BEFORE THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENTS AND TRADEMARK OFFICE

HARRY I. MOATZ, Director, Office of Enrollment and Discipline, v. JEROME M. TEPLITZ, Respondent.	)	Proceeding No. D2000-10

FINAL DECISION UNDER 37 C.F.R. § 10.156

Respondent Jerome M. Teplitz appeals the Initial Decision of Hon. Susan L. Biro, Administrative Law Judge ("ALJ"), recommending that Respondent be suspended for three years, nunc pro tunc November 19, 1999, from practice before the United States Patent and Trademark Office ("USPTO"), with the further requirement that Respondent demonstrate fitness to practice before the USPTO as a condition of reinstatement.[1] The Director of the Office of Enrollment and Discipline (OED Director) cross appeals. I have reviewed carefully the record, and I conclude that clear and convincing evidence supports the ALJ's finding that Respondent violated USPTO Disciplinary Rules (DR) 10.23(b)(1), (b)(6), and (c)(5)[2] by being suspended from practice as an attorney by the State of Illinois and the United States District Court for the Northern District of Illinois, and by engaging in conduct that adversely reflected on his fitness to practice before the Office. I adopt all of the ALJ's factual findings and legal conclusions, but modify the recommended sanction so as to have it start prospectively.

---

[1] Moatz v. Teplitz, No. D2000-10 (Admin. Law Judge August 2, 2001) (initial decision).

[2] The USPTO Disciplinary Rules are part of the USPTO Code of Professional Responsibility, 37 C.F.R. ch. 10 (1996). See 37 C.F.R. § 10.20(b) (listing Disciplinary Rules).

Background

Respondent was admitted in Illinois to practice law in 1964. Initial Decision at 4. He currently is admitted to practice before the USPTO in patent cases, having registration no. 21,113. Id. Respondent previously worked as a patent attorney for Research Corporation Technologies (RCT) until 1992 when he was terminated. Id. On August 27, 1997, the Administrator of the Illinois Disciplinary Commission instituted an action against Respondent alleging that Respondent violated Illinois Rules of Professional Conduct because he (1) used confidential information he had received while employed by RCT to contact RCT's clients and solicit them as clients of his newly formed law firm; and (2) disseminated confidential information in a report he released to the Internal Revenue Service (IRS), the Arizona Attorney General's Office, Michigan State University, and the media, in which Respondent alleged that RTC had engaged in a scheme to defraud the IRS.[3] Id.

The Hearing Board of the Illinois Attorney Registration and Disciplinary Commission found that Respondent had:

1. Breached his fiduciary duty to his clients by using confidential information for his own use;
2. Violated Illinois Supreme Court Rule 771 (engaging in conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute);
3. Violated Illinois Rules of Professional Conduct 1.6(a) by using or revealing a confidence or secret of a client known to the lawyer without the client's consent;

---

[3] RTC sued Respondent in the Superior Court of the State of Arizona and obtained a temporary and then a permanent injunction against Respondent's dissemination of confidential or proprietary information. Initially, the Illinois Disciplinary Commission declined to take any action against Respondent after it received a complaint against Respondent, however after entry of the permanent injunction, the Commission instituted disciplinary action.

4. Violated Illinois Rules of Professional Conduct 1.9(a)(2) by using information relating to representation of a former client to the disadvantage of the former client; and
5. Violated Illinois Rules of Professional Conduct 8.4(a)(5) by engaging in conduct that is prejudicial to the administration of justice.

Id. at 5.

The Illinois Supreme Court approved the Hearing Board's findings, and on November 19, 1999, suspended Respondent from the practice of law in the State of Illinois for three years. Id. at 6. Because of this suspension, on March 8, 2000, the United States District Court for the Northern District of Illinois also suspended Respondent from practicing law in that Federal district for three years, applied retroactively to November 19, 1999. Id.

On January 23, 2001, the OED Director issued a complaint against Respondent pursuant to 37 C.F.R. § 10.134, charging him with violating the following USPTO ethical rules:

1. 37 C.F.R. § 10.23(b)(1) by violating a disciplinary rule, namely 37 C.F.R. § 10.23(c)(5);
2. 37 C.F.R. § 10.23(b)(6) by engaging in conduct that adversely reflects on fitness to practice before the USPTO; and
3. 37 C.F.R. § 10.23(c)(5) by being suspended from the practice of law on ethical grounds by the State of Illinois and the United States District Court for the Northern District of Illinois.

Complaint and Notice of Proceeding Under 35 U.S.C. § 32.

Pursuant to a joint motion, the ALJ granted the parties a hearing on the written record. Initial Decision at 7 n.8; see also Order dated May 21, 2001. The ALJ found that Respondent had been suspended from the practice of law by the Supreme Court of Illinois, followed by a suspension by the United States District Court for the Northern District of Illinois. Initial Decision at 6. The ALJ concluded that the OED Director had produced evidence from the disciplinary hearing in Illinois that established that Respondent had engaged in unethical

conduct, conduct that is prejudicial to the administration of justice, and conduct that adversely reflects upon his fitness to practice law. Id. at 8. The ALJ then considered whether "reciprocal discipline," whereby one jurisdiction disciplines a practitioner based upon the disciplinary findings of another, was appropriate. Id. at 7-10. Finding that Respondent had not shown that he was denied due process in the Illinois proceeding, or that there was a lack of proof of his misconduct, or that applying reciprocal discipline would result in a grave injustice, the ALJ concluded that the decision of the Supreme Court of Illinois that Respondent should be disciplined could be reciprocally imposed on Respondent in the present action. Id. at 10. The ALJ also found that based upon the findings of the Arizona Superior Court, Respondent had engaged in conduct that adversely reflects upon his fitness to practice before the USPTO, in violation of 37 C.F.R. § 10.23(b)(6). Id. After considering the factors listed in 37 C.F.R. § 10.154(b), the ALJ suspended Respondent for three years, nunc pro tunc November 19, 1999, with the requirement that Respondent prove fitness prior to reinstatement. Id. at 12.

Respondent now appeals the ALJ's initial decision. Respondent characterizes his appeal as raising a single issue: "the integrity, or lack thereof, of the sanctimonious legal profession in having issued against respondent two injunction orders and now three suspension orders, all for his whistle-blowing activities in which he accused his former employers, Research Corporation ("RC") and Research Corporation Technologies ("RCT"), of committing an ongoing charity fraud in connection with the proceeds from patent rights relating to two blockbuster anticancer drugs, cisplatin, and carboplatin." Respondent's Appeal at 1. Respondent alleges that in conducting the hearing and in reaching her initial decision, the ALJ became "entangled in a chain of judicial and administrative corruption." Id. at 2. The OED Director responded to

Respondent's appeal by asserting that there is no evidence in the record to support Respondent's allegation of widespread corruption. OED Director's Cross-Appeal and Reply at 12-13.

The OED Director cross appeals on the sole issue of whether the three-year suspension should be applied retroactively, and requests that the suspension run prospectively. Id. at 1. The OED Director argues that throughout these proceedings below, Respondent was still registered with, and was free to practice before, the USPTO, and that his prior suspensions in the State of Illinois did not affect his status before the USPTO. Id. at 9. The OED Director argues that a retroactive suspension could have a deleterious effect on any patents Respondent may have prosecuted before the USPTO during the time period covered by the retroactive suspension. Id. at 10. Finally, the OED Director argues that precedent and the need for an effective penalty, require prospective application of the suspension. Id. at 10-11. Respondent replies to the OED Director's cross-appeal with further allegations of a corrupt judicial system. Respondent's Reply to OED Director's Cross-Appeal at 1-2.

Decision

Having reviewed the record in these proceedings, I adopt the factual findings of the ALJ and the sanction imposed, but modify its effective date as discussed further herein.

Respondent's main objection to the ALJ's initial decision is his allegation that "this entire matter is entangled in a chain of judicial and administrative corruption." Respondent alleges that the ALJ was complicit in this corruption by failing to consider the narrative of his prehearing exchange which Respondent refers to as "The Rest of the Story." However, the ALJ correctly noted that Respondent agreed to have this matter decided on the record and in a joint motion with the OED Director offered into the record the evidence that would be considered.

Initial Decision at 7 n.8. The narrative on which Respondent now relies was not part of that submission, and Respondent failed to take the necessary steps to have the narrative considered. Id. As such, the ALJ properly excluded the narrative from the hearing record. Doing so was not a result of any corruption by the ALJ, but rather a result of Respondent's own failure to follow the procedures to which he agreed.[4]

Based upon the record, the ALJ properly concluded that the OED Director had shown that Respondent was suspended from the practice of law by the Supreme Court of Illinois and by the United States District Court for the Northern District of Illinois. The ALJ afforded the Respondent the opportunity to show whether in the proceedings that led to his suspension, he was denied due process, whether there was a lack of proof of his guilt, or whether the punishment imposed upon him was a grave injustice. The ALJ properly concluded that Respondent had not presented evidence to establish any deficiency in the prior proceedings, and therefore that reciprocal justice was appropriate. The ALJ also properly considered the factors for determining a sanction contained in 37 C.F.R. § 10.154(b).

The evidence of record demonstrates that Respondent was suspended from practice as an attorney on ethical grounds by both the Supreme Court of Illinois and the United States District Court for the Northern District of Illinois. There is no evidence to support Respondent's allegations of extraordinary corruption in these prior proceedings, or to otherwise undermine confidence in the process that led to Respondent's suspension. Respondent has no right to re-

---

[4] However, even taking into consideration Respondent's narrative, the ALJ's conclusions remain valid. Respondent's narrative makes extraordinary accusations of corruption and collusion among the participants in the prior judicial proceedings, but the exhibits that supposedly prove these allegations do little to prove his claim. These exhibits do not establish any corruption in the prior proceedings despite Respondent's steadfast belief to the contrary.

litigate issues simply because they were resolved to his displeasure. The evidence clearly supports the ALJ's decision that Respondent violated both 37 C.F.R. §§ 10.23(c)(5) and 10.23(b)(1). Further, Respondent's breach of the attorney-client relationship that led to his suspension by the Illinois Supreme Court and the U.S. District Court for the Northern District of Illinois, as well as a permanent injunction by the Arizona Superior Court, supports the ALJ's decision that Respondent has violated 37 C.F.R. § 10.23(b)(6).

The ALJ decided that a three-year suspension with the additional requirement that Respondent demonstrate fitness prior to reinstatement was warranted based upon the factors listed in 37 C.F.R. §154(b). I concur in this decision. However, the ALJ ordered that the suspension should run "nunc pro tunc November 19, 1999." Thus, the ALJ's decision imposes a retroactive suspension. The OED Director appeals the retroactive application of the suspension. OED Director's Cross-Appeal at 1. I conclude that the suspension should run prospectively, and therefore grant the OED Director's Cross-appeal.

The ALJ's decision did not address why the suspension should be applied retroactively. In his response to the OED Director's cross-appeal, the Respondent has not presented any argument as to why the suspension was properly ordered to be retroactive. Instead, Respondent again launches into allegations of judicial corruption which are not relevant to the issue of whether the suspension should be prospective or retroactive. Respondent's Reply to OED Director's Cross-Appeal at 1-2. Respondent then discounts any impact a suspension would have on him. Respondent states that "[r]egardless of whether he is suspended retroactively or prospectively, he can still walk away from this whole thing with his head held high, taking pride in the knowledge that throughout this entire ordeal, he has stood up to the challenge and never

lost his balls to speak the truth and call a spade a spade." Id. at 2. Therefore, lacking any argument by Mr. Teplitz as to why the OED Director's request for prospective application should be denied, I conclude that the suspension should run prospectively.

I further note that the record below lacks evidence on whether Mr. Teplitz practiced before the USPTO in the period that would be covered by a retroactive order. The OED Director has proffered that, if given the opportunity, he could establish that Mr. Teplitz practiced in that period. Mr. Teplitz's failure to address the propriety of retroactivity suggests that a remand for purposes of receiving evidence on the point would unnecessarily prolong this proceeding and potentially lengthen the duration of Mr. Teplitz's suspension. In these circumstances, it appears appropriate to grant the OED Director's cross-appeal in the absence of the kind of complete records that would normally be presented on this issue.

ORDER

Upon consideration of the entire record, and pursuant to 35 U.S.C. § 32, it is

ORDERED that one (1) month from the date this order is entered, JEROME M. TEPLITZ, of Tucson, Arizona, whose USPTO Registration Number is 21,113 be suspended for three (3) years from practice before the USPTO under the conditions set forth in 37 C.F.R. § 10.158;

ORDERED that Respondent must prove fitness prior to reinstatement; and

ORDERED that this Final Decision in this proceeding be published.

RECONSIDERATION AND APPEAL RIGHTS

Any request for reconsideration of this decision must be filed within twenty (20) days from the date of entry of this decision. 37 C.F.R. § 10.156(c). Any request for reconsideration mailed to the USPTO must be addressed to:

James A. Toupin
General Counsel
Office of the General Counsel
Crystal Park 2, Suite 905
United States Patent and Trademark Office
Washington, D.C. 20231

A copy of the request must also be served on the attorney for the Director of Enrollment and Discipline:

Joseph G. Piccolo
Associate Solicitor
United States Patent and Trademark Office
Post Office Box 16116
Arlington, Virginia 22215

Any request hand-delivered to the USPTO must be hand-delivered to the Office of the General Counsel, in which case the service copy for the attorney for the OED Director shall be hand-delivered to the Office of Enrollment and Discipline.

If a request for reconsideration is not filed, and 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 District of Columbia under 35 U.S.C. § 32 and Local Rule 213 of the U.S. District Court for the District of Columbia within thirty (30) days of the date of entry of this decision.

IT IS SO ORDERED.

JAMES A. TOUPIN[5]
General Counsel
United States Patent and Trademark Office

April 4, 2002
Date

cc: Harry I. Moatz
Office of Enrollment and Discipline

Jerome M. Teplitz
6740 East Bacobi Circle
Tucson, AZ 85750

Joseph G. Piccolo
Office of the Solicitor

[5] On January 31, 2002, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office delegated to the General Counsel the authority under 37 C.F.R. § 10.156 to decide appeals from the initial decisions of administrative law judges, and to issue final decisions in proceedings under 35 U.S.C. § 32.