

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

In the Matter of:	)	
	)	
Jehan A. Carter,	)	Proceeding No. D2023-27
	)	
Respondent	)	
_____	)	

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

Pursuant to 37 C.F.R. § 11.24, Jehan A. Carter (“Respondent”) is hereby suspended from the practice of trademark and other non-patent law before the United States Patent and Trademark Office (“USPTO” or “Office”) for six (6) months, with allowance for Respondent to petition for reinstatement after ninety (90) days, 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 Washington, D.C., has been an attorney in good standing licensed by the District of Columbia Bar to practice law in that jurisdiction. As a licensed attorney in good standing, Respondent is authorized to practice before the Office in trademark and non-patent matters pursuant to 37 C.F.R. § 11.14(a) and is engaged in practice before the Office, and, therefore, is subject to the USPTO Rules of Professional Conduct set forth at 37 C.F.R. § 11.101 *et seq.* The Director of the USPTO has jurisdiction over this proceeding pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.19 and 11.24.

2. By Order dated August 18, 2022, in the District of Columbia Court of Appeals in *In re Carter*, 280 A.3d 193 (D.C. 2022), suspended Respondent from the practice of law in that jurisdiction for six months, of which all but ninety (90) days was stayed. The stayed suspension

was conditioned on Respondent completing three hours of continuing legal education related to her ethical violations and on Respondent not engaging in any misconduct in any jurisdiction within a year of reinstatement. *In re Carter*, 280 A.3d at 194. The discipline was negotiated with Respondent, who agreed to a suspension because she admittedly made a string of false statements in two California court filings, on her website, and in a letter to the District of Columbia disciplinary counsel investigating her ethical rule violations. *See* “OED Director’s Response to Respondent’s Response to Notice and Order Pursuant to 37 C.F.R. § 11.24” (“OED Response”), at 1. *See also In Re Carter*, Disciplinary Docket Nos. 2018-D215 and 2019-D112 (Petition for Negotiated Disposition) (D.C. Ct. of Appeals 2022).

3. In the joint petition for negotiated discipline, Respondent voluntarily agreed that she misrepresented her residence and legal practice in a *pro hac* vice application in Los Angeles Superior Court, included a fabricated attorney profile for a fictitious lawyer on her law firm website, and gave a false explanation about the fabricated profile in a declaration filed in the same Los Angeles matter. *See In Re Carter*, Disciplinary Docket Nos. 2018-D215 and 2019-D112 (Petition for Negotiated Disposition) (Stipulation of Facts and Rule Violations). Her *pro hac* vice application was ultimately denied because of credibility and honesty concerns with respect to the fabricated attorney profile. *See id.* at ¶ 14.

4. During the District of Columbia disciplinary proceedings, Respondent “freely and voluntarily acknowledged” all facts about her misrepresentations to the Los Angeles Court. *See* OED Response, at 5. She also acknowledged that, by making these misrepresentations, she violated California Business & Professions Code § 6106, which prohibits the commission of an act involving moral turpitude and dishonesty. *Id.*; *In re Carter*, 280 A.3d at 193.

5. After the District of Columbia proceeding was initiated, D.C. Disciplinary Counsel sent Respondent a letter, to which she responded on December 5, 2019. *See In Re Carter*, Board Docket No. 22-ND-002 (Report and Recommendation of Ad Hoc Hearing Committee Approving Petition for Negotiated Discipline) (D.C. Ct. App., July 21, 2022) (“Report”), at 7. In her Response, Respondent misrepresented that her website “was a draft website being built to include the bio information” of the Los Angeles attorney that had been on Ms. Collier’s case, whose biography had been copied. *Id.* at 7-8. According to Respondent, that attorney “was being listed on [her] website as counsel for the Collier case” and “a stock photo from Google and sample name and bio” from “[t]he website template” was “being edited to state [the attorney’s] bio info as you read instead.” *Id.* Respondent alleged that “ultimately the photo and name would have been changed as well but remained unfinished.” *Id.* These representations were false. *See* Report at 7, 14; *see also In re Carter*, 280 A.3d at 193.

6. By making those misrepresentations, Respondent violated D.C. Rules of Professional Conduct 8.1(a) and 8.4(c), which prohibit knowingly making a false statement to Disciplinary Counsel and engaging in conduct involving dishonesty. Respondent acknowledged these rule violations during the District of Columbia disciplinary proceeding. *See* Report, at 13–14; *In re Carter*, 280 A.3d at 193. Because of her admitted misconduct, Respondent acknowledged that she could not successfully defend against discipline. Report at 8. She therefore agreed to negotiated discipline, petitioned the District of Columbia Court of Appeals for that discipline, and voluntarily acknowledged the underlying facts and rule violations. Respondent also recognized that “the negotiated disposition . . . may affect her present and future ability to practice law” and “bar memberships in other jurisdictions.” *Id.* at 9. Finally, Respondent acknowledged “that Disciplinary Counsel may seek that Respondent serve the remaining 90 days

of the suspension previously stayed, if it has probable cause to believe that Respondent has engaged in misconduct,” thus violating the second condition for the stayed suspension. *Id.* at 10.

7. In August 2022, the District of Columbia Court of Appeals granted the petition and accepted the negotiated discipline, which had been approved by the Board on Professional Responsibility’s Ad Hoc Hearing Committee. *See In re Carter*, 280 A.3d 193.

USPTO Reciprocal Discipline Proceeding

8. On July 5, 2023, a “Notice and Order Pursuant to 37 C.F.R. § 11.24” (“Notice and Order”) was sent by certified mail (receipt no. 70220410000250014196)¹ 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 and 11.34” (“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 August 18, 2022 Order of the District of Columbia Court of Appeals in *In re Carter*, Case No. 22-BG-534, suspending Respondent from the practice of law in that jurisdiction for 6 months, wherein 90 days would be an actual suspension. 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 August 18, 2022 Order of the District of Columbia Court of Appeals in *In re Carter*, Case No. 22-BG-534, based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1).

9. On August 4, 2023, Respondent filed a “Response To Notice and Order and Opposition to Complaint for Reciprocal Discipline” (“Response to Notice and Order”). In her Response to Notice and Order, Respondent argues that she suffered a deprivation of due process when was

¹ A Notice and Order was initially sent to Respondent on June 9, 2023 but was undeliverable. Consequently, it was resent on July 5, 2023.

not properly served via certified mail. *See* Response to Notice and Order, at 1; “Reply to OED Director’s Response to Respondent’s Response to Notice and Order Pursuant to 37 C.F.R. § 11.24” (“Reply”), at 1-2. She also claims that reciprocal discipline would constitute a grave injustice due to various burdens that discipline would place on her and her clients. *See* Response to Notice and Order, at 2; Reply, at 3-5. She also claims that the discipline sought her is not “identical” to the D.C. discipline and claims that she is entitled to discipline *nunc pro tunc*. *See* Response to Notice and Order, at 1-2; Reply, at 2-3.

10. In accordance with an August 11, 2023 Briefing Order, the OED Director filed the OED Response on September 25, 2023. In that pleading the OED Director denied that Respondent satisfied the requirements necessary to prevent reciprocal discipline and, accordingly, argued that reciprocal discipline was appropriate.

11. Respondent filed her Reply on September 28, 2023, wherein she largely reiterated her arguments in the Response to Notice and Order.

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. 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 6-month suspension is appropriate.

III. ANALYSIS

In her Response to Notice and Order, Respondent argues that she suffered a deprivation of due process when she was not properly certified via certified mail. *See* Response to Notice and Order, at 1; Reply, at 1-2. She also claims that the various personal, professional, and financial burdens that are a consequence of reciprocal discipline constitute a grave injustice. *See* Response to Notice and Order, at 2; Reply, at 3-5. In addition to these arguments, she claims that the discipline sought here is not identical to the discipline received in the D.C. disciplinary proceedings and that any discipline should be served *nunc pro tunc*, in addition to other peripheral arguments. *See* Response to Notice and Order, at 1-2; Reply, at 2-3. The OED Director disputes these assertions and argues that Respondent has not made the required showing under 37 C.F.R. § 11.24(d) and, as a result, a reciprocal suspension is appropriate here.

As explained below, Respondent has wholly failed to carry her specific burdens under 37 C.F.R. § 11.24 and reciprocal discipline is appropriate.

A. Respondent Did Not Suffer a Deprivation of Due Process.

Respondent first argues that she was not properly served via certified mail but, rather, an unsigned and partially opened certified mail envelope was left at one of her residences. *See* Response to Notice and Order, at 1; Reply, at 1-2. However, Respondent misunderstands the due process standard and analysis. As discussed further, below, the relevant consideration here is whether “[t]he procedure *elsewhere* was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.” 37 C.F.R. § 11.24(d)(1)(i) (emphasis added).

Respondent's argument concerns the procedure here, not "elsewhere" and therefore fails successfully argue that she suffered a deprivation of due process.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *In re Karten*, 293 F. App'x 734, 736 (11th Cir. 2008) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). In disciplinary proceedings, an attorney is entitled to due process, such as reasonable notice of the charges before the proceedings commence. *See In re Ruffalo*, 390 U.S. 544, 551 (1968); *In re Cook*, 551 F.3d 542, 549 (6th Cir. 2009) (procedural due process includes fair notice of the charge). Due process requirements are satisfied where a respondent "attended and participated actively in the various hearings, and was afforded an opportunity to present evidence, to testify, to cross-examine witnesses, and to present argument." *In re Squire*, 617 F.3d 461, 467 (6th Cir. 2010) (quoting *Ginger v. Cir. Ct. for Wayne Cnty.*, 372 F.2d 620, 621 (6th Cir. 1967)); *see In re Zdravkovich, supra* (stating that attorney could not satisfy a claim of due process deprivation where he was given notice of the charges against him, was represented by counsel, and had hearing at which counsel had the opportunity to call and cross-examine witnesses, make arguments, and submit evidence). Due process requirements are also met where a respondent is given "an opportunity to respond to the allegations set forth in the complaint, testify at length in [his] own defense, present other witnesses and evidence to support [his] version of events . . . , [and is] able to make objections to the hearing panel's findings and recommendations." *In re Squire*, 617 F.3d at 467 (ellipsis and third alteration in original) (quoting *In re Cook*, 551 F.3d at 550). These standards and considerations, as set forth here, have been repeatedly applied by the USPTO Director in determining whether or not a practitioner has suffered a deprivation of due process under 37 C.F.R. § 11.24(d)(1)(i). *See, e.g., In re Khaliq*, Proceeding No. D2020-28 (USPTO, Mar. 31,

2021); *In re Faro*, Proceeding No. D2019-09 (USPTO, Feb. 21, 2020); *In re Baker*, Proceeding No. D2019-08 (USPTO, Aug. 8, 2019); *In re Chaganti*, Proceeding No. 2015-10 (USPTO, Aug. 4, 2015).

Here, Respondent does not claim that she failed to receive notice of the D.C. disciplinary charges against her, or that she was prevented from actively participating in the underlying disciplinary case. Nor could she make such claims since the underlying D.C. discipline is the result of negotiated discipline, which she agreed to and accepted.

Turning to her related argument that she was not properly served, which is couched under a due process argument, the OED Director disputes that she was not properly served. The OED Director argues that “mail service of a notice and order can be properly effected even without a signature, such as by posting the notice on the front door of the residence.” OED Response, at 9 (citing *Jones v. Flowers*, 547 U.S. 220, 234–35 (2006)). Section 11.24(b) requires that a notice and order be served in accordance with § 11.35, which expressly permits service by mail. *See* 37 C.F.R. § 11.35(a)(2) (“A complaint may be served on a respondent by . . . mailing a copy of the complaint by . . . any delivery service that provides confirmation of delivery or attempted delivery to . . . [a] respondent who is not registered at the last address for the respondent known to the OED Director.”). *See* OED Response at 9-10. Respondent does not provide any authority or argument to counter the OED Director’s position here. Thus, it is concluded that Respondent was properly served under the rules.

Finally, even if her argument that she was improperly served had merit, it is noted that Respondent suffered no prejudice by any claims that she did not sign for or receive the Notice and Order via certified mail. In fact, she received the Notice and Order. She doesn’t dispute it was received. She filed a response to the Notice and Order. Additionally, the OED Director

provided authority for the proposition that her argument should be rejected due to lack of prejudice. *See In re Burbank*, 790 F. App'x. 226, 229 (1st Cir. 2019) (rejecting service- and notice-related argument because respondent “suffered no prejudice since he already had a copy of the [underlying] decision”). *See also In re Jafree*, 759 F.2d 604, 608 (7th Cir. 1985) (“While personal service is required by [state] procedure, it is not mandated by the due process clause . . . [T]he question . . . is not whether there was personal service, but whether respondent was afforded his due process right to adequate notice of and opportunity to respond to the charges against him.”) Respondent does not address those authorities or respond to the OED Director’s argument. Having suffered no prejudice, and Respondent not having addressed or responded to the OED Director’s arguments on this point, it is concluded that she has not suffered a deprivation of due process.

In sum, Respondent has not shown any argument or evidence that she was denied the opportunity to be heard at a meaningful time and in a meaningful manner during the D.C. disciplinary proceedings. Respondent does not claim that she failed to receive notice of the D.C. disciplinary charges against her or that she was prevented from actively participating in the underlying disciplinary case. In fact the record shows just the opposite and that the resulting discipline in that jurisdiction was negotiated with Respondent’s input and approval. Her claims that she suffered a deprivation of due process are denied.

B. Reciprocal Discipline Will Not Result in a Grave Injustice.

Respondent next raises several arguments, premised on the resulting burdens from a reciprocal suspension, and claims those burdens are unfair and constitute a grave injustice. *See* Response to Notice and Order, at 2; Reply, at 3-5. For example, she claims that the imposition of a reciprocal suspension would result in a grave injustice to her clients since the majority of

Respondent's clients are trademark clients and would need to find other counsel during the period of her reciprocal suspension. Response to Notice and Order, at 2. This would also, she argues, create an undue financial burden on her. *See id.* The suspension would also compound financial burdens on her associated with the care of a family member. *See id.* However, as the OED Director notes, these arguments are an improper analysis under 37 C.F.R. § 11.24(d)(1)(iii).

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

Respondent makes no argument relevant to the applicable grave injustice standard. She makes no argument regarding whether a suspension is an appropriate sanction for the underlying state misconduct. She cites no case law, or any authority whatsoever, as to whether the underlying suspension was within the range of penalties for the underlying misconduct. Instead, the arguments she proffers are simply not pertinent to the grave injustice analysis and provide no

basis to prohibit reciprocal discipline.

In addition, even if these considerations were pertinent, Respondent cannot credibly make an argument regarding grave injustice on the basis of the resulting hardships. Respondent participated in and agreed to the underlying state discipline. Additionally, she acknowledged in the D.C. proceedings that the “negotiated [District of Columbia] disposition . . . may affect her present and future ability to practice law” and bar memberships in other jurisdictions.” Report, at 9. Consequently, her various complaints about the hardships and fairness of imposing reciprocal discipline are both undercut by her own agreement to that discipline, and acknowledgement of the resulting hardships, during the D.C. proceedings.

Lastly, to the extent that Respondent claims that a grave injustice would result from reciprocal discipline here due to her having no previous discipline and on the basis that she is a respected young attorney in the community who assists in pro bono trademark matters and is a professor, those arguments again ignore the grave injustice standard, which focuses on the “fit” of the underlying discipline to the misconduct. Additionally, again, Respondent agreed to the discipline at issue. Further, her disciplinary record was already considered as a mitigating circumstance by the District of Columbia Court of Appeals when accepting the agreed-to discipline, who “concluded that the agreed-upon sanction [was] justified and not unduly lenient.” See Report at 10, 14. Because mitigating factors, like her lack of previous discipline, was already considered, Respondent may not rely on that same mitigating factor to further reduce her sanction in this proceeding. See *In re Wisz*, Proceeding No. D2022-02 at 9 (USPTO May 23, 2022) (“[M]itigating factors were already considered in connection with the [original] suspension. There is no authority . . . to consider them a second time in the context of these reciprocal proceeding[s] to further reduce the penalty.”); see also *In re Kramer*, 282 F.3d 721,

727 (9th Cir. 2002) (“In reviewing a reciprocal disbarment, [the Director] do[es] not re-try an attorney for misconduct.”).

C. Respondent’s Other Arguments Have No Merit.

Respondent raises several other arguments in an attempt to negate or reduce reciprocal discipline here. For reasons set forth below, those arguments simply do not provide any basis to prevent the imposition of reciprocal discipline here.

1. **USPTO’s Reciprocal Discipline is not Required to be Identical.**

Respondent first notes that, under the USPTO’s rules, Respondent will be required to petition for reinstatement but that there is no such requirement to petition for reinstatement in the District of Columbia. Response to Notice and Order, at 1; Reply, at 2-3. Thus, she argues that the discipline sought by the OED Director is not identical to the D.C. discipline.

Respondent correctly notes that reinstatement is generally automatic under the D.C. disciplinary rules after the period of suspension period is complete. *See* D.C. Bar Rule XI § 16(c). Pursuant to USPTO’s regulation, however, a “suspended practitioner will not be automatically reinstated at the end of his or her period of . . . suspension.” 37 C.F.R. § 11.58(a). A “suspended practitioner must comply with the provisions of [§ 11.58] and § 11.60 to be reinstated.” *Id.* Section 11.60, which allows petitions for reinstatement, also does not contemplate automatic reinstitution when a suspension ends. *See* 37 C.F.R. § 11.60(a) (“An excluded or suspended practitioner shall not resume the practice of patent, trademark, or other non-patent matters before the Office until reinstated.”); *id.* § 11.60(b) (“An excluded or suspended practitioner shall be eligible to petition for reinstatement only upon expiration of the period of suspension or exclusion and the practitioner’s full compliance with § 11.58.”).

Despite these procedural differences, the requested reciprocal discipline sought in these proceedings is as close to identical as possible under USPTO regulations. And as the OED Director noted, courts recognize that “reciprocal discipline . . . will be identical—or as close to identical as [local] rules and the circumstances permit—to the discipline imposed by the prior court or other disciplinary authority.” *In re Roman*, 601 F.3d 189, 192 (2d Cir. 2010) (emphasis added); *see also In re Winston*, 917 A.2d 629, 630 (D.C. 2007) (ordering five-year suspension as reciprocal discipline, which was “virtually identical” to resignation in California, because “identical discipline [was] not available in th[e] case since [D.C.] rules do not allow an attorney to resign while charges are pending”). This is the case here where a reciprocal 6 month suspension, with allowance to apply for reinstatement prior to the expiration of that suspension period, is as close to identical to the D.C. rules as possible. As a result, her argument does not provide a basis for negating reciprocal discipline here.

2. Respondent Has Not Satisfied the Requirements for Discipline to be Imposed *Nunc Pro Tunc*.

Respondent next argues that she already served a suspension in 2022 and, in doing so, did not practice at all before the Office from September 18, 2022 through December 18, 2022. *See* Response to Notice and Order, at 1; Reply, at 3. She claims that, since she served her D.C. suspension “concurrently” before the USPTO, it would be unfair to require her to serve it again. *See* Response to Notice and Order, at 1; Reply, at 3. In short, she is asking that any suspension period be imposed by the USPTO *nunc pro tunc*. However, the USPTO’s rules permit concurrent reciprocal discipline only in very prescribed circumstances and, as noted below, Respondent’s arguments do not sufficiently satisfy those requirements.

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 [disbarment] 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 include, but are 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(c)(1)-(3). 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*. *See In re Levine*, Proceeding No. 2015-21 (USPTO, Aug. 1, 2016); *see also In re Plache*, Proceeding No. D2014-20, at 6 (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.”).

Here, Respondent has plainly failed to allege compliance or prove that she satisfied any of the conditions stated in USPTO’s reciprocal discipline rule. Simply ceasing practice before the USPTO, as she claims, without satisfying the other requirements of § 11.24(f), is an insufficient basis for permitting *nunc pro tunc* treatment. *See In re Plache*, at 6. Here, Respondent acknowledges she did not provide notice to the USPTO of her D.C. suspension because she was “unaware that USPTO had a separate ‘disciplinary board.’” Reply, at 3. She claims that her public filings with D.C. should be sufficient to satisfy any notice requirements however. *See id.* However, practitioners before the USPTO are charged with notice of the disciplinary rules and, as stated, requirements for *nunc pro tunc* treatment of discipline are strictly enforced. As a result,

because she has not satisfied all of the requirements under § 11.24(f), reciprocal discipline may not be imposed *nunc pro tunc* here.

3. Respondent's Collateral Attacks on Underlying Proceedings are Without Merit.

Respondent lastly raised a series of challenges in her Reply filing that bear no relevance to the factors set forth in § 11.24. She claims that the OED Director has no personal knowledge of the statements or negotiations, asserts that the negotiated discipline was later amended due to inaccuracies in background facts, and argues that the negotiated discipline was motivated only by conservation of legal resources and not merits of the underlying discipline. Reply, at 1, 4. But these claims are little more than collateral attacks on the underlying proceedings, which is not a proper analysis or challenge to reciprocal discipline. *See In re Rheinstein*, Proceeding No. D2021-06, at 13 (“Reciprocal disciplinary proceedings are not in any sense *de novo* proceedings.”); *In re Barach*, 540 F.3d 82, 87 (1st Cir. 2008) (“A proceeding designed to weigh the advisability of reciprocal discipline is not a vehicle for retrying the original disciplinary proceeding.”) (citing *In re Williams*, 398 F.3d 116, 119 (1st Cir. 2005)). Thus, they do not provide a basis for defeating reciprocal discipline here.

In addition, Respondent also claims that the D.C. matter is irrelevant to practice of trademark law. *See* Reply, at 1. This is incorrect. Respondent unquestionably engages in practice before the Office, as defined by the USPTO's regulations. *See* 35 U.S.C. § 11.14. As such, she is subject to the jurisdiction of the Office. *See* 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. § 11.19. Further, the Office's regulations specifically allow for reciprocal discipline for practitioners like Respondent, where misconduct is predicated on having been disciplined by a duly constituted authority of a State. *See* 37 C.F.R. §§ 11.804(h) and 11.24. Thus, regardless of Respondent's feelings of relevance between her state discipline and her

practice before the Office, the USPTO's rules specifically allow for disciplinary jurisdiction over Respondent's actions, both generally and in the context of reciprocal discipline for underlying state misconduct in non-IP related matters.

ORDER

ACCORDINGLY, it is ORDERED that:

1. Respondent is suspended from the practice of trademark and other non-patent law before the USPTO for six months, commencing on the date of this Final Order. Respondent shall be permitted to file a petition for reinstatement after ninety (90) days;
2. Respondent shall remain excluded from the practice of trademark and other non-patent law before the USPTO until the OED Director grants a petition requesting Respondent's reinstatement pursuant to 37 C.F.R. § 11.60;
3. The OED Director shall publish a notice in the *Official Gazette* materially consistent with the following:

Notice of Suspension

This notice concerns Jehan A. Carter of Washington D.C., who is authorized to practice before the United States Patent and Trademark Office ("USPTO") in trademark and non-patent matters. In a reciprocal disciplinary proceeding, the Director of the USPTO has ordered that Ms. Carter be suspended from practice before the USPTO for six months in trademark and other non-patent matters for violating 37 C.F.R. § 11.804(h), predicated upon being suspended from the practice of law by a duly constituted authority of a State. Ms. Carter may petition for reinstatement after she serves ninety (90) days of her suspension. Ms. Carter is not authorized to practice before the USPTO in patent matters.

While petitioning to appear *pro hac vice* in a California case, Ms. Carter misrepresented information on her law firm's website, leading to violations of California Business and Professions Code § 6106 (committing an act involving moral turpitude and dishonesty; District of Columbia Rule of Professional Conduct 8.1(a) (in connection with a disciplinary matter, knowingly making a false statement of fact); and

District of Columbia Rule of Professional Conduct 8.4(c) (engaging in conduct involving dishonesty).

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

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

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

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.

Date

Users, Berdan, David
Digitally signed by Users, Berdan, David
Date: 2024.01.03
06:52:46 -05'00'

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

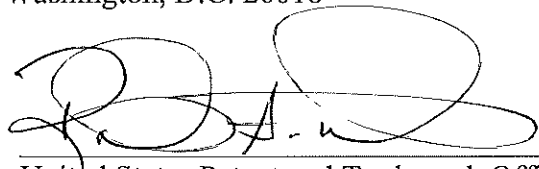
CERTIFICATE OF SERVICE

I hereby certify that the Final Order Pursuant to 37 C.F.R. § 11.24 was mailed by first-class certified mail, return receipt requested, on this day to the Respondent to where the OED Director reasonably believes Respondent receives mail:

Ms. Jehan Carter
1666 Connecticut Ave, NW, Suite 100
Washington, D.C. 20009

Ms. Jehan Carter
3107 18th Street, NE
Washington, D.C. 20018

1/3/2024
Date


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