

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

In the Matter of:)	
)	
Derek R. Van Gilder,)	Proceeding No. D2017-17
)	
Respondent)	
<hr/>		

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

Pursuant to 37 C.F.R. § 11.24, the public reprimand of Derek R. Van Gilder (“Respondent”) is hereby ordered by the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) for violation of 37 C.F.R. § 11.804(h).

Background

On September 8, 2016, in *Commission for Lawyer Discipline v. Derek Robert Van Gilder*, No. 201504822, the Evidentiary Panel for State Bar District No. 8-7 of the State Bar of Texas issued a Judgment of Public Reprimand imposing a Public Reprimand on Respondent in that jurisdiction.

On June 8, 2017, the Office attempted to serve on Respondent at his Bastrop, TX address, by certified first-class mail (receipt no. 70160910000045132047), a “Notice and Order Pursuant to 37 C.F.R. § 11.24” (“Notice and Order”) that notified Respondent that the Director of the Office of Enrollment and Discipline (“OED Director”) had filed a “Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24” requesting that the Director of the USPTO impose reciprocal discipline upon Respondent identical to the discipline imposed by the Evidentiary Panel for State Bar District No. 8-7 of the State Bar of Texas in *Commission for Lawyer Discipline v. Derek Robert Van Gilder*, No. 201504822. The United States Postal Service (“USPS”) took possession of the Notice and Order, but delivery of the Notice and Order was

never completed and it remains "In Transit" according to the USPS's tracking system. The Notice and Order was never returned to the Office by the USPS.

On June 21, 2017, the Office attempted to serve on Respondent at his Bastrop, TX, address another copy of the Notice and Order by certified first-class mail (receipt no. 70160910000045132078). The Notice and Order was delivered to Respondent on June 23, 2017.

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 Evidentiary Panel for State Bar District No. 8-7 of the State Bar of Texas, based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1). Respondent has not filed a response to the Notice and Order.

Analysis

In light of Respondent's failure to file a response, it is hereby determined that there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and public reprimand of Respondent is the appropriate discipline.

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

1. Respondent be, and hereby is, reprimanded;
2. The OED Director publish the following Notice in the *Official Gazette*:

Notice of Reprimand

This notice concerns Derek R. Van Gilder of Bastrop, Texas, who is a registered patent attorney (Registration Number 34,268). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Van Gilder be reprimanded for violating 37 C.F.R. § 11.804(h), predicated upon receiving a public reprimand by a duly constituted authority of a State.

By Judgment of Public Reprimand dated September 8, 2016, the Evidentiary Panel for State Bar District No. 8-7 of the State Bar of Texas in *Commission for Lawyer Discipline v. Derek Robert Van Gilder*, No.

201504822, imposed a Public Reprimand on Mr. Van Gilder for violating Rule 1.06(b)(2) of the Texas Disciplinary Rules of Professional Conduct. That rule forbids a lawyer from representing a person if such representation, *inter alia*, reasonably appears to be or become adversely limited by the lawyer's responsibilities to another client, or to a third person, or by the lawyer's own interests.

The Evidentiary Panel found that while representing a client in her personal affairs, Mr. Van Gilder also represented her company. In January 2009, the client set up a trust for the benefit of her only child. In January of 2013, while still an employee of the company, Mr. Van Gilder drafted, and the client executed, an amendment to the trust that reduced the share of the trust distribution to the child. The amendment further changed the successor trustees from the client's family members to Respondent and then another individual.

In mid-July 2014, at the client's request, Mr. Van Gilder drafted a second amendment to the trust. In the summer of 2014, disputes about the client's mental condition arose and on July 29, 2014, an application for appointment of guardian of the person and estate was filed. On August 5, 2014, the client executed the second amendment to the trust. This second amendment appointed Van Gilder co-trustee of the trust and also appointed Van Gilder successor trustee should the client become incapacitated. Then, on August 26, 2014, the client revoked her former power of attorney and executed a new power of attorney naming Van Gilder her attorney-in-fact. On November 11, 2014, a medical doctor diagnosed the client with dementia and determined that she was without capacity to care for herself or to manage her property.

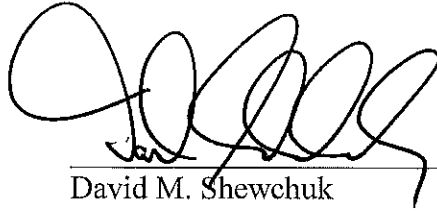
This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.24. Disciplinary decisions are available for public review at the Office of Enrollment and Discipline's FOIA Reading Room, located at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>; and

3. The OED Director comply with 37 C.F.R. § 11.59.

[SIGNATURE FOLLOWS ON NEXT PAGE]

1 Aug 2017

Date



David M. Shewchuk
Deputy General Counsel for General Law
United States Patent and Trademark Office

on behalf of

Joseph D. Matal
Performing the Functions and Duties of the Under
Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark
Office

cc:

OED Director

Mr. Derek R. Van Gilder
Law Office of Derek R. Van Gilder
916 Main Street
Bastrop, Texas 78602