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

In the Matter of:	
Imran A. Khaliq,	Proceeding No. D2020-28
Respondent.	

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

Pursuant to 37 C.F.R. § 11.24, Imran A. Khaliq ("Respondent") is hereby suspended for two years from the practice of patent, trademark, and other non-patent law before the United States Patent and Trademark Office ("USPTO" or "Office"), and shall serve a three-year probationary period, 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 Menlo Park, California, has been registered to practice in patent matters before the USPTO and is subject to the USPTO Rules of Professional Conduct. Respondent's USPTO registration number is 55,325.

2. Respondent has been licensed to practice law in California since December 2004.

3. By Order dated December 18, 2019, in *In re Imran A. Khaliq*, Case No. S257598, the Supreme Court of California suspended Respondent from the practice of law for a minimum of two years, stayed the suspension, placed him on probation for three years, suspended him for the first two years of the three-year probationary period with certain credit for suspension time

already served, and ordered that the stayed suspension be terminated contingent upon satisfaction of certain conditions at the expiration of the three-year probationary period.

Respondent's Arrest and Criminal Proceeding

4. On July 13, 2015, intending to "test her loyalty and fidelity, Respondent sent his then girlfriend, [redacted], text messages from a phone unknown to Ms. [redacted] and pretended to be the CEO of a company where Ms. [redacted] was seeking employment. OED Response, Ex. 5, Tr. 185:4-20; Reply at 11. The text messages suggested that the CEO wanted to schedule a meeting with Ms. [redacted], included a request for her to "wear something sexy," and asked whether she liked to drink scotch. *Id.* Tr. 186:9-12, 24-25; 187:2-8. In response to Ms. [redacted] inquiry, Respondent did not admit to sending the texts. *Id.* Tr. 194:13-195:3. Respondent later told the police that it was just a "prank." *Id.* Tr. 189:17-24; OED Response, Ex. 7, Tr. 62: 16-25. However, Ms. [redacted] testified that she viewed Respondent's actions as a means to manipulate and control her. OED Response, Ex. 5, Tr. 200:5-11.

5. On another occasion, the evening of August 9, 2015, Respondent and Ms. [redacted] were at his home and started "kissing and making out" on a couch. OED Response, Ex. 5, Tr. 146:3-5. Respondent forcefully began to remove Ms. [redacted] clothes and damaged a jacket that she was wearing. *Id.* Tr. 146:21-24. Ms. [redacted] got up and told Respondent that she was going to leave. *Id.* Tr. 147:22-25. Respondent got upset because he felt that she had "got him so excited" and then rejected him. *Id.* Tr. 149:9-12. Respondent lost control and struck Ms. [redacted] in the face multiple times, knocking her to the ground and causing her to become temporarily disoriented. *Id.* Tr. 149:13-15; 150:6-13; 150:22 -151:2; 151:5-12; 151:10-14; 151:24-152:6; 152:24-25. After hitting Ms. [redacted], Respondent stated, "See what you made me do." *Id.* Tr. 149:16-21.

6. The day after the assault, Respondent sent Ms. [redacted] several texts. One text stated, "I'm

sorry I lost control. I just really wanted you, and was too worked up." OED Response, Ex. 5, Tr. 174:25-175:2. Ms. [redacted] suffered a closed right eye for days and some of her other injuries were visible for weeks after the assault. *Id.* Tr. 15:10-16; 162:11-14; 166:6-12; 172:4-10. As a result of her injuries, Ms. [redacted] was unable to go to work for a time period totaling between three or four weeks. *Id.* Tr. 206:1-8. Respondent was later arrested for the injuries caused to Ms. [redacted].

7. Respondent was initially charged with felony domestic violence under California Penal Code section 273.5 subdivision (a). OED Response, Ex. 11, at 7. On June 14, 2016, a jury found Respondent guilty of violating Penal Code section 273.5, subdivision (a). *Id.* On January 9, 2017, the judge granted Respondent's motion for a new trial based on jury misconduct and set aside the jury's verdict. *Id.* at 8. On August 22, 2017, Respondent pled no contest/nolo contendere to a single count of violating Penal Code section 273.5, subdivision (a), domestic violence, a felony. OED Response, Ex. 11, at 8; Response to Notice and Order at 3. The judge accepted Respondent's plea but reduced the charge and entered the judgment as a misdemeanor. OED Response, Ex. 11, at 8; Response to Notice and Order at 3 (acknowledging that the charge was reduced to misdemeanor). On August 22, 2017, Respondent was placed on probation for a period of 36 months, with at least the first 18 months being supervised probation. OED Response, Ex. 11, at 8.

8. Respondent later met with a Probation Officer so that she could prepare a report and recommendation regarding criminal sentencing. OED Response, Ex. 7, Tr. 109:5-15. Respondent provided the Probation Officer with a written statement *Id.* Tr. 109:6-8. In that written statement, Respondent stated that he "never struck anyone in my adult life, including any ex-girlfriend or ex-wife." *Id.* Tr. 109:6-110:17. That statement was not true in light of Respondent's violence towards another girlfriend, Ms. [redacted]. *See infra* at 4-5.

California State Bar Proceedings

9. Respondent's misdemeanor conviction was referred to the California State Bar's Hearing Department to determine whether his misconduct involved moral turpitude and also to hold a hearing and provide a recommendation for discipline. OED Response, Ex. 11, at 2.

10. On March 12, 2018, a Notice of Hearing on Conviction was filed. OED Response, Ex. 1. It was served on Respondent's then-counsel. *Id.* Respondent responded to the Notice of Hearing on Conviction on April 3, 2018. OED Response, Ex. 2. He subsequently filed a *motion in limine* in an attempt to prevent the State Bar from introducing certain evidence, testimony, and exhibits, including evidence relating to the "prank" played on Ms. [redacted] and evidence relating to Ms. [redacted]. OED Response, Ex. 3. The motion was denied. OED Response, Ex. 4.

11. A trial was conducted in the Hearing Department on July 5, 6, 18 and 25, 2018. OED Response, Exs. 5-8. At the trial, Respondent cross-examined each of the witnesses that the California State Bar called to testify, Respondent testified at length, and he conducted a direct examination of some of the other witnesses that he called during his case-in-chief. *Id.* After the trial, both parties were permitted to file a closing brief explaining his view of both the evidence and the law surrounding the issue of moral turpitude and any possible discipline. OED Response, Ex. 8, Tr. 124:10-14; OED Response, Ex. 10.

12. During the trial, the testimony of [redacted] was permitted over Respondent's objections. Ms. [redacted] testified that she met Respondent while they were undergraduate students and dated approximately from 2001 to 2004. OED Response, Ex. 5, Tr. 118:2-3. They moved in together while Respondent was in law school. *Id.* Tr. 118:6-10. She further testified that, on an occasion when Respondent was angry, he threw plates and cups towards her, at the wall behind her. *Id.* Tr.118:18-24. On another occasion, during an argument with Ms. [redacted], Respondent

punched her in the face while she was driving him to work. *Id.* Tr. 119:2-10. The punch left a mark on her face. *Id.* On a third occasion, when Ms. [redacted] attempted to leave his residence after an argument, Respondent grabbed her neck area and pushed her against a door. *Id.* Tr. 123:24-25-124:1-2.

13. The Judge of the State Bar Court, Lucy Armendariz, issued a decision on August 17, 2018, finding that although Respondent's offenses didn't involve "moral turpitude per se," the facts and circumstances surrounding Respondent's conviction established that his conviction involved moral turpitude. OED Response, Ex. 11, at 9-10. She noted that "Respondent violently assaulted and beat his girlfriend, leaving her severely bruised and with two black eyes, among other injuries, when she refused to have sex with him. Respondent's girlfriend was not aggressive in any way towards Respondent on the night of the incident and nothing justifies or excuses Respondent's violent outburst on that night. Furthermore, after his girlfriend reported the incident to law enforcement, Respondent attempted to dissuade her from going forward with the criminal matter." *Id.* at 10. Although the criminal conduct did not involve the practice of law, it involved "(1) a serious breach of duty owed to another; (2) a flagrant disrespect for the law and society norms, and (3) undermines public confidence in, and respect for, the legal profession." *Id.* Finally, the Judge found that Respondent demonstrated a lack of honesty in his impersonation of the CEO and in his testimony regarding his criminal conduct. *Id.* Based on all of these findings, the Judge concluded that "the facts and circumstances surrounding Respondent's conviction . . . involved moral turpitude" as defined by California law. *Id.*

14. As to the appropriate sanction, the Judge rejected Respondent's contention that discipline should be no greater than a reproval or a suspended suspension. *Id.* at 16. Instead, the Judge observed that although cases involving assaultive behavior have resulted in various short periods

of actual suspension in the past, those cases were filed more than 20 years ago and did not involve a finding of moral turpitude. *Id.* The Judge noted that "the concept of moral turpitude depends upon the state of public morals, and may vary according to the community or times." *Id.* (citing *In re Hatch*, 73 P.2d 885, 887 (1937). Further, the Judge's decision noted that in cases of serious crimes involving moral turpitude, disbarment, rather than suspension, has been the rule rather than the exception. *Id.* at 17 (citing *In re Rech*, 3 Cal. State Bar Ct. Rptr. 310, 317 (1995)). Consequently, the Judge recommended that Respondent be disbarred. *Id.* at 18.

15. Respondent filed an appeal to the Review Department challenging the moral turpitude finding and the disbarment recommendation. OED Response, Ex. 12.

Review Department Decision

16. In a June 12, 2019 decision, the Review Department agreed with the trial Judge and concluded that Respondent's "past actions surrounding the assault did, indeed, involve moral turpitude." OED Response, Ex. 13, at 10. The Review Department concluded that Respondent's impersonation of the CEO, via a text to his girlfriend that Respondent characterized as a "prank," and "his omissions to the probation officer constituted a breach of a duty owed to others, displayed disrespect for the law and societal norms, and undermined public confidence in and respect for the legal profession." *Id.* Furthermore, the Review Department found that Respondent "exhibited violent behavior regarding a prior girlfriend. These actions stemmed from issues of control and dominance that are consistent with the later conduct in his assault." *Id.* As such, the Review Department found that Respondent's past actions surrounding his conviction involved moral turpitude. *Id.*

17. With respect to the appropriate discipline, the Review Department declined to recommend discipline of no more than six months actual suspension as Respondent requested.

OED Response, Ex. 13, at 16. However, after a lengthy review and analysis of the facts and of recent case law dealing with a misdemeanor conviction and surrounding circumstances involving moral turpitude, including the case of *In re Guillory*, 5 Cal. State Bar Ct. Rptr. 402 (Review Dep't 2015), the Review Department recommended that Respondent receive a two-year actual suspension rather than disbarment. *Id.* at 24.

18. On August 2, 2019, the Review Department issued an *en banc* decision denying the State Bar's request for reconsideration. OED Response, Exs. 14, 15.

California Supreme Court

19. The State Bar filed a petition for review of the Review Department's recommendation to the California Supreme Court. Respondent did not petition for review of the suspension recommendation.

20. On December 18, 2019, in *In re Imran A. Khaliq*, Case No. S257598, the Supreme Court of California issued an Order denying the petition for review and suspending Respondent from the practice of law for a minimum of two years. OED Response, Ex. 17. The suspension was stayed and Respondent was ordered to be placed on probation for three years. *Id.* Respondent was ordered suspended for the first two years of the three-year probationary period with certain credit for suspension time already served, and the court further ordered that the stayed suspension be terminated contingent upon satisfaction of certain conditions at the expiration of the three-year probationary period. *Id.*

USPTO Reciprocal Discipline Proceeding

21. On October 21, 2020, a "Notice and Order Pursuant to 37 C.F.R. § 11.24" ("Notice and Order") was sent by certified mail (receipt nos. 70191640000071024918 and 70191640000071024901) 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 December 18, 2019 Order of the Supreme Court of California in *In re Imran A. Khaliq*, Case No. S257598. 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 California in *In re Imran A. Khaliq*, Case No. S257598, based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1).

22. Respondent filed a Response to Notice and Order Pursuant to 37 C.F.R. § 11.24 ("Response to Notice and Order") on December 14, 2020. Therein, Respondent does not deny that he participated in the underlying state disciplinary proceedings. Nevertheless, he claims that those proceedings failed to afford him appropriate due process. In particular, he alleges:

- Facts demonstrating that the victim in this case was the dominant aggressor were ignored. *See* Response to Notice and Order at 10-13;
- Granting immunity to the accuser violated his due process rights. *See* Response to Notice and Order at 13-14;
- His due process rights were violated when the trial judge failed to consider expert testimony offered on behalf of Respondent and allowed the State Bar's expert, whom he claims had financial conflicts of interest. *See* Response to Notice and Order at 14;
- Respondent claims the hearing judge was biased and that bias resulted in a tainted record. *See* Response to Notice and Order at 15-16; and
- His due process rights were violated when the State Bar was permitted to bring in witnesses and other evidence regarding allegations he characterizes as outside the scope

of his criminal conviction. *See* Response to Notice and Order at 16-18. Respondent also argues that reciprocal discipline would be a grave injustice and, alternatively, any discipline should be imposed *nunc pro tunc*. *See* Response to Notice and Order at 18, 21.

23. The OED Director was permitted to respond to the Response to Notice and Order ("OED Response") and did so on February 1, 2021. The OED Director argues that Respondent was afforded full due process. *See* OED Response at 10-11. The OED Director specifically denies that any of Respondent's particular arguments as to due process, noted above, have any merit. The OED Director also argues that reciprocal discipline would not be a grave injustice as his state discipline was supported by case law and was therefore appropriate. *See* OED Response at 22-25. Finally, the OED Director objects to discipline being imposed *nunc pro tunc* and states that Respondent's actions do not satisfy the requirements of 37 C.F.R. § 11.24(f). *See* OED Response at 25-26. Accordingly, the OED Director claims that any such request should be denied.

24. Respondent filed a Reply brief ("Reply") on February 15, 2021, reasserting his earlier arguments, and arguing that these proceedings should be dismissed as a result of the OED Director's violation of 37 C.F.R. § 11.18. Reply at 1-7. Respondent also asserts that minority practitioners are unable to receive fair trials. *Id.* at 7-10.

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. 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) (quoting *In re Sibley*, 564 F.3d 1335, 1341 (D.C. Cir. 2009)) (second and third alternations in original).

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 any timely filed response and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification unless the practitioner clearly and convincingly demonstrates, 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 a Response to the Notice and Order challenging the imposition of reciprocal discipline. He claims he was deprived of due process, that the discipline would be a grave injustice and, in the alternative, that any discipline should be imposed *nunc pro tunc*. As already stated, however, 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 at 724; *In re Friedman*, 51 F.3d at 22. Because he cannot satisfy this burden, reciprocal discipline is appropriate here.

A. Respondent Admits To Being Afforded Due Process Throughout the California Proceedings.

Respondent asserts that the imposition or reciprocal discipline would constitute a deprivation of due process. The OED Director rejects this argument, detailing Respondent's extensive participation in the underlying California Bar disciplinary hearing and review. OED Director Response at 10-11. That participation is not refuted by Respondent. Consequently, after a review of the facts, Respondent's argument that he was deprived of due process cannot overcome the presumption that reciprocal discipline is proper.

"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) (citing *Mathews v. Eldridge,* 424 U.S. 319 (1976) (internal quotation marks omitted)). 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 also In re Zdravkovich, supra* (stating that attorney could not satisfy 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 (quoting *In re Cook,* 551 F.3d 542, 550 (ellipsis and third alteration in original). 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 Faro*, Proceeding No. 2019-09 (USPTO 2020); *In re Baker*, Proceeding No. D2019-08 (USPTO 2019); *In re Chaganti*, Proceeding No. 2015-10 (USPTO 2015).

Here, Respondent was unequivocally afforded a meaningful time for, and the opportunity to, challenge his state discipline. He actively participated in those proceedings at every stage. For example, he filed a detailed answer to disciplinary charges, as well as a *motion in limine*. *See* OED Director Response, Exs. 2, 3. Respondent participated in a four-day disciplinary trial,

which included offering exhibits, cross-examining witnesses, and testifying on his own behalf. *See* OED Director Response, Exs. 5-8. After the Hearing Department's decision, Respondent filed an appeal to the Review Department, objecting to the Hearing Department's findings and disbarment recommendation. *See* OED Director Response, Ex. 12. He also filed a motion for reconsideration of the Review Department's Decision. *See* OED Director Response, Ex. 15. This is not an exhaustive list of Respondent's participation in the state level proceedings. Importantly, Respondent does not challenge or argue that these actions and participation did not occur. Nowhere in his response does he claim that he was not able to be heard or was prevented from participating in those proceedings. Nor could he do so since the evidence shows that he was provided a meaningful opportunity to challenge the state discipline and he did so. Accordingly, he has not raised a genuine issue of material fact that he was deprived of due process and reciprocal discipline here is not precluded.

1. Respondent's Other Allegations Concerning the California Proceedings Were Not a Deprivation of Due Process.

Although he actively and extensively participated in the state disciplinary proceedings, Respondent raises several other allegations that he characterizes as a deprivation of due process. However, a review of those allegations finds that they are both factually unsupported and were fully raised and considered during the state disciplinary processes. These arguments amount to little more than disagreement with the decisions rendered during the state disciplinary proceedings. However, mere disagreement does not provide a basis for finding a deprivation of due process or for precluding reciprocal discipline. Tribunals have broad discretion to admit or refuse evidence into the record. *In re Harper*, 725 F.3d 1253, 1258 (10th Cir. 2013) (citing *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." *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.* (rejecting practitioner's due process claims where "unremarkable" claims of evidentiary errors, procedural errors, and other errors were raised). As discussed below, Respondent's other claims are nothing more than an attempt to retry the underlying proceedings.

a. Claim 1: Failure to Account for Respondent's Argument that Ms. [redacted] Was the Dominant Aggressor.

Respondent first argues that the California State Bar failed to account for significant facts demonstrating that the victim in this case was the dominant aggressor. Response to Notice and Order at 10-13. In short, he claims that the California State Bar did not resolve reasonable inferences in his favor. *Id.* at 10. He claims that his criminal conviction resulted from a history of being assaulted by his accuser and that he only "reacted instinctively" when he assaulted Ms. [redacted] on August 9, 2015. *Id.* He claims that the fact that Ms. [redacted] was the "dominant aggressor" should have been accounted for in the state disciplinary proceedings. *Id.* at 12-13.

Respondent's argument is without merit. Despite his argument to the contrary, the State Bar acknowledged Respondent's allegations of Ms. [redacted] prior violence in its prehearing statement. OED Response Ex. 18, at 4-5. The Hearing Department Judge also acknowledged it. *Id.*, Ex. 11 at 5 n.10. Respondent provided testimony on this issue, as well as the circumstances surrounding the August 9, 2015 assault. OED Response, Ex. 5, Tr. at 11, 19, 21-22. Despite this, Respondent's dominant aggressor argument was rejected. OED Response, Ex. 11, at 17.

Because Respondent was afforded a meaningful opportunity to present his dominant aggressor argument, he did not suffer a deprivation of due process. Respondent's argument is

that he disagrees with the resolution of that argument. But, as already noted, disagreement with that outcome is not a consideration with regard to due process. This argument is denied.

b. Claim 2: Challenge to Grant of Immunity to Ms. [redacted]

Respondent next argues that Ms. [redacted] was improperly "provided legal immunity for her violence in order to testify against [Respondent] to secure a conviction." Response to Notice and Order at 12. He claims, without any authority,[1] that offering such immunity violated his due process and equal protection rights, and was a grave injustice. *Id.* at 12-13.[2]

It is noted that a review of the criminal proceedings is beyond the scope of the review here. *See Selling*, *supra* (standard of review in reciprocal discipline cases); *see also In re Barach*, 540 F.3d at 84-85; *In re Williams*, 398 F.3d at 118; *In re Surrick*, 338 F.3d at 230-31. Further, to the extent that Respondent's claim argues that Ms. [redacted] should have been deemed a less credible witness on account of any immunity she received during the criminal manner, and failing to do so violated his due process rights, that claim is rejected. As the OED Director notes in his Response, the Hearing Department considered, but ultimately rejected, this argument. OED Response at 13-14; OED Response, Ex. 11, at 5 n.10. Instead, after weighing all the evidence with respect to the August 2015 assault, the judge ultimately found Ms. [redacted] to be a credible witness. OED Response, Ex. 11, at 5 n.10. In contrast, Respondent's testimony was found to be not credible. OED Response, Ex. 11, at 4 n.8.

As noted previously, the USPTO will not question the factfinder's evaluation of Ms. [redacted] testimony since tribunals have broad discretion to admit or refuse evidence into the record. *See In re Harper*, 725 F.3d at 1258; *In re Williams*, 398 F.3d at 118. Reciprocal discipline is not a

[1] The case cited by Respondent, *Yick v. Hopkins*, 118 U.S. 356 (1886), is offered for the proposition that discriminatory enforcement of the law *can* violate equal protection and due process. But, Respondent does not provide any argument or evidence that this occurred here.

[2] Respondent's grave injustice arguments are addressed at Section III.B of this Final Order.

vehicle for retrying the original disciplinary proceeding or for the revisiting of judgment calls. *See In re Barach*, 540 F.3d at 87. The "[e]valuation of the credibility of a live witness is the most obvious example" of a circumstance where "the factfinder is in a better position to make judgments about the reliability of some forms of evidence than a reviewing body acting solely on the basis of a written record." *Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co.*, 56 F.3d 556, 567 (4th Cir. 1995). Respondent's mere disagreement with the credibility determinations made during the state disciplinary proceedings does not mean that the California disciplinary proceedings failed to provide Respondent with due process.

c. Claim 3: Respondent's Challenge to Expert Testimony.

Respondent next argues, under the guise of a deprivation of due process, that his expert witness "should have been credited or at least discussed in the underlying State Court Review Department decision." Response to Notice and Order at 14. He also argues that his motions to disqualify the State Bar's expert should have been granted. *Id.* However, as noted, the Hearing Department's decisions not to credit Respondent's expert, John Hamel's, findings and testimony and to accept the testimony of the State Bar's expert were credibility determinations that are within the Hearing Department's discretion. Respondent's argument has no bearing on due process. Respondent's argument is not that he was denied the opportunity to participate in the State disciplinary proceedings, because he participated in the processes extensively, but rather he is dissatisfied with the rulings in those proceedings. Disagreement with those rulings is not a due process violation. This challenge is denied.

d. Claim 4: Respondent Claims the State Bar Hearing Judge Was Biased.

Respondent next claims that his due process rights were violated when the State Bar Hearing Judge Lucy Armendariz commented on the record that she is "feminist." Response to Notice and

Order at 15. The OED Director denies that Respondent's due process rights were violated by this statement, stating that the Judge's statement does not rise to the level of deep-seated extreme favoritism or antagonism that establishes bias. OED Response at 17-18.

It is true that a fair trial in a fair tribunal is a basic requirement of due process. *In re Murchison*, 349 U.S. 133, 136 (1955). However, Respondent's argument here is without merit. Although he recites the California Rules of Judicial Ethics that requires a Judge to act in a way that avoids impropriety or the appearance of impropriety or impartiality, he cites to no authority that the State Bar Hearing Judge's statement rises to that level here. Respondent has cited no case law to establish that a mere appearance of a judicial bias alone is sufficient to show a due process violation. On the contrary, the OED Director cited case law showing that, even if the term "feminist" could be construed to be a biased statement, that statement does not rise to the level of actual or presumptive bias that would have affected Respondent's due process rights. *See* OED Response at 16-17 (*citing Liteky v. United States,* 510 U.S. 540, 555 (1994) and *Bigby v. Dretke*, 402 F.3d 551, 558-59 (5th Cir. 2005)). Finally, the OED Director correctly notes that the mere appearance of any bias does not violate due process rights. *See* OED Response at 17-18 (citing *Johnson v. Carroll,* 369 F.3d 253, 263 (3d Cir. 2004) (holding that "the Supreme Court's case law has not held, not even in dicta, let alone 'clearly established,' that the mere appearance of bias on the part of a state trial judge, without more, violates the Due Process Clause"); *Del Vecchio v. Illinois Dep't of Corr.,* 31 F.3d 1363, 1371–72 (7th Cir. 1994) (holding that the "Supreme Court has never rested the vaunted principle of due process on something as subjective and transitory as appearance").

Respondent's thin allegations of bias find no support in applicable authorities and, indeed, Respondent has cited none. The Hearing Judge's statement that she was a "feminist" simply does

not rise to the level of bias – actual, presumptive, or even the appearance thereof – that undermined Respondent's due process rights in any way. That conclusion finds support in case law, as noted in the OED Director's response. Consequently, Respondent's argument here is denied.

e. Claim 5: Respondent's Character Declarations.

Respondent next claims that the Hearing Department's record for review was highly biased. For example, Respondent claims that approximately 15-signed and sworn character declarations from witnesses, many of whom were unable to attend the trial due to conflicts with their summer schedules, were disallowed by the Hearing Judge. Response to Notice at Order at 16. He argues that this violated his due process rights. However, this argument is plainly without any support. First, he does not identify specific statement that should have been admitted. Also, importantly, the Review Department *permitted* character evidence from Respondent's father, mother, brothers, and sister and found that they gave "detailed information about [Respondent's] upbringing and his acts of honesty and charity throughout his life." OED Response at 18-19; OED Response, Ex. 13, at 14 and Ex. 20. That evidence provided favorable weight by the Review Department. Thus, his argument here without factual support. Further, to the extent that he is challenging any credibility determination made with regard to any excluded declaration, and as already noted, disagreement with those rulings is simply not a basis for finding a deprivation of due process.

f. Claim 6: Evidentiary Challenges.

Respondent's last argument on the matter of his due process rights are complaints that the Hearing Judge made findings that Respondent's texts to his girlfriend were not a prank but rather an way to control and manipulate her, as well as findings about other prior relationships.

Response to Notice and Order at 16-17. He claims that he should not have been forced to defend against these allegations as they were unrelated to his criminal conviction, and he unsuccessfully sought to prohibit evidence related to this finding. *See id.* This argument does not provide a basis for finding a deprivation of due process.

As already stated several times, Respondent's argument here is not that he was not afforded a meaningful opportunity to present evidence or participate in the state disciplinary matter. He did both, extensively. His arguments here amount to little more than disagreement or dissatisfaction with the decisions made by the Hearing Judge, and Review Department, during those proceedings. That disagreement does not provide a foundation for a due process violation. Thus, this claim is denied.

B. Reciprocal Discipline Would Not Amount to a Grave Injustice.

Respondent claims that a grave injustice would result from the imposition of reciprocal discipline, claiming there is no authority for moral turpitude findings or for a two-year suspension from a misdemeanor assault conviction not involving the practice of law. Response to Notice and Order at. 18. The OED Director argues that Respondent's suspension was within the range of allowable penalties, based on applicable authorities in California.

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).

California looks to the Standards for Imposing Lawyer Sanctions to determine the appropriate discipline to impose. *Drociak v State Bar*, 804 P.2d 711, 714 (1991). Standard 2.15(c) states that "[d]isbarment or suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude." *See also* OED Response, Ex. 13, at 16. The Review Department, however, rejected disbarment as excessive in Respondent's disciplinary matter. *Id.* at 17-18. Relying on case law in California, and persuasive case law in other jurisdictions, the Review Department imposed a two-year actual suspension in a case involving an attorney's misdemeanor conviction involving moral turpitude. *Id.* at 18-24. The Supreme Court of California affirmed the Review Department's sanction. OED Response, Ex. 17.

Respondent argues that California precedent dictates a suspension of no more than a month. Response to Notice and Order at 19. Further, he challenges that the cases relied upon by the state are inapposite. However, he does not cite any cases involving moral turpitude that resulted in an actual suspension of less than two years. In other words, the cases he cites are not relevant here because they do not involve moral turpitude, and do not render his 2-year suspension a grave injustice.

Respondent's argument against applying *In re Guillory*, *supra*, one of the cases specifically relied upon by the Review Department, is also without merit. *Guillory* involved a practitioner who had 3 prior DUI convictions and was arrested for a fourth, at which time he was on

probation and driving on a suspended license. 5 Cal. State Bar Ct. Rptr. at 405. He received a two-year actual suspension because the facts and circumstances surrounding a fourth DUI misdemeanor conviction were found to involve moral turpitude. *Id.* at 407-08. Specifically, the court noted as a basis for the moral turpitude finding the fact that he lied to arresting officers by saying he was permitted to drive to and from work with a suspended license, repeatedly attempted to leverage his position as a criminal prosecutor to avoid arrest, and lied to officers about his alcohol consumption. *Id.* at 405, 408. *Guillory* plainly applies here. As in *Guillory*, Respondent's conduct involved underlying misdemeanor criminal misconduct. Similarly, also as in *Guillory*, Respondent's conduct was found to involve moral turpitude when he attempted to deceive other people. Based on these similarities, consistent with the sanction in *Guillory*, Respondent was properly given a two-year suspension. Further, despite Respondent's implication otherwise, the OED Director correctly notes that lack of cases with a specific posture or set of facts like the instant matter is not fatal. Where there are no cases with facts similar facts to pending cases, tribunals may consider cases involving other relevant misconduct where the surrounding facts involve moral turpitude. *Id.* at 410.

In sum, Respondent's argument that reciprocal discipline would be a grave injustices without support or merit. A two-year suspension is contemplated by the Standards for Imposing Lawyer Sanctions and within the allowance of relevant case law. Respondent cites no cases involving moral turpitude that would change this conclusion. Reciprocal discipline is therefore appropriate.

C. Respondent's Reciprocal Discipline Is Not Eligible for Imposition *Nunc Pro Tunc*.

As an alternative against the imposition of reciprocal discipline, Respondent requests *nunc pro tunc* treatment of his two-year suspension which started on August 30, 2018 in view of the few matters he has prosecuted before the USPTO for these friends. Response to Notice and

Order at 21-22. However for the reasons stated below, his request that discipline be imposed *Nunc Pro Tunc*, or otherwise suspended, is denied.

Upon request by a practitioner, "reciprocal discipline may be imposed nunc pro tunc only if the practitioner promptly notified the OED Director of his or her [suspension] in another jurisdiction, and establishes by clear and convincing evidence that the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58." 37 C.F.R. § 11.24(f). The provisions of 37 C.F.R. § 11.58 concern duties of disciplined practitioners and includes, but is not limited to, requirements such as filing notices of withdrawal in each patent and trademark application pending before the USPTO and providing notices of the discipline to all State and Federal jurisdictions and to all clients. *See* 37 C.F.R. § 11.58(b)(1)(i) and (ii).

Respondent carries the burden of proof to establish § 11.58 compliance by clear and convincing evidence. *See* 37 C.F.R. § 11.24(f). The USPTO Director regularly enforces the express terms of § 11.24(f) before applying reciprocal discipline *nunc pro tunc. In re Feuerborn,* Proceeding No. 2020-23 (USPTO Dec. 21, 2020); *In re Levine*, Proceeding No. 2015-21 (USPTO Aug. 1, 2016); *see also In re Plache*, Proceeding No. D2014-20 (USPTO Sept. 24, 2014) (The USPTO Director refused to reciprocally apply a New York three-year suspension *nunc pro tunc* where the practitioner did not notify the OED Director of the suspension. The Final Order states that: "...voluntary cessation of practice before the USPTO alone has no legal effect on the imposition of reciprocal discipline."). Further, the OED Director opposes *nunc pro tunc* discipline here on the basis that Respondent failed to satisfy these minimum requirements for *nunc pro tunc*. OED Response at 25. The OED Director notes that Respondent admits that he prosecuted three patent applications on behalf of close friends during his California suspension

period. Response to Notice and Order at 21-22.

Respondent has not asserted, nor has he proven, that he satisfied the provisions of § 11.24(f) such that discipline *nunc pro tunc* is appropriate here. By his own admission, Respondent did not cease practice before the USPTO. Response to Notice and Order at 21-22. He admitted to prosecuting three patent prosecution matters before the USPTO during the period of his California suspension. *Id.* Although he attempts to excuse those matters, stating that the matters were on behalf of "two close personal friends" who are "fully aware of the facts and circumstances surrounding Respondent's conviction and discipline and provided declaration and supporting testimony in his favor" such justification is irrelevant. *Id.* There is no personal friend exception or informed consent exception to the rule requiring that a practitioner voluntarily cease all activities related to practice before the Office and comply with all provisions of § 11.58 during the period of suspension, in order to be entitled to discipline *nunc pro tunc*. 37 C.F.R. § 11.24(f) (requirement that practitioner establish "by clear and convincing evidence that the practitioner voluntarily ceased all activities related to practice before the Office.") Because Respondent cannot show that he satisfied the provisions of 37 C.F.R. § 11.24(f) by clear and convincing evidence, his request that discipline be imposed *nunc pro tunc* here is denied.

D. Respondent's Other Claims Do Not Preclude Reciprocal Discipline.

1. Respondent Is Not Entitled to Dismissal Under 37 C.F.R. § 11.18.

In his Reply, Respondent argues that the reciprocal discipline case should be dismissed pursuant to 37 C.F. R. § 11.18. The basis for dismissal is his belief that the OED Director made "false and misleading statements" in the OED Director's Response. Reply at 1. In fact, Respondent spends the first 7 pages of his Reply brief identifying what he believes are false or misleading statements made by the OED Director, and which he asserts warrants dismissal

"For all documents filed in the [USPTO] in patent, trademark, and other non-patent matters, and all documents filed with a hearing officer in a disciplinary proceeding, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the [USPTO] must bear a signature, personally signed or inserted by such practitioner, in compliance with § 1.4(d) or § 2.193(a) of this chapter." 37 C.F.R. § 11.18(a). Any party that presents to the USPTO or hearing officer in a disciplinary proceeding (whether by signing, filing, submitting, or later advocating) any paper, that party is certifying the truth and veracity of statements made and evidence offered. *Id.* § 11.18(b). Violation of this provision may result in sanction up to and including "[t]erminating the proceedings. . . ." *Id.* § 11.18(c)(5).

Respondent's argument that the OED Director violated the provisions of § 11.18 fails here. His argument in support of dismissal is a mere restatement of the unsuccessful factual and legal challenges he made throughout his criminal and disciplinary proceedings. He argued an alternative narrative of his misconduct during his criminal case, during the State Bar proceedings, in an attempt to escape discipline there, and he reiterated those arguments during these reciprocal discipline proceedings. In every instance, Respondent's narrative has been rejected. Although Respondent continues to advocate for that rejected narrative, which narrative is set forth by the OED Director in his Response, his disagreement with the OED Director's factual recitation does not result in the OED Director's response being false or misleading. To the contrary, the OED Director's assertions and statements are firmly rooted in the record, are supported by exhibits and witness testimony, and accurately reflect the findings of the California Supreme Court and the findings of the state bar proceedings, generally. Consequently, his challenge is denied.

2. Respondent's Claims of Prosecutorial and Judicial Misconduct Are Beyond the Scope of These Proceedings.

Respondent argues that a recent California Supreme Court case raised this issue of "minority and black lawyers are investigated and disciplined more harshly" than similarly situated white male attorneys. Reply at 7-8. Although Respondent claims that OED is required to address these allegations, the burden falls on him to make this claim. Respondent bears the burden of proving these arguments by clear and convincing evidence. *See* 37 C.F.R. § 11.49 (A practitioner shall have the burden of proving any affirmative defense by clear and convincing evidence.) He has not met this burden.

Respondent offers no argument, only thin speculation, of disparate treatment. He cites no case law or other authority in support of his claims. For the single reference he does make, he offers no analysis or argument as to how that case applies or is dispositive here. Instead, he reiterates the same arguments made regarding due process and applicability of authorities previously discussed in this final order, and he continues to dispute the narrative accepted by the criminal court and the California Supreme Court, both of which he amply contested, as well as in these proceedings. These arguments have already been made and rejected. Because he offers no argument or evidence in support of this claim, instead only raising a speculative argument of discriminatory treatment, he has failed to carry his burden of proof and reciprocal discipline is not precluded.

ORDER

ACCORDINGLY, it is ORDERED that:

1. Respondent is suspended for two years from the practice of patent, trademark, and other non-patent law before the USPTO, and shall serve a three-year probationary period, 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 and Probation

This notice concerns Imran A. Khaliq currently of Menlo Park, California, who is a registered patent agent (Registration Number 55,325). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Khaliq be (a) suspended for two years from practice before the USPTO in patent, trademark, and other non-patent matters and (b) placed on probation for three years. Such discipline is imposed for Mr. Khaliq having violated 37 C.F.R. § 11.804(h), predicated upon being suspended from the practice of law by a duly constituted authority of a State.

On August 15, 2015, Mr. Khaliq was arrested for assaulting his girlfriend. Mr. Khaliq was ultimately found guilty of a misdemeanor violation of California Penal Code section 273.5 subdivision (a) (injuring a spouse, cohabitant, fiancé, boyfriend, girlfriend or child's parent).

As a result of his misdemeanor conviction, the State Bar of California instituted a disciplinary proceeding against Mr. Khaliq that culminated in the Supreme Court of California suspending Respondent from the practice of law for a minimum of two years, staying the suspension, placing him on probation for three years, suspending him for the first two years of the three year probationary period with certain credit for suspension time already served, and ordering that the stayed suspension be terminated contingent upon satisfaction of certain conditions at the expiration of the three-year probationary period.

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: 2021.03.31 16:10:18 -04'00'

Date

David Berdan
General Counsel for General Law
United States Patent and Trademark Office

on delegated authority by

Andrew Hirshfeld
Performing the Functions and Duties of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office