BEFORE THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of:	)	
	)	
Christopher E. Haigh,	)	Proceeding No. D2014-25
	)	
Respondent	)	
	)	

FINAL ORDER PURSUANT TO 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 orders the exclusion of Christopher E. Haigh ("Respondent") for violation of 37 C.F.R. § 11.804(h).

Background

At all times relevant to these proceedings, Respondent has been suspended from practice before the USPTO. (Exhibit 1 at page 1). Respondent's USPTO Registration Number is 46,377. (*Id.*).

On June 30, 2008, the Indiana Supreme Court, in *Matter of Haigh*, 894 N.E.2d 550 (Ind. 2008), *cert. denied*, 555 U.S. 1154 (2009), suspended Respondent from the practice of law for not less than two years, effective August 15, 2008 ("Indiana Suspension Order"). (Exhibit 2 at page 2). Respondent was suspended for violating Indiana Professional Conduct Rule 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer) and Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). (*Id.*) These violations stemmed from Respondent providing alcohol to two minors on a school team that he coached, becoming sexually intimate with them, and making misrepresentations to the school and the

parents of the minors that he had not had an inappropriate relationship with the minors. (*Id.*)

The USPTO imposed reciprocal discipline upon Respondent of two years suspension in an order dated August 3, 2009. (Exhibit 6).

On January 6, 2012, the Indiana Supreme Court Disciplinary Commission ("ISCDC") filed a petition for rule to show cause against Respondent that alleged he had committed acts in contempt of the Indiana Supreme Court by, inter alia, "holding himself out as an attorney or paralegal and practicing law while suspended." (Exhibit 2 at page 2). The Indiana Supreme Court referred the contempt proceeding to a hearing by an order dated February 28, 2013. (*Id.* at page 3). Respondent has noted this hearing lasted five days. (Exhibit 3 at page 7). The hearing officer filed a report that contained his conclusions of facts and law with the Indiana Supreme Court on November 14, 2013. (Exhibit 2 at page 3).

On May 7, 2014, the Indiana Supreme Court issued an order ("Haigh Order") in *In re Christopher E. Haigh*, No. 98S00-0608-DI-317, 7 N.E.3d 980 (Ind. 2014), disbarring Respondent from the practice of law in Indiana on ethical grounds. (Exhibit 2). The Indiana Supreme Court adopted the hearing officer's findings and conclusions of law, and further noted that, "Although Respondent had vigorously contested many of the factual and legal issues during this contempt proceeding, at this point, Respondent does not contest any of the hearing officer's findings of fact and conclusion of law." (*Id.* at page 3). The Indiana Supreme Court concluded Respondent had committed egregious violations of the Indiana Suspension Order that had been on-going, pervasive, and deliberate. (*Id.* at page 14). The Indiana Supreme Court disbarred Respondent from the practice of law in the state of Indiana and imposed a fine of $1000. (*Id.* at page 15).

On June 20, 2014, the Director of the Office of Enrollment and Discipline of the USPTO ("OED Director") served a Complaint for Reciprocal Discipline Under 37 C.F.R. § 11.24 ("OED Complaint") on Respondent. (Exhibit 1). The OED Director requested that the USPTO Director impose reciprocal discipline upon Respondent for violating 37 C.F.R. § 11.804(h) by being disbarred on ethical grounds by a duly constituted authority of a State. (*Id.* at page 2). The OED Director also filed on June 20, 2014, a Request for Notice and Order Pursuant to 37 C.F.R. § 11.24 asking that the USPTO Director serve a Notice and Order on Respondent. (Exhibit 4).

On July 2, 2014, the Deputy General Counsel for General Law, on behalf of the USPTO Director, issued a Notice and Order Pursuant to 37 C.F.R. § 11.24 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 the discipline identical to that imposed" by the Indiana Supreme Court in *In re Christopher E. Haigh*, No. 98S00-0608-DI-317, would be unwarranted based upon any of the grounds permissible under 37 C.F.R. § 11.24(d)(1). (Exhibit 5).

On August 12, 2014, Respondent filed a Response to the Notice and Order ("Response"). (Exhibit 3). Respondent contends that the imposition of reciprocal discipline would not be appropriate because there is an infirmity of proof and such an imposition would constitute a grave injustice.

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. *Selling* at 51. 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); *see also 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(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 the imposition of reciprocal discipline, Respondent is required to demonstrate that he meets one of these criteria by clear and convincing evidence. *See* 37 C.F.R. § 11.24(d)(1). As discussed below, however, Respondent has not satisfied, by clear

and convincing evidence, any of the factors set forth in 37 C.F.R. § 11.24(d)(1). Respondent bases his argument against the imposition of reciprocal discipline to two of the four criteria set forth in 37 C.F.R. § 11.24(d)(1): infirmity of proof (37 C.F.R. § 11.24(d)(1)(ii)) and grave injustice (37 C.F.R. § 11.24(d)(1)(iii)).

Analysis

A. **The Resolution of the State Disciplinary Matter Did Not Suffer From An Infirmity of Proof under 37 C.F.R. § 11.24(d)(1)(ii).**

A state disbarment creates a federal-level presumption that imposition of reciprocal discipline is proper. *See Sellig, supra.* A respondent may seek to defeat that presumption by showing by clear and convincing evidence that there was such an infirmity of proof establishing the conduct as to give rise to a clear conviction that the Office could not, consistently with its duty, accept as final the state's conclusion on that subject. *See* 37 C.F.R. § 11.24(d)(1)(ii).

To successfully invoke infirmity of proof as a defense to reciprocal discipline, Respondent must do more than simply challenge the fact finder's weighing of the evidence; he 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.* The Respondent asserts several claims in support of his argument there was an infirmity of proof. (Exhibit 3 at pages 1 to 8). These reasons can be divided into the following categories: 1) Respondent followed advice of counsel, 2) false allegations were made against Respondent during the course of the Indiana disciplinary proceedings resulting in his disbarment, and 3) false statements were made and false evidence was relied upon to the detriment of Respondent in those same proceedings. (*Id.*).

Respondent argues that he followed the advice of counsel with respect to complying with

the terms of the suspensions imposed upon him by the Indiana Supreme Court and the USPTO. (*Id.* at pages 1 to 3). Respondent raised this same argument in the course of the disciplinary proceedings in Indiana. The Indiana Supreme Court addressed this argument, stating:

> Respondent repeatedly contended that his course of conduct during his suspension was on advice by his Indiana counsel and subsequently the Zuckerman firm. The hearing officer found that testimony of these attorneys did not support that position and that Respondent's effort to attribute any misconduct to advice received from his Indiana counsel was unfounded.

(Exhibit 2 at page 11). Respondent makes no reference in his Response to the testimony provided by his Indiana attorney or the Zuckerman firm at the contempt hearing in Indiana. Instead, Respondent simply lists entries from his counsel's billing records and asserts he followed their advice. (Exhibit 3 at pages 1 to 3). However, the advice from Respondent's counsel appears to have been diametrically opposed to Respondent's representation of it. The attorneys for the Zuckerman firm, for instance, advised Respondent that he, "could not work in any capacity for any organization that was doing legal work, whether under the title paralegal or any other title . . . ." (Exhibit 2 at pages 3, 7). The hearing officer at the Indiana contempt hearing concluded Respondent did not follow his counsel's advice, and the Supreme Court of Indiana accepted that finding. Determinations by the trier-of-fact regarding the credibility of witnesses generally receive deference, particularly here where Respondent fails to proffer any explanation as to why the testimony of his counsel at the Indiana disciplinary hearing was incorrect or false. *See In re Zdravkovich*, 634 F.3d at 580.

Respondent also argues that the allegations against him were tainted because they were made by a person, a Mr. Marc Lurie, with whom Respondent had been embroiled in a disputed legal matter. Respondent does not identify in his Response which specific allegations made by Mr. Lurie were included by the hearing officer at the Indiana contempt hearing in his findings of

fact or law and then adopted by the Indiana Supreme Court. Rather, Respondent appears to be asserting the entirety of the disciplinary process in Indiana was inherently flawed because Mr. Lurie initiated it. (Exhibit 3 at page 3). In support of this contention, Respondent claims that allegations made by Mr. Lurie against Respondent and two other individuals to the Illinois Attorney Regulatory and Disciplinary Commission (IARDC) were dismissed. Even if Respondent is correct in stating the IARDC dismissed the allegations against him, this does not invalidate the separate finding made by the Indiana Supreme Court that Respondent violated the terms of his Indiana suspension. *See, e.g., In re Haigh*, 366 Fed.Appx. 167, 169 (C.A. Fed. 2010).

The lack of specificity with regard to Mr. Lurie's allegations in the Response is particularly relevant in light of the fact that the Indiana Supreme Court noted in its decision disbarring Respondent that he was no longer contesting any of the hearing officer's findings of fact and conclusions of law. (Exhibit 2 at page 3). Assuming, arguendo, Respondent's claim concerning Mr. Lurie's allegations were true, Respondent would still have violated the terms of the Indiana Suspension Order. Respondent's complaint about Mr. Lurie's allegations center on litigation in a federal district court in Arizona. (Exhibit 3 at page 4). The Indiana Supreme Court noted that Respondent's activities before the district court in Arizona were an aggravating circumstance, but concluded that Respondent's actions negotiating for, and accepting employment as, general counsel with an Indiana company, Margco LLC, and his participation in proceedings in the Southern District of Indiana violated the Indiana Suspension Order. (Exhibit 2 at page 12).

Respondent next claims that false evidence and statements were used against him during the Indiana disciplinary proceedings. In particular, Respondent claims his estranged wife, Ms. Aida Haigh, was not trustworthy and that the prosecuting attorney during the disciplinary hearing, Mr.

David Hughes, made false assertions of fact.

With respect to Respondent's allegations against Ms. Haigh, Respondent accuses her of being manipulative and misleading. (Exhibit 3 at page 5). However, Respondent fails to identify in the Response a single misleading statement or document provided by Ms. Haigh. An example of the generic nature of Respondent's claim is where he states in the Response that, "several of the documents Ms. Haigh submitted to the ISCDC were documents that she prepared, and not Haigh, and such documents were *never* sent to clients or even representative of work done." (Exhibit 3 at page 7). Respondent fails to identify these documents or explain how they were used to his detriment in the Indiana disciplinary proceedings. This type of conclusory allegation is insufficient to show an infirmity of proof. *See In re Kramer*, 282 F.3d at 727.

The Respondent also asserts Mr. Hughes, the chief prosecuting attorney, made false assertions of fact during the Indiana contempt hearing. Respondent identifies two particular false assertions allegedly made by Mr. Hughes: 1) that he claimed Respondent's record was sealed, and 2) that he falsely asserted Respondent broke the law in West Virginia. With respect to Respondent's claim that Mr. Hughes stated his record was sealed when it was not, this claim, even if true, appears entirely irrelevant to the question of whether Respondent violated his Indiana suspension and Respondent never proffers an explanation as to why it would be relevant.

Respondent claims that Mr. Hughes made a false assertion when he stated Respondent broke the law in West Virginia. This appears to be a reference to the misconduct by Respondent that resulted in the Indiana Suspension Order. As discussed by the Indiana Supreme Court in *Matter of Haigh*, 894 N.E.2d 550, "While Respondent was a volunteer coach of a crew team at a school in Indianapolis, he became sexually intimate with two female crew team members while they were still minors—'AB' and her close friend, 'CD.' In June 2004, while attending a crew camp

in West Virginia, Respondent gave AB, then 16, and CD, then 17, wine to drink, and he engaged in sexual conduct with AB." *Matter of Haigh*, 894 N.E.2d at 551. The Indiana Supreme Court noted that the hearing officer "concluded Respondent violated the laws of West Virginia and Illinois prohibiting furnishing liquor to a minor and the law of West Virginia prohibiting sexual conduct with a child under 18 by a 'custodian.' . . . [W]e conclude he committed, at the very least, the violations found by the hearing officer . . . ." *Id.* If Mr. Hughes stated Respondent violated the law of West Virginia, he had a sound basis for doing so as the Indiana Supreme Court had already come to that same conclusion in a published opinion. Respondent also fails to explain why a statement that he broke West Virginia law, even if incorrect, would have been relevant. Respondent's actions in West Virginia were a factor in the Indiana Suspension Order issued in 2008, but the subsequent actions by Respondent which led the Indiana Supreme Court to disbar him did not involve allegations of violations of West Virginia law.

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

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 by clear and convincing evidence that a "grave injustice" would result under 37 C.F.R. § 11.24(d)(1)(iii). Respondent claims that imposition of reciprocal discipline would be a grave injustice because his conduct was in compliance with federal law.

Respondent has not shown by clear and convincing evidence that a reciprocal reprimand and probation would be a grave injustice. 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).

Here, the Respondent violated a suspension imposed by the Indiana Supreme Court. The Indiana disciplinary standards make clear that disbarment is within the range of appropriate sanctions for attorney misconduct. *See Rule 23(3) of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys.* In addition, the Indiana Supreme Court specifically held, with respect to Respondent, "that the Court's arsenal of sanctions for contempt includes disbarment in egregious cases." *See In re Haigh*, 7 N.E.3d at 990; *see also ABA Standard 8.1(a) of Standards for Imposing Lawyer Sanctions.*

The main argument asserted by Respondent as to why imposing reciprocal discipline would be a grave injustice is that his legal practice was entirely federal or before the USPTO. The Respondent contends that the Indiana Supreme Court violated the Supremacy Clause of the United States Constitution by imposing discipline upon him for his practice as a paralegal before the USPTO. (Exhibit 3 at page 9).

Respondent's allegation that federal law preempted Indiana law in this matter so that the Indiana Supreme Court did not have authority to impose discipline on him is not supportable. It is long-settled that "the State maintains control over the practice of law within its borders except to the limited extent necessary for the accomplishment of federal

objectives." *Sperry* v. *State of Fla.,* 373 U.S. 379, 402 (1963). This is so even when attorney discipline is predicated on actions purportedly taken while working on a patent case or claim. *See Kroll* v. *Finnerty,* 242 F.3d 1359, 1365 (Fed. Cir. 2001).

In *Kroll*, the U.S. Court of Appeals for the Federal Circuit held that federal patent law did not preempt a state disciplinary proceeding for an attorney's failure to promptly inform a client that the client's patent application was rejected by the USPTO. *See id.* at 1365. As the court in *Kroll* explained, because the State of New York was not attempting to suspend or exclude the attorney from practicing before the USPTO, the state disciplinary action did not fall within the field of preemption outlined by *Sperry*. *Id.* As was the case with the state disciplinary authority in *Kroll*, the Indiana Supreme Court did not seek to exclude Respondent from practice before the USPTO, which supports the conclusion the disciplinary proceedings in Indiana were not preempted by federal law:

> [E]ven were the Grievance Committee to disbar Kroll, there would still be no conflict with federal law. Because Kroll is enrolled to practice before the PTO, he could continue to do so unless also expelled by the Director. Thus, the respective powers of the Grievance Committee and the Director can be exercised without conflict.

Id.

In conclusion, Respondent has failed to establish by clear and convincing evidence that there was an infirmity of proof or that imposing reciprocal discipline would be a grave injustice.

ORDER

ACCORDINGLY, it is hereby **ORDERED** that:

1. Respondent be excluded from the practice of patent, trademark, and other non-patent law before the USPTO effective the date of this Final Order;

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

Notice of Exclusion

This notice concerns Christopher E. Haigh of Chicago, Illinois, who is a registered patent attorney (Registration Number 46,377), currently suspended from practice before the USPTO. In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Haigh be excluded 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 disbarred from the practice of law by a duly constituted authority of a State.

On May 7, 2014, the Indiana Supreme Court ordered that Mr. Haigh be fined $1,000 and disbarred from the practice of law in the State of Indiana, for engaging in conduct in contempt of the Indiana Supreme Court by his egregious violations of the Court's Suspension Order. The June 30, 2008 Suspension Order suspended Mr. Haigh from the practice of law for not less than two years, effective August 15, 2008, for violation of Professional Conduct Rule 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer) and Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). *See Matter of Haigh*, 894 N.E.2d 550 (Ind. 2008), *cert. denied*, 555 U.S. 1154 (2009). The contempt order is based on, among other things, Mr. Haigh holding himself out as an attorney or paralegal and continuing to practice law while suspended.

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.

3. The OED Director gives 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;

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

5. The USPTO dissociate Respondent's name from any Customer Numbers and the

public key infrastructure ("PKI") certificate associated with those Customer Numbers;

6. 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

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

APR 22 2015

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 the United States Patent and Trademark Office

cc:

OED Director

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