UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of:	)	
	)	
David E. Herron II,	)	Proceeding No. D2019-54
	)	
Respondent	)	
	)	

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

Pursuant to 37 C.F.R. § 11.24, David E. Herron II ("Respondent") is hereby suspended for sixty (60) days from the practice of patent, trademark, and other non-patent law before the United States Patent and Trademark Office ("USPTO" or "Office"). Respondent's reciprocal discipline is predicated on his violation of 37 C.F.R. § 11.804(h), having been disciplined by a duly constituted authority of a state.

Background

On November 1 2019, a "Notice and Order Pursuant to 37 C.F.R. § 11.24" ("Notice and Order") was sent by certified mail (receipt nos. 70161970000031995440 and 70161970000031995457) notifying Respondent that the Director of the Office of Enrollment and Discipline ("OED Director") had filed a "Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24" ("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 Supreme Court of the State of Kansas in *In re David E. Herron II*, No. 119,726. 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 Supreme Court of the State of Kansas in *In re*

David E. Herron II, No. 119,726, based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1).

Respondent filed a response to the Notice and Order ("Response"), which was received by the USPTO on December 12, 2019. In his Response he does not challenge the imposition of reciprocal discipline, conceding that "there were no defects in the prior proceedings filed against [him]", and that "none of the criteria enumerated within 37 CFR 11.24(d)(1) applies to negate the presumption of a reciprocal sanction." Response, at ¶ 2. And although he asserts there is a "minor inaccuracy"[1] in the Disciplinary Complaint's proposed Notice of Suspension, it is concluded that the Notice of Suspension is accurate, as supported by the May 10, 2019 Order of Supreme Court of the State of Kansas in *In re David E. Herron II*, No. 119,726. Response, at ¶ 5.[2]

Analysis

Having considered the Response, it is hereby determined that there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and Respondent's suspension from the practice of patent, trademark and other non-patent law before the USPTO is the appropriate discipline.

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[1] Respondent asserts that "the Proposed Notice of Suspension is misleading because the Supreme Court of Kansas determined that I did not violate Kansas Rules of Professional Conduct ("KRPC") 3.3 in my advocacy of DJ by urging DJ's sobriety." *See* Response, at ¶ 5. However, the proposed Notice of Suspension omits reference to a violation of KRPC 3.3(c) since that finding was not sustained by the Kansas Supreme Court. However, other violations of 3.3 were sustained and those references are thus properly included in the Notice of Suspension. *See* Order of the Supreme Court of the State of Kansas, *In re David E. Herron II*, No. 119,726, at 54.

Further, in a corrected Notice of Suspension proffered by Respondent, he strikes language pertaining to his violations of 8.4(c) of the KRPC. *See* Response, at ¶ 6. However, both the panel of the Kansas Board for Discipline of Attorneys and the Supreme Court of the State of Kansas concluded that Respondent violated 8.4(c) when he made dishonest statements to a tribunal about the status of his client's sobriety. *See* Order of the Supreme Court of the State of Kansas, *In re David E. Herron II*, No. 119,726, at 47, 50-3. Thus, the Notice of Suspension is accurate as proposed and as stated in this Final Order.

[2] Respondent also identifies a correct mailing address for him as the Overland Park, Kansas address rather than the address of record in Lenexa, Kansas. That address will be reflected in the Notice of Proposed suspension.

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

1. Respondent is suspended from the practice of patent, trademark, and other non-patent law before the USPTO for sixty (60) days, commencing on the date of this Final Order;

2. Respondent shall remain suspended from the practice of patent, trademark, and other non-patent law before the USPTO until the OED Director grants a petition requesting Respondent's reinstatement pursuant to 37 C.F.R. § 11.60;

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

Notice of Suspension

This notice concerns David E. Herron II of Overland Park, Kansas, who is a registered patent attorney (Registration Number 46,467). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. David E. Herron II be suspended 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 suspended on ethical grounds for sixty (60) days from the practice of law by a duly constituted authority of a State.

By Order and Opinion No. 119,726 dated May 10, 2019, the Supreme Court of the State of Kansas ordered the suspension of Mr. Herron for a period of sixty (60) days. The Supreme Court found that Mr. Herron violated Kansas Rules of Professional Conduct §§ 1.6(a) (confidentiality) when he revealed confidential information to court services officers in a client's case; 3.3(a)(1) (candor to the tribunal) by leading the district court to believe that the prosecutor declined to come to court; 3.3(d) (candor to the tribunal) at an *ex parte* hearing by failing to inform the district court of all material facts known to Mr. Herron; 8.4(c) (professional conduct involving dishonesty) when Mr. Herron made statements to the court about a client's sobriety, told the court the prosecutor declined to go to court, and drafted a journal entry that contained false information; and 8.4(d) (professional misconduct prejudicial to the administration of justice) when Mr. Herron drafted a journal entry that he knew contained inaccurate and false information for the court's signature.

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/.;

4. 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.

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

6. The USPTO shall dissociate Respondent's name from any Customer Number(s) and USPTO verified Electronic System account(s), if any.

13 Dec 2019
Date

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

on delegated authority by

Andrei T. Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office