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

In the Matter of:	)	
	)	
Dale Reese Jensen,	)	Proceeding No. D2022-25
	)	
Respondent.	)	
	)	

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

Pursuant to 37 C.F.R. § 11.24, Dale Reese Jensen ("Respondent") is hereby suspended 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.

BACKGROUND

1. At all times relevant, Respondent of Staunton, Virginia, has been registered to practice in patent matters before the USPTO as an attorney under registration number 55,300, and subject to the USPTO Rules of Professional Conduct set forth at 37 C.F.R. § 11.101 *et seq.*

2. At all relevant times, Respondent was also admitted to the Virginia State Bar.

3. By Orders dated June 23, 2022 (Summary Order) and September 2, 2022 (Final Judgment Memorandum Order ("FJMO")), in Case No. CL21-653, *Virginia State Bar ex rel. Eighth District Committee v. Dale Reese Jensen*, the Circuit Court of the City of Staunton suspended Respondent for 60 days from the practice of law in Virginia.

Virginia Proceeding and Discipline

4. Respondent was charged with violations of the Virginia Rules of Professional Conduct in connection with four client matters, which involved work on behalf of clients who had been convicted of felonies. In each of the four matters, the four Complainants expressed frustration at the inability to communicated directly with Respondent. *See* FJMO, at 5 ¶ 16. Also, Respondent admitted that, in each of the matters, he had not properly deposited fees paid by clients, which were characterized by Respondent as "flat" fees, into his client trust account. *Id.*at ¶ 17. Respondent also stipulated that he did not keep required trust account records pursuant to Rules 1.15(c) and (d) of the Virginia Rules of Professional Conduct. *Id.*

Michael Wright Representation

5. Brenda Lee Tucker's son, Michael Wright, was convicted by the Circuit Court of Allegany County in 2013 and sentenced to a period of incarceration of thirty-three years. FJMO, at 5 ¶ 21.

6. Respondent performed a file review and a pardon application on behalf of Mr. Wright and Ms. Tucker paid a total of $5,500 to Respondent for that work. FJMO at 5-6 ¶¶ 22-24, 28-30. Neither Respondent nor any member of his staff provided Ms. Tucker with a written fee agreement pertaining to the case review or pardon application. *Id.* at 6 ¶¶ 26, 31. Ms. Tucker paid the funds to Respondent in 2017 and 2018. *Id.* at 5-6 ¶¶ 23, 29. Respondent did not deposit the funds received into his client trust account, nor did he keep records required by Rule 1.15(c) of the Virginia Rules of Professional Conduct. FJMO at 6 ¶¶ 24-25, 30.

7. Respondent employed a number of non-lawyer employees who worked from their homes. *See* FJMO at 4 ¶¶ 4-5, 10-14. Carl Mitchell, one of Respondent's non-lawyer employees, worked as a paralegal and had regular communications with Respondent's post-conviction clients. *Id.* at 4 ¶ 10. Mr. Mitchell was also responsible for receiving and processing mail relating to post-

conviction proceedings, scanning that mail and uploading it to the secure server for Respondent's law practice. *Id.* at 7 ¶ 39. Mr. Mitchell also answered the phone and drafted documents for Respondent. *Id.* at 7 ¶ 40. Respondent was unaware which client files Mr. Mitchell kept at his house, and had no written policies and procedures for how Mr. Mitchell was to perform his work. *Id.* at 7 ¶¶ 41-42.

8. Respondent terminated Mr. Mitchell's employment sometime in January of 2020, and Respondent instructed a new employee, Samantha George, to obtain all client files and materials that were in Mr. Mitchell's possession. *See* FJMO. at 7 ¶¶ 43-44. In March 2020, Respondent learned that Mr. Wright's file had been sent to another client, Michael Carter. *Id.* at 6-7 ¶¶ 32-35, 46. Respondent never advised Mr. Wright or Ms. Tucker that Mr. Wright's file had been sent to another client. *Id.* at 6 ¶ 36. Instead, Ms. Tucker learned of the mistake from Mr. Carter's wife. *Id.* at 6 ¶¶ 32-34. Respondent made no effort to contact either Ms. Tucker or Mr. Wright about the status of Mr. Wright's file. *Id.* at 7 ¶ 47.

9. On the basis of the above findings, the Virginia court found Respondent to have violated Rules 1.15 (a)(1) (safekeeping property), 1.15 (b)(3), 1.15(b)(5), 1.15 (c)(1-4), 1.15 (d)(1-4), and Rules 5.3 (a),(b) and(c)(2) (Responsibilities Regarding Nonlawyer Assistants). *See* FJMO at 8 ¶ 53.

Jason Robles Representation

10. Jason Robles was convicted of multiple felonies on February 13, 2018, and was sentenced to a period of incarceration in the Virginia State Penitentiary of more than 40 years. *See* FJMO 11 ¶ 55. Mr. Robles' father contacted Respondent to conduct a review of the case. *Id.* at 11 ¶¶ 56-57. Mr. Robles signed a written fee agreement employing Respondent to conduct a file review for flat fee of $3,000. *Id.* at 11 ¶¶ 59-60. That fee agreement stated that because the payment was a flat fee, there were no partial refunds once work began on the case. *Id.* at 11 ¶ 63.

The fee agreement also stated that, after the file review, Respondent and his staff would set up one or more meetings to discuss the case. *Id.* at 11 ¶ 64.

11. Mr. Robles' father paid Respondent $3,000 for the representation on May 4, 2020. *See* FJMO at 11 ¶ 59. The $3000 was not deposited into a client trust account in accordance with Rule 1.15(a), nor did Respondent keep the required trust account records pursuant to Rule 1.15(c). *Id.* at 11 ¶ 61. Respondent never met with nor spoke to either Mr. Robles or his father during the representation. *Id.* 11 at ¶ 65. Respondent fully refunded the $3,000 to Mr. Robles' father. *Id.* 11 at ¶ 66.

12. On the basis of the above findings, Respondent was found to have violated Virginia Rules of Professional Conduct 1.4(a) and (b) (Communication), 1.15(a)(1), (b)(3) and (5), and Rules 1.15 (c)(1-4) (Safekeeping Property). *See* FJMO 12 at ¶ 70.

Michael Alonzo Robinson Representation

13. Michael Alonzo Robinson was convicted of a felony and sentenced to life in prison on January 15, 2013. *See* FJMO at 13 ¶ 72. Following that conviction, Mr. Robinson filed an unsuccessful appeal and two Writs for *habeas corpus* on a *pro se* basis. *Id.* at 13 ¶¶ 73-74. In June 2019, Mr. Robinson received a letter from Respondent's office, quoting a flat fee of $3,000 to conduct an initial file review of Mr. Robinson's case. *Id.* at 14 ¶ 76. The letter was signed by Samantha George, one of Respondent's non-lawyer employees. *Id.* at 14 ¶ 77. Mr. Robinson employed Respondent to represent him in March 2020, and signed a written fee agreement. *Id.* at 14 ¶ 80. The written fee agreement stated that because the payment was a flat fee, there were no partial refunds once work began on the case. *Id.* at 14 ¶ 83. The agreement also stated that once review of the case was completed, Respondent and his staff would set up one or more meetings to discuss the case. *Id.* at 14 ¶ 84.

14. In March 2020, Mr. Robinson's mother, Flora Skipwith, sent Respondent a cashier's check to Respondent's office to initiate the representation. *See* FJMO at 14 ¶ 79. Respondent did not deposit the $3,000 fee into his client trust account, nor did he maintain records required to be kept pursuant to Rule 1.15(c) of the Virginia Rules of Professional Conduct. *Id.* at 14 ¶ 81.

15. On April 6, 2020, Ms. Skipwith received an email from Ms. George, stating the case review had been completed. *See* FJMO at 14 ¶ 86. The email did not specify who had completed the case review. *Id.* at 14 ¶ 88. That email also stated that for a flat fee of $25,000, Respondent's office would file a motion to vacate Mr. Robinson's sentence based upon due process and Eighth Amendment violations. *Id.* at 14-15 ¶ 89. Ms. Skipwith contacted Respondent's office with questions that Mr. Robinson had posed about the representation, and Ms. George responded to those questions by email. *Id.* at 15 ¶¶ 90-92. In pertinent part, Mr. Robinson and his mother asked whether there was a chance to win the motion. *Id.* at 15 ¶ 91. Ms. George responded by stating, "We would not suggest filing a motion that did not have a chance of going somewhere, and we do not want people to waste their money." *Id.* at 15 ¶ 92. Mr. Robinson and his mother paid Respondent the requested $25,000 in installments, relying upon the representation of Ms. George, a non-lawyer employee. *Id.* at 15-16 ¶¶ 93-103. Respondent did not deposit the $25,000 into his client trust account, nor did he maintain required trust account records pursuant to Rule 1.15(c) of the Virginia Rules of Professional Conduct. *Id.* at 15-16 ¶¶ 97, 101, 104.

16. The Virginia State Bar investigator stated that he interviewed Mr. Robinson, and that Mr. Robinson stated that he spoke with Respondent only once by telephone during the entire representation, and that otherwise, all communications were between Mr. Robinson and/or Ms. Skipwith and Respondent's staff. *See* FJMO at 14 ¶ 85.

17. In July, 2020, Respondent's office filed a Motion to Vacate Sentence on behalf of Mr. Robinson. *See* FJMO at 16 ¶ 105. Mr. Robinson's mother received an email from

j.dennis@jensenjustice.com, enclosing copies of the filings on behalf of Mr. Robinson. *Id.* at 16 ¶¶ 106-107. That email was signed, "J. Dennis, Chief Law Clerk." *Id.* at 16 ¶ 107. Respondent testified that James Dennis was a former employee who was no longer employed by his firm, after Mr. Dennis became incarcerated in 2018. *Id.* at 4 ¶¶ 4-6. From November of 2020 through July 2021, while incarcerated, Mr. Dennis made approximately 1,550 phone calls between himself and Respondent's office. *Id.* at 4 ¶ 7. Complainants Jason Robles, De Andre Gordon, Michael Robinson, and their respective families all testified that they received email correspondence from the j.dennis@jensenjustice.com email address. *Id.* at 4 ¶ 9.

18. Mr. Robinson's motion to vacate his sentence was denied in December, 2020, and Ms. Skipwith was advised of this fact by Ms. George. *See* FJMO at 17 ¶¶115-116. Ms. Skipwith then contacted Respondent's office and attempted to set up a meeting between Mr. Robinson and Respondent. *Id.* at 17 ¶ 117. An employee at Respondent's office advised her that Mr. Robinson should speak with Mr. Dennis. *Id.* at 17 ¶ 118.

19. On February 1, 2021, Ms. Skipwith requested a meeting with Respondent. *See* FJMO at 17 ¶ 119. On February 2, 2021, Respondent sent her an email confirming a meeting the following Friday at 10:00 a.m. *Id.* at 17 ¶ 120. Respondent failed to attend that meeting. *Id.* at ¶ 121.

20. On February 4, 2021, Respondent filed a Motion for a Delayed Appeal with the Virginia Court of Appeals. *See* FJMO at 17 ¶ 122. On March 4, 2021, Ms. Skipwith again demanded a meeting with Mr. Robinson and Respondent by teleconference. *Id.* at 17 ¶ 124. Later that same day, she received an email response from a non-lawyer employee of Respondent, saying that the case was being appealed to the Court of Appeals of Virginia and that there was no other update. *Id.* at ¶ 125. Respondent acknowledged to the Virginia State Bar during the investigation and

testified at trial that he failed to properly docket the date for appealing the denial of the Motion to Vacate, and did not timely file a proper notice of appeal. *Id.* at 17 ¶ 126.

21. The Virginia court found that Respondent knew or should have known that his staff, or Mr. Dennis through an intermediary, was sending unreviewed legal communications on Respondent's behalf, purportedly from Mr. Dennis to Respondent's clients and others while Mr. Dennis was incarcerated. *See* FJMO at 18 ¶ 130. The Virginia court further found that Respondent violated Rules 1.4(a) and (b) (Communication); 1.5(a) (Fees); 1.15(a)(1); 1.15(b)(3) and (5); 1.15 (c)(1-4) (March 2020) (Safekeeping Property); and 5.3(a) and (b); and (c)(2) (Responsibilities Regarding Nonlawyer Assistants). *Id.* at ¶ 131.

DeAndre Gordon Representation

22. DeAndre Gordon was convicted of felony charges in 2011, and sentenced to a period of incarceration in the Virginia Department of Corrections. *See* FJMO at 22 ¶ 133. Asia Hunt, Mr. Gordon's fiancé, communicated with Respondent's law firm in relation to Mr. Gordon's case. *Id.* at 22 ¶ 134. Mr. Gordon hired Respondent's law firm to file a petition for Writ of Actual Innocence in July 2020, and Ms. Hunt tendered a cashier's check in the amount of $10,000 for that representation. *Id.* at 22 ¶¶ 137-138. Respondent did not deposit the payment into a trust account, nor did he maintain records required under Rule 1.15 (c) of the Virginia Rules of Professional Conduct. *Id.* at 22 ¶ 139. The written fee agreement for this representation stated that, because the payment was a flat fee, there were no partial refunds once work began on the case. *Id.* at 22 ¶ 141.

23. On August 11, 2020, Ms. Hunt sent an email to a non-lawyer employee at Respondent's office, requesting a meeting with Respondent by video or phone. *See* FJMO at 22 ¶ 142. Respondent did not set up such a meeting. *Id.* at 22 ¶ 143

24. On September 4, 2020, Ms. Hunt received an email from j.dennis@jensenjustice.com, appearing to come from Respondent's former law clerk, Mr. Dennis. *See* FJMO at 22 ¶ 144. At that time, Mr. Dennis was incarcerated in the Virginia Department of Corrections. *Id.* at 23 ¶ 145. Neither Mr. Gordon nor Ms. Hunt were aware that at the time they were receiving emails from the j.dennis email address, Mr. Dennis was incarcerated. *Id.* at 23 ¶ 146.

25. On September 9, 2020, Ms. Hunt received an email from the j.dennis@jensenjustice.com email address, advising her how to schedule a phone call between Mr. Dennis and Mr. Gordon. *See* FJMO at 23 ¶ 147. On September 10, 2020, Taylor Biggs, another non-lawyer employee of Respondent, sent an email to Ms. Hunt, in which Ms. Biggs stated that the filing deadline would be missed if Mr. Gordon did not sign the petition that Mr. Dennis advised him to sign. *Id.* at 23 ¶ 148.

26. On September 11, 2020, Ms. Hunt received an email from the j.dennis@jensenjustice.com email address, in which the author advised Ms. Hunt that Mr. Robinson needed to sign the writ promptly. *See* FJMO at 23 ¶ 150. In addition, the email went on to state that the writ is "not a one shot chance," but that missing the deadline would "eliminate the Writ all together." *Id.* The email further stated that the author was attempting to facilitate an attorney call as it had previously occurred, but was constrained by a memo issued by the Department of Corrections relating to attorney client communications. *Id.*

27. On September 16, 2020, Ms. Hunt wrote to j.dennis@jensenjustice.com and expressed that Mr. Gordon was frustrated with not being able to get through to Respondent or his chief law clerk, Mr. Dennis. *See* FJMO at 23 ¶ 151. An email was sent from the j.dennis@jensenjustice.com email account later that day, stating that Mr. Gordon had participated in a telephone conversation thirteen days prior and that all of Mr. Gordon's questions had been answered. *Id.* at 24 ¶ 152.

28. On December 3, 2020, Ms. Hunt wrote to Respondent, passing along an email written by Mr. Gordon that expressed his frustration that Respondent would not return his calls or answer his letters. *See* FJMO at 24 ¶ 155. She further relayed Mr. Gordon's frustration at Mr. Dennis insisting that Mr. Gordon sign the Writ of Actual Innocence before speaking with Respondent. *Id.*

29. On December 9, 2020, Respondent emailed Ms. Hunt, stating that he had set up a telephone appointment with Mr. Gordon on December 14, 2020. *See* FJMO at 24 ¶ 156. Respondent did not call or otherwise meet with Mr. Gordon on December 14, 2020. *Id.* at 24 ¶ 157.

30. On January 11, 2021, Ms. Hunt emailed Respondent and requested another phone appointment with Respondent. *See* FJMO at 24 ¶ 158. Ms. Hunt received no response from Respondent. *Id.*

31. Respondent filed a motion to amend the Writ of Actual Innocence, to include additional information, on June 3, 2021. *See* FJMO at 24 ¶ 159. That motion was granted on June 24, 2021. *Id.* at 24 ¶ 160. Respondent scheduled a call with Mr. Gordon on June 24, 2021, to discuss the case. *Id.* at 24 ¶ 161. Respondent did not call Mr. Gordon on that day as scheduled. *Id.* at ¶ 163.

32. The Virginia court found that Respondent violated Rule 1.4(a) and (b) (Communication); 1.5(a) (Fees); 1.15(a)(1), 1.15(b)(3) and (5) (Safekeeping Property); 1.15(c)(1-4); and 5.3(a) and (b), and (c)(2) (Responsibilities Regarding Nonlawyer Assistants). *See* FJMO at 25 ¶ 165.

33. The Virginia court imposed a sixty-day suspension, effective August 1, 2022. FJMO at 27. In addition to the suspension, Respondent was required to provide proof to the Virginia State Bar of his compliance with Rule 1.15 of the Virginia Rules of Professional Conduct, every 60 days. *Id.* Respondent was also required to provide to the office of Bar Counsel written policies for compliance and conformance with the Virginia Rules of Professional Conduct to ensure

compliance with Rule 5.3 of the Virginia Rules of Professional Conduct, and to provide those written policies to current staff and all staff subsequently hired by Respondent. *Id.*

USPTO Reciprocal Discipline Proceeding

34. On December 14 , 2022, a "Notice and Order Pursuant to 37 C.F.R. § 11.24" ("Notice and Order") was sent by certified mail (receipt nos. 70220410000250013816 and 70220410000250013823) 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 June 23, 2022 and September 2, 2022 Orders of the Circuit Court of the City of Staunton in Case No. CL21-653, *Virginia State Bar e rel. Eighth District Committee v. Dale Reese Jenson*, suspending Respondent for 60 days from the practice of law in that jurisdiction. 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 June 23, 2022 and September 2, 2022 Orders of the Circuit Court of the City of Staunton in Case No. CL21-653, *Virginia State Bar e rel. Eighth District Committee v. Dale Reese Jenson* based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1).

35. On January 23, 2023 Respondent filed an "Answer", which responded to the Notice and Order ("Response to Notice and Order.")

36. A Briefing Order was mailed on January 30, 2023, directing the OED Director to respond to Respondent's Response to Notice and Order within 45 days of the date of the Briefing Order and permitting Respondent to Reply to the OED Director's briefing no later than 14 days from the OED Director's filing.

37. On March 16, 2023 the USPTO Director responded ("OED Response") to Respondent's Response to Notice and Order.

38. Respondent did not file a Reply.

I. 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. Pursuant to *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 *Selling* standard:

> [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). Consequently, a reciprocal 60-day suspension is appropriate.

II. ANALYSIS

In his Response to Notice and Order, Respondent challenges the imposition of reciprocal discipline on several grounds. While Respondent does not contend that a denial of due process occurred in in the underlying disciplinary case, *see* Response to Notice and Order at 1-2, he does contend there were infirmities of proof establishing the misconduct in the underlying disciplinary cases, and he argues that the imposition of a 60-day suspension would be a grave injustice. The OED Director disputes Respondent's arguments and asserts that a 60-day reciprocal suspension is appropriate.

Having considered all of the pleadings, as well as the record of evidence produced by the parties, it is determined that a 60-day reciprocal suspension is appropriate. As explained below, Respondent has wholly failed to carry his specific burdens under 37 C.F.R. § 11.24 and reciprocal discipline is appropriate.

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

Practitioners may 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 makes several challenges on this basis. However, for the reasons set forth below, none of these challenges have any merit.

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 inconsistent with the USPTO's 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.

1. Ignorance of the law.

For all of the four underlying cases, which formed the bases for the Virginia discipline, Respondent has stated that he did not know or have notice that Virginia Rules required depositing the negotiated flat fees for all four cases into the trust account. *See* Response to Notice and Order at 2-3. In short, he claims ignorance of the law as to how flat fees were viewed under the Virginia rules. *See id.* at 3. However, ignorance of the law is not a basis to excuse the misconduct or to prohibit reciprocal discipline here.

First, as the OED Director notes, the Virginia State Bar's interpretation of ethics rules related to fixed, non-refundable fees was published in Legal Ethics Opinion 1606, which was first published in 1994, and was approved by the Virginia Supreme Court in 2016. *See* OED Response at 12-15 (citing Ex. A, LEO 1606). This opinion found that that non-refundable fixed fees that are deposited into a practitioner's operating account before the fees were earned violated numerous Virginia disciplinary rules. *Id.* at 13 (citing Ex. A). Thus, there was publicly available guidance on the treatment of fixed fees. Respondent's claims that he lacked notice of the rule, or otherwise didn't know of the rule, and should not be held accountable as a result of that, is without any foundation. Even if he lacked actual notice, as a lawyer, Respondent is charged with notice of the ethics rules in his jurisdiction. *See e.g. In re Bowen*, 252 A.3d 300, 311 (Vt. 2021) (lawyers are "charged with notice of the rules and the standards of ethical and professional conduct.") The USPTO Director has also previously recognized that "any defense predicated on ignorance of the law is inconsistent with…the right to advise other people of the law." OED Response at 14 (citing *In re Feuerborn*, Proceeding No. D2020-23 at 11 (USPTO December 21, 2020), citing *Halvonik v. Dudas,* 398 F. Supp. 2d 115, 126 (D.D.C. 2005)).[1]

Finally, it is noted that Respondent "stipulated to violations related to Rule 1.15 of the Virginia Rules of Professional Conduct as set forth in the Certification." *See* FJMO at 2. An attorney disciplined in a state cannot avoid reciprocal discipline under the infirmity of proof exception where the practitioner stipulated to the facts necessary to support the state discipline. *See In re Mcmullen*, 149 A.3d 1043 (D.C.Cir. 2016). *See also In re Jarblum*, 852 N.Y.S.2d 98,

[1] This is consistent with other jurisdictions, particularly as it applies to an attorney's duties to his client and the legal profession. *See* OED Response at 14 (citing *State ex rel. Couns. for Discipline of Nebraska Supreme Ct. v. Nimmer* 916 N.W. 2d 732, 749 (Neb. 2018) ("neither good faith nor ignorance of the rules prohibiting commingling client and personal funds provides a defense to a disciplinary charge that an attorney violated the rules against commingling"); *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Howe*, 706 N.W.2d 360, 370 (Iowa 2005) (attorney's "ignorance of his ethical obligation is no defense.")).

51 A.D.3d 68 (NY 2008) (attorney could not raise any defenses to imposition of reciprocal discipline based on sanctions imposed by state, where attorney stipulated to the facts, conclusions of law, and recommended sanction, and admitted misconduct constitutes misconduct in the state). The USPTO Director thus agrees with the OED Director that, where a practitioner has stipulated to facts and/or a conclusion that constitutes misconduct, it would be improper to allow the practitioner to then challenge those stipulated findings by claiming an infirmity of proof.[2]

2. Hearsay

Respondent next argues that, with regard to all four underlying matters, there was an infirmity of proof on the basis of hearsay evidence admitted at the trial, prejudicing Respondent. *See* Response to Notice and Order at 2-3 ¶ 1.a.iii . However, Respondent does not provide any of the documents he identifies as containing hearsay or develop the arguments regarding those documents as to the issue of hearsay. *See* OED Response at 15-17. More importantly, however, the rules governing the Virginia disciplinary proceedings allow for the admission of such evidence, with appropriate weight to be accorded by the three-judge panel.

> In disciplinary cases before a three-judge panel, the court is directed to "recei[ve] into evidence…all reasonably probative evidence," with the caveat that the "weight given such evidence shall be commensurate with its evidentiary foundation and likely reliability."
>
> See Rules of the Virginia Supreme Court Part Six, Section IV, Paragraph 13-12(D).

See OED Response at 16.

[2] To the extent that Respondent raises other arguments regarding the issue of fees, including that there was no evidence adduced as to what was a reasonable fee for the services at issue or that that Rule 1.15 is vague as to how fixed fee payments should be handled, *see* Response to Notice and Order at 4, 9, 11, 13, those arguments are rejected for the reasons already articulated. But additional bases for rejection are those as identified in the OED Director's Response. *See* OED Response at 20 (waiver), 20-21 (no determination of fee needed as flat fees are per se unreasonable), and 21 (addressing vagueness).

As the disciplinary panel had the authority to receive alleged hearsay evidence, Respondent's attempt to cast doubt on evidence presented, and accepted, by the disciplinary panel is little more than an attempt to revisit the panel's evidentiary decisions. This is not an appropriate consideration under the "infirmity of proof" standard. *See In re Rheinstein*, Proceeding No. D2021-06 at 20 (USPTO July 22, 2022) ("mere disagreement about the credibility of a witness or findings [of] fact and legal conclusions do not establish an infirmity of proof"). Respondent could have raised this issue before the Virginia Supreme Court as an appeal of right. *See* Virginia Code §54.1-3935 (D). Such an appeal would have allowed Virginia's highest court to determine whether the Virginia trial court properly applied Virginia law in admitting the alleged hearsay evidence during Respondent's Virginia disciplinary proceeding. However, he did not file any such appeal. Having failed to do that, Respondent cannot now use these reciprocal proceedings as the vehicle to retry or revisit the disciplinary panel's decisions.

3. Michael Wright

Specific to the Wright case, Respondent challenges the underlying misconduct that resulted from a "misaddressing of a package sent by a former employee" which should have been sent to Mr. Wright. *See* Response to Notice and Order at 3. However, that package was mistakenly sent to another client. *See id.* In addition to the arguments noted in Sections 3.A.1 and 2 above, Respondent claims that violations of Rule 5.3 were found without identifying how staff violated the Rules. *See* Response to Notice and Order at 4-5. Respondent also claims that the paralegal alleged to have signed the letter denied doing so and there was "conflicting testimony" over the mistakenly sent letter. *See id.* at 5. However, on the plain face of the order, the FJMO fully set for the factual basis for finding violations of Rule 5.3, as well as other disciplinary rules. These arguments are little more than disagreement with disciplinary tribunal's findings and conclusions. And, while Respondent may disagree with those findings, as already stated, "mere

disagreement about the credibility of a witness or findings [of] fact and legal conclusions do not establish an infirmity of proof." *In re Rheinstein*, Proceeding No. D2021-06 at 20.

4. Jason Robles

Specific to the Robles matter, in addition to the arguments raised in Sections 3.A.1 and 2 above, Respondent also claims that the basis of the Robles' complaint was the allegation that his case review results were not as detailed as what Mr. Robles wanted. *See* Response to Notice and Order at 5. Respondent argues that Mr. Robles never asked for a more detailed review and the findings were contrary to evidence of the case. *See id.* at 7-8. For example, he disputes the FJMO's finding that fee agreement promise of a status meeting is supported by the fee agreement. *See id.* at 7. He also claims that there was no evidence at trial that phone communications did not fulfill the terms of the case contract. *See id.* at 7-8. Finally, he notes that he refunded Robles' fee despite giving doing thorough job and having received no complaints from Robles. In sum, he claims that Rule 1.4 violations should not have been found. *See id.* at 7-8.

Despite these arguments, Respondent fails to satisfy the infirmity of proof standard. The FJMO plainly and fully set forth the factual basis for finding the enumerated disciplinary violations. Additionally, Respondent's arguments merely rehash the arguments at issue in the Virginia disciplinary proceedings. And as already stated, while he may disagree with those findings, "mere disagreement about the credibility of a witness or findings [of] fact and legal conclusions do not establish an infirmity of proof." *In re Rheinstein*, Proceeding No. D2021-06 at 20.

5. Michael Robinson

Respondent characterizes Mr. Robinson's complaint as the result of a "docketing error resulting in a date for filing a notice of appeal for a denied Motion to Vacate passing without the

notice of appeal being filed." *See* Response to Notice and Order at 8. In addition to the arguments raised in Sections 3.A.1 and 2 above, Respondent implies that Mr. Robinson was not prejudiced since missing the appeal date was not fatal to underlying claims because they were jurisdictional arguments. *See id.* He also notes that he took remedial measures via collaterally challenging the convictions. *See id.* Finally, he makes several other evidentiary challenges to the disciplinary findings including: a) Violations of Rule 1.4 were not proper because "numerous communications were specifically noted in the FJMO"; b) Violations of Rule 1.5 were not proper because there was no evidence of unreasonable fee charged; and c) Violations of Rule 5.3 were made without enumerating how actions of firm staff violated Virginia rules. *See id.* at 8-10.

Insofar as Respondent challenges the disciplinary findings and conclusions, his arguments are little more than an attempt to revisit the substantive arguments made before the panel and mere disagreement the disciplinary panel's findings and conclusions. And as already stated, that sort of disagreement does not establish an infirmity of proof." *In re Rheinstein*, Proceeding No. D2021-06 at 20. Finally, regarding Respondent's claims about "remedial measures" and lack of prejudice to his former client, those factors do not negate misconduct or the resulting ethical violations.

6. DeAndre Gordon

Lastly, as to Mr. Gordon, Respondent characterizes the underlying complaint as "made because he believed that the Petition for Writ of Actual Innocence filed on his behalf took place before he had obtained two additional affidavits in support of his writ." Response to Notice and Order at 10. Respondent describes the steps taken regarding the writ, including that the affidavits later obtained and that the Appeals Court granted leave to amend the Petition. *Id.* He further notes that a hearing was held regarding the amended writ and Respondent attended both days.

See id. at 10-11. The implication in this description is that Mr. Gordon had not been harmed by the filing of a premature writ.

In addition to the arguments raised in Sections 3.A.1 and 2 above, Respondent here argues that a) Violations of Rule 1.4 were not proper because "numerous communications were specifically noted in the FJMO", b) Violations of Rule 1.5 were not proper because there was no evidence of unreasonable fee charged; and c) Violations of Rule 5.3 were found without enumerating how actions of firm staff violated Virginia rules. *See id.* at 11-12. Finally, he asserts that any errors were timely corrected and Mr. Gordon suffered no harm or prejudice. *See id.* at 12.

Again, Respondent's arguments are little more than an attempt to revisit the substantive arguments made before the panel and mere disagreement the disciplinary panel's findings and conclusions. And as already stated, that sort of disagreement does not establish an infirmity of proof." *In re Rheinstein*, Proceeding No. D2021-06 at 20. Finally, insofar as Respondent's claims about "remedial measures" and lack of prejudice to his former client, those factors do not negate misconduct or the resulting ethical violations.

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

Practitioners may also attempt to defeat the presumption that imposition of reciprocal discipline is proper by arguing that such reciprocal discipline will result in a grave injustice. Here, Respondent argues that, to the extent that misconduct occurred, it was unintentional and a 60-day suspension did not fit the misconduct, especially given his asserted infirmities of proof. Response to Notice and Order at 13. Thus, he argues that imposing reciprocal discipline here would amount to a grave injustice.

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).

Here, although Respondent invokes the grave injustice standard and fleetingly refers to its standard, his argument does not go beyond that. As a result, and as set forth in the OED Director's Response, "where a respondent restricted a challenge to an ALJ decision to 'two or three sentences," and were "conclusory statements of his belief and general denials[,]' the USPTO Director could justifiably disregard those arguments as failing to meet USPTO filing requirements." *In re Piccone*, Proceeding No. D2015-06 at 16 (USPTO May 25, 2017). OED Response at 20. Having failed to fully develop an argument on the grave injustice issue, the USPTO Director agrees that this argument has been forfeited and is dismissed.

Even on the merits, however, the Respondent's grave injustice argument is without merit. Respondent makes no argument relevant to the applicable grave injustice standard. He makes no argument regarding whether suspension is an appropriate sanction for the misconduct found in the Virginia disciplinary proceedings. Rather, citing the already argued "infirmities of proof as evidenced herein" he challenges the "vagueness of the actual Virginia Rules of Professional Conduct" and states that his misconduct was unintentional. However, these arguments are little

more than an attempt to substantively attack and/or rehash arguments and positions raised in the state disciplinary matter. These arguments are simply not pertinent to the grave injustice analysis under 37 C.F.R. § 11.24(d)(1)(iii) and do not prevent the imposition of reciprocal discipline. *In re Rheinstein*, Proceeding No. D2021-06 at 20.

Unlike Respondent, the OED Director has relied on the appropriate grave injustice standard to support the conclusion that Respondent's 60-day suspension was an appropriate sanction in Virginia. OED Response at 18-20. Acknowledging that the USPTO Director has routinely looked to the American Bar Association Standards for Imposing Lawyer Sanctions ("ABA Standards") when imposing discipline against practitioners, *see In re Chae*, Proceeding No. D2013-01 (USPTO Oct. 21, 2013), the OED Director has shown that those Standards indicate that where a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client, suspension is generally appropriate. OED Response at 19 (citing ABA Standards, § 4.12).

In sum, contrary to Respondent, and as noted above, the OED Director cited appropriate and applicable authority to support the conclusion that Respondent's suspension was an appropriate sanction in Virginia. As a result, a reciprocal 60-day suspension will not result in a grave injustice.

ORDER

ACCORDINGLY, it is ORDERED that:

1. Respondent is suspended for 60 days 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 Suspension

This notice concerns Dale Reese Jensen of Staunton, Virginia, who is a registered patent attorney (Registration Number 55,300). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Jensen be suspended for 60 days 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 for 60 days from the practice of law by a duly constituted authority of a State.

Mr. Jensen has been suspended from the practice of law in Virginia in view of the findings of the Circuit Court of the City of Staunton in Case No. CL21-653, *Virginia State Bar ex rel. Eighth District Committee v. Dale Reese Jensen*. The Circuit Court of the City of Staunton found Mr. Jensen culpable of failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information (Virginia State Bar Rules of Professional Conduct, (Rule 1.4(a)); failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (Rule 1.4(b)); charging an unreasonable fee (Rule 1.5(a)); failing to deposit funds received or held on behalf of a client into a client trust account (Rule 1.15(a)(1)); failing to maintain complete records of all client funds (Rule 1.15(b)(3)); disbursing funds or using property of a client without their consent (Rule 1.15(b)(5)); failing to maintain record-keeping requirements (Rule 1.15(c)); failing to comply with required trust accounting procedures (Rule 1.15(d)); failing to make reasonable efforts to ensure that the lawyer's firm has in effect measures giving reasonable assurance that the conduct of a nonlawyer employee is compatible with the professional obligations of the lawyer (Rules 5.3(a)); failing to make reasonable efforts to ensure that the conduct of a nonlawyer employee is compatible with the professional obligations of the lawyer (Rule 5.3(b)); and failing to take timely remedial action to mitigate a non-lawyer employee's violation (Rule 5.3(c)(2)).

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: 2023.06.12 11:30:28 -04'00'

Date

David Berdan
General Counsel
Office of the 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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Final Order was mailed to the parties in the manner indicated below-

Via first-class certified mail, return receipt requested, on this day to the Respondent at the most recent address provided to the OED Director pursuant to 37 C.F.R. § 11.11(a):

Mr. Dale Reese Jensen
Law Offices of Dale Jensen, PLC
606 Bull Run
Staunton, Virginia 24401

and to where the OED Director reasonably believes Respondent receives mail:

Mr. Dale Reese Jensen
Law Offices of Dale Jensen, PLC
2027 Woodbrook Court
Suite 2027
Charlottesville, Virginia 22901

and to the OED Director via email:

Robin Crabb
Office of the Solicitor
Robin.Crabb@uspto.gov
[redacted]
Counsel for the OED Director

6/12/2023
Date

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450