#62

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

HARRY I. MOATZ,	)	
Director of Enrollment	)	
and Discipline	)	
	)	
Complainant,	)	
	)	**Proceeding No. D03-14**
v.	)	
	)	
SOL SHEINBEIN,	)	
	)	
Respondent	)	

INITIAL DECISION[1] OF ADMINISTRATIVE LAW JUDGE

In this disciplinary proceeding brought by the Director of Enrollment and Discipline,[2] United States Patent and Trademark Office ("USPTO," "PTO," or "Complainant") under 35 U.S.C. § § 2(b)(2)(D) and 32 and 37 C.F.R. §§ 10.132 and 10.139, PTO seeks the Respondent's exclusion from practice before the USPTO based on Sol Sheinbein's disbarment from practice as an attorney, on ethical grounds, by the State of Maryland and the District of Columbia. On September 7, 2004, the Court issued its Order on Cross-Motions for Summary Judgment. That Order concluded that PTO "established by clear and convincing evidence that the Respondent was disbarred from practice as an attorney on ethical grounds in Maryland and the District of Columbia.[3] Accordingly the Summary Judgment Order determined that the Respondent engaged in conduct which constituted a violation of 37 C.F.R. Section 10.23 paragraphs (a) and (b). A hearing date was established for the sanctions phase of this proceeding, but the Respondent waived his right to such hearing.

37 C.F.R. §10.132 provides that a disciplinary proceeding may result in a reprimand, suspension or exclusion from practice before the USPTO. The initial decision of the Administrative Law Judge is to include an order of suspension or exclusion from practice, an order of reprimand, or an order dismissing the complaint. 37 C.F.R. §10.154. In determining

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[1]The "Initial Decision" is the term applied to the decision of the administrative law judge but this decision represents only the last among many orders issued in this case, and includes the September 7, 2004 Order on Cross-Motions for Summary Judgment.

[2]The current Director of Enrollment and Discipline is Harry I. Moatz

[3]Mr. Sheinbein also conceded that his misconduct, which resulted in his disbarment in two states, has been proven. *See* Order on Cross-Motions for Summary Judgment at 24, ftnt 36.

any penalty, the Court normally should consider the public interest, the seriousness of the violation of the Disciplinary Rule, the deterrent effects deemed necessary, the integrity of the legal profession, and any extenuating circumstances.[4] The parties have submitted briefs in support of their respective positions as to the appropriate sanction. The briefs included a Response from the PTO and a Reply from the Respondent. All filings were considered by the Court.

Evidence entered into the official record and considered in determining the Appropriate Sanction.

At the Court's direction, the parties were instructed to determine those exhibits for which there could be stipulations for their admission to the record in this case. Thereafter, the parties stipulated to the following exhibits consideration in this case. Each of these are admitted to the record.

Opinion and Order of the Court of Appeals of Maryland in the matter of Attorney Grievance Commission of Maryland v. Sol Sheinbein, Complainant's Prehearing Exchange Exhibit 1, Bates 1 - 66;

Order of the District of Columbia Court of Appeals In the Matter of Sol Sheinbein, Esquire, dated February 6, 2003, Complainant's Prehearing Exchange Exhibit 9, Bates 1 - 3;

Order of the District of Columbia Court of Appeals In the Matter of Sol Sheinbein, Esquire, dated March 11, 2004, Complainant's Prehearing Exchange Exhibit 10, Bates 1 - 2;

Federal Register, Vol. 50, No. 25, Page 5163, Feb. 6, 1985, Respondent's Prehearing Exchange Exhibit 5; Federal Register, Vol. 49, No. 166, Page 33795, Aug. 24, 1984, Respondent's Prehearing Exchange Exhibit 6;

Action Paper from the 21st Century Strategic Plan of the United States Patent and Trademark Office entitled Monitor Practitioner Adherence to Rules of Practice: Periodic Recertification for Registered Practitioners, Respondent's Prehearing Exchange Exhibit 13;

Federal Register, Vol. 68, No. 239, December 12, 2003, Pages 69442-69562, Proposed Rules: Changes to Representation of Others before the United States Patent and Trademark Office, Respondent's Prehearing Exchange Exhibit 14;

Federal Register, Vol. 69, No. 121, June 24, 2004, Pages 35428 - 35459, Final Rules: Changes to Representation of Others Before the United States Patent and Trademark Office, Respondent's Prehearing Exchange Exhibit 15;

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[4] *See, e.g., Marinangeli v. Lehman*, 32 F.Supp.2d 1 (D.D.C. 1998)

Written Comments of Jere W. Sears, former Deputy Solicitor of the United States Patent and Trademark Office to OED, dated January 31, 2004, regarding proposed rule changes, Respondent's Prehearing Exchange Exhibit 16;

Respondent's USPTO Registration Data Sheet, dated April 15, 1970, Joint Exhibit 1;

Respondent's District of Columbia Bar certification, dated April 26, 1971, Joint Exhibit 2;

Respondent's Certificate of Change in Registration Status, dated May 24, 1971, Joint Exhibit 3;

Respondent's Change of Address for Registered Patent Attorneys and Agents, dated April 10, 2001, and accompanying transmittal letter, Joint Exhibit 4;

News Article from *The Washington Post*, entitled "Sheibein Obstructed Justice, Judge Rules," dated Tuesday, April 30, 2002, Joint Exhibit 5.

Disputed Exhibits.

The parties were not able to agree to the admissibility of the following documents as part of the record in this case:

-District of Columbia Court of Appeals Board on Professional Responsibility's Report and Recommendation, dated February 19, 2004 *In the Matter of Sol Sheinbein, Esquire*; Complainants' Prehearing Exchange Exhibit 4, Bates 1 - 3;

-District of Columbia Court of Appeals Board on Professional Responsibility's Report and Recommendation, dated July 31, 2003 *In the Matter of Sol Sheinbein, Esquire*, Complainant's Prehearing Exchange Exhibit 12, Bates 1 - 26;

-Warrant for the arrest of Respondent and the related Statement of Charges and application in support thereof, Complainant's Prehearing Exchange Exhibit 12, Bates 211 - 217.

The Respondent objected to the admission of these documents on the basis that, while authentic, they were immaterial and unnecessary. The Complainant seeks their admission "for completeness of the evidentiary record and for consideration during the penalty phase of this proceeding." Joint Set of Stipulated Exhibits and Disputed Exhibits at 3.

The Court, noting that there is no challenge to the authenticity of any of the disputed exhibits, rules that each of these disputed exhibits are admitted. However, because the Court considers the Opinion and Order of the Court of Appeals of Maryland and the two Orders issued by the District of Columbia Court of Appeals, issued February 6, 2003 and March 11, 2004, as the final word from those bodies, it is not considering the underlying Report and Recommendations from the District of Columbia's Court of Appeals Board on Professional

Responsibility, Complainant's Prehearing Exchange Exhibits 4 and 12, in determining the appropriate sanction. The warrant for arrest is being considered both for completeness of the record as well as for consideration during this penalty phase.

Some of the exhibits are not of particular relevance to the sanction issue addressed here, but they are formally admitted as part of the record in the event that there is an appeal of this Court's decisions in this matter. For example, Respondent's Prehearing Exchange Exhibit 5, a Federal Register document, is admitted, but its purpose does not relate to the sanction issue. Rather, its relevance is in connection with the Respondent's contentions regarding the ability of PTO to sanction him in this matter.

Other exhibits, also unrelated to the specific issue of the appropriate sanction, have significance to matters such as contentions about the Respondent's registration status with the PTO. One of the Respondent's contentions was that he can retreat to the status of patent agent and thereby avoid the sanctions PTO is attempting to impose. The Court formally rejects the Respondent's argument on this issue. Joint Exhibit 1 reflects the Respondent's April 27, 1970 registration with the USPTO as an agent and his subsequent May 24, 1971 registration as an attorney with the USPTO. As reflected in Joint Exhibit 2, the Respondent was admitted to the District of Columbia Bar on April 26, 1971. Joint Exhibit 3 reflects the Respondent's change in status from a patent agent to an attorney, practicing before the USPTO. This document, shows that Sol Sheinbein was issued attorney certificate number 25,457 on May 24, 1971. Joint Exhibit 4, a letter dated April 10, 2001 from the Respondent, and bearing the heading "**CHANGE OF ADDRESS OF ATTORNEY**" evidences the Respondent's acknowledgment that he considered his registration status with the USPTO to be as an attorney with that Office. Thus, with USPTO's approval, the Respondent clearly changed his registration status before the USPTO from an agent to an attorney.

PTO's Position as to the Appropriate Sanction[5]

Complainant PTO asserts that, given that this Court has determined that the Respondent violated the reciprocal discipline provisions of 37 C.F.R. § 10.23[6] and that the Respondent has not demonstrated any mitigating factors which would justify imposing a lesser sanction than that imposed by the Maryland and District of Columbia Courts, reciprocal disbarment represents the only appropriate penalty in this case. PTO Sanction Brief at 1. Complainant, noting that

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[5]References are to PTO's Brief in Support of Respondent's Disbarment ("PTO Sanction Brief") and PTO's Response to Brief of Respondent Regarding Appropriate Penalty ("PTO Sanction Response")

[6]As pertinent here, this section provides that conduct which constitutes misconduct includes "[s]uspension or disbarment from practice as an attorney or agent on ethical grounds by any duly constituted authority of a State or the United States...." 37 C.F.R. § 10.23(c)(5).

imposition of identical reciprocal discipline is a common practice,[7] characterizes such practice as the "norm," and urges that deference to a sister jurisdiction's determination in such matters is appropriate "for its sake alone." *Id.* at 2, 5. This principle applies unless there is a showing that application of the identical discipline, imposed by the earlier disciplinary determination, would be inappropriate.

In this instance, PTO maintains that the Respondent has not presented reasons which justify a lesser sanction being imposed. It asserts that such a showing requires evidence that there was a lack of due process in the earlier disciplinary proceeding, that there was an "infirmity of proof" of misconduct in that earlier proceeding, or that a "grave injustice" would result from imposing that other jurisdiction's disciplinary action. *Id.* at 4, citing *Selling v. Radford*, 243 U.S. 46, 51 (1917).

PTO then examines the applicability of the factors listed at 37 C.F.R. § 10.154(b) to this proceeding. This section provides that "[i]n determining any penalty, the following should normally be considered: (1) The public interest; (2) The seriousness of the violation of the Disciplinary Rule; (3) The deterrent effects deemed necessary; (4) The integrity of the legal profession; and (5) Any extenuating circumstances." Addressing the first factor, PTO maintains that the public interest is strong in having confidence that those attorneys on the official USPTO roster "are fit to practice law and to represent others before the agency." *Id.* at 5. It notes that Maryland's Court of Appeals has determined that the Respondent is no longer fit to practice law. PTO believes that if Respondent is not disbarred from practice before it, this would mislead the public's in its assumption that all attorneys on the USPTO roles are "fit to practice law and [are individuals] who will honor [their] obligations to the public." *Id.* at 6.

PTO also rejects the Respondent's oft-repeated assertion that he either is only an "agent" or only wants to retain the status of an agent. PTO asserts that one does not have the option to "retreat[] to 'agent' status once registered as an attorney. With that "attorney registrant" status comes the "more stringent ethical standards."

In addition, PTO asserts that the Respondent has been charged with the crime of obstructing and hindering a police officer in the performance of that officer's lawful duties. As a result of that charge an arrest warrant has been issued against the Respondent, but the warrant has not been served because the Respondent now resides in Israel. PTO maintains that "[t]he public's trust would be negatively impacted if it knew that the USPTO permitted a practitioner with an outstanding arrest warrant to remain registered on the USPTO roster of practitioners." *Id.* at 6. Further, contrary to Mr. Sheinbein's assertion, Complainant believes that the Respondent's conduct in this case is not unrelated to his professional work. It contends that more than the Respondent's personal conduct was involved because Respondent applied his

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[7]In making this point, PTO cites to a host of cases in support of the principle of imposing identical reciprocal discipline, observing that the principle is applied by states, the federal courts and by administrative agencies. PTO Sanction Brief at 2 - 4.

knowledge of the law's operation to commit obstruction of justice. *Id.* at 7.

Regarding the second factor, the seriousness of the violation of the disciplinary rule, PTO submits that Mr. Sheinbein's interference with the judicial process by assisting his son, as a murder suspect, to escape Maryland prosecution was deemed as serious or more serious than misappropriation of money, income tax evasion, or bribery. PTO notes again that this conduct resulted in the Respondent being charged with obstructing a police officer.

As for the third factor, deterrent effects deemed necessary, as a specific deterrent, PTO believes that disbarment is necessary to prevent the Respondent from "repeating similar misconduct in the future" and because his "underlying offense is still ongoing, as evidenced by the unexecuted arrest warrant issue[d] against [him]." As a general deterrent PTO believes that if Mr. Sheinbein could still continue his patent practice, despite being disbarred by those states where he was licensed to practice law, this would send the undesirable message to USPTO practitioners that "it is permissible to commit serious legal offenses in the U.S. and to evade justice by living abroad without forfeiting a professional practice before a U.S. agency." *Id.* at 8.

Speaking to the impact on the integrity of the legal profession, PTO notes that the Court of Appeals of Maryland characterized Mr. Sheinbein's conduct as "both criminal in nature and directly harmful to the legal profession," observing that "[w]hen an officer of the legal system improperly thwarts the mechanisms within it, he shows a disrespect for that system and the public confidence in the legal profession as a whole necessarily suffers a devastating blow. There can be no question that the public confidence in the legal profession has been adversely affected by respondent's conduct." *Id.* at 9. Quoting from *Attorney Grievance Comm'n of Maryland v. Sheinbein*, 812 A.2d 981, 1002 (Md. App. 2002). PTO also states that the commentary to the ABA's Model Rules for Lawyer Disciplinary Enforcement, Rule 22, describes it as a "spectacle" if a lawyer can be disbarred in one jurisdiction yet continue to practice in another jurisdiction. Such a situation, according to PTO, would send "an inappropriate statement to the public about the inability of the profession and PTO to police the conduct of attorneys practicing before the USPTO." *Id.*

Last, as to the factor of "[a]ny extenuating circumstances," PTO simply states that none exist and that the Respondent has not presented reasons which would point to a conclusion that Maryland or the District of Columbia's determinations were not right or just. *Id.* at 9-10.

Respondent's Position as to the Appropriate Sanction

While reserving all appeal rights stemming from the Court's Order on Cross-Motions for Summary Judgment, the Respondent believes that the minimal penalty of a reprimand should be imposed. Accordingly, Respondent believes that any penalty beyond a reprimand would be excessive. Respondent contends that his conduct "was not so egregious so as to make [him] a person unfit to practice before the USPTO." Respondent's Penalty Brief at 1. In this regard, Respondent states that his "actions were what [he] considered necessary in an emergency to

prevent [his] son from committing suicide." *Id.* Further, Respondent states that he "cooperated with the authorities at all times [and that he] was not attempting to prevent the State of Maryland from punishing [his] son ... [rather he] was attempting to prevent [his] son from punishing himself outside the law by committing suicide out of feelings of guilt or fear ... [and that his] intent [in sending his] son to Israel was [his] personal effort to prevent a possible suicide, to avoid a police confrontation where [Respondent's son] could be injured or killed, to gain control over [his] son who was clearly out of control, and, after a time-out to cool off, to persuade him to return to Maryland."[8] *Id.* at 1-2.

Respondent also takes the position that, while his "conduct offered grounds for disbarment as an attorney, [that] conduct does not affect [his] patent practice or [his] patent clients." *Id.* at 2. Elaborating on this contention, the Respondent distinguishes his ethical requirements as an attorney from those required as a patent agent. The Respondent acknowledges that lawyers are held to a higher standard of conduct and he includes in his argument the Maryland Court's conclusion that the public confidence *in the legal profession* has been adversely affected by his conduct. *Id.* at 2. However, the lesson Respondent draws from this grave conclusion is that because the Maryland Court expressed that his actions did not affect his patent practice or adversely impact his patent clients and since he only wants to continue working before the USPTO as a patent agent, the appropriate resolution is to allow him to continue his patent practice as an agent who has been reprimanded. *Id.* at 3. Respondent even suggests that as the PTO only seeks the reciprocal discipline that he be disbarred as an attorney, it implies that this is all the PTO is seeking as well. *Id.*

Although an inappropriate ground to raise at the penalty phase, because the Court has already ruled on the matter, the Respondent still resurrects his claim that this whole business of proceeding against him in a disciplinary proceeding is barred by the statute of limitations. It follows from this perspective that one cannot discipline a practitioner for such out of date charges. Respondent's Penalty Brief at 4. Respondent makes similar misplaced arguments in paragraphs 5 and 6 of his penalty brief. These include his theory that the Court's earlier ruling means, inanely, that one would be endlessly subject to new claims of misconduct by virtue of the determination that cognizable misconduct occurred here and his contention that if he were only viewed as a patent agent, he would not be subject to PTO discipline. The short answer to these oft-raised contentions is that there has already been a ruling issued on these subjects.

Last, the Respondent contends that, as all of his clients want him to continue to represent him, that should be the determining factor. With those clients wanting him to continue his work for them, Respondent believes that a reprimand is the only appropriate penalty. *Id.* at 5.

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[8]Respondent points to his Answer in this proceeding and the dissenting opinion of two judges with the Maryland Court of Appeals.

PTO's Response Brief

PTO, observing that the Respondent did not analyze the penalty factors set forth in 37 C.F.R. § 10.154(b), asserts that, as a consequence, its penalty arguments went unchallenged. It also contends that the Respondent failed to distinguish his case from the general rule that imposing reciprocal discipline is the appropriate sanction absent a showing that a lesser penalty is warranted.

Speaking to specific points raised in the Respondent's brief, PTO takes issue with the Respondent's position that his actions were prompted by his concern that his son might commit suicide and with Respondent's assertion that he did not help his son evade Maryland's justice system.[9] To rebut these assertions, PTO points to the Maryland hearing judge's findings and the determinations of the majority of the Maryland Court of Appeals. PTO Response at 2-3. As for the Respondent's claim that he is fit to practice before the PTO, Complainant observes that this runs contrary to the Maryland determination which expressly found him "no longer fit to practice law." Response at 3. In fact, PTO points out that the argument Respondent advances – that his actions did not directly affect his practice of law – can be viewed from the opposite perspective, as the Maryland Court still concluded that despite the lack of a direct impact on his clients, the Respondent's actions warranted the most severe sanction – that of disbarment. From PTO's perspective, the Respondent's actions were broader than any direct adverse impact on particular clients and showed a "disregard of the entire legal system."[10] *Id.* at 5.

PTO notes that its own disciplinary rules contradict the Respondent's theory that discipline should be imposed only where clients are directly impacted. For example, the disciplinary rules prohibit illegal conduct involving moral turpitude and similarly prohibit conduct involving dishonesty, fraud, deceit or misrepresentation, without tying that conduct to attorney-client interaction.

Addressing Respondent's argument that he can avoid disciplinary action by being self- described now as an agent, PTO observes that the Respondent is currently registered to practice as an attorney.[11] This status does not change unless and until the PTO authorizes such a

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[9]It is true that the Respondent stated in his brief that he took the actions he deemed necessary prevent his son from committing suicide and, as to the latter point, Respondent stated: "I cooperated with the authorities at all times." Respondent's Brief at 1.

[10]As PTO observes, adopting the Respondent's perspective on the imposition of a sanction would mean that any kind of misconduct, other than transgressions directly affecting his clients, should not result in disbarment. PTO Response at 5.

[11]The Court notes that, while the Respondent argues that he reverts to his earlier agent status, once he is no longer a licensed attorney, the Respondent does not challenge the fact of his registration status. Indeed, joint exhibits 3 and 4 support that Respondent has long been

new status before it. It notes that just as one does not become a registered patent attorney by operation of law upon gaining a law license, one does not automatically revert to agent status upon becoming disbarred. *Id.* at 6. PTO argues that "[o]nce [the] Respondent became registered as a patent attorney before the USPTO, he undertook that higher standard of conduct[12] and should be held to it." *Id.* at 7.

As for the Respondent's assertion that the logic of upholding PTO enforcement in this case would be to endlessly subject to him to new claims of misconduct by virtue of a conclusion that cognizable misconduct occurred here, PTO rejects this claim. It argues that the claim that the finding of misconduct and imposition of a sanction would then constitute a new basis for PTO to claim that constitutes a new violation in itself, has no merit because once a practitioner is suspended or excluded from practice the public has been protected and there is no need take further action. Consistent with this observation – that once the public is protected there is no need to act again purely to demonstrate that it is theoretically possible to do so – in practice as well, PTO states that it has never used the discipline imposed in one PTO disciplinary proceeding as the basis for launching a new disciplinary action. *Id.* at 9.

PTO next responds to the Respondent's Constitutional equal protection argument that attorneys are subject to disciplinary actions for longer time periods than agents by noting that this Court has already ruled on this matter in its Order on Cross Motions for Summary Judgment. While PTO reiterates that any practitioner, agent or attorney, is subject to the reciprocal discipline provision at 37 C.F.R. § 10.23(c)(5), it observes that this reargument is not relevant to the penalty phase. *Id.* at 9.

Last, PTO speaks to the Respondent's argument that the Court should consider that his clients do not want him suspended or excluded from practice. PTO asserts that 37 C.F.R. § 10.154(b) should not be construed to include such considerations. It observes that section provides for consideration of the public interest, necessary deterrent effects, and the integrity of the legal profession, but not the "narrow interests of a practitioner's clients." Accordingly, it views such interests as irrelevant to the penalty determination. *Id.* at 10. PTO concludes that as the Respondent has failed to demonstrate any mitigating circumstances, there is no basis for departing from the imposition of the same discipline imposed by the state of Maryland and the

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registered before PTO as an attorney and that *it was the Respondent who sought to change his original status as a PTO agent to that of an attorney.*

[12]There is no dispute between the parties about the higher standard of conduct owed by attorneys. Thus, Respondent does not challenge PTO's assertion that attorneys, as officers of the court, are subject to a higher standard of conduct than non-attorneys. Nor, does the Respondent take issue with the assertion that an attorney "owes substantial duties to the court and to the public as well ... [that this duty obtains] even in the absence of the attorney-client relation to a more rigid standard of conduct than required of laymen ... [and that this duty is] superior to any competing personal interest of the attorney..." *Id.* at 6.

District of Columbia. Like those jurisdictions, it contends that only disbarment will adequately protect the public interest, reflect the seriousness of the Respondent's violation, accomplish the deterrent effects, and restore the integrity of the legal profession.

Respondent's Reply to PTO's Response Brief

Respondent characterizes PTO's Response as suggesting that the only sanction course of action available to the Court is to exclude him from practice, as the option of a reprimand is unavailable because there is no "retreat" right that allows him to revert to "agent" status. Respondent contends that "a reciprocal discipline proceeding does not necessarily require exclusion from the rolls of the USPTO but allows for exclusion from the rolls of attorney[s]." It is Respondent's position that, owing to his disbarments, he has not been an attorney in any bar since January 2003. From this, he reasons that, as he is registered as a "practitioner" before the USPTO, the only other status he could have is as an "agent." Reply at 1-2. In support of his view that his disbarments operated to transform him to "agent" status, Respondent observes that "[e]ven by the USPTO's own definition he is not an attorney." As to PTO's position on "retreat rights," Respondent asserts that PTO "routinely transfer[s] practitioners from the attorney roster to agent status when advised by the practitioner that the practitioner has ceased paying State Bar membership dues ... yet wished to remain registered as a patent practitioner agent on the USPTO rolls." Thus, Respondent concludes there is a "right of retreat" and if PTO asserts otherwise, he is "prepared to prove the falsity of [that] position." *Id.* at 2.

The remainder of Respondent's Reply, Part "C," challenges various aspects of PTO's Response Brief, and serves notice, again, that Respondent intends to appeal any suspension or exclusion to the Federal courts. Respondent believes that PTO would lead the Court to believe that he had "committed ... felonious criminal action" but that in fact the "statement filed against [him] was for a misdemeanor." Respondent also objects to PTO's suggestion that, if he were not registered as a patent attorney, it would have acted under other provisions to have him excluded from practice. Respondent states that such "other provisions" do not exist and that if PTO is "hinting" that his conduct could be subject to removal as an agent, it has already conceded that the statute of limitations would bar discipline on that approach. Respondent also takes issue with PTO's treatment of Respondent's contention that if discipline is applied here, such discipline, under PTO's theory, would mean that discipline *itself* could form the basis for a new disciplinary proceeding, stemming from that outcome. Respondent is of the view that PTO's response is a diversion because it only states that it would not use a finding of misconduct here as the basis to launch a new complaint. Respondent replies that his concern is not with the prospect that a new disciplinary proceeding being initiated, but rather that a finding that suspension or disbarment is appropriate here would mean that the Respondent would have, by such finding, incurred a new basis for misconduct under PTO's rules, a result the Respondent describes as "Kafkaesque." *Id.* at 4.

Last, Respondent objects to the inclusion of the warrant for his arrest in the record. Respondent sees this as part of a pattern of attempts by PTO at "distortions and [a] blatant

attempt to prejudice [him] before the Court." Respondent characterizes the suggestion that the warrant is still in force as "conjecture" and rejects PTO's attempt to shift the burden of proof as to the status of that warrant to him.[13] *Id.*

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[13]Because this contention is not central to the basis for disbarring the Respondent, the Court will comment on this here. The fact of the matter is that an arrest warrant was issued for the Respondent in connection with the events connected with his son's flight to Israel. Whether that arrest warrant is still in force is not part of this record, although, as a matter of recognizing it, the Court could take official notice of such a fact if it were brought to its attention. This Court fully realizes that an arrest warrant does not equate with a conviction and it makes no assumptions about what the outcome would have been if the warrant had been served. On the other hand, the Respondent's characterization that whether the warrant is still in force is only conjecture, while true enough, does not mean that Maryland has concluded that the arrest warrant is, or perhaps was, ill-advised. What is certain is that the Respondent, like his son, remains unreachable in the safe harbor of Israel. While the Court will not revisit the rulings it made, and stands by, in its Order on Cross-motions for Summary Judgment, it notes in passing that, although this is the sanctions phase of this proceeding, the Respondent has again raised contentions regarding the statute of limitations. In so doing, however, the Respondent has revealed again the emptiness of his argument. For example, under the Respondent's view, if he were to return to the U.S. and he was arrested, either under the warrant that was issued or upon issuance of a new warrant, and thereafter convicted, his argument that PTO could do nothing to disbar him would still obtain, at least from his perspective. This is so because he has maintained that the dates of the events of his wrongdoing are the *only* dates for measurement in determining whether PTO could act against him. Thus, even if convicted, under the Respondent's analysis, the conviction would have no impact on his status before PTO, as the actions constituting his wrongdoing, being over five years from the filing of a PTO complaint, would be too ancient. In the Court's view, Respondent's construction produces absurd results. **Another significant problem with Respondent's contention is that the Director's authority to suspend or exclude those from practice before it includes those who do not comply with regulations the Director establishes under the authority provided at 35 U.S.C. § 32. That authority, per the powers and duties set forth at 35 U.S.C. § 2, expressly provides that the Patent and Trademark Office may establish regulations governing the recognition and conduct of those who appear before it. With the regulations promulgated under that authority comes limited ability to challenge the substantive validity of those regulations after the rulemaking has been completed and, beyond that, deference to PTO's interpretation of its statutory authority and construction of its regulations.** ***See Friedman v. Lehman, Commissioner of Patent and*** **Trademarks, 1996 WL 652768, (DCC. 1996),** ***Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*** **467 U.S. 837 (1984),** ***Bureau of Alcohol, Tobacco and Firearms v.*** **FLRA, 464 U.S. 89 (1983),** ***Raton Gas Transmission v.*** **FERC, 852 F.2d 612, 615 (D.C. Cir. 1988),** ***Capital Network System, Inc. v. FCC,*** **28 F.3d 201, 206 (D.C. Cir. 1994) See** ***also*** **the Court's September 7, 2004 Order on Cross-Motions for Summary Judgment at 16, footnote 21.**

Discussion and Imposition of Sanction

The Court now examines closely the Opinion and Order of the Court of Appeals of Maryland in the matter of Attorney Grievance Commission of Maryland v. Sol Sheinbein, as this is the foundational document for the facts in this case. **Opinion and Order of the Court of Appeals of Maryland in the matter of Attorney Grievance Commission of Maryland v. Sol Sheinbein, Misc. Docket (Subtitle AG) No. 37, September Term 2001, filed December 16, 2002. Complainant's Prehearing Exchange Exhibit 1.** ("Maryland Opinion"). As such it is the primary basis for determining the appropriateness of imposing reciprocal enforcement as well as the factual basis for measuring the Respondent's actions against the factors to be considered under 37 C.F.R. § 10.154 (b).

As background, in August 2001, the Maryland Attorney Grievance Commission filed a petition with the Court of Appeals of Maryland seeking disciplinary action against the Respondent, Sol Sheinbein, alleging that he had violated the provisions of Rule 8.4 of the Maryland Rules of Professional Conduct (MRPC). Among other aspects, that provision provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects or to engage in conduct that is prejudicial to the administration of justice. Pursuant to Maryland practice in such matters, the case was referred to the appropriate Circuit Court, which in that instance was in Montgomery County, Maryland, where it was assigned to Judge S. Michael Pincus of that Circuit Court. Judge Pincus conducted an evidentiary hearing and made findings of fact and conclusions of law concerning the case. Following the hearing, Judge Pincus "found, by clear and convincing evidence, that respondent violated MRPC 8.4." Maryland Opinion at 3.

The Court of Appeals included Judge Pincus' findings of fact that it deemed relevant to its inquiry and found that those identified facts were established by clear and convincing evidence. Maryland Opinion at 3 - 9. Although this Court has issued many orders in this proceeding, it has yet to summarize the important underlying facts in this case. Drawing from the findings of fact made by Judge Pincus, which facts were adopted by the Court of Appeals of Maryland, this Court now sets forth these established facts[14] in this case. The following facts are derived from Section I A of the Maryland Decision.

On or about September 16 or 17, 1997, Alfred Enrique Tello was murdered in Montgomery County, Maryland and his body was discovered on September 19, 1997 in a garage at 14041 Breeze Hill Lane, which is located in Montgomery County, Maryland. The Montgomery County

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[14]The Court of Appeals of Maryland held that the findings of fact included in its decision were established by clear and convincing evidence. Maryland Opinion at 3. The facts are related by the Court in a narrative form to make the retelling more readable and while the Court does not retell every fact found by the Maryland Court, in no way does this summary shade those facts. While all of the facts are important, the Court has quoted those facts it has noted as particularly important in this case.

homicide division was called to the scene and during that division's investigation a witness described two individuals who were in the front yard at the Breeze Hill address at the relevant time. The investigators found droplets of apparent blood along a pathway between Breeze Hill Lane and 2940 Birch Tree Lane, which was the address of the Respondent at that time.[15] The investigation led to a search warrant being issued for the Respondent's address. The Respondent' son, Samuel Sheinbein, was a person of interest in connection with the murder of Mr. Tello. On September 19, 1997, the search warrant and other supporting information were presented to the Respondent and, with the Respondent present, the search was conducted.

It is important to note that:

> [a]t the time of the execution of the search warrant, when the documents were presented to the Respondent, and after the items were observed and seized pursuant to the warrant, a homicide detective indicated to the Respondent the seriousness of the matter under investigation and requested the Respondent contact her if he heard from his son, which he indicated he would do."

Finding of Fact 31.[16]

On the day after the search, "the homicide detective who had served the search warrant upon the Respondent spoke with him by telephone. She inquired whether or not Respondent had heard from his son Samuel and was informed he had not." Finding of Fact 34. At that time the homicide detective "was advised that Respondent had retained counsel." Finding of Fact 35.

"A warrant was issued for the arrest of Samuel Sheinbein [son of the Respondent] on the evening of September 20, 1997. Before the arrest warrant could be executed and served upon Samuel Sheinbein, Samuel fled Maryland and left the United States to travel to Israel, upon the suggestion of the Respondent and with his aid and assistance. (Grand Jury Transcript, p. 65, lines 3-13, p. 65, lines 15-25, p.67, lines 1-17.)" Finding of Fact 37. "The Respondent paid for the plane ticket to Israel, albeit a round trip ticket,[17] and brought the passport of his son, Samuel Sheinbein, to him in New York to enable him to leave the United States." Finding of Fact 38. The "Respondent and his family had invoked their Fifth Amendment privilege against self-incrimination and, after being brought before a judge of the Circuit Court of Montgomery

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[15]The "Respondent" in the Court of Appeals of Maryland decision refers to the same Respondent in this proceeding, Sol Sheinbein.

[16]These "Findings of Fact" and the associated numbers are derived from the Maryland Decision.

[17]Which ticket, the Respondent acknowledged, was cheaper than purchasing a one-way fare.

County, where they again collectively asserted their Fifth Amendment privilege, a ruling was made to compel their testimony." Finding of Fact 40. Thereafter, pursuant to a grant of immunity, the Respondent testified before the Maryland grand jury in Montgomery County on September 25, 1997.

"After the disclosures of the investigator, the review of the supporting affidavit and the search warrant, the Respondent had sufficient knowledge to believe his son was a suspect and probable perpetrator of the murder of Mr. Tello. In addition to the facts contained in the affidavit to support the application for the search warrant, and the observance of the items seized in his own garage, Respondent also observed ashes on his garage floor, which investigators concluded was the situs of the dismembering and attempted immolation of the body of Alfrd Enrique Tello, Jr." Findings of Fact 61 and 62.

"At the time the Application for Search Warrant and Search Warrant were presented to the Respondent by Detective Hamill on September 17, 1997, Detective Hamill learned the Respondent was a lawyer and was advised by [the Respondent] that he had an earlier contact from Samuel by phone. On more than one occasion, on the evening of September 19, 1997, ... Detective Hamill was assured by the Respondent that he would contact her whenever he heard from his son and otherwise alert her of his whereabouts. His representation to the contrary, he failed to do so although he did speak to Detective Hamill by phone at approximately mid-day on Saturday, September 20, 1997. During that conversation, although [the Respondent's] son Robert had a telephone conversation with Samuel, the substance of which was relayed to the Respondent, [Sol Sheinbein] failed to alert [Detective Hamill] of that contact. Instead [Sol Sheinbein] informed [Detective Hamill that] the family had retained [an attorney], on behalf of Samuel and that, in the future, should there be any contact with Samuel, it should be through counsel." Finding of Fact 62.

The Respondent spoke with Samuel on September 20, 1997 and urged him to come home but Samuel, who was in Ocean City, Maryland at that time, did not return home. The "Respondent neither informed [his] counsel, nor Detective Hamill, of his contact with Samuel at this time, nor did he otherwise convey the fact that he believed his son to be in Ocean City, Maryland." Finding of Fact 63.

"Respondent contends his son Samuel expressed suicidal ideation in connection with Aaron Needle[18] also having expressed a desire to commit suicide. *It was at this time the Respondent told his son he should go to Israel. In furtherance of the efforts to facilitate Samuel's flight from the United States, the Respondent purchased airplane tickets for Samuel to depart from New York just prior to midnight September 21st and arrive in Tel Aviv, Israel at approximately 10:00 a.m. Eastern time on Monday, September 22nd.*" Finding of Fact 65, 66. (Italics in original decision)

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[18]Aaron Needle, friend of Samuel Sheinbein, was a co-defendant in the murder of Alfred Enrique Tello. *See*, for examples, Findings of Fact 42, 43, 55.

"*Although the Respondent was unaware of the issuance of the arrest warrant on September 21, 1997, he was aware, from his observations of the results of the search warrant, his scrutiny of the application for the Search Warrant, and his discussions with Detective Hamill, that his son was a focus of the investigation and was a person who the investigating authorities expressed a great desire to interview at least as a witness if not a suspect. Nonetheless, Respondent obtained Samuel's passport prior to leaving Maryland and brought it to New York where he met his son.* ***Also, prior to the Respondent's suggestions that his son leave the United States for Israel, he was a aware his son had admitted to killing Tello.*** (Transcript, p. 50, lines 16-25, p. 51-56, lines 1-14.)" Finding 68. (Italics and bold added by the Court of Appeals of Maryland.)

Section I. B. is also part of the "Facts" section of the Maryland decision and is listed as "The Hearing Judge's Conclusions of Law."[19] These findings will be identified now. The Maryland Court of Appeals noted that the hearing judge (Judge Pincus of the Maryland Circuit Court, Montgomery County) found that Sol Sheinbein's actions satisfied the elements of obstructing or hindering a police officer. Specifically, the Maryland Court noted that Judge Pincus found that Sol Sheinbein "was 'well aware of the duty that the police officer, Detective Paula Hamill, was in the process of performing, i.e. the investigation of the death of Alfred Enrique Tello, Jr.' and that **[Sol Sheinbein] knew of the Detective's desire to question his son, who respondent knew to be responsible for the death of Mr. Tello**. In addition, **[Sol Sheinbein] knew that his subsequent arrangements to assist his son to flee to Israel, would frustrate that officer's performance of her duties. Judge Pincus did not find respondent's argument, that respondent's intent was merely to save his son from Mr. Needle's influence and his son's alleged threats of suicide, to be credible and we are not prepared to disturb that credibility determination.** [Judge Pincus] found that the facts satisfied the requisite elements of common law obstruction, and ruled that the respondent had violated MRPC 8.4(b)." Maryland Decision at 9-10. (emphasis added).

In the same section the Maryland Court noted that Judge Pincus "determined that [Sol Sheinbein] also violated MRPC 8.4(d) by 'engag[ing] in conduct that is prejudicial to the administration of justice.' This conclusion was based on the court's assessment that **respondent's actions were criminal in nature and impaired the public's confidence in the entire legal profession**. Reciting several egregious facts , [Judge Pincus] concluded that **[Sol Sheinbein's] sending his son to Israel in spite of the knowledge that his son was an 'integral party to a criminal investigation' was 'in direct contravention to the oath he swore in open court when he was admitted to the Bar of the Court of Appeals of Maryland** on June 24, 1971." Maryland Decision at 10. (emphasis added).

In part II of the Maryland Court of Appeals decision, the "Discussion" Section, that court reviewed the findings of Judge Pincus. This Court will now review that section of the Maryland

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[19]Again this refers to the Judge S. Michael Pincus' findings of fact and conclusions of law, which the Maryland Court of Appeals held were established by clear and convincing evidence.

decision.

At the outset, the Court here notes the important observation made by the Maryland Court that **Sol Sheinbein took "no exception to [Judge Pincus'] Findings of Fact 1 through 67.**" Thus, of the Findings of Fact related in the Maryland Court of Appeals decision, as set forth at pages 3 through 9 of that decision, those uncontested findings are conclusive factual determinations. It was only as to Finding 68, of the listed Findings 1 through 68, that the Respondent took issue and, to be more precise, Sol Sheinbein took issue only with the last sentence of Finding 68, which stated:

> Also, prior to the Respondent's suggestions that his son leave the the United States for Israel, he was aware his son [Samuel Sheinbein] had admitted to killing Tello.

Maryland Decision at 11.

The Maryland Court of Appeals rejected Sol Sheinbein's exception to this Finding, holding that the "disputed omission of any mention of the son's assertion of self defense has little bearing on the outcome of this proceeding and is therefore, as to this proceeding, irrelevant. **It is undisputed that respondent knew, prior to his actions in encouraging and aiding his son in absconding to Israel, that his son had committed a homicide. Respondent's inappropriate conduct stems from sending his son to Israel with the knowledge that Samuel had committed a homicide in Maryland**, not from the precise circumstances of Mr. Tello's death or whether a jury might ultimately credit his son's assertion of self defense." Maryland Decision at 12. (emphasis added). The Maryland Court also noted that "in 1999, Samuel Sheinbein pled guilty in an Israeli court to killing Mr. Tello and was sentenced to twenty-four years in an Israeli prison [and that he] is eligible for parole after sixteen years of imprisonment and he is eligible to apply for weekend furlough privileges after only four years." *Id.* at 12, footnote 8.

Applying the "clear and convincing standard" the Maryland Court held that the facts demonstrated that the Respondent committed the crimes of obstructing or hindering a police officer and that this constituted a violation of MRPC 8.4(b). *Id.* at 13. It rejected the Respondent's challenge to two of the elements to that offense – that there be an act which obstructs or hinders an officer and that there be an intent to so hinder or obstruct – holding that Sol Sheinbein knew that a homicide had occurred that his son was a primary suspect, and that by his actions in "devising and facilitating his son's departure to Israel, [he] obstructed and hindered Detective Hamill in the performance of her lawful duties." *Id.* at 15. Specifically addressing the intent element, as to which the Respondent asserted that his "actual intent, in keeping information from Detective Hamill, and assisting his son to flee to Israel, was 'to prevent his son from committing suicide or being killed in some sort of confrontation with the police,' the Maryland Court, noted that the hearing judge did not find that assertion to be credible. *Id.* at 16. In fact, the Maryland Court stated that the "record is replete with facts that support the hearing judge's finding that respondent was not credible in testifying before the Grand Jury that his intent

was limited to saving his son from Mr. Needle, suicide[20] or a shootout with the police." *Id.* at 17. Regarding this claim, the Maryland Court concluded "**that respondent's true intent was to facilitate his son's escape from the United States... .**" *Id.* at 19 (emphasis added). Thus, the Maryland Court debunked this claim of the Respondent, adopting the conclusion of the hearing judge.

The Maryland Court also stated that, as to issue of whether the Respondent had the specific intent to take actions which he knew would hinder or obstruct Detective Hamill, "[t]he record supplies ample evidence... ." In this regard, it is worth highlighting some of the particulars noted by the Maryland Court, which stated: "First and foremost, at the time he helped Samuel abscond to Israel, respondent knew that his son had killed Mr. Tello and that the killing was considered by the police to be a murder[21]. .... Respondent, *by his own testimony*, also knew that it was imminent that the police would seek out and arrest Samuel. He [Sol Sheinbein] was fully aware that the investigation had focused on his house and his son because of the information contained in the application for a search warrant, *which he had read.* Respondent *thoroughly planned* his son's getaway. He brought his son's passport from Maryland to New York. ... Respondent was the person who first made the suggestion[22] to his son [that the son flee to Israel]. ... Respondent then proceeded to purchase a plane ticket for his son and [made] arrangements for his son to stay with relatives in Israel. ... All of these events took place *before* respondent sent his son to Israel, but *after* he knew his son had committed a homicide that was considered by the police to be a murder." *Id.* at 20-21 (emphasis added). The Maryland Court summed up its review of this issue, "hold[ing] that respondent had the specific intent to obstruct or hinder the investigation and probable arrest of his son by sending him to Israel. *Id.* at 21.

This led the Maryland Court to find that there was clear and convincing evidence to support the hearing judge's conclusion that Sol Sheinbein committed the crime of obstructing or hindering a police officer. Such a holding meant that the respondent necessarily violated Rule 8.4(b), which provides that it "is professional misconduct for a lawyer to ... commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." *Id.* at 22. The Maryland Court did not leave this finding with that sterile description,

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[20]The Maryland Court noted that Samuel Sheinbein turned over the car and the shotgun when he met with the his mother, brother, and his father, the Respondent, in New York and that "[a]t that time, when in the presence of his family, Samuel was not in apparent imminent danger of committing suicide." *Id.* at 19.

[21]Here again, the Maryland Court made specific note that the claim of self-defense was a distraction, because the Respondent knew that his son had committed the homicide of Mr. Tello, and because the issue of whether a homicide can be deemed as justified is for a jury, not the Respondent, to decide.

[22]The Maryland Court noted that, based on the record, there was no evidence that the son even had the thought of fleeing to Israel until his father arrived in New York.

as it added that "**[o]bstructing or hindering a police investigation of an alleged murder has a profound impact on a 'lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.**'" Indeed, the Maryland Court stated that it "is difficult to perceive that any other contention is *even possible*." *Id.* (emphasis added). Also with regard to the violation of Rule 8.4(b), that court, in an understatement, expressed that "**in the circumstances here present, a lawyer's ensuring that a police investigation is thwarted by sending a main suspect known by him to be the killer in a murder case to a distant country necessarily reflects adversely on that lawyer's trustworthiness.**" *Id.* (emphasis added).

As to the violation of Rule 8.4(d), conduct prejudicial to the administration of justice, the Maryland Court found that Sol Sheinbein's actions were "**so appalling that ... [they were] both criminal in nature and directly harmful to the legal profession.**" *Id.* (emphasis added). That court noted that a criminal conviction is not a prerequisite to finding a violation of this section and that Mr. Sheinbein's actions obstructing and hindering a police officer were necessarily conduct that was prejudicial to the administration of justice.[23] **The Maryland Court observed that Sol Sheinbein "did more than lie or hide the truth from [the detective, as he] took intentional steps to improperly aid his son to avoid the consequences of his son's criminal conduct [and that such] "actions were prejudicial to the administration of justice.**" *Id.* at 24 (emphasis added).

Even putting aside the criminal nature of Mr. Sheinbein's acts, the Maryland Court noted that 'a criminal conviction is not a condition precedent for a finding of a violation of Rule 8.4(d)" as "**a lawyer is subject to professional discipline ... for conduct the lawyer engages [*even where it is*] *outside his or her role as a lawyer.*" *Id.***

The Maryland Court acknowledged that generally, in instances involving non-criminal conduct, such conduct has related to the lawyer's legal practice or client relationship. With that observation in mind, that court stated that in Mr. Sheinbein's case it appeared that his "patent law practice and his clients appear to be unaffected by [his] private actions ... related to his son's criminal plight ... ." That expression, however, relates only half of that Court's view of this subject. This is because the Maryland Court immediately added in the context of that subject that the **Respondent's actions still have "considerable consequences on other facets of the justice system.**" *Id.* at 25. It observed that **the Respondent's assistance to his son "interfered with the natural progression of the criminal justice system,**" and consequently that **his actions usurped the role of a Maryland jury** and that **those acts of the Respondent "made it**

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[23]The Maryland Court observed that while the Respondent has not been charged of any crime, "there are charges pending in Montgomery County, [Maryland]" but that he "cannot be tried in Maryland because he remains in Israel." *Id.* at 23. As mentioned, this Court does consider as part of a complete examination of the penalty phase in this matter, that in fact, per Complainant's Prehearing Exchange Exhibit 12, Bates 211-217, a Warrant for the arrest of the Respondent was issued and this was accompanied by the related statement of charges and application in support thereof.

impossible for the justice system to work." *Id.* at 26 (emphasis added).

Pointing out that lawyers are held to a higher standard of conduct than the average citizen, the Maryland Court tied that standard of conduct to the importance of public confidence in the legal profession adding that such confidence is a "critical facet to the proper administration of justice." *Id.* at 27. **Applying that standard of conduct to Mr. Sheinbein, the Maryland Court described him as "a lawyer, who was familiar with the inner workings of the system and had sworn to uphold its laws, [yet he] did everything in his power to ensure that his son circumvent that system and [enabled him to] flee to another country, ... [and these] actions totally stymied the criminal justice system and subsequently the judicial process in Maryland in respect to a serious criminal offense**." *Id.* at 27-28 (emphasis added).

Importantly, in rejecting the Respondent's argument that because his clients were not directly affected by his actions, his wrongdoing should be viewed more leniently, the Court of Appeals of Maryland stated "[w]hen an officer of the legal system improperly thwarts the mechanisms within it, he shows a disrespect for that system and the public confidence in the legal profession as a whole necessarily suffers a devastating blow. *There can be no question that the public confidence in the legal profession has been adversely affected by respondent's conduct*." *Id.* at 28. (emphasis added).

The Complainant has sought reciprocal discipline in this case. Therefore, as part of the analysis of this basis for discipline, the Court now reviews that part of the Maryland decision discussing the sanction it imposed. At the outset the Maryland Court observed that the purpose of a sanction is to protect the public, to deter others from violating its rules of professional conduct, and to maintain the integrity of the legal profession. It added that sanctions should be "commensurate with the nature and gravity of the violations and the intent with which they were committed." *Id.* at 28, quoting from another Maryland attorney disciplinary matter. Thus there must be an evaluation of the particular facts and circumstances involved and consideration of any mitigating factors.[24]

After noting decisions in its own jurisdiction which resulted in disbarment, and determining that Mr. Sheinbein's actions were "as serious or even more so" than those, the Maryland Court looked to how sister states had dealt with analogous situations. It then addressed the "extenuating circumstances" that Mr. Sheinbein urged them to consider, noting that he focused "on the timing of the situation" contending that "it precluded 'mature reflection as to a

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[24]Although the Maryland Court stated that the facts here were unlike any other disciplinary matter it had faced, it still found guidance in cases where attorneys had misappropriated client money, where attorneys had engaged in bribery or willful evasion of income taxes, and even where an attorney was feeding a parking meter with slugs. In each of the cited instances, the attorneys were disbarred and, stating the obvious, the Maryland Court expressed that the Respondent's interference with the judicial process was as serious, or even more so, than the cited examples. *Id.* at 30.

'proper' course of action.'" *Id.* at 34. To be direct, the Maryland Court was not persuaded. It observed that Sol Sheinbein's argument:

> **neglects to mention the time and care [he] showed in devising an escape route for his son. He thought enough in advance to bring his son's passport from Maryland to New York City in contemplation of his son's need to leave the country. Respondent also suggests that he 'cooperated' with the authorities by turning over information and evidence to the police, such as the car his son and [co-murder defendant Aaron Needle] drove to New York and its contents, which included a shotgun, stun gun, and letters written by the two young men. This alleged "assisting" of Detective Hamill's investigation occurred *only after* [Sol Sheinbein] had encouraged and assisted his son to flee beyond the reach of Maryland's jurisdiction. The prejudice to the administration of justice had already occurred.**

Maryland Decision at 34 (emphasis added).

The Maryland Court took pains to point out that "[t]his is not a case of ... passing moral or criminal judgment on a father for trying to protect his youngest son, nor is [the Court] punishing a surrogate for a crime where the accused has escaped the reach of Maryland's law, [rather] [i]t is merely the process by which [the Court] protects the public from attorneys whose actions fly in the face of their legal obligations to the public and to their own profession." *Id.* at 35. With that in mind, **the Maryland Court concluded that the "respondent's utter abandonment of proper professional conduct in the face of the circumstances of Mr. Tello's murder" led it to the only conclusion it could reach – the Respondent, Sol Sheinbein, was no longer fit to practice law**. Maryland Decision at 35 (emphasis added). Accordingly, it disbarred Mr. Sheinbein.[25] The Maryland decision was filed on December 16, 2002. Complainant's Prehearing Exchange Exhibit 1 at 2.

Having considered the entire record, this Court concludes that the only appropriate sanction in this case is that the Respondent, Sol Sheibein, be disbarred from practice before the U.S. Patent and Trademark Office and accordingly this decision so orders the Respondent's

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[25]The Order of the District of Columbia Court of Appeals In the Matter of Sol Sheinbein, Esquire, dated February 6, 2003, Complainant's Prehearing Exchange Exhibit 9, Bates 1 - 3, and the Order of the District of Columbia Court of Appeals In the Matter of Sol Sheinbein, Esquire, dated March 11, 2004, Complainant's Prehearing Exchange Exhibit 10, Bates 1 - 2, do not materially add to the discussion above concerning the Maryland Court of Appeals, except that the District of Columbia Order notes that Mr. Sheinbein consented to disbarment and that had the effect of rendering the reciprocal matter as moot. The District of Columbia disbarment Order was issued March 11, 2004.

exclusion from such practice. The Court's determination and sanction is based on two *independent* grounds for the Respondent's exclusion from practice. First, the Court finds that the Respondent should be excluded from practice before the U.S. Patent and Trademark Office, based on the imposition of reciprocal discipline stemming from the Respondent's disbarment from the practice of law in the State of Maryland and the District of Columbia. Second, applying the five factors listed at 37 C.F.R. § 10.154(b), the Court, independent of the discipline imposed by Maryland and the District of Columbia, finds that when those listed factors are considered, disbarment is the only appropriate sanction. Each of these independent grounds will now be discussed.

The Court notes that imposition of reciprocal discipline is a commonly applied practice and that, absent a showing that application of the identical discipline imposed by the earlier disciplinary determination would be inappropriate, the practice should be applied. The reasons presented to depart from the earlier authority's sanction, that there was an "infirmity of proof" of misconduct in that earlier proceeding, or that a "grave injustice" would result from imposing that other jurisdiction's disciplinary action, are decidedly not present here. The Court agrees with the PTO that the Respondent has not presented reasons which would justify a lesser sanction being imposed. Certainly here there has been no showing that there was a lack of due process in the earlier disciplinary proceeding.[26] It should also be emphasized that the Respondent took no exception to Judge Pincus' Findings of Facts 1 through 67, and that as to the *single* Finding Respondent objected to, Finding 68, that he was aware that his son had admitted killing Mr. Tello, the Maryland Court of Appeals rejected Sol Sheinbein's exception. In this regard the Maryland Court stated:

> **It is undisputed that respondent knew, prior to his actions in encouraging and aiding his son in absconding to Israel, that his son had committed a homicide. Respondent's inappropriate conduct stems from sending his son to Israel with the knowledge that Samuel had committed a homicide in Maryland** ...

Maryland Decision at 12 (emphasis added).

Thus, the Decision issued by the Maryland Court of Appeals represents findings of fact concerning the Respondent's actions in connection with his son's homicide of Mr. Tello, which findings were accepted without exception by the Respondent, except for Finding 68. As discussed, even that excepted Finding was rejected by the Maryland Court, with the consequence that each of the Findings of Fact, (i.e. Findings 1 through 68) was conclusively determined, being upheld under the clear and convincing standard of proof. It was against this factual background that the Maryland Court of Appeals determined that the Respondent's utter abandonment of proper professional conduct in the face of the circumstances of Mr. Tello's murder led it to the only conclusion it could reach – the Respondent, Sol Sheinbein, was no

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[26] *Selling v. Radford*, 243 U.S. 46, 51 (1917).

longer fit to practice law.

Obviously, the Court rejects the Respondent's view that only a reprimand is due in this instance. While the Respondent continues to assert that his actions were what he deemed to be necessary in an emergency to prevent his son from committing suicide, that assertion was fully considered by the Maryland Court and rejected. As noted above, Judge Pincus of the Maryland Circuit Court did not find respondent's argument – that Respondent's intent was merely to save his son from Mr. Needle's influence and to address his son's alleged threats of suicide – to be credible. Upon review, the Maryland Court of Appeals was not about to disturb that credibility determination. Maryland Decision at 9-10. This Court will not relitigate that determination either. So too, Respondent's claim that he "cooperated with the authorities at all times" is a claim that is completely at odds with the Maryland Court's findings of fact. As that Court noted, the Respondent "neglect[ed] to mention the time and care [he] showed in devising an escape route for his son. He thought enough in advance to bring his son's passport from Maryland to New York City in contemplation of his son's need to leave the country. Respondent also suggests that he 'cooperated' with the authorities by turning over information and evidence to the police, such as the car his son and [co-murder defendant Aaron Needle] drove to New York and its contents, which included a shotgun, stun gun, and letters written by the two young men. This alleged "assisting" of Detective Hamill's investigation occurred *only after* [Sol Sheinbein] had encouraged and assisted his son to flee beyond the reach of Maryland's jurisdiction. The prejudice to the administration of justice had already occurred." Maryland Decision at 34. Nor has Respondent pointed in either his Brief regarding sanctions or in his Response Brief to any evidence that, after "a time-out to cool off" that he acted to persuade his son to return to Maryland. To the contrary, the Respondent and his son remain in Israel, both outside of the reach of the Maryland criminal justice system.

Respondent's legal arguments, like his recounting of the claimed suicide risk and his belief that he cooperated with the authorities at all times, have a hollow ring to them. The Maryland Court did not buy into Respondent's theory that, because his clients were not directly affected, that should translate into a minimal sanction. As the Maryland Court observed **"[w]hen an officer of the legal system improperly thwarts the mechanisms within it, he shows a disrespect for that system and the public confidence in the legal profession as a whole necessarily suffers a devastating blow. *There can be no question that the public confidence in the legal profession has been adversely affected by respondent's conduct.*"** Maryland Decision at 28. (emphasis added). This Court agrees with that contention and also rejects Respondent's related contention, asserting that the penalty should be minimal because his clients want him to continue representing them. Neither contention operates to warrant mitigation of the sanction in this case.

So too, Respondent's gambit, conceding that although *as an attorney* his conduct provides grounds for disbarment,[27] by simply changing his official label, from attorney to agent, he should be to allowed to continue practicing before the PTO, is too clever by half. This is because the Respondent is registered to practice *as an attorney* and *not as an agent* before PTO. That this change in status came about as a result of the Respondent's past action, seeking a change from 'agent' status to 'attorney,' does not demonstrate that a status change can be accomplished without PTO's approval. Although the Respondent has referred to instances where practitioners change their status as attorneys or agents before PTO, this does not mean that a change is unilaterally achieved. PTO must approve any desired status change. The example the Respondent offers, an attorney who ceases to pay bar dues but wants to continue practicing as an agent, is hardly instructive here. The facts do matter. Respondent refers to his desired change of status back to an "agent" as if it were a purely ministerial function and ignores the context of his conduct that prompted this wish. While such a change would represent a dream outcome for the Respondent, because he could then assert that the statute of limitations had run as to his original conduct engineering his son's escape from justice, and because a less rigorous standard of conduct is applied for non-attorneys, it must awaken to the reality that the Respondent's registration before the PTO is *as an attorney, not as an agent*. Similarly, Respondent's suggestion that he is willing to accept the 'unflattering' penalty of being disbarred as an attorney before the PTO is most disingenuous because the effect of such a limited sanction would be toothless. In fact, as Respondent points out, the penalty "would be nugatory, since [he] no longer [is], or claim[s] to be, an attorney." Respondent's Brief at 3. As the Respondent is apparently not licensed to practice law in any U.S. State, he cannot hold himself out as an attorney anyway. Thus the Respondent would be able to substantially continue his patent practice, but under the label of "patent agent."

In his Reply Brief, the Respondent advances yet another contortion to his contention that he could not be sanctioned as an attorney anyway because he has not been an attorney in any bar since January 2003. In this variation, Respondent contends that *since he is currently registered as a practitioner* before the USPTO,[28] presently he *must be an agent* with it. Respondent seems to be oblivious to the fact that it is his current *sole* registration status *as an attorney* before the USPTO and whether he should be permitted to continue to practice before the USPTO that is the subject of this proceeding. No amount of semantic gymnastics by the Respondent can alter the fact that his status and registration with the USPTO is as an attorney.

The same sanction, disbarment, is the only appropriate sanction when the Court makes the sanction determination independently of the reciprocal disbarment approach and applies the

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[27]In fact, the Respondent has conceded in his brief that the Maryland Court concluded that the public confidence *in the legal profession* has been adversely affected by his conduct. Respondent's Penalty Brief at 2.

[28]With this Court's decision however, the Respondent's currently registered status as a practitioner before the USPTO has ended.

criteria set forth at 37 C.F.R. § 10.154(b) to this proceeding. As described earlier, this section provides that "[i]n determining any penalty, the following should normally be considered: (1) The public interest; (2) The seriousness of the violation of the Disciplinary Rule; (3) The deterrent effects deemed necessary; (4) The integrity of the legal profession; and (5) Any extenuating circumstances." Each of these factors will be discussed.

Regarding the first factor, the Court agrees with PTO that there is a strong public interest in having confidence that those attorneys on the official USPTO roster are fit to practice law and to represent others before the agency. The Court also agrees that if the Respondent is not disbarred from practice before the USPTO, this would mislead the public in its assumption that all attorneys on its roles are fit to practice law and are individuals who will honor their obligations to the public. In this regard it is appropriate to note again that Maryland's Court of Appeals has determined that the Respondent is no longer fit to practice law and this Court notes that the facts in support of that determination fit within the class of the most egregious conduct. The Court also agrees with PTO that, as to the second factor, the seriousness of the violation of the disciplinary rule, Respondent Sheinbein's interference with the judicial process, by assisting his son, as a murder suspect, to escape Maryland prosecution was deemed as serious or more serious than misappropriation of money, income tax evasion, or bribery. As noted by PTO, this conduct resulted in the Respondent being charged with obstructing a police officer. In fact, describing the Respondent's role as "assisting" his son's flight to Israel understates his role. The Respondent was the architect of the plan. Without his actions it is very likely that the Maryland law enforcement mechanisms would have been able to apprehend the Respondent's son. As alluded to, among the degrees of seriousness of violations of the Disciplinary Rules, certainly the Respondent's violations rank among the most serious.

Addressing the third factor, the deterrent effects deemed necessary, the Court concurs with PTO's analysis that, as a specific deterrent, disbarment is necessary to prevent the Respondent from repeating similar misconduct and because his underlying offense is still extant, as evidenced by the unexecuted arrest warrant issued against him. Certainly at no point in this proceeding has the Respondent displayed any remorse for his actions. Rather, there is every indication from the tenor of his arguments before the Maryland Court and this Court, that he would act in the same fashion if confronted with similar circumstances. The Court also agrees that, as a general deterrent, if Mr. Sheinbein could still continue his patent practice, despite being disbarred by those states where he was licensed to practice law, and given the extreme nature of the actions he took, which actions resulted in his disbarments, such an outcome would send the very undesirable message to USPTO practitioners that one may commit serious legal offenses in the United States and thereafter evade justice by living abroad and do so without forfeiting a professional practice before a U.S. agency.

With respect to the impact of the Respondent's actions on the integrity of the legal profession, the Court also concurs with PTO's observation that the Court of Appeals of Maryland characterized Mr. Sheinbein's conduct as both criminal in nature and directly harmful to the legal profession, as well as with its observation that when an officer of the legal system improperly thwarts the mechanisms within it, he shows a disrespect for that system and the public

confidence in the legal profession as a whole necessarily suffers a devastating blow. Accordingly, this Court agrees that there is no question that the public confidence in the legal profession has been adversely affected by the Respondent's conduct. The Court also agrees with PTO that it would be an unacceptable result, under the uncontested facts present here, to have the Respondent, disbarred in two jurisdictions, nevertheless able to continue to practice before the United States Patent and Trademark Office. Such an outcome would send a very inappropriate statement to the public about the USPTO's ability to police and take action against serious misconduct committed by attorneys practicing before it.

Finally, as to the factor of any extenuating circumstances, the Court absolutely agrees, as discussed earlier at various points in this Initial Decision, that there are no cognizable factors to be considered. Like the Maryland Court of Appeals, this Court does not sit in moral judgment of the actions the Respondent took to make it possible for his son to evade justice in the United States for a murder, rather the Court adjudges that the Respondent may not evade the consequence of those actions on his ability to continue to practice before the United States Patent and Trademark Office.

Accordingly, the undersigned administrative law judge orders that the Respondent, Sol Sheinbein, be excluded from practice before the United States Patent and Trademark Office.

SO ORDERED.

William B. Moran
United States Administrative Law Judge

Dated: December 10, 2004

In the Matter of Sol Sheinbein, Respondent
Disciplinary Proceeding No. D03-14

CERTIFICATE OF SERVICE

I hereby certify that a true copy of **Initial Decision of Administrative Law Judge**, dated December 10, 2004, was sent this day in the following manner to the addressees listed below:

Nelida Torres
Legal Staff Assistant

Dated: December 10, 2004

Sent by Facsimile and Regular Mail to:

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