a result of his disclosure to Ameren, Mr. Manse was issued a cautionary letter concerning conducting personal business while on company time. (Ex. 7, pp. 400, 644, 646). Respondent testified that he was not sorry that Mr. Manse was disciplined because of his threat to add Ameren to a refiled lawsuit. (Ex. 7, p. 422).

that Respondent violated Missouri Rule of Professional Conduct 4-4.2 because he directly communicated with a client who had counsel. (Ex. 7, pp. 626-628).

State Disciplinary Proceedings

On June 11, 2013, the Chief Disciplinary Counsel filed an Information charging that Respondent violated Rules 4-4.2 (communicating without consent about the subject of the representation with a person he knew to be represented by counsel) and 4-8.4(d) (engaging in conduct prejudicial to the administration of justice). (Ex. 7, pp. 79-83, 728).

Respondent fully participated in the resulting disciplinary proceedings and vigorously defended himself against the charges. He filed an Answer to Information and filed multiple motions and requests prior to the disciplinary hearing. (Ex. 7, pp. 105-109; 110-114, 294, 296, 348-350, 358-359). Respondent conducted discovery. (Ex. 7, pp. 115-118, 327-329). Respondent appeared *pro se* at the disciplinary hearing but was assisted by an associate attorney. (Ex. 7, pp. 424 (reference to co-counsel), 731). Respondent introduced evidence and argument at the hearing, cross-examined witnesses, and gave a narrative of his position. (Ex. 7, pp. 370-468.) Respondent also filed a "Final Argument" brief following the disciplinary hearing. (Ex. 7, pp. 711-727).

On December 18, 2013, as part of discovery, Respondent served a subpoena on Mr. DeVoto ordering him to appear at a location, bringing with him all documents "Concerning or relating to the following persons: Naren Chaganti, Whispering Oaks, Lafayne Manse, Manse Heating and Cooling Inc between the periods 2009 until November 2013." (Ex. 7, pp. 334-336). Mr. DeVoto filed objections and a Motion to Quash the subpoena with the Disciplinary Hearing Panel ("DHP") assigned to Respondent's disciplinary hearing, asserting that the subpoena suffered from various filing deficiencies and stating that the documents sought by Respondent could not be produced without violating the attorney-client privilege between Mr. Manse and Mr. DeVoto. (Ex. 7, pp. 330-336). Respondent opposed the Motion to Quash, specifically challenging Mr. DeVoto's assertion of the attorney-client privilege on the basis that the privilege was waived when Mr. DeVoto produced certain documents to Chief Disciplinary Counsel during the disciplinary investigation. (Ex. 7, pp. 337-340). The Motion to Quash was granted by the DHP

but Mr. DeVoto was instructed to bring his Whispering Oaks files to the disciplinary hearing where Mr. DeVoto's testimony would be taken, and a review and the contents of Mr. DeVoto's file would be made. (Ex. 7, p. 346).

In a subsequent pre-hearing motion, Respondent requested that the DHP bar disciplinary counsel from introducing Mr. DeVoto's File Memorandum into evidence at the disciplinary hearing. (Ex. 7, pp. 348-350). This request was denied as premature as there was no evidentiary ruling currently before the DHP, and the matter was deferred until the disciplinary hearing per the prior DHP order. (Ex. 7, p. 351).

At the hearing, a central point of dispute was whether or not the File Memorandum drafted by Mr. DeVoto following the October 31, 2012 confrontation was credible and admissible. (Ex. 7, pp. 394, 732). Further, Respondent renewed his prehearing requests to have access to the remainder of Mr. DeVoto's Whispering Oaks case file. (Ex. 7, p. 394). The DHP ruled that Mr. DeVoto's testimony regarding the File Memorandum was credible, and concluded that the File Memorandum was admissible. (Ex. 7, pp. 394, 732). The DHP also declined to admit into evidence any attorney-client privileged communication between Mr. DeVoto and Mr. Manse, finding that Mr. DeVoto's production of the File Memorandum and other select non-privileged documents to the Chief Disciplinary counsel did not waive the attorney-client privilege. (Ex. 7, pp. 382, 394; 733). The DHP provided Respondent the opportunity to articulate any way in which his case had been hampered by inability to have access to specific documents in Mr. DeVoto's files; however, the DHP concluded Respondent failed to present any arguments to attempt to make such a showing. (Ex. 7, p. 394; 733). Instead, Respondent orally moved for an order to "open up" DeVoto's file to "look at what's there, and maybe produce what is not privileged." (Ex. 7, p. 394). That justification was deemed insufficient, with one DHP member stating: "Based on the fact that, although invited to do so, you have not articulated a specific reason why you need that, it is again denied. Let's move on." (Ex. 7, pp. 394, 733).

On March 13, 2014, the DHP issued a decision and concluded that "Respondent violated Rule 4-4.2 by communicating without consent about the subject of the representation with a person he knew to be represented by counsel." (Ex. 7, p. 733). The DHP declined to accept Respondent's argument that he was

a party to the lawsuit with Whispering Oaks, stating that "his entire pleading in the County Litigation clearly establishes that Respondent was acting as the attorney for . . . Whispering [Oaks]."") (Ex. 7, pp. 732, 734). The DHP found that Whispering Oaks, not Respondent, was the plaintiff in the lawsuit with Mr. Manse; particularly the DHP noted that the petition itself identified Respondent only as "Attorney for Plaintiff." (Ex. 7, p. 733). Finally, DHP concluded that Respondent's role as attorney for Whispering Oaks was evident, and recognized by Respondent himself in communications to Mr. Manse, in which Respondent acknowledged that he could not speak with Mr. Manse during the litigation. (Ex. 7, p. 735). With regard to the other elements of the violation, the DHP found that Respondent had knowledge of the fact of Mr. DeVoto's continuing representation of Mr. Manse and that the "subject matter of the representation" is broader than just "litigation." (Ex. 7, p. 734).

Lastly, the DHP also concluded that Respondent's conduct "violated Rule 4-8.2 by engaging in conduct prejudicial to the administration of justice." (Ex. 7, p. 733). The decision noted that Respondent's actions of contacting a represented party and seeking to intimidate that party through threats were "precisely the type of over-reaching" that rises to the level of conduct that is prejudicial to the administration of justice. (Ex. 7, p. 734-735). Applying Standard 6.3 of the ABA Standards for Imposing Lawyer Sanctions, the DHP noted that "suspension is the generally appropriate sanction when a lawyer engages in communication that he knows is improper and that communication causes injury or potential injury to a party." (Ex. 7, p. 736). Similarly, "the Panel concludes that suspension is appropriate here under 7.2" since "Respondent knowingly engaged in conduct that is a violation of his duty as a professional and it caused injury to another lawyer's client." (Ex. 7, p. 736).

In making this finding, the DHP observed that "Respondent barely skirts the application of Standard 7.1, suggesting disbarment, since his violation comes close to falling within the prohibition of actions with an intent to obtain a benefit for the lawyer and his entity." (Ex. 7, p. 736). The DHP identified three aggravating factors (selfish motive, refusal to acknowledge the wrongful nature of his conduct, and Mr. Manse's vulnerability). (Ex. 7, p. 737). The DHP recommended that Respondent be suspended indefinitely and that Respondent not be permitted to apply for reinstatement for 6 months. (Ex. 7, p. 737).

In Missouri proceedings, within 30 days after the panel's written decision, a party may file a written notice stating whether or not that party accepts or rejects the DHP's decision. (Ex. 7, p. 738). On March 13, 2015, Respondent filed his statement of rejection of the DHP's decision and requested review by the Supreme Court of Missouri. (Ex. 7, p. 739).

Although the Supreme Court of Missouri gives considerable weight to the DHP's suggestions, DHP recommendations are advisory in nature. *See In re Donaho*, 98 S.W.3d 871, 873 (Mo. banc 2003). The Supreme Court independently reviews the record *de novo* and determines the punishment necessary to both "protect the public, and maintain the integrity of the legal profession." *See In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005); *In re Donaho*, 98 S.W.3d at 873 (citing *In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986)).

On October 28, 2014, after briefing by the parties and having been "sufficiently advised" of the pending matter, the Supreme Court of the State of Missouri found that "Respondent is guilty of misconduct as a result of violations of Rules 4-4.2 and 4-8.4(d) of the Rules of Professional Conduct and should be disciplined." (Ex. 1, *In re: Naren Chaganti* (Case No. SC94181),). Respondent was ordered suspended indefinitely from the practice of law in that jurisdiction and with no petition for reinstatement permitted to be entertained for period of one year from the date of the Order. (Ex. 1).

USPTO Disciplinary Proceedings

On February 2, 2015, the Deputy General Counsel for General Law issued a "Notice and Order Pursuant to 37 C.F.R. § 11.24" ("Notice and Order") by certified mail (receipt no. 70140510000044248523) notifying Respondent that the Director of the Office of Enrollment and Discipline ("OED Director") filed a "Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24" ("Complaint"). (Exs. 2, 3). That Complaint requested that the Director of the USPTO suspend Respondent indefinitely from the practice of patent, trademark, and other non-patent matters before the USPTO, with no petition for reinstatement to be entertained for a period of one year. (Ex. 3). The OED Director's request is based on reciprocal discipline for the October 28, 2014 Order of the Supreme Court of the State of Missouri in *In re Naren Chaganti* (Case No. SC94181). (Ex. 3).

The Notice and Order provided Respondent an opportunity to file, within forty (40) days, a response opposing the imposition of reciprocal discipline identical to that imposed by the Supreme Court of the State of Missouri in *In re Naren Chaganti* (Case No. SC94181), based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1). (Ex. 2).

On April 28, 2015, the Agency received Respondent's response to the Notice and Order.[5] (Exs. 6, 7). Respondent's response contests the imposition of reciprocal discipline based on three arguments. First, Respondent argues that the "Missouri hearing panel . . . denied due process to Respondent" when it "denied an opportunity to conduct discovery or to cross-examine the witnesses against him." (Ex. 6, at 5). Respondent also challenges the DHP's order quashing the discovery subpoena of Mr. DeVoto and the decision to "impose[] a blanket attorney-client privilege" on certain documents and testimony. (Ex. 6, at 5). Next, Respondent claims that there is an infirmity of proof establishing the misconduct because, reiterating the arguments made during the state disciplinary proceedings, "Respondent did not agree with the findings or conclusions of the Missouri action." (Ex. 6, at 7). Finally, Respondent argues that Missouri's suspension exceeded all bounds of reasonableness, resulting in that sanction being a grave injustice. (Ex. 6, p. 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 a reciprocal disbarment 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*

[5] Based on Respondent's two unopposed requests for an extension of time to file a response to the Notice and Order, Respondent was given until May 15, 2015 to file his response. (Exs. 4, 5).

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(d)(1), 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 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.

To prevent imposition of the reciprocal discipline here, Respondent is required to clearly and convincingly shown 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).

A. Respondent Has Not Suffered a Deprivation of Due Process.

A state suspension creates a federal-level presumption that imposition of reciprocal discipline is proper. *See Selling, supra.* An attorney respondent may seek to defeat that presumption by clear and convincing evidence that there is a genuine issue of material fact 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 has not made a sufficient showing under § 11.24(d)(1)(i) here.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and

in a meaningful manner." *See In re The Matter of Alan Ira Karten*, 293 Fed.Appx. 734, 736 (11th Cir. 2008) (citing *Mathews v. Eldridge,* 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (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, 88 S.Ct. 1222, 1226 (1968); *In re Cook*, 551 F.3d 542, 549 (6th Cir. 2009) (procedural due process includes fair notice of the charge). 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)).

Respondent fully acknowledges that he participated fully in the state-level proceedings. Respondent acknowledged that notice of the state misconduct charges was provided and a hearing held. (Ex. 6, p. 5). He answered the charges and filed multiple pre-hearing motions. (Ex. 7, pp. 105-109; 110-114, 294, 296, 348-350, 358-359). And, despite his allegation to the contrary, a review of the hearing transcript reveals that Respondent both testified on his own behalf and extensively cross-examined the witnesses who testified at the disciplinary hearing. (Ex. 7, pp. 379-394, 401-414, 424-430).

Despite the foregoing, Respondent nevertheless claims he was denied due process when the DHP quashed a discovery subpoena to examine the contents of Mr. DeVoto's attorney file concerning the Whispering Oaks lawsuit. (Ex. 6, p. 5). However, the DHP's denial ruling does not amount to a

deprivation of due process. State disciplinary orders are generally entitled to due respect. *See In re Cook*, 551 F.3d at 549. "Tribunals have broad discretion to admit or refuse to admit evidence into the record on a number of grounds, including relevance, privilege, and undue prejudice." *In re Harper*, 725 F.3d 1253, 1258 (10th Cir. 2013). Absent some explanation as to how this evidentiary ruling deprived him of a fair opportunity to present his defense, Respondent cannot rely upon the ruling to demonstrate that the reciprocal disciplinary proceeding was conducted in violation of his due process rights. *See id.* (without information regarding how a referee's rulings prevented a fair opportunity to present a defense, due process argument was rejected.)

The contents of Mr. DeVoto's Whispering Oaks file, and the issue of whether any of the documents in it should be reviewed and/or admitted, was the subject of prehearing motions and was also discussed and ruled upon at the disciplinary hearing. (Ex. 7, pp. 330-346, 394). As is clear from the motions on the issue and the hearing transcript, Respondent was given every opportunity to argue in favor of a review and production of the documents. Ultimately, in its discretion, the DHP declined to review Mr. DeVoto's file and declined to order Mr. DeVoto to produce any privileged document from the Whispering Oaks file. (Ex. 7, p. 394). The DHP concluded that the privilege asserted over the documents had not been waived by Mr. DeVoto and that Respondent failed to offer a sufficient reason or need that would require the disclosure of any privileged materials. (Ex. 7, p. 394).

In sum, Respondent's disagreement with the DHP evidentiary ruling does not result in a due process violation. Respondent was afforded numerous opportunities to provide adequate justification for the DHP to review and consider disclosure of privileged material from Mr. DeVoto's file. He failed to provide that justification and the DHP, in its discretion, ruled that those documents were privileged. Further, such evidentiary rulings are entitled to respect. Consequently, Respondent's due process argument is without merit and he has not shown by clear and convincing evidence that there is any genuine issue of material fact as to whether 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).

B. The Missouri Suspension Did Not Suffer From an Infirmity of Proof.

As stated above, a state suspension creates a federal-level presumption that imposition of reciprocal discipline is proper. *See Selling, supra.* In addition to a due process challenge, a respondent may also seek to defeat that presumption by presenting clear and convincing evidence that there is a genuine issue of material fact as to whether there was such an infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Office could not, consistent with its duty, accept as final the state's conclusion on that subject. *See* 37 C.F.R. § 11.24(d)(1)(ii). Here, Respondent argues that the state disciplinary proceeding suffers from an infirmity of proof based solely on the fact that "Respondent did not agree with the findings or conclusions of the Missouri action." (Ex. 6, p. 7). This is wholly insufficient to defeat the imposition of reciprocal discipline.

To successfully invoke infirmity of proof as a defense to reciprocal discipline, Respondent must demonstrate that there was "such an infirmity of proof" establishing the charges against him "as to give rise to the clear conviction" that accepting the state discipline would be "inconsistent with [our] duty." *See In re Zdravkovich*, 634 F.3d at 579. "This is a difficult showing to make. . . ." *Id.* And, determinations by the trier-of-fact regarding the credibility of witnesses generally receive deference. *See Zdravkovich*, 634 F.3d at 580. Therefore, a disagreement about the credibility of a witness does not establish an infirmity of proof.

The Supreme Court of the State of Missouri concluded, based on the record and briefings before it, that "Respondent is guilty of misconduct as a result of violations of Rules 4-4.2 and 4-8.4(d) . . . and should be disciplined." (Ex. 1). To reach its ruling, the Court implicitly rejected Respondent's account of his actions. Further, as discussed below, a review of the documents provided by the Respondent with his response, which includes a transcript of the disciplinary hearing, provides firm evidentiary support for the Supreme Court's order suspending Respondent.

Respondent provided over 700 documents with his response. *See Generally*, Ex. 7. A review of those documents divulges ample factual support for the Order suspending Respondent. For example, Respondent's documents demonstrate that Respondent filed suit on behalf of the corporate entity,

Whispering Oaks, against Mr. Manse, on July 21, 2009 as "Attorney for Plaintiff." (Ex. 7, pp. 244-251). Respondent was not a party to the lawsuit. (Ex. 7, pp. 251, 416). Respondent held himself out as counsel for Whispering Oaks, both on the Petition and other correspondence and pleadings. (Ex. 7, pp. 161, 162, 182, 184, 206, 251, 416). Mr. Manse retained Thomas DeVoto to represent him in the lawsuit filed by Whispering Oaks. (Ex. 7, pp. 252, 375, 396). Respondent's correspondence with Mr. Manse confirms that Respondent recognized that he could not contact Mr. Manse directly as a result of his status as counsel for Whispering Oaks. (Ex. 7, p. 630). When the lawsuit was ultimately dismissed for failure to prosecute, Mr. DeVoto communicated to Respondent that his representation of Mr. Manse in the matter continued. (Ex. 7, pp. 377, 409, 625). Moreover, the matter between Whispering Oaks and Mr. Manse did not cease upon dismissal of that lawsuit, particularly as Respondent stated his intention to refile the litigation in state court. (Ex. 7, p. 630).

A review of the documents Respondent submitted also reveals that Respondent directly contacted Mr. Manse, a party he knew to be represented by counsel, about the subject matter of the representation. Hearing testimony supports this finding, as well as Mr. DeVoto's October 31, 2012 File Memorandum, support this finding. (Ex. 7, pp. 377, 625). During the October 31, 2012 encounter, Respondent informed Mr. DeVoto that, among other things, he intended to contact Mr. Manse directly about settlement because Mr. Manse was no longer represented. (Ex. 7, pp. 377, 625). At that point, Mr. DeVoto informed Respondent that he did not have permission to contact Mr. Manse and that he would report Respondent to the Bar Association if he contacted Mr. Manse directly. (Ex. 7, pp. 377, 625). The facts further show that, despite Mr. DeVoto's warning not to contact Mr. Manse, Respondent mailed a letter directly to Mr. Manse the very next day, on November 1, 2012, (Ex. 7, pp. 420, 630, 642). In that letter, Respondent informed Mr. Manse that he intended to refile the Whispering Oaks lawsuit and would add Mr. Manse's employer, Ameren, to the lawsuit. (Ex. 7, pp. 420, 630). Respondent urged Mr. Manse to discuss settlement of the substance of the Whispering Oaks lawsuit. (Ex. 7, pp. 420, 630). Mr. Manse, feeling "harassed and threatened" sent Respondent's letter to Mr. Devoto. (Ex. 7, pp. 398-399, 629, 643).

The foregoing facts were the explicit findings of the DHP and formed the basis of Supreme Court's order suspending Respondent. The Supreme Court found that Respondent's conduct of communicating with a represented party about the subject of the representation violated Missouri rule 4-4.2. (Ex. 1). *See e.g., State v. Chandler*, 605 S.W.2d 100, 111 (Mo. banc 1980); *State of Florida v. Yatman*, 320 So.2d 401, 402-03(Fla. 1975) ("There is probably no provision of the Canons of Ethics more sacred between competing lawyers than the prohibition against communicating with another lawyer's client on the subject of the representation. Such knowing communication constitutes the grossest sort of unethical conduct."). Respondent's conduct was also held to violate Rule 4-8.4(d), where the conduct has a prejudicial effect on the administration of justice. (Ex. 1).

Respondent does not assert there are no facts underlying the findings. Indeed, the facts are drawn directly from the documents he provided with his response. Rather, Respondent merely states his disagreement with the order. However, mere disagreement is insufficient to show an infirmity of proof. The disciplinary order suspending Respondent was made after both parties had been able to put forth their case and their respective arguments. Respondent's version of events was not credited and his legal arguments were rejected. Because state disciplinary orders are generally entitled to due respect, s*ee In re Cook*, 551 F.3d at 549, and because of the ample factual support found in the documents submitted by Respondent, Respondent has not shown by clear and convincing evidence that there is any genuine issue of material fact as to whether there was such infirmity of proof establishing the misconduct in the Missouri disciplinary case such that reciprocal discipline is not warranted.

C. Respondent's Missouri Suspension was not a Grave Injustice.

In addition to the other grounds, an attorney respondent may also seek to defeat the federal-level presumption that imposition of reciprocal discipline is proper by clear and convincing evidence that there is a genuine issue of material fact as to whether a "grave injustice" under 37 C.F.R. § 11.24(d)(1)(iii) would result if reciprocal discipline were imposed. The grave injustice analysis focuses on whether the severity of the punishment "fits" the misconduct. *See In re Thav*, 852 F. Supp. 2d 857, 861-62 (E.D. Mich. 2012); *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).

Respondent asserts here that Missouri's suspension exceeded all bounds of reasonableness, resulting in that sanction being a grave injustice. (Ex. 6, p. 9). Respondent also cites various mitigating factors as support for his argument. (Ex. 6, pp. 9-20). However, the "grave injustice" showing required to avoid reciprocal discipline is a high standard, focusing on whether the severity of the punishment "fits" the misconduct. *See In re Thav*, 852 F. Supp. 2d 857, 861-62 (E.D. Mich. 2012). *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"). Respondent's argument does not survive this analysis. The Missouri disbarment was the result of disciplinary proceedings that included a full disciplinary hearing and culminated in an Order of the Supreme Court of the State of Missouri finding that "Respondent is guilty of misconduct as a result of violations of Rules 4-4.2 and 4-8.4(d) of the Rules of Professional Conduct and should be disciplined." (Ex. 1). As discussed below, Respondent's sanction, indefinite suspension with no petition for reinstatement permitted for period of one year, is within the range of applicable penalties for his misconduct.

Missouri relies on the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") to determine the appropriate discipline to be imposed in attorney discipline cases. *See, e.g., In re Madison*, 282 S.W.3d at 360; *In re Crews*, 159 S.W.3d 355, 360-61 (Mo. banc 2005); *In re Warren*, 888 S.W.2d 334 (Mo. banc 1994); *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994); *In re Oberhellman*, 873 S.W.2d 851 (Mo. banc 1994). The ABA Standards state that a suspension is generally appropriate where, as here, a lawyer engages in communication with an individual in the legal system when the

lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding. *See* Standard 6.32 of the Standards for Imposing Lawyer Sanctions. *See also*, Ex. 1 ("Respondent is guilty of misconduct as a result of violations of Rules 4-4.2. . ." which concerns communicating without consent about the subject of the representation with a person he knew to be represented by counsel).

In addition, suspension is also within the range of appropriate penalties under ABA Standard 7.2, for attorney misconduct that involves knowingly engaging in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.[6] *See* ABA Standard 7.2 ("Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.") Here, Respondent was also deemed guilty of misconduct under Rule 4-8.4(d), for engaging in conduct prejudicial to the administration of justice. (Ex. 1). *See also In re Hess*, 406 S.W.3d 37 46 (Mo. 2013) (utilizing the legal process so as to harass, intimidate, and burden an individual in order to pressure or influence settlement is prejudicial to the administration of justice pursuant to Rule 4-8.4(d)). Thus, a suspension was an appropriate penalty here.

After misconduct has been established, the ABA Standards allow that mitigating and aggravating circumstances may be considered in imposing attorney discipline. *See* ABA Standard 9.1. Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. *See* ABA Standard 9.21. Factors which may be considered in aggravation include dishonest or selfish motives; refusal to acknowledge wrongful nature of conduct; and the vulnerability of the victim. *See* ABA Standard 9.22. Here, the DHP found several aggravating circumstances , all of which are within the list identified by the ABA Standards: selfish motive, refusal to acknowledge the wrongful nature of his conduct, and the vulnerability of Mr. Manse. (Ex. 7, p. 737). The Supreme Court's order did not make an explicit finding as to the presence or absence of mitigating and aggravating circumstances. (Ex. 1).

[6] Indeed, the DHP found that Respondent barely escaped disbarment. "In fact, Respondent barely skirts the application of Standard 7.1, suggesting disbarment, since his violation comes close to falling within the prohibition of actions with intent to obtain a benefit for the lawyer and his entity." (Ex. 7, p. 736)

Yet, considering all the circumstances and arguments before it, the Supreme Court ordered not only that Respondent be indefinitely suspended as the DHP recommended, but it increased the period of time for which no petition for reinstatement could be entertained from the six months the DHP recommended to one year. (Ex. 1). This remains within the range of penalties available for the misconduct for which Respondent was found guilty and is reasonable. *See* ABA Standards 6.32, 7.2

Despite the fact that his sanction was reasonable under the ABA Standards, Respondent argues various mitigating factors render reciprocal discipline here a grave injustice. These include his attempt to diminish the seriousness of his contact with Mr. Manse, which he characterizes as a single incident of an "innocuous settlement invitation." (Ex. 6, p. 9). He also claims that he lacked notice that suspension was possible for his conduct and that the Supreme Court of Missouri's suspension was punitive. (Ex. 6, p. 10). Finally, he cites a litany of other factors such as the political climate in Ferguson, Missouri, the fact that he has done pro bono work and the fact that he self-reported the Missouri action to the OED. (Ex. 6, pp. 11-20.) However, while rehabilitative steps can be, in some circumstances, a factor to consider when an excluded or suspended person is applying for reinstatement under 37 C.F.R. § 11.60, they do not bear on the reciprocal discipline here.

Even if they were relevant, many of factors Respondent cites as mitigating are not helpful to Respondent or grounded in fact. For example, Respondent's characterization of his contact with a represented client as an "innocuous settlement invitation" underscores the fact that, at best, he fails to understand the gravity of his misconduct and, at worst, he lacks any remorse for his misconduct. Lack of remorse is an aggravating factor under the ABA standards. *See* ABA Standard 9.22(g) (citing "refusal to acknowledge wrongful nature of conduct" as an aggravating factor.)

Additionally, his claims of lack of notice are not compelling as the Missouri Rules of Professional Conduct and the ABA Standards are publicly available (http://www.courts.mo.gov/page.jsp?id=707) and, as a member of the bar, he is presumed to be familiar with his obligations thereunder. "[I]gnorance of the disciplinary rules is no excuse." *See In the Matter of Hollendonner*, 504 A.2d 1174, 1178 (N.J. 1985) (citing *Matter of Eisenberg,* 383 A.2d 426 (1978)). The remainder of the factors Respondent identifies as

mitigating are similarly unpersuasive on the issue of whether the imposition of reciprocal discipline would be a grave injustice.

As a suspension was reasonable and within the range of penalties permitted for his misconduct, Respondent has not shown by clear and convincing evidence that there is any genuine issue of material fact as to whether a "grave injustice" under 37 C.F.R. § 11.24(d)(1)(iii) would result if reciprocal discipline were imposed.

ORDER

ACCORDINGLY, it is hereby ORDERED that:

1. Respondent be, and hereby is, indefinitely suspended from practice before the Office in patent, trademark, and other non-patent matters beginning on the date of this Final Order and that no petition for reinstatement will be entertained for period of one year from the date of this order;

2. Respondent be, and hereby is, granted the right to seek reinstatement pursuant to 37 C.F.R. § 11.60 after serving one-year of his indefinite suspension;

3. As a condition of a granting a petition seeking Respondent's reinstatement pursuant to 37 C.F.R. § 11.60, Respondent shall demonstrate that he achieved a passing grade on a Multistate Professional Responsibility Examination taken within the two years immediately preceding his request for reinstatement pursuant to 37 C.F.R. § 11.60;

4. The OED Director publish the following Notice in the *Official Gazette*:

Notice of Suspension

> This notice concerns Naren Chaganti of Town & Country, Missouri, who is a registered patent attorney (Registration Number 44,602). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Chaganti be suspended indefinitely from practice before the USPTO in patent, trademark, and other non-patent matters for violating 37 C.F.R. § 11.804(h), predicated upon being indefinitely suspended from the practice of law by a duly constituted authority of a State. Respondent may seek reinstatement after serving one-year of his indefinite suspension. However, Respondent shall demonstrate that he achieved a passing grade on a Multistate Professional Responsibility Examination taken within the two years immediately preceding his request for reinstatement pursuant to 37 C.F.R. § 11.60 as a prerequisite to seeking reinstatement.

By the October 28, 2014 Order in *In re Naren Chaganti* (Case No. SC94181), the Supreme Court of the State of Missouri found that Mr. Chaganti was guilty of misconduct as a result of violations of Missouri Rules of Professional Conduct 4-4.2 (communication with a party known to be represented by another lawyer about the subject matter of the representation, without consent) and 4-8.4(d) (engaging in conduct prejudicial to the administration of justice).

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.

5. 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;

6. Respondent shall comply with the duties enumerated in 37 C.F.R. § 11.58;

7. The USPTO dissociate Respondent's name from any Customer Numbers and the public key infrastructure ("PKI") certificate associated with those Customer Numbers;

8. 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; and

9. Such other and further relief as the nature of this cause shall require.

If Respondent desires further review, Respondent is notified that he is entitled to seek judicial review on the record in the U.S. District Court for the Eastern District of Virginia under 35 U.S.C. § 32 "within thirty (30) days after the date of the order recording the Director's action." *See* E.D.Va. Local Civil Rule 83.5.

AUG 0 4 2015

Date

Sarah Harris
General Counsel for General Law
United States Patent and Trademark Office

on behalf of

Michelle Lee
Under Secretary of Commerce for Intellectual Property and
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 OED pursuant to 37 C.F.R. § 11.11(a):

Mr. Naren Chaganti
713 The Hamptons Lane
Town & Country, MO 63017

And email at: [redacted]

AUG 0 4 2015
Date

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450