

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

In the Matter of)	
)	
Ralph T. Rader,)	Proceeding No. D2015-24
)	
Respondent.)	
_____)	

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.29

Pursuant to 37 C.F.R. § 11.29, Ralph T. Rader (“Respondent”) is hereby transferred to disability inactive status and Respondent shall not be authorized to practice before the United States Patent and Trademark Office (“USPTO” or “Office”) in patent, trademark, and other non-patent law until further Order of the USPTO Director. However, Respondent may seek immediate reinstatement pursuant to 37 C.F.R. §§ 11.29(j)(1)-(8), 11.58, and 11.60.

I. BACKGROUND AND PROCEDURAL HISTORY

1. At all relevant times, Respondent has been registered to practice in patent matters before the USPTO as an attorney based on his membership in the Virginia Bar. (Ex. 5, Ex. 1 thereto). Respondent’s USPTO Registration Number is 28,772. (*Id.*)

2. Respondent subsequently became licensed as an attorney in Michigan.

3. Respondent is subject to the USPTO Rules of Professional Conduct set forth at 37 C.F.R. § 11.101 *et seq.*

4. On January 23, 2013, Respondent suffered a stroke, which resulted in aphasia affecting his cognitive abilities. (Ex. 5, Ex. 2 thereto) (Letter from Respondent to OED, received April 7, 2015). He was unable to perform his normal functions of his legal practice after the stroke and therefore withdrew from his law firm, effective March 23, 2013. (*Id.*) His medical condition will “likely prevent [his] being able to return as a trial lawyer or even as a litigation/practicising (sic) lawyer.” (*Id.*)

Michigan Proceedings

5. On September 16, 2013, the Michigan Grievance Administrator, Michigan Attorney Grievance Commission, filed a “Petition for Order Transferring Respondent to Inactive Status Due to Incapacity” with the State of Michigan Attorney Disciplinary Board. (Ex. 5, Ex. 3 thereto) (“Petition”). In the Petition, the Grievance Administrator explained that, “[o]n January 23, 2013, Respondent had a stroke which was caused by a blood clot going from his heart to his brain ... [d]ue to the stroke, Respondent currently suffers from aphasia which has significantly affected his cognitive functions.” (*Id.*)

6. A “Stipulation for an Order Transferring Respondent to Inactive Status Due to Incapacity,” (“Stipulation”) signed by counsel for Respondent and the Grievance Administrator was attached to the Petition. (Ex. 5, Ex. 4 thereto). That Stipulation was filed under the authority of Michigan Court Rule (“MCR”) 9.121(B) (“Attorney Declared to be Incompetent or Alleged to be Incapacitated or Asserting Impaired Ability”), and cited Respondent’s medical problems as “interfering with his capacity to practice law arising out of the stroke suffered by Respondent on January 23, 2013.” (*Id.*)

7. On October 15, 2013, the State of Michigan Attorney Discipline Board entered an “Order of Transfer to Inactive Status Pursuant to MCR 9.121(B)” (“Allegations of Incompetency or Incapacity.”) (Ex. 5, Ex. 5 thereto). The Attorney Discipline Board ordered that Respondent be transferred to inactive status for an indefinite period, until further order of the Attorney Discipline Board, in accordance with MCR 9.121(B), due to his incapacity to practice law. (*Id.*) Pursuant to this Order he is ineligible to resume the practice of law in Michigan until such time as he has complied with the requirements of MCR 9.121(E), which requires a showing by clear and convincing evidence that an attorney’s disability has been removed and that he or she is fit to resume the practice of law.

II. USPTO PROCEEDINGS

On January 27, 2015, the OED Director received notification that Respondent had been transferred to inactive status in Michigan. (Ex. 5, at 4). Consistent with 37 C.F.R. § 11.29(a), the OED Director requested a certified copy of the Michigan Order transferring Respondent to inactive status, which was received on February 20, 2015. (*Id.*) After receiving the certified copy of the Michigan Order, on June 29, 2015, the OED Director filed the Michigan Order with the USPTO Director, requested that

Respondent be transferred to disability inactive status, and requested that the USPTO Director issue a notice and order to Respondent as set forth in 37 C.F.R. § 11.29(b). (Ex. 1).

On July 2, 2015, a “Notice and Order Pursuant to 37 C.F.R. § 11.29” was mailed to Respondent consistent with 37 C.F.R. § 11.29(b)(1)-(3). (Ex. 2). Respondent was provided with thirty days to respond to the Notice and Order. (*Id.*) By letter dated August 3, 2015, Respondent, through counsel, responded to the USPTO Director's Notice and Order. (Ex. 3).

Thereafter, on October 6, 2015, USPTO Director issued an Order directing the OED Director to respond to Respondent's August 3, 2015 filing, and permitting Respondent to reply to such OED Director filing. (Ex. 4). The “OED Director's Reply to Respondent's August 3, 2015 Response to Notice and Order” was filed on November 4, 2015. (Ex. 5). Respondent filed a Reply on November 17, 2015. (Ex. 6).

In his filings, Respondent claims that he voluntarily entered into inactive status with the State Bar of Michigan and that his inactive status was not the result of a finding of incompetence or the result of any disciplinary proceedings. (Exs. 3, 6). He claims a reciprocal transfer to disability inactive status without any findings of incompetence or of disciplinary misconduct, such as disreputable conduct, is an infirmity of proof establishing his transfer to disability status. (Ex. 3). Finally, Respondent claims that a grave injustice would result if USPTO were to reciprocally transfer him to disability inactive status because the Michigan Order applies to him only in his capacity as an attorney. (Exs. 3, 6). Since he was initially registered with the USPTO as a patent agent, he avers that the Michigan Order has no effect on his status as a patent agent. (*Id.*)

Because there is no genuine issue of material fact as to any of the factors set forth in 37 C.F.R. § 11.29(d), and for all of the reasons set forth below, Respondent's transfer to disability inactive status is warranted.

III. LEGAL STANDARD

The process for initiating and carrying out a reciprocal transfer to disability inactive status when a practitioner has been transferred to disability inactive status in another jurisdiction is set forth at 37 C.F.R.

§ 11.29. Within thirty days of being transferred to disability inactive status in another jurisdiction, a practitioner shall notify the OED Director of the transfer.¹ 37 C.F.R. § 11.29(a)(1). Upon notification, the OED Director shall obtain a certified copy of the order transferring the practitioner to disability inactive status in the other jurisdiction and file the following with the USPTO Director: the order; a request that the practitioner be transferred to disability inactive status, including the specific grounds therefore; and a request that the USPTO Director issue a Notice and Order. 37 C.F.R. § 11.29(a)(1)(i)-(iii).

Upon receipt of the information provided by the OED Director, the USPTO Director provides a Notice and Order to the practitioner. 37 C.F.R. § 11.29(b). That Notice and Order directs the practitioner to respond, within 30 days from the date of the notice, providing all evidence that would establish a genuine issue of material fact as to the factors set forth in 37 C.F.R. § 11.29(d). *See id.* At the end of the 30 days, and considering any timely filed practitioner response, the USPTO Director shall “impose the identical transfer to disability inactive status based on the practitioner's transfer to disability status in another jurisdiction,” unless the practitioner demonstrates by clear and convincing evidence,² or the USPTO Director finds there is a genuine issue of material fact by clear and convincing evidence, that:

- (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (2) There was such infirmity of proof establishing the transfer to disability status, judicial declaration of incompetence, judicial order for involuntary commitment on the grounds of incompetency or disability, or placement by court order under guardianship or conservatorship that the USPTO Director could not, consistent with Office's duty, accept as final the conclusion on that subject;
- (3) The imposition of the same disability status or transfer to disability status by the USPTO Director would result in grave injustice; or
- (4) The practitioner is not the individual transferred to disability status, judicially declared incompetent, judicially ordered for involuntary commitment on the grounds of incompetency or disability, or placed by court order under guardianship or conservatorship.³

¹ Respondent did not notify the OED Director of the Michigan Order transferring him to disability inactive status in that jurisdiction. (Ex. 5, at 5; Ex. 5, Ex. 2 thereto).

² Respondent mistakenly states in his Reply brief that “[t]he OED cannot meet its burden.” (Ex. 6, at 1). The plain text of § 11.29 make clear that the burden of proving that there is a genuine issue of material fact as to the factors in § 11.29(d)(1)-(4) lies with Respondent. *See* 37 C.F.R. § 11.29(d).

³ Respondent makes no claim that he was not the individual transferred to disability inactive status in the October 15, 2013 Order of Transfer to Inactive Status Pursuant to MCR 9.121(B) (By Consent). To the contrary, his filings acknowledge, implicitly and otherwise, that he was transferred to disability inactive status. (Exs. 3, 6). Thus, this factor will not be discussed in the Final Order.

37 C.F.R. § 11.29(d).

Because Respondent has not clearly and convincingly demonstrated that there is a genuine issue of material fact as to any of the factors set forth in 37 C.F.R. § 11.29(d)(1)-(4), and the USPTO Director has not found that a genuine issue of material facts exists as to those factors, Respondent's reciprocal transfer to disability inactive status is ordered.

IV. DECISION

It is uncontroverted that Respondent was transferred to disability inactive status in Michigan. The record shows that Respondent agreed to be transferred to inactive status in accordance with the Michigan Rules governing incompetency or incapacity, MCR 9.121(B), due to medical problems that interfered with his capacity to practice law. (Ex. 5, Ex. 4 thereto) (Stipulation). In an Order of Transfer to Inactive Status Pursuant to MCR 9.121(B) (By Consent) dated October 15, 2013, the State of Michigan's Attorney Discipline Board accepted Respondent's Stipulation to be transferred to disability inactive status. (*Id.*) Respondent's reciprocal transfer to disability inactive statutes is therefore appropriate unless he demonstrates by clear and convincing evidence that, or the USPTO Director finds by clear and convincing evidence that, there is a genuine issue of material fact as to one of the factors set forth in 37 C.F.R. § 11.29(d)(1)-(4).

1. The Michigan Proceeding Provided Respondent with Due Process.

A Respondent may seek to defeat a transfer to disability inactive status by clearly and convincingly establishing that the state proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process. *See* 37 C.F.R. § 11.29(d)(1). Here, it is unclear from a reading of Respondent's Response and Reply filings whether Respondent is raising a due process argument pursuant to § 11.29(d)(1). As a result, a review of the record was conducted and it is concluded that Respondent has not made a showing of, and the Director finds that no genuine issue of material fact exists with regard to, § 11.29(d)(1).

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *In re Karten*, 293 F. App'x 734, 736 (11th Cir. 2008) (quoting *Mathews v.*

Eldridge, 424 U.S. 319 (1976)). See also *In re Feng Li*, Proceeding No. D2014-36 (USPTO Apr. 28, 2015); *In re Brufsky*, Proceeding No. D2013-18 (USPTO June 23, 2014). In proceedings before the Office under 37 C.F.R., pt. 11, it has generally been settled that an attorney is entitled to due process, such as reasonable notice of the charges before the proceedings commence. See *In re Feng Li*, Proceeding No. D2014-36; *In re Brufsky*, Proceeding No. D2013-18; see also *In re Ruffalo*, 390 U.S. 544, 551 (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) (quoting *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); *In re Feng Li*, Proceeding No. D2014-36; *In re Brufsky*, Proceeding No. D2013-18. 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 (quoting *In re Cook*, 551 F.3d at 550); *In re Feng Li*, Proceeding No. D2014-36; *In re Brufsky*, Proceeding No. D2013-18.

A review of the documents presented by the parties in this matter demonstrates that Respondent was afforded appropriate due process during the Michigan proceedings. Respondent knew of the Petition for Order Transferring Respondent to Inactive Status Due to Incapacity, as evidenced by the fact that he was represented by counsel during those proceeding. (Ex. 5, Ex. 4 thereto). Most importantly, Respondent consented to his transfer to “inactive status due to incapacity” in the Stipulation entered into with counsel for the Grievance Administrator. (Ex. 5, Ex. 4 thereto) (Stipulation). That Stipulation, which was signed by Respondent’s counsel, was filed with the State of Michigan Attorney Discipline Board and was a basis

for the Michigan Order transferring Respondent to inactive status pursuant to MCR 9.121(B). (Ex.3; Ex. 5, Ex. 4, thereto; Ex. 6).

In sum, the record establishes that Respondent was not deprived of his due process rights. Further, Respondent has not provided any evidence or argument to refute this conclusion. Respondent participated fully, and with the assistance of counsel, in the state-level proceedings. Thus, Respondent has not demonstrated that he suffered a deprivation of due process pursuant to 37 C.F.R. 11.29(d)(1). Further, the USPTO Director finds there is no genuine issue of material fact as to § 11.29(d)(1).

2. There Is No Infirmary of Proof Establishing That Respondent Was Transferred to Disability Status on the Grounds of Incompetency or Disability.

A respondent may also seek to defeat the reciprocal transfer to disability inactive status by showing by clear and convincing evidence that there was such infirmity of proof establishing the transfer to disability status that the USPTO Director could not, consistent with Office's duty, accept as final the conclusion on that subject. *See* 37 C.F.R. § 11.29(d)(1)-(2). Respondent here argues that there is an infirmity of proof because Respondent voluntarily entered into inactive status in the State of Michigan and his transfer was not the result of a determination that he was incompetent or disreputable. (Exs. 3, 6).

In order to successfully invoke infirmity of proof as a defense in proceedings brought under 37 C.F.R. Part 11, a 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." *In re Zdravkovich*, 634 F.3d at 579 (alterations in original); *see also In re Feng Li*, Proceeding No. D2014-36; *In re Haley*, Proceeding No. D2014-27 (USPTO Dec. 31, 2014). "This is a difficult showing to make. . . ." *In re Zdravkovich*, 634 F.3d at 579; *see also In re Feng Li*, Proceeding No. D2014-36; *In re Haley*, Proceeding No. D2014-27. This showing is particularly difficult where, as here, Respondent agreed to the underlying state decision that formed the basis for the USPTO proceedings. Courts have found that an attorney's voluntary consent to discipline does not support an argument that there is an "infirmity of proof" in reciprocal proceedings. *See in re Day*, 717 A.2d 883, 888 (D.C. 1998). *See also In re Lebowitz*, 944 A.2d 444, 453 (D.C. 2008) (finding that there is no infirmity of

proof where reciprocal discipline resulted from attorney's own voluntary resignation in California); *In re Haley*, Proceeding No. D2014-27 (finding infirmity of proof defense particularly difficult where a respondent voluntarily resigned in the face of pending disciplinary charges). Had Respondent wanted to dispute the transfer to inactive status, he could have done so during the underlying proceeding. However, he did not and instead agreed to the transfer to inactive status. Thus, the fact of his consent to the transfer to inactive status in Michigan is not a basis for finding an infirmity of proof.

As to the substance of the Michigan proceedings, the facts here are uncontested. On January 23, 2013, Respondent suffered a stroke, which resulted in aphasia affecting his cognitive abilities. (Ex. 5, Ex. 2 thereto) (Letter from Respondent to OED, received April 7, 2015). He was unable to perform his normal functions after the stroke and therefore withdrew from his law firm, effective March 23, 2013. (*Id.*) On September 16, 2013, the Michigan Grievance Administrator with the Michigan Attorney Grievance Commission filed a "Petition for Order Transferring Respondent to Inactive Status Due to Incapacity" with the State of Michigan Attorney Disciplinary Board. (Ex. 5, Ex. 3 thereto). In the Petition, the Grievance Administrator explained that, "[o]n January 23, 2013, Respondent had a stroke which was caused by a blood clot going from his heart to his brain ... [d]ue to the stroke, Respondent currently suffers from aphasia which has significantly affected his cognitive functions." (*Id.*) A Stipulation, in which Respondent agreed to be transferred to inactive status as a result of his incapacity, was attached to the Petition. (Ex. 5, Ex. 4 thereto). That Stipulation was filed under the authority of MCR 9.121(B), governing allegations of Incompetency or Incapacity, and cited Respondent's medical problems that are interfering with "his capacity to practice law arising out of the stroke suffered by Respondent on January 23, 2013." (*Id.*) After considering the Petition and Stipulation, the State of Michigan Attorney Discipline Board entered an "Order of Transfer to Inactive Status Pursuant to MCR 9.121(B)" on October 15, 2013. (Ex. 5, Ex. 5 thereto). Respondent was ordered transferred to inactive status for an indefinite period, until further order of the Attorney Discipline Board, in accordance with MCR 9.121(B). (*Id.*)

Respondent does not contest that he was transferred to inactive status in Michigan. Rather, he argues that his Stipulation in the Michigan proceeding was not a finding that triggers the imposition of disability inactive status by the USPTO. (Exs. 3, 6). Specifically, he claims that his transfer to inactive status with the State Bar of Michigan was not the result of a finding that he was incompetent or disreputable, which he avers are required findings before the USPTO Director may transfer him to disability inactive status. (*Id.*) He argues that a finding of incompetence or disrepute is “presumably required by the enabling act of the USPTO at 35 USC 32.” (Ex. 3, at 2). He supports this argument by pointing to the USPTO Director's authority to suspend or exclude “any person, agent, or attorney shown to be incompetent or disreputable or guilty of gross misconduct, or who does not comply with the regulations established under section 2(b)(2)(D)” 35 U.S.C. § 32. This argument has no merit.

Congress bestowed broad authority upon the USPTO Director to establish regulations governing the conduct of practitioners before the agency. *See* 35 U.S.C. § 2(b)(2)(D). As the Federal Circuit has held, 35 U.S.C. § 2(b)(2)(D) provides the USPTO with “broad authority to govern the conduct of proceedings before it and to govern the recognition and conduct of attorneys.” *Lacavera v. Dudas*, 441 F.3d 1380, 1383 (Fed. Cir. 2006). In fact, USPTO has a comprehensive scheme of regulations governing the practice of patent, trademark, and non-patent matters before the Office, including regulation of registered practitioners, and as already discussed, 37 C.F.R. § 11.29. Pursuant to these regulations, the USPTO Director has jurisdiction over Respondent as a practitioner registered to practice before the Office. 37 C.F.R. § 11.19(a).

A plain reading of the regulations governing transfers to disability inactive status eviscerates Respondent's argument that, because there was no judicial finding of incompetence or disreputable conduct on his part, he should not be transferred to disability inactive status. With his argument, Respondent has conflated the grounds on which the OED Director may initiate discipline against a practitioner with the separate grounds for transfer to disability inactive status. The grounds for transfer to disability inactive status are set forth at 37 C.F.R. § 11.19(b)(2)(i)-(iii) and include, but are not limited to, being transferred to disability inactive status in another jurisdiction. 37 C.F.R. § 11.19(b)(2)(i). In

contrast, the possible grounds for discipline are set forth in 37 C.F.R. § 11.19(b)(1)(i)-(v). The two processes are a separate and distinct processes. *See* 73 Fed. Reg. 47,650, 47,653 (Aug. 14, 2008). While the substantive disciplinary provisions may require a finding of incompetence or disreputable conduct for the OED Director to take action, as further discussed below, the provision under which Respondent's reciprocal transfer to disability inactive status was undertaken has no such a requirement.

The provisions governing the process for reciprocal transfer to disability inactive status, 37 C.F.R. § 11.29, confirm that transfer to disability inactive status in another jurisdiction may alone warrant reciprocal treatment before the USPTO. 37 C.F.R. § 11.29(d) ("[T]he USPTO Director shall ... impose the identical transfer to disability inactive status based on the practitioner's transfer to disability status in another jurisdiction.") *see also* 37 C.F.R. § 11.19(b)(2)(i) (identifying grounds for transfer to disability inactive status as including being transferred to disability inactive status in another jurisdiction). There are alternative paths to a reciprocal transfer to disability inactive status that do require a finding of incompetence by the state court order. *See, e.g.*, 37 C.F.R. § 11.19(b)(2)(ii) (requires finding of having been judicially declared incompetent). But, those grounds are in addition to the independent ground of merely "[b]eing transferred to disability inactive status in another jurisdiction," which provides sufficient basis for the reciprocal transfer here 37 C.F.R. §§ 11.19(b)(2)(i), 11.29(d).

Given that a transfer to disability inactive status in another jurisdiction is an independent basis on which to base the reciprocal transfer to disability inactive status before the USPTO, the only issue that remains is whether or not the State of Michigan transferred Respondent to disability inactive status in that jurisdiction. Very clearly, it did.

As already stated, on September 16, 2013, the Michigan Grievance Administrator filed a "Petition for Order Transferring Respondent to Inactive Status Due to Incapacity" with the State of Michigan Attorney Disciplinary Board. (Ex. 5, Ex. 3 thereto) (Petition). In the Petition, the Grievance Administrator explained that, "[o]n January 23, 2013, Respondent had a stroke which was caused by a blood clot going from his heart to his brain ... [d]ue to the stroke, Respondent currently suffers from aphasia which has significantly affected his cognitive functions." (*Id.*) The Stipulation signed by counsel for Respondent

and the Grievance Administrator, in which Respondent consented to transfer to inactive status due to incapacity, was attached to the Petition. (Ex. 5, Ex. 4 thereto). After considering the Petition and Stipulation, on October 15, 2013, the State of Michigan Attorney Discipline Board entered an “Order of Transfer to Inactive Status Pursuant to MCR 9.121(B),” transferring Respondent to inactive status for an indefinite period until further order, and until such time that Respondent can demonstrate that he has complied with the provisions of MCR 9.121(E), which requires a showing by clear and convincing evidence that an attorney’s disability has been removed and that he or she is fit to resume the practice of law prior to reinstatement. (Ex. 5, Ex. 5 thereto).

In sum, proof of an attorney’s transfer to disability inactive status in a state may alone serve as the basis for reciprocal transfer to disability inactive status before the USPTO. 37 C.F.R. §§ 11.19(b)(2)(i), 11.29(d). Proof of incompetence and/or disreputable conduct is not required under § 11.19(b)(2)(i) or § 11.29(d). Because the OED Director received proof of Respondent’s transfer to inactive status, a fact not contested here, Respondent has not demonstrated, and the USPTO Director finds, that there is no material issue of fact as to an infirmity of proof under §11.29(d)(2). Respondent’s reciprocal transfer to disability status before the USPTO was proper.

3. Reciprocally Transferring Respondent to Disability Inactive Status Would Not Result In a Grave Injustice.

A respondent may also seek to defeat the reciprocal transfer to disability inactive status by showing by clear and convincing evidence that the imposition of the same disability status or transfer to disability status by the USPTO Director would result in grave injustice. 37 C.F.R. § 11.29(d)(3). Here, Respondent argues without any authority that it would be a grave injustice to transfer him to disability status before the USPTO despite the fact that Michigan did so. (Exs. 3, 6). Respondent notes that he was initially granted registration to practice before the USPTO as a patent agent, not as an attorney, and he seeks to maintain his designation as a patent agent. (*Id.*) In Respondent’s view, the transfer to disability inactive status as an attorney in Michigan should have no effect on his registration to practice before the USPTO as an agent. (*Id.*) Implicit in his argument is the claim that acting as a patent agent is somehow different

than a patent attorney. However, because the USPTO's rules governing the practice of patent matters before the USPTO apply with equal force to patent attorneys and agents, Respondent's argument fails.

USPTO regulations governing the registration of patent practitioners do not differentiate between patent agents and patent attorneys. *See* 37 C.F.R. §§ 11.1 (defining practitioner as both being an attorney or an agent registered to practice before the Office in patent matters), 11.6(a) and (b). All practitioners registered to practice before the Office in patent matters are equally subject to the disciplinary jurisdiction of the Office. *See* 37 C.F.R. § 11.19(a). Further, it has long been settled that the prosecution of patent applications before the USPTO constitutes the practice of law. *See Sperry v. Florida*, 373 U.S. 379, 383 (1963) (registered patent agents engage in practice of patent law before USPTO). And, since the Stipulation that Respondent agreed to and that formed the basis for his transfer to inactive status in Michigan stated that "Respondent has medical problems interfering with his capacity to practice law arising out of the stroke suffered by Respondent on January 23, 2013," (Ex. 5, Ex. 4 thereto), that Stipulation equally applies to preclude Respondent from practicing as a patent agent here. As a result, Respondent's argument that his status as a patent agent should be unaffected by his transfer to inactive status in Michigan fails. Respondent has not shown by clear and convincing evidence that his transfer to disability status by the USPTO Director would result in grave injustice and the USPTO Director concludes that there is no genuine issue as to 37 C.F.R. § 11.29(d)(3).

Respondent also avers that "there is no proof that his medical problems interfere with his ability to perform as a patent agent." Respondent presented no evidence to support that allegation. However, if Respondent wishes to demonstrate his fitness to practice as an agent before the Office, Respondent is permitted to immediately file for reinstatement pursuant to 37 C.F.R. §§ 11.29(j)(1)-(8), 11.58, and 11.60. In any reinstatement petition, Respondent will have the opportunity to demonstrate his fitness to practice before the Office.

ORDER

ACCORDINGLY, it is hereby ORDERED that:

1. Respondent be transferred to disability inactive status, precluding him from the practice of patent, trademark, and other non-patent law before the USPTO until further Order of the USPTO Director, effective the date of this Final Order.;
2. Respondent may immediately seek reinstatement pursuant to 37 C.F.R. §§ 11.29(j)(1)-(8), 11.58, and 11.60. In any reinstatement petition, Respondent will have the opportunity to demonstrate his fitness to practice before the Office.
3. The OED Director publish the following Notice in the *Official Gazette*:

Notice of Transfer to Disability Inactive Status

This notice concerns Ralph T. Rader of Kennesaw, Georgia, who is a registered patent attorney (Registration Number 28,772). In a reciprocal proceeding pursuant to 37 C.F.R. § 11.29, the Director of the United States Patent and Trademark Office (“USPTO”) has ordered that Mr. Rader be transferred to disability inactive status.

This action is predicated on an October 15, 2013 Order of the State of Michigan Attorney Discipline Board transferring Respondent to inactive status on consent pursuant to M.C.R. 9.121(B) for an indefinite period, rendering Respondent ineligible to practice law in that jurisdiction until further order of the Attorney Discipline Board, in accordance with M.C.R. 9.121(E). While on disability inactive status, Mr. Rader shall not be authorized to practice before the USPTO in patent, trademark, and other non-patent matters.

This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.29. Disciplinary decisions and decisions regarding transfer to disability inactive status 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>.


4. The OED Director give notice pursuant to 37 C.F.R. §§ 11.29(h)(2) and 11.59 of Respondent’s reciprocal transfer to disability status to the 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;
5. Respondent shall comply with the duties enumerated in 37 C.F.R. § 11.58;

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

7. 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.

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 30 days after the date of the order recording the Director's action." E.D.Va. Local Civil Rule 83.5.

5/18/16
Date



Sarah Harris
General Counsel
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

cc:

OED Director

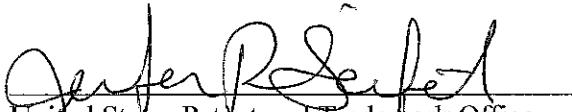
Mr. Donald D. Campbell
Counsel for Respondent

Certificate of Service

I hereby certify that copies of the foregoing Final Order Pursuant To 37 C.F.R. § 11.29 was sent to the parties on this date, in the manner indicated:

5/18/2016

Date


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