

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

In the Matter of:)
)
Jerry L. Hefner,) Proceeding No. D2015-36
)
Respondent)
_____)

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.25

Pursuant to 37 C.F.R. § 11.25, the interim suspension of Jerry L. Hefner (“Respondent”) from the practice of patent, trademark, and other non-patent law before the United States Patent and Trademark Office (“USPTO” or “Office”) is hereby ordered for violation of 37 C.F.R. §§ 11.804(b), and 11.804(i). It is further ordered that a “Disciplinary Complaint Pursuant to 35 U.S.C. § 32 and 37 C.F.R. 11.25” be referred to an Administrative Law Judge (“ALJ”) for the purpose of conducting a formal disciplinary proceeding.

I. Background

1. At all times relevant hereto, Respondent has been registered to practice in patent matters before the USPTO subject to the USPTO Rules of Professional Conduct set forth at 37 C.F.R. § 11.101 *et seq.* Respondent’s USPTO registration number is 53,009.

2. On June 13, 2014, Respondent pled *Nolo Contendere* to violating California Health & Safety Code § 11377(a) (Possession of a Controlled Substance), which is a felony, and California Penal Code § 25850(a) (Carrying a Loaded Firearm), which is a misdemeanor.

3. By Order of the Superior Court of California, County of Kern, dated June 13, 2014, in SF017278A, Respondent was convicted of one count of violating California Health & Safety Code § 11377(a) (Possession of a Controlled Substance) and one count of violating California Penal Code § 25850(a) (Carrying a Loaded Firearm).

II. USPTO Disciplinary Proceedings

4. On December 15, 2015, a “Notice and Order Pursuant to 37 C.F.R. § 11.25” (“Notice and Order”), mailed by certified mail (receipt number 70150640000327334133), notified Respondent that the Director of the Office of Enrollment and Discipline had filed a “Request for Notice, Order, Interim Suspension, and Referral for Further Proceedings Pursuant to 37 C.F.R. § 11.25” with a “Disciplinary Complaint Pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 11.25” (“Complaint”), requesting that the Director of the USPTO impose an interim suspension upon Respondent predicated on evidence that Respondent committed a serious crime: violation of California Health & Safety Code § 11377(a) (Possession of a Controlled Substance), which is a felony offense. The Notice and Order was delivered to Respondent on December 22, 2015.

5. The Notice and Order provided Respondent an opportunity to file, within forty (40) days, a response opposing the imposition of discipline. Respondent filed a response on January 19, 2016. His sole argument is that a violation of California Health & Safety Code § 11377(a) is not a felony, but rather a misdemeanor, and should not constitute a serious crime. In support of that argument, Respondent noted that on November 4, 2014, ballot initiative Proposition 47 was passed in California, allowing individuals convicted of certain drug possession crimes, including those that constitute a violation of California Health & Safety Code §11377(a), to petition the court for resentencing of the crime as a misdemeanor. Respondent further stated that, on January 14, 2016, he filed with the Superior Court of California, County of Kern, a Petition under Proposition 47 for reduction of the violation of California Health & Safety Code § 11377(a) to a misdemeanor and for appropriate resentencing. A hearing on his Petition had been scheduled for February 25, 2016.

6. On March 30, 2016, the USPTO Director issued an Order to the Parties. In that Order, Respondent was directed to file an Amended Response to the Notice and Order that addressed the results or resolution of, or any order issued as a result of, the February 25, 2016 hearing on his Petition for resentencing his felony conviction. Respondent was also directed to address the proposed interim suspension in light of any result, resolution, or order issued as a result of the February 25, 2016 hearing. The OED Director was to be served with Respondent's Amended Response and was permitted to file a Response, to which Respondent could Reply.

7. A copy of the Order was mailed by certified mail (receipt number 70142870000070093824) at an address provided by Respondent to the OED Director pursuant to 37 C.F.R. § 11.11(a), as well as an address where Respondent is known to receive mail and from which Respondent has initiated correspondence with the Office in this disciplinary matter (receipt number 70142870000070093855). Despite using these addresses, the Order was not delivered or picked up by Respondent. Nevertheless, because the Office has utilized addresses provided by and previously utilized by Respondent in this proceeding, it is concluded that there is good cause to proceed with this Final Order.

III. Analysis

Upon being convicted of a crime in a court of the United States or any State, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of the conviction within thirty days from the date of such conviction. 37 C.F.R. § 11.25(a). Thereafter, the OED Director shall make a preliminary determination whether the crime constitutes a serious crime warranting interim suspension and, if the crime is a serious crime, the OED Director shall, among other things, file with the USPTO Director a complaint against the practitioner predicated upon the conviction of a serious crime. *Id.*

Upon receipt of a certified copy of the court record, docket entry or judgment demonstrating that the practitioner has been so convicted together with the complaint, the USPTO Director shall issue a notice to the practitioner and to the OED Director, containing:

- (i) A copy of the court record, docket entry, or judgment of conviction;
- (ii) A copy of the complaint; and
- (iii) An order directing the practitioner to file a response with the USPTO Director and the OED Director, within forty days of the date of the notice, establishing that there is a genuine issue of material fact that the crime did not constitute a serious crime, the practitioner is not the individual found guilty of the crime, or that the conviction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process. *See* 37 C.F.R. § 11.25 (b)(2).

The request for interim suspension shall be heard by the USPTO Director on the documentary record unless the USPTO Director determines that the practitioner's response establishes a genuine issue of material fact that: The crime did not constitute a serious crime, the practitioner is not the person who committed the crime, or that the conviction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process. *See* 37 C.F.R. § 11.25 (b)(3). If the USPTO Director determines that there is no genuine issue of material fact regarding the defenses set forth in the preceding sentence, the USPTO Director shall enter an appropriate final order regarding the OED Director's request for interim suspension regardless of the pendency of any criminal appeal. *Id.* If the USPTO Director is unable to make such determination because there is a genuine issue of material fact, the USPTO Director shall enter a final order dismissing the request and enter a further order referring the complaint to a hearing officer for a hearing and entry of an initial decision *Id.*

A. Respondent Has Committed a Serious Crime Such That Interim Suspension is Warranted.

A serious crime includes “[a]ny criminal offense classified as a felony under the laws of the United States, any state or any foreign country where the crime occurred.” 37 C.F.R. § 11.1. The definition of “conviction” includes any “verdict or judgment finding a person guilty of a crime” and “any entered plea, including *nolo contendere* or Alford plea, to a crime.” *Id.* Accordingly, Respondent’s felony conviction for violating California Health & Safety Code § 11377(a) is a serious crime for imposing interim suspension under 37 C.F.R. § 11.25.

Respondent’s sole argument for why an interim suspension should not be imposed here is that his crime under California Health & Safety Code § 11377(a) (Possession of a Controlled Substance) was not a serious crime. In support thereof, Respondent claims that that on November 4, 2014, ballot initiative Proposition 47 was passed in California, allowing individuals convicted of certain drug possession crimes, including those that constitute a violation of California Health & Safety Code §11377(a), to petition the court for resentencing of the crime as a misdemeanor. He claims to have file such a petition on January 14, 2016, with the Superior Court of California, County of Kern, seeking reduction of the violation of California Health & Safety Code § 11377(a) to a misdemeanor and for appropriate resentencing. A hearing on his Petition had been scheduled for February 25, 2016.

It is beyond dispute that on June 13, 2014, Respondent was convicted of a felony crime in the state of California. And, although California currently permits resentencing of certain drug possession crimes from a felony to a misdemeanor, it has not been proven that Respondent has successfully availed himself of those procedures. To the contrary, Respondent was provided the opportunity to file an Amended Response to the Notice and Order, providing the results, resolution, or outcome of his attempts to seek a resentencing under the new authority.

However, he failed to provide the requested supplemental information that would show that his felony conviction, a serious crime under USPTO's disciplinary rules, was mitigated to a misdemeanor.

In sum, the facts indicate that Respondent's crime was a felony conviction. Despite his contrary claim, Respondent has not provided sufficient evidence to establish a genuine issue of material fact that his crime of Possession of a Controlled Substance under California Health & Safety Code § 11377(a) did not constitute a serious crime.

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

1. Respondent be suspended on an interim basis from the practice of patent, trademark, and other non-patent law before the USPTO effective the date of this Final Order;
2. Respondent is granted limited recognition to practice before the Office commencing on the date of this Order and expiring thirty (30) days after the date this Order is signed, with such limited recognition being granted for the sole purpose of facilitating Respondent's compliance with the provisions of 37 C.F.R. § 11.58(b);
3. The Complaint (a copy of which is attached hereto) is referred, in accordance with 37 C.F.R. § 11.25(b)(5), TO A HEARING OFFICER AT THE U.S. Department of Housing and Urban Development for the purpose of conducting a formal disciplinary proceeding.
4. Pursuant to 37 C.F.R. § 11.36, within thirty (30) days from the date of this Final Order, Respondent's written answer to the Complaint shall be filed with the hearing officer addressed as follows:

If sent by mail:

Docket Clerk
HUD Office of Hearings and Appeals

451 7th Street, S.W.
Room B-133
Washington, D.C. 20410

If hand-delivered
(e.g., via Federal Express or
other delivery service):

Docket Clerk
HUD Office of Hearings and Appeals
409 3d Street, S.W.
Suite 201
Washington, D.C. 20024

and Respondent must also file a PDF version of the answer with the hearing office via email to:



and a copy of the answer shall be served on the OED Director by mail to:

Mail Stop 8
Office of the Solicitor
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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

Notice of Interim Suspension

This notice concerns Jerry L. Hefner of Encinitas, California, who is a registered patent attorney (Registration Number 53,009). Mr. Hefner has been suspended from practice before the United States Patent and Trademark Office in patent, trademark and other non-patent matters on an interim basis pursuant to 37 C.F.R. § 11.25(b) by the United States Patent and Trademark Office for being convicted of one count of violating California Health & Safety Code § 11377(a) (Possession of a Controlled Substance), a felony.

This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. §§ 11.19 and 11.25. 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>.

6. The OED Director gives notice of this Final Order to i) appropriate employees of the USPTO; ii) interested departments, agencies, and courts of the United States; and iii) appropriate authorities of any state in which Respondent is known to be a member of the bar;

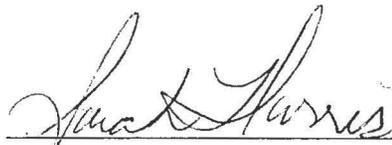
7. Respondent shall comply with 37 C.F.R. § 11.58;

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

9. 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

10. If Respondent seeks a review of this suspension, any review shall not operate to postpone or otherwise hold in abeyance the suspension.

10/12/2016
Date



Sarah Harris
General Counsel for General Law
United 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
Mr. Jerry L. Hefner