

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

In the Matter of:)	
)	
Jason Edward Rheinstein,)	Proceeding No. D2021-06
)	
Respondent.)	
)	

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

Pursuant to 37 C.F.R. § 11.24, Jason Edward Rheinstein (“Respondent”) is hereby excluded from the practice of patent, trademark, and other non-patent law before the United States Patent and Trademark Office (“USPTO” or “Office”), for violation of 37 C.F.R. § 11.804(h), having been disciplined by a duly constituted authority of a state.

I. BACKGROUND

1. At all times relevant hereto, Respondent of Severna Park, Maryland, has been registered to practice in patent matters before the USPTO as an attorney, subject to the USPTO Rules of Professional Conduct. Respondent’s USPTO registration number is 55,571.

2. By Order dated January 24, 2020, in *Attorney Grievance Commission of Maryland v. Jason Edward Rheinstein*, Misc. Docket AG No. 77 (September Term, 2015), the Court of Appeals of Maryland disbarred Respondent from the practice of law in that jurisdiction. (RHEIN 082).¹ The Court of Appeals found that Respondent (i) failed to represent his client competently in violation of Maryland Lawyers’ Rules of Professional Conduct (“MLRPC”)² 1.1;

¹ The references to “RHEIN XXX” refer to the page numbers for the Maryland Court of Appeals opinion produced by the OED Director with his response.

² Effective July 1, 2016, the Maryland Lawyers’ Rules of Professional Conduct were renamed the Maryland Attorneys’ Rules of Professional Conduct. However, all of the relevant conduct occurred prior to the revision. (RHEIN 004).

(ii) made frivolous filings in violation of MLRPC 3.1; (iii) failed to maintain fairness to opposing parties and counsel in violation of MLRPC 3.4; (iv) failed to maintain respect for the rights of third persons in violation of MLRPC 4.4; and (v) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation and prejudicial to the administration of justice in violation of MLRPC 8.4. (RHEIN 058, 062, 065-68, 071-73).

Factual Background

3. Beginning in October 2011, Respondent represented a couple, the Moores, in a civil suit against Imagine Capital, Inc. (“Imagine”), a private lender, seeking to open, modify or vacate a previous judgment. (RHEIN 041-42; Exs. 27, 29-30).³

4. At his first court appearance in the matter, Respondent “interjected irrelevant and unsubstantiated accusations against Imagine and its members regarding an elaborate fraud scheme,” “leered” at one of Imagine’s officers, and erroneously “led the court to believe that Imagine and its officers were under investigation by the Department of Justice.” (RHEIN 042). Ultimately, the court vacated the judgment. (*Id.*).

5. In November 2011, Respondent filed a bar complaint against Imagine’s counsel, causing him to withdraw from representation based upon the grievance complaint. (RHEIN 042).

6. Imagine retained new counsel to appeal the decision to vacate the previous judgment in the Moore case and Respondent threatened to sue them and file bar complaints against them if they did not drop Imagine’s appeal. (RHEIN 042-43; Ex. 43). Imagine’s counsel informed its professional liability carrier of Respondent’s threat to sue and retained counsel of their own. (RHEIN 044). Imagine’s counsel wrote to Respondent asking him to cease his threatening conduct toward Imagine’s law firm and cited authority that held that “threatening attorney

³ The references to “Ex.” refer to the exhibits submitted by Respondent with his Response to Notice and Order.

grievance complaints to gain a tactical advantage in litigation violates the Maryland Rules of Professional Conduct.” (*Id.*). Imagine also filed a bar complaint alleging that Respondent had threatened attorney grievances to gain a tactical advantage in litigation. (*Id.*).

7. Respondent thereafter filed a flurry of “frivolous” motions. (RHEIN 044-46). On May 29, 2012, Respondent threatened to sue Imagine’s counsel again and demanded that they settle the lawsuit if the law firm’s insurance policies “are big enough.” (RHEIN 046).

8. The next day, on May 30, 2012, Respondent filed a civil complaint on behalf of the Moores against 28 individuals, including Imagine’s officers, alleging fraud and asking for \$17,000,000 in damages. (RHEIN 046-47). Less than a month later, on June 20, 2012, Respondent filed a Qui Tam action in federal court against ten defendants, including Imagine and others whom had also been included in the previous civil complaint. (RHEIN 047; Ex. 61).

9. During this time period, the Maryland Court of Special Appeals erroneously dismissed Imagine’s appeal of the order vacating the judgment against the Moores. (RHEIN 047). After Imagine filed a motion to reconsider the dismissal, Respondent threatened additional causes of action against Imagine’s counsel including “(1) civil conspiracy, (2) 42 USC 1983, 42 USC 1985, (3) Malicious prosecution, (4) abuse of process, (5) RICO.” (*Id.*). Later that same day, Respondent filed a second Qui Tam action in the federal court listing 24 defendants, including Imagine and its officers. (RHEIN 048; Exs. 63-64). Respondent then emailed Imagine’s counsel, accused him of fraud, and demanded that he withdraw from the representation. (RHEIN 048-49).

10. Later that month, Respondent sent a threatening email that described what Respondent imagined would happen to Imagine’s counsel if they did not agree to settle the case on Respondent’s terms. (RHEIN 049) (“I can’t wait to see [Imagine’s counsel’s] balls shoved down his fucking throat . . . we could turn [Imagine’s counsel] fucking upside down, chew him up and

spit him out in so many pieces you cannot imagine . . . Indeed [Imagine's counsel] should be disbarred . . . a jury will hang [Imagine's counsel], no less than they would his clients. The media, the public, and the bar will crucify him . . ."). Later, responding to a Maryland Bar Counsel inquiry, Respondent attempted to explain away this email as "simply ask[ing] if [Imagine's counsel's] firm wanted to settle his potential liability arising out of his intent to conceal this mortgage fraud scam." (RHEIN 051).

11. Ultimately, the Maryland Court of Special Appeals granted Imagine's motion to reconsider and vacated the earlier order dismissing Imagine's appeal. (RHEIN 051; Ex. 65). Respondent then filed a motion to reconsider and wrote a 16-page letter to the Chief Judge of the Maryland Court of Special Appeals accusing Imagine's counsel of *ex parte* communications with the clerk's office in an effort to "manipulate the trial court record" and "manufacture arguments for appellate review." (RHEIN 051-52; Ex. 67). The court denied Respondent's motion, which caused Respondent to file a writ of certiorari and a supplemental petition for writ of certiorari to the Court of Appeals of Maryland, both of which were denied. (RHEIN 052-53; Exs. 69, 74, 78, 86). Respondent then filed in the federal court a 68-page motion to disqualify Imagine's counsel as potential co-conspirators, which was stricken for exceeding the Court's page limit. (RHEIN 053; Exs. 90-91). In December 2012, Respondent also continued to threaten legal action against Imagine's counsel unless Imagine agreed to settlement discussions. (RHEIN 054).

12. In February 2013, while Imagine's appeal was pending, the Moores declared bankruptcy, automatically staying the matter in the Court of Special Appeals. (RHEIN 054). Respondent failed to advise Imagine of the automatic stay and sought to continue litigating against Imagine (*Id.*). The bankruptcy trustee appointed special counsel, who entered his appearance in the appeal and the civil suit brought by the Moores against Imagine. (*Id.*). At the end of 2013, Imagine and

the Moores were eventually able to settle the matters so that the Moores received money rather than having to pay Imagine. (*Id.*). The bankruptcy court approved the settlement. (RHEIN 055).

13. In November 2014, the United States declined to intervene in the Qui Tam actions filed by Respondent. (RHEIN 055). Around the same time, the Court of Special Appeals issued an opinion rejecting Respondent's fraud theory, which it found to have "no merit," and reversed and remanded in favor of Imagine. (*Id.*). Respondent nevertheless filed several more motions, all of which were also denied. (RHEIN 056). Respondent also filed claims with the bankruptcy estate alleging he was owed legal fees, to which both the trustee and the Moores filed objections. (*Id.*). Ultimately, Respondent withdrew those claims in exchange for receiving an assignment of the estate's Qui Tam claims. (*Id.*).

14. In 2017, Respondent's first Qui Tam suit was dismissed with prejudice because he had failed to timely serve the defendants and because some of his responses to the defendants' motion to dismiss were found to be "meritless." (RHEIN 056). The judge referred to Respondent's claim as "a paradigmatic example of a 'parasitic' suit" because it did not bring to light independently-discovered fraud and Respondent "offered no information that [was] 'independent of and materially adds to'" publicly available information. (RHEIN 056-57). With respect to Respondent's conduct, the judge found that Respondent "displayed a pattern of not meeting deadlines throughout th[e] litigation" and although she had shown him some leniency on page limits, the judge concluded that "there was no good cause to 'permit [his] continued excessively lengthy filings.'" (RHEIN 057) (alterations in original). Nonetheless, Respondent continued "to promote his conspiracy theory and further his financial interest" by attempting to proceed with the second Qui Tam action. (*Id.*). After additional unsuccessful filings throughout 2017, Respondent eventually moved to dismiss that suit voluntarily. (*Id.*; Exs. 120-21).

State Disciplinary Action

15. Maryland Bar Counsel served Respondent with a Petition for Disciplinary or Remedial Action and discovery requests on April 22, 2016 (“Petition” or “Charging Document”). (RHEIN 008; Ex. 2). Respondent was charged with violations of Maryland Lawyers’ Rules of Professional Conduct in connection with his representation of the Moores. Specifically, the Maryland Charging Document, in paragraph 68, charges Respondent with violations of rules 1.1, 3.1, 3.2, 3.4(c), 3.4(e), 4.4(a), 8.4(a), 8.4(c), and 8.4(d). (Ex. 2). The basis of these violations was the misconduct detailed in paragraphs 1-67 of the Charging Document. (*Id.*)

16. On May 12, 2016, Respondent filed a “Motion to Dismiss Petition for Disciplinary or Remedial Action for Failure to State a Claim and Lack of Ripeness; or in the Alternative, Motion for More Definite Statement; and Request for Hearing.” (RHEIN 008; Exs. 145-46).

17. On May 23, 2016, without responding to discovery requests or waiting for his motion to be ruled upon, Respondent filed a Notice of Removal in the United States District Court for the District of Maryland. (RHEIN 008). On March 17, 2017, the federal court ruled against Respondent and remanded the case back to Maryland state court. (RHEIN 008-09) (citation omitted).

18. After remand, the Maryland court heard arguments on Respondent’s motion to dismiss but denied the motion. (RHEIN 010-11). Respondent was allotted an additional 60 days, until August 8, 2017, to comply with discovery. (*Id.*).

19. On July 19, 2017, Maryland Bar Counsel filed a motion for sanctions and default based upon Respondent’s continued failure to file an Answer or respond to discovery requests. (RHEIN 013-14; Ex. 148). On July 20, 2017, Respondent filed a 99-page Answer to the disciplinary charges, defending his actions in the Moore litigation and offering fourteen affirmative defenses,

“albeit without any mention of mitigation.” (RHEIN 014-15; Ex. 149). Shortly thereafter, in July, 2017, Respondent also served his own discovery requests on the Attorney Grievance Commission, as well as deposed a member of the Attorney Grievance Committee’s office. (Exs. 188, 190-93, 196-97).

20. On August 2, 2017, Respondent filed an Opposition to the Motion for Sanctions, arguing that Maryland Bar Counsel’s discovery requests were invalid after he removed the case to federal court. (RHEIN 015; Ex. 153, at 13) (“While then-outstanding pleadings, motions, and orders transferred to the U.S. District court . . . upon removal the Pre-removal Discovery Requests did not transfer and were nullified. Upon remand, this case was ‘Reopened;’ but there were not outstanding discovery requests pending before the U.S. District Court to come back.”). Respondent argued that Bar Counsel was required to renew new discovery after the case was remanded back to state court and, having failed to do that, that Maryland Bar Counsel was precluded from any further discovery. (RHEIN 015; Exs. 153-54).

21. The day after discovery responses were due, on August 9, 2017, Respondent filed a motion for an extension of time to respond to the requests, stating he intended to locate an expert who would opine that his pleadings in the Moore litigation were not frivolous as alleged in the Petition. (RHEIN 015).

22. On August 14, 2017, the court denied Maryland Bar Counsel’s motion for a default since Respondent had filed an Answer to the charges but stated that the Motion for Sanctions would be addressed at trial. (RHEIN 016; Ex. 155).

23. Shortly before the disciplinary hearing was to begin, on September 2, 2017, Respondent filed a second Notice of Removal in the U.S. District Court for the District of Maryland, alleging that Maryland Bar Counsel had engaged in an “illicit strategy . . . to exploit the state court

procedural rules in a manner [sic] that has the practical effect of rendering the notice requirements of due process nugatory and ineffectual.” (RHEIN 016-17). On the day the hearing was scheduled to begin, September 5, 2017, Maryland Bar Counsel filed an emergency motion for remand in the federal court, which was granted several weeks later. (RHEIN 017).

24. Respondent appealed the remand order to the United States Court of Appeals for the Fourth Circuit. (RHEIN 017). The Maryland court stayed Respondent’s disciplinary proceeding pending the outcome of his appeal to the Fourth Circuit. (*Id.*). Over a year later, on February 5, 2019, the Fourth Circuit affirmed the remand order and the Maryland state court lifted its stay. (*Id.*). The matter was assigned to a new judge because the previous judge had retired. (*Id.*). A trial date was set and an order noted that “discovery in the Circuit Court was concluded in August 2017.” (RHEIN 017-18).

25. On June 12, 2019, Maryland Bar Counsel filed a new motion for sanctions and default based upon Respondent’s failure to respond to discovery requests asking the Circuit Court to, *inter alia*, grant the Motion for Sanctions and “[o]rder that the averments in the Petition for Disciplinary or Remedial Action be deemed admitted.” (RHEIN 018; Ex. 169). Prompted by the Motion for Sanctions, on the following day, Respondent finally responded to discovery. (RHEIN 019-21). These responses were served twenty two months after discovery was due. (RHEIN 019 n.13). In his discovery responses, Respondent also claimed for the first time, years after discovery was initially due, that he intended to offer mitigating evidence that he suffered from Attention-Deficit Hyperactivity Disorder. (RHEIN 020-21).

26. In a June 24, 2019 Opposition to the Motion for Sanctions, Respondent argued that his responses were timely since it was his belief that Maryland Bar Counsel’s original discovery

requests did not survive the repeated removals of the case to federal court. (RHEIN 021; Ex. 170).

27. In a Supplement to its Motion for Sanctions, Maryland Bar Counsel objected to Respondent's attempt to assert a disability on the eve of hearing, which precluded "discovery into the Respondent's diagnosis, medical history, symptoms, or causal connection." (RHEIN 022). Respondent had previously refused to provide any discovery relating to mitigation or defenses. (RHEIN 023). Further, Bar Counsel noted it has been precluded from obtaining an independent medical evaluation of Respondent during discovery. (*Id.*).

28. The Maryland court granted Maryland Bar Counsel's motion for sanctions and a default, deemed the averments in the Charging Document to be admitted, and precluded Respondent from calling witnesses or presenting evidence contradicting the averments. (RHEIN 023; Ex. 172). The Maryland court noted that Respondent "failed, after proper service, to respond to, or supplement, in a timely manner, Petitioner's First Set of Interrogatories, and Petitioner's First Request for Production of Documents, Electronically Stored Information and Property." (RHEIN 024; Ex. 172). The Court determined that Respondent's refusal to respond to discovery "was purposeful and willful," and that he "engaged in a course of conduct designed to be dilatory." (*Id.*). Respondent "made no good faith effort to resolve this discovery dispute," and his position that his discovery requests had been somehow nullified by virtue of his removal of the matter to federal court was "unsupported in law." (*Id.*). Noting that Respondent sought no protective order in the matter, the Court again noted his conduct as being "dilatory and willful." (*Id.*). Having granted Bar Counsel's motion, the court ordered that Bar Counsel "file Proposed Findings of Fact and Conclusions of Law." (RHEIN 025; Ex. 172). The Court stated it would "conduct a

hearing for the purpose of argument only from the parties on such Proposed Findings of Fact and Conclusions of Law, commencing July 1, 2019.” (*Id.*).

29. Respondent filed a motion for reconsideration arguing, that the default judgment against him was not appropriate based, in part, upon the fact that he “suffers from ADHD, which caused him to struggle with deadlines and require additional time to complete routine tasks.” (RHEIN 025).

30. On July 10, 2019, a hearing was held on Respondent’s Motion for Reconsideration and that Motion was denied. (RHEIN 025). At the same hearing, the Maryland court also heard arguments about Maryland Bar Counsel’s Proposed Findings of Fact and Conclusions of Law. (*Id.*).

31. On August 8, 2019, Rheinstein filed a Motion to Supplement the Record for Further Relief and requested a hearing, asking the court to reject Bar Counsel’s Proposed Conclusions of Law based upon their reliance on emails sent by the Respondent in connection with the underlying litigation, “take judicial notice of the publicly-accessible records of the underlying litigation” and to allow him to submit a response to Bar Counsel’s Proposed Findings of Fact and Conclusions of Law, which was denied. (RHEIN 025-26; Ex. 176).

32. The Maryland court, in an order dated August 19, 2019, found that Respondent violated Rules 1.1, 3.1, 3.4, 4.4 and 8.4. (RHEIN 026; Ex. 177). The court also found the following aggravating factors set forth in the American Bar Association Standards for Imposing Lawyer Sanctions: dishonest or selfish motive; a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge wrongful nature of conduct;

and substantial experience in the practice of law. (RHEIN 075; Ex. 177). The only mitigating factor was the absence of prior discipline. (RHEIN 080; Ex. 177).

33. Respondent appealed the imposition of discovery sanctions but, on March 26, 2021, the Court of Appeals affirmed on all grounds and disbarred Respondent. (RHEIN 085-86).

USPTO Reciprocal Discipline Proceeding

34. On November 17, 2022, a “Notice and Order Pursuant to 37 C.F.R. § 11.24” (“Notice and Order”) was sent by e-mail and certified mail (receipt no. 70192970000179056274) notifying Respondent, through counsel, that the Director of the Office of Enrollment and Discipline (“OED Director”) had filed a “Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24” (“Complaint”) requesting that the Director of the United States Patent and Trademark Office impose reciprocal discipline upon Respondent identical to the discipline imposed by the January 24, 2020 order of the Court of Appeals of Maryland in *Attorney Grievance Commission of Maryland v. Jason Edward Rheinstein*, Misc. Docket AG No. 77 (September Term, 2015). The Notice and Order provided Respondent an opportunity to file, within forty (40) days, a response opposing the imposition of reciprocal discipline identical to that imposed by the January 24, 2020 order of the Court of Appeals of Maryland in *Attorney Grievance Commission of Maryland v. Jason Edward Rheinstein, supra*, based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1).

35. On December 27, 2021, rather than filing his response as ordered, Respondent filed a motion for extension of time requesting an additional 42 days to file his response. *See* Motion/Request For Extension Of Time To File Response To Notice And Order Pursuant To 37 C.F.R. § 11.24 (Dec. 27, 2021). On January 5, 2022, the USPTO Director granted Respondent’s motion in part and ordered Respondent to file his response by January 7, 2022. *See* Order (Jan. 5,

2022).

36. On January 7, 2022, Respondent filed his 225-page response, along with 270 exhibits consisting of several thousands of pages (“Response to Notice and Order”). Early the next day, Respondent filed a motion for reconsideration, seeking an additional extension until January 17, 2022, and a motion for leave to file certain exhibits under seal. *See Motion/Request For Partial Reconsideration As To Motion For Extension Of Time To File Response To Notice And Order Pursuant To 37 C.F.R. § 11.24 (Jan. 8, 2022); Motion For Leave To File And Maintain Exhibits 19, 20, 21, And 128 Under Seal (Jan. 8, 2022).*

37. On February 15, 2022, Respondent filed an additional two motions, which were styled as procedural motions for “official notice,” but actually contained substantive arguments with respect to the Notice and Order. *See Motion For Official Notice As To Publicly-Available Records Pertaining To Federal Bankruptcy Case Referenced In Maryland Decision (Feb. 15, 2022); Motion For Official Notice As To Publicly-Available Records Pertaining To The December 2011 Hearing At Issue In The Maryland Decision (Feb. 15, 2022).*

38. On February 22, 2022, the USPTO Director granted the motion to file exhibits under seal, denied Respondent’s motion for reconsideration as not permitted or authorized under the rules governing reciprocal discipline, and denied Respondent’s motions for official notice as moot and an improper attempt to mask substantive responses as procedural motions. *See Order (Feb. 22, 2022).* The USPTO Director also set forth a briefing schedule for the OED Director to respond to Respondent’s Response to Notice and Order, and for Respondent to file a Reply.

39. The OED Director responded (“OED Response”) on March 21, 2022.

40. Respondent filed a Reply on April 12, 2022.

II. LEGAL STANDARD

Reciprocal disciplinary proceedings are not in any sense *de novo* proceedings. See *In re Barach*, 540 F.3d 82, 84 (1st Cir. 2008); *In re Surrick*, 338 F.3d 224, 232 (3d Cir. 2003). Rather, pursuant to 37 C.F.R. § 11.24(d), and in accordance with *Selling v. Radford*, 243 U.S. 46 (1917), the USPTO has codified standards for imposing reciprocal discipline based on a state’s disciplinary adjudication. Under *Selling*, state disbarment creates a federal-level presumption that imposition of reciprocal discipline is proper, unless an independent review of the record reveals: (1) a want of due process; (2) an infirmity of proof of the misconduct; or (3) that grave injustice would result from the imposition of reciprocal discipline. *Id.* at 51. Federal courts have generally “concluded that in reciprocal discipline cases, it is the respondent attorney’s burden to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline.” *In re Kramer*, 282 F.3d 721, 724 (9th Cir. 2002); *In re Friedman*, 51 F.3d 20, 22 (2d Cir. 1995). “This standard is narrow, for ‘[a Federal court, or here the USPTO Director is] not sitting as a court of review to discover error in the [hearing judge’s] or the [state] courts’ proceedings.’” *In re Zdravkovich*, 634 F.3d 574, 578 (D.C. Cir. 2011) (second and third alterations in original) (quoting *In re Sibley*, 564 F.3d 1335, 1341 (D.C. Cir. 2009)).

The USPTO’s regulation governing reciprocal discipline, 37 C.F.R. § 11.24(d)(1), mirrors the standard set forth in *Selling*:

[T]he USPTO Director shall consider the record and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification unless the practitioner demonstrates by clear and convincing evidence, and the USPTO Director finds there is a genuine issue of material fact that:

- (i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute deprivation of due process;
- (ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;

- (iii) The imposition of the same public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would result in a grave injustice; or
- (iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

Id.

To prevent the imposition of reciprocal discipline, Respondent is required to demonstrate that there is a genuine issue of material fact as to one of these criteria by clear and convincing evidence. *See id.* As discussed below, however, Respondent has not shown by clear and convincing evidence that there is a genuine issue of material fact with regard to any of the factors set forth in 37 C.F.R. § 11.24(d)(1).

III. ANALYSIS

Respondent filed his Response to Notice and Order on January 7, 2022. In that response, Respondent challenges the imposition of reciprocal discipline on several bases. Respondent argues that USPTO should not impose identical reciprocal discipline because (1) the procedure in the Maryland disciplinary case was so lacking in notice and opportunity to be heard as to constitute a deprivation of due process; (2) there was an infirmity of proof for the findings of misconduct in the Maryland decision; and (3) the imposition of the same discipline as was imposed by the Maryland court would result in a grave injustice. *See* Response to Notice and Order, at 1-2. The OED Director argues that Respondent has not met his burden of proof by clear and convincing evidence in any of the factors under 37 C.F.R. § 11.24 and, accordingly, a reciprocal exclusion is appropriate.

Having considered all of the pleadings, as well as the record of evidence produced by the parties, it is determined that reciprocal discipline is appropriate. Although the lengthy factual and procedural background of this case are complicated, the legal conclusions are not since they are

clearly dictated by § 11.24 and supporting case law. Despite Respondent's many motions, the lengthy replies, and voluminous exhibit list, and as further explained below, Respondent has wholly failed to carry his specific burdens under 37 C.F.R. § 11.24.

A. Respondent Was Not Deprived of Due Process.

Respondent asserts that the imposition of reciprocal discipline would constitute a deprivation of due process. While he offers a lengthy challenge to various aspects of the Maryland disciplinary proceedings in his 230-page response, *see* Response to Notice and Order, at 30-86, these challenges are little more than attempts to relitigate the state disciplinary matter. It is not necessary to address each, specific allegation that Respondent has made here since the documents Respondent has proffered and is relying on, are insufficient to establish a deprivation of due process under 37 C.F.R. § 11.24(d)(1).

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *In re Karten*, 293 F. App'x 734, 736 (11th Cir. 2008) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). In disciplinary proceedings, an attorney is entitled to due process, such as reasonable notice of the charges before the proceedings commence. *See In re Ruffalo*, 390 U.S. 544, 551 (1968); *In re Cook*, 551 F.3d 542, 549 (6th Cir. 2009) (procedural due process includes fair notice of the charge). Due process requirements are satisfied where a respondent “attended and participated actively in the various hearings, and was afforded an opportunity to present evidence, to testify, to cross-examine witnesses, and to present argument.” *In re Squire*, 617 F.3d 461, 467 (6th Cir. 2010) (quoting *Ginger v. Cir. Ct. for Wayne Cnty.*, 372 F.2d 620, 621 (6th Cir. 1967)); *see In re Zdravkovich, supra* (stating that attorney could not satisfy a claim of due process deprivation where he was given notice of the charges against him, was represented by counsel, and had hearing at which

counsel had the opportunity to call and cross-examine witnesses, make arguments, and submit evidence). Due process requirements are also met where a respondent is given “an opportunity to respond to the allegations set forth in the complaint, testify at length in [his] own defense, present other witnesses and evidence to support [his] version of events . . . , [and is] able to make objections to the hearing panel’s findings and recommendations.” *In re Squire*, 617 F.3d at 467 (ellipsis and third alteration in original) (quoting *In re Cook*, 551 F.3d at 550). These standards and considerations, as set forth here, have been repeatedly applied by the USPTO Director in determining whether or not a practitioner has suffered a deprivation of due process under 37 C.F.R. § 11.24(d)(1)(i). *See, e.g., In re Khaliq*, Proceeding No. D2020-28 (USPTO, Mar. 31, 2021); *In re Faro*, Proceeding No. D2019-09 (USPTO, Feb. 21, 2020); *In re Baker*, Proceeding No. D2019-08 (USPTO, Aug. 8, 2019); *In re Chaganti*, Proceeding No. 2015-10 (USPTO, Aug. 4, 2015).

Here, Respondent does not claim that he had no notice of the charges against him. Nor does he argue that he was prevented from participating in those proceedings. This is for good reason since the record of the underlying proceedings, including the Respondent’s own voluminous set of 270 exhibits, are conclusive on this issue. The record establishes that Respondent received notice of the charges and fully and vigorously participated in the Maryland disciplinary proceeding from beginning to end. It is undisputed that he received notice of the Petition and that he, ultimately, filed an Answer to the charges. (Exs. 2, 149). Similarly undisputed, he had the opportunity to take and respond to discovery, (Exs. 188, 190-93, 196-97), and the opportunity to be heard prior to being sanctioned. (RHEIN 008-26; Ex. 170). Finally, his own exhibits submitted with his Response to Notice and Order show that he filed many motions in connection with his state disciplinary matter. (*See, e.g.,* Exs. 145-46, 176). Given this procedural history of

the Maryland disciplinary action, it is clear that Respondent received sufficient notice of the disciplinary charges and extensively participated in and advocated for himself in the Maryland proceedings, rendering meritless his allegations of lack of due process.

Additionally, it is noted that the issues Respondent raises in support of his due process challenge were already argued during and throughout the state disciplinary matter, including on appeal. While this is reflected throughout the record of his disciplinary proceedings, it is noted that, for example, the Maryland Court of Appeals opinion reflects that Respondent had the opportunity to, and did substantively challenge, his disbarment on the basis of his misconduct; he raised the allegation that disbarment was an unusually harsh sentence imposed without due process. (RHEIN 026-41; RHEIN 033 n.17); and allegations that the Maryland court improperly refused to take judicial notice of certain records (RHEIN 022-23; Ex. 184). Consequently, these substantive challenges to issues already raised and argued amount to little more than disagreement with the decisions rendered during the state disciplinary proceedings and mere disagreement does not provide a basis for finding a deprivation of due process or for precluding reciprocal discipline. *See In re Khaliq*, Proceeding No. D2020-28, at 13 (USPTO, Mar. 31, 2021). Tribunals have broad discretion to admit or refuse evidence into the record. *See id.* at 13-14 (citing *In re Harper*, 725 F.3d 1253, 1258 (10th Cir. 2013) (citing, in turn, *United States v. Scheffer*, 523 U.S. 303, 328 (1998)); *In re Williams*, 398 F.3d 116, 118 (1st Cir. 2005) (A “state court’s substantive findings are entitled to a high degree of respect when this court is asked to impose reciprocal discipline.”)) “A proceeding designed to weigh the advisability of reciprocal discipline is not a vehicle for retrying the original disciplinary proceeding.” *Id.* at 14 (quoting *In re Barach*, 540 F.3d at 87). “Nor is it a vehicle either for the correction of garden-variety errors or for revisiting of judgment calls.” *Id.* (internal quotation marks omitted) (rejecting

practitioner's due process claims where "unremarkable" claims of evidentiary errors, procedural errors, and other errors were raised).

Lastly, Respondent's allegation that he was disciplined for misconduct that post-dated the Charging Document is rejected. *See* Response to Notice and Order, at 78-79. As the OED Director notes in his brief, this argument appears to be based on one sentence from the Court of Appeals opinion which in describing the numerous bases for Respondent's violation of MLRPC 8.4(d) states that he "wasted judicial resources and forced others to expend unnecessary resources to defend frivolous allegations he presented" in several courts, including the United States Court of Appeals for the Fourth Circuit. (OED Response, at 15; RHEIN 072-73). Because the reference to Respondent having wasted the Fourth Circuit's judicial resources occurred after the filing of the Charging Document, Respondent argues that a due process violation has occurred. However, a review of the Court of Appeals opinion reveals that the vast majority of the Court of Appeals' analysis with respect to MLRPC 8.4(d) focused on misconduct that occurred prior to the filing of the Charging Document, to include his wasting of judicial resources of the Circuit Court for Baltimore City, the Maryland Court of Special Appeals, the United States District Court for the District of Maryland, the United States Bankruptcy Court, and the Maryland Court of Appeals, none of which Respondent disputes was within the scope of the Charging Document. (RHEIN 069-70). The Court of Appeals also focused on Respondent's behavior that "repeatedly sought to intimidate and harass his opponents to coerce a settlement contrary to the merits of any of his claims" as well as seeking an "exorbitant amount" in fees that "were the result of [his] vexatiousness and frivolous filings, as well as consistent harassment of opposing counsel," all behavior within the scope of the Charging Document. (RHEIN 073). The OED Director argues, and after consideration it is concluded here, that the brief reference to any

post-charging document misconduct before the Fourth Circuit does not give rise to a due process violation, particularly since it properly could have been considered as aggravation. *See* ABA Standards for Imposing Lawyer Sanctions 9.22(e) (listing “bad faith obstruction of the disciplinary proceeding” as an aggravating factor).

In sum, Respondent has not shown by clear and convincing evidence that there is a genuine issue of material fact the procedure in the Maryland disciplinary matter was so lacking in notice and opportunity to be heard as to constitute a deprivation of due process.

B. There Was No Infirmity of Proof in the State Disciplinary Decision.

Practitioners may also challenge the presumption that reciprocal discipline is proper by presenting clear and convincing evidence that there is a genuine issue of material fact as to whether there was such an infirmity of proof establishing the misconduct as to give rise to a clear conviction that the USPTO could not, consistent with its duty, accept as final the state’s conclusion on that subject. 37 C.F.R. § 11.24(d)(1)(ii). Here, Respondent attempts to argue this factor by arguing that admissions inherent in a default judgment are not “actual evidence” to support misconduct findings. (Response to Notice and Order, at 86-96). Additionally, he argues that even if a default judgment was sufficient to support misconduct, the deemed admissions do not support violations of the Maryland disciplinary rules. (*See id.*) In short, Respondent again attempts to challenge the disciplinary findings and conclusions of the Maryland court.

To successfully invoke infirmity of proof as a defense to reciprocal discipline, Respondent must demonstrate that there was “such an infirmity of proof” establishing the charges against him “as to give rise to the clear conviction” that accepting the state discipline would be “[in]consistent with [our] duty.” *In re Zdravkovich*, 634 F.3d at 579 (alterations in original). “This is a difficult showing to make. . . .” *Id.* Determinations by the trier-of-fact regarding the

credibility of witnesses generally receive deference. *Id.* at 580. Also, as already noted, “[a Federal court, or here the USPTO Director is] not sitting as a court of review to discover error in the [hearing judge’s] or the [state] courts’ proceedings.” *Id.* at 578 (second and third alterations in original) (quoting *In re Sibley*, 564 F.3d at 1341). Therefore, mere disagreement about the credibility of a witness or findings fact and legal conclusions do not establish an infirmity of proof.

As an initial matter, any argument that a default judgment is an insufficient basis to support disciplinary misconduct or an order of reciprocal discipline is without merit. First, the USPTO Director is able to and has imposed reciprocal discipline where the basis for the discipline was the result of a default judgment. OED Response, at 16-17 (citing *In re Mays*, Proceeding No. D2018-43 (USPTO, July 24, 2019) (exclusion imposed under § 11.24 as a result of Georgia disbarment following default); *In re Anderson*, Proceeding No. D2018-14 (USPTO, May 25, 2018) (exclusion imposed under § 11.24 as a result of California disbarment following default); *In re Malas*, Proceeding No. D2010-17 (USPTO, Oct. 13, 2010) (exclusion imposed under § 11.24 as a result of Georgia disbarment following default)). Respondent cites no authority for his proposition to the contrary, that is, that default judgment is an improper basis for findings of misconduct and/or for imposing reciprocal discipline.

In addition, Respondent’s argument that none of the misconduct findings in the Maryland decision were supported by actual evidence is flatly incorrect. As noted by the OED Director, the Maryland Court of Appeals decision analyzed each of the Maryland Rule violations he was found to have committed, based on Respondent’s exceptions raised, and upheld them, with exhaustive reference to supporting case law. (RHEIN 058-73). That analysis lays plain the factual and legal support for the Maryland misconduct findings. Respondent’s arguments here

are nothing more than attempts to relitigate his disciplinary case. As already stated, those sorts of mere disagreements are insufficient to make a showing of infirmity of proof under 37 C.F.R. § 11.24(d)(1)(ii).

C. There Would Be No Grave Injustice in Imposing Reciprocal Discipline.

Respondent lastly claims that imposing reciprocal discipline here would amount to a grave injustice. However, upon closer review, this argument is again little more than an attempt to rehash arguments and positions raised in the state disciplinary matter. This is an improper analysis under 37 C.F.R. § 11.24(d)(1)(iii).

The grave injustice analysis focuses on whether the severity of the punishment “fits” the misconduct and allows for consideration of various mitigating factors. *See In re Thav*, 852 F. Supp. 2d 857, 861-62 (E.D. Mich. 2012); *see also In re Kramer*, 282 F.3d at 727 (on challenge to imposition of reciprocal discipline, “we inquire only whether the punishment imposed by [the first] court was so ill-fitted to an attorney’s adjudicated misconduct that reciprocal disbarment would result in grave injustice”); *In re Attorney Discipline Matter*, 98 F.3d 1082, 1088 (8th Cir. 1996) (no grave injustice where disbarment imposed by the state court “was within the appropriate range of sanctions”); *In re Benjamin*, 870 F. Supp. 41, 44 (N.D.N.Y. 1994) (public censure within range of penalties for misconduct and thus censure was not a grave injustice). “As long as the discipline from the state bar was within the range of appropriate sanctions, it is not grave injustice for the [USPTO] to impose reciprocal discipline.” *Persaud v. Dir. of the USPTO*, No. 1:16-cv-00495, 2017 WL 1147459, at *2 (E.D. Va. Mar. 27, 2017).

With this standard in mind, the OED Director cited appropriate and applicable authority to support the conclusion that Respondent’s disbarment is an appropriate sanction in Maryland, as well as under USPTO precedent and other jurisdictions across the country. *See* OED Response,

at 19-20 (citations omitted). Respondent cites no authority on this point. Instead, he again focuses on challenging the findings and conclusions of the state disciplinary matter, which is insufficient to prevent reciprocal discipline under the grave injustice analysis.

While Respondent initially acknowledges that “[t]he crux of the grave injustice exception is that courts and administrative agencies have a duty not to impose unwarranted sanctions” (Response to Notice and Order, at 13-14 (citing *Theard v. United States*, 354 U.S. 278 (1957))), his nearly 100 pages of grave injustice arguments do not address whether his disbarment was an appropriate sanction imposed by the Maryland court. Again, instead, he merely continues to restate and reargue against any discipline whatsoever. As the OED Director correctly observed in his response, “Respondent exclusively attempts to reargue that court’s factual findings and legal conclusions.” OED Response, at 19. For example, Respondent argues that the Maryland court’s conclusions are “negated” by publicly available information that the court refused judicial notice of. Response to Notice and Order, at 76-78. As noted, however, Respondent has already raised this issue multiple times throughout the disciplinary and appeal proceedings, without success. Respondent’s attempts to revisit the rulings, findings, and conclusions are simply inappropriate in the reciprocal discipline context. The USPTO Director’s role is not to reconsider the transcripts and court filings quoted and cited to by Respondent. *See* OED Response, at 19 (citing *In re Feuerborn*, Proceeding No. D2020-23, at 4 (USPTO, Dec. 21, 2020) (USPTO Director is “not sitting as a court of review to discover error in the [hearing judge’s] or the [state] court’s proceedings.” (alterations in original)); *In re Nace*, Proceeding No. D2015-03, at 14-15 (USPTO, Sept. 8, 2015) (“Reciprocal discipline proceedings are not . . . venues for rearguing the original foreign discipline.”); *In re Kramer*, 282 F.3d at 727 (“In reviewing a reciprocal disbarment, [the USPTO Director] do[es] not re-try an attorney for misconduct.”)).

Because Respondent has not offered any argument or evidence that disbarment imposed by the state court was outside the appropriate range of sanctions, a grave injustice would not result from the imposition of reciprocal discipline. He has failed to establish the requisite showing under 37 C.F.R. § 11.24(d)(1)(iii) and, consequently, a reciprocal disbarment is appropriate.

ORDER

ACCORDINGLY, it is ORDERED that:

1. Respondent is excluded from the practice of patent, trademark, and other non-patent law before the USPTO, effective the date of this Final Order.
2. The OED Director publish a notice in the *Official Gazette* materially consistent with the following:

Notice of Exclusion

This notice concerns Jason Edward Rheinstein of Severna Park, Maryland, who is a registered patent attorney (Registration Number 55,571). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office (“USPTO”) has ordered that Mr. Rheinstein be excluded from practice before the USPTO in patent, trademark, and other non-patent matters for violating 37 C.F.R. § 11.804(h), predicated upon being disbarred from the practice of law by a duly constituted authority of a State.

Mr. Jason E. Rheinstein was disbarred for violating Maryland Lawyers’ Rules of Professional Conduct 1.1 (Competence); 3.1 (Meritorious Claims and Contentions); 3.2 (Expediting Litigation); 3.4 (Fairness to Opposing Party and Counsel); 4.4 (Respect for Rights of Third Persons); and 8.4 (Misconduct) by failing to represent his client competently, failing to maintain fairness to opposing parties and counsel, failing to maintain respect for rights of third persons, and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation that is prejudicial to the administration of justice. Mr. Rheinstein also misrepresented facts to a circuit court judge in an effort to intimidate his opponents, advanced unsubstantiated claims of fraud against an opposing party, without basis, led a tribunal to believe that an opposing party had been facing criminal charges, and repeatedly attempted to disqualify any attorney retained by the opposing party and bully counsel into settling cases for “ridiculous” amounts. Mr. Rheinstein further pursued litigation in a vexatious manner

and caused intolerable delay in the disciplinary proceeding.

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

3. The OED Director give notice pursuant to 37 C.F.R. § 11.59 of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;

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

5. The USPTO dissociate Respondent's name from any Customer Numbers and USPTO verified Electronic System account(s), if any; and

6. Respondent shall not apply for a USPTO Customer Number, shall not obtain a USPTO Customer Number, nor shall he have his name added to a USPTO Customer Number, unless and until he is reinstated to practice before the USPTO.

Pursuant to 37 C.F.R. § 11.57(a), review of the final decision by the USPTO Director may be had by a Petition filed with the U.S. District Court for the Eastern District of Virginia under 35 U.S.C. § 32 "within thirty (30) days after the date of the order recording the Director's action." See E.D. Va. Local Civil Rule 83.5.

It is so ordered.

**Users, Berdan,
David**

Digitally signed by Users,
Berdan, David
Date: 2022.07.22 09:55:20 -04'00'

Date

David Berdan
General Counsel
United States Patent and Trademark Office

on delegated authority by

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office