

**IN THE SUPREME COURT OF PENNSYLVANIA**

In the Matter of : No. 2499 Disciplinary Docket No. 3  
: :  
LOUIS ALFRED PICCONE : Board File No. C1-18-177  
: :  
: (United States Patent and Trademark  
: Office, Proceeding No. D2015-06)  
: :  
: Attorney Reg. No. 55347  
: :  
: (Out of State)

**ORDER**

**PER CURIAM**

**AND NOW**, this 14<sup>th</sup> day of December, 2018, upon consideration of the responses to a Notice and Order directing Louis Alfred Piccone to provide reasons against the imposition of a three-year suspension reciprocal to that imposed by the United States Patent and Trademark Office, Louis Alfred Piccone is suspended from the practice of law in this Commonwealth for three years, and he shall comply with all the provisions of Pa.R.D.E. 217.

Respondent's Request for Court-Ordered Subpoena is denied and his Request for Leave to File Sur-Reply is granted.

A True Copy Patricia Nicola  
As Of 12/14/2018

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania



THE DISCIPLINARY BOARD  
OF THE  
SUPREME COURT OF PENNSYLVANIA

Paul J. Killion, Esquire  
Chief Disciplinary Counsel  
601 Commonwealth Avenue  
Suite 2700  
P.O. Box 62485  
Harrisburg, PA 17106-2485  
(717) 783-0990  
(717) 783-4963 (Fax)



Paul J. Burgoyne, Esquire  
Deputy Chief Disciplinary Counsel

Disciplinary Counsels-in-Charge  
District I – Anthony P. Sodroski  
District II – Raymond S. Wierciszewski  
District III – Ramona M. Mariani  
District IV – Angelea A. Mitas

CHIEF DISCIPLINARY COUNSEL  
[www.padisiplinaryboard.org](http://www.padisiplinaryboard.org)

June 15, 2018

RECEIVED  
6/18/2018  
PA Disciplinary Board  
Office of the Secretary

Prothonotary  
Supreme Court of Pennsylvania  
Western District Office  
801 City-County Building  
Pittsburgh, PA 15219

Attention: John A. Vaskov, Esq.  
Deputy Prothonotary

102 TB 2018

RE: Reciprocal Discipline Under  
Rule 216, Pa.R.D.E.  
Louis Alfred Piccone, Esquire  
Attorney Registration No. 55347  
(File Reference #C1-18-177)

Dear Prothonotary:

By Final Order of the General Counsel of the United States Patent and Trademark Office ("USPTO-GC") dated May 25, 2017, on delegated authority by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office ("USPTO"), Louis Alfred Piccone ("Respondent") was suspended from the practice of all patent, trademark, and other non-patent matters before the USPTO for a period of three years. *In the Matter of Louis A. Piccone*, USPTO Proceeding No. D2015-06. Attached, as Attachment 1, is a certified copy of the Final Order.<sup>1</sup> By "Final Order Under 37

<sup>1</sup> The Final Order affirmed the Initial Decision of Susan L. Biro, Chief Administrative Law Judge of the United States Environmental Protection Agency authorized to hear cases pending before the United States Department of Commerce, Patent and

John A. Vaskov, Esquire  
June 14, 2018  
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C.F.R. § 11.56(c)," dated February 9, 2018, the USPTO-GC denied Respondent's request for reconsideration of the Final Order dated May 25, 2017. Attached, as Attachment 3, is a certified copy of the "Final Order Under 37 C.F.R. § 11.56(c)." Registration records indicate that Respondent was admitted to practice law in Pennsylvania on June 15, 1989, under the attorney registration number shown above, and is registered as "active." Imposition of reciprocal discipline under Rule 216, Pa.R.D.E., appears appropriate.

Pursuant to Rule 216, Pa.R.D.E., the Court should issue an order directing the respondent-attorney to show any reason why the imposition of identical or comparable discipline in this Commonwealth would be unwarranted. Enclosed is a proposed form of an order appropriate for that purpose.

Rule 216 provides that, upon issuance of such an order, "the Board shall cause this notice" (including a copy of the order of the other jurisdiction) to be served upon the respondent-attorney by mailing it to the address furnished in the attorney's last registration statement. Those addresses are:

519 Kirchner Rd.  
Dalton, MA 01226

593 McGill St.  
Hawkesbury, Ontario  
Canada K6A-1R1

By letter dated March 11, 2018, Respondent *untimely* reported his suspension from practice before the USPTO to the Secretary of the Pennsylvania Disciplinary Board. See Pa.R.D.E. 216(e) (requiring an attorney suspended by another authority to report the suspension to the Secretary of the Board "within 20 days after the date of the order, judgment or directive imposing

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Trademark Office, pursuant to an Interagency Agreement effective for a period beginning May 15, 2014. A certified copy of the Initial Decision is attached as Attachment 2.

John A. Vaskov, Esquire  
June 14, 2018  
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or confirming the discipline ...."). In that letter, Respondent confirmed that the address in Canada is current.<sup>2</sup>

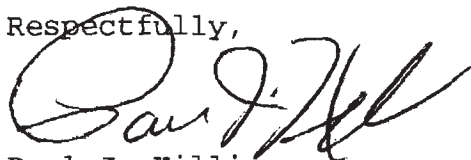
Respondent is not represented by counsel in this proceeding.

Respondent has no discipline of record in Pennsylvania.

This letter should serve as notice to Respondent that a conforming copy of all filings with the Court is to be served on Michael D. Gottsch, Disciplinary Counsel, District I Office, Office of Disciplinary Counsel, 1601 Market Street, Suite 3320, Philadelphia, PA 19103.

I certify that I have this day sent a copy of this letter and its attachments to Respondent, addressed to the two addresses listed above. In addition, I am providing copies of this letter and its attachments to individuals as indicated below.

Respectfully,



Paul J. Killion  
Chief Disciplinary Counsel

MDG:rbc

Enclosures

cc: (w/encls.)

Julia Frankston-Morris, Esq., Secretary, Disciplinary Board

Louis Alfred Piccone, Esquire, Respondent

(w/o encls.)

Michael D. Gottsch, Disciplinary Counsel

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<sup>2</sup> In his letter, Respondent asks that "any reciprocal actions be delayed pending resolution of my appeal before the U.S. Courts so as to narrow any issues which may be relevant to practice before your court." The "deferment" provision of Pa.R.D.E. 216(b) is limited to the situation where the discipline imposed in the original jurisdiction has been "stayed," which is not the case here. In any event, any request for deferment must be made to the Court.

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of                   : No.     Disciplinary Docket No. 3  
  :  
LOUIS ALFRED PICCONE            : Board File No. C1-18-177  
  :  
  : (United States Patent and Trademark  
  : Office, Proceeding No. D2015-06)  
  :  
  : Attorney Reg. No. 55347  
  :  
  : (Out of State)

NOTICE AND ORDER

PER CURIAM:

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, having been suspended from the practice of patent, trademark, and other non-patent law before the United States Patent and Trademark Office for a period of three years by the attached Final Order of the United States Patent and Trademark Office, Louis Alfred Piccone is directed to inform this Court within 30 days from service of this Notice of any grounds against the imposition of the identical or comparable discipline in this Commonwealth.

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

2-28-2018

(Date)

I hereby certify that this is a true and accurate copy of the Final Order in Disciplinary Proceeding No. D2015-06, *In the Matter of Louis A. Piccone*, issued May 25, 2017.



By authority of the  
DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

*Harold Robinson*

Certifying Officer.

Attachment 1

**BEFORE THE UNDER SECRETARY OF COMMERCE  
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE  
UNITED STATES PATENT AND TRADEMARK OFFICE**

**In the Matter of** )  
 )  
**Louis A. Piccone,** )  
 )  
**Appellant.** )  
\_\_\_\_\_ )

Proceeding No. D2015-06

**Final Order**

Pursuant to 37 C.F.R. § 11.55, Louis A. Piccone ("Appellant") has appealed the June 16, 2016 Initial Decision of Administrative Law Judge ("ALJ") Susan L. Biro in this matter to the Director of the United States Patent and Trademark Office ("USPTO" or "Agency"). In that Initial Decision, the ALJ concluded that Appellant violated the following provisions of the Code of Professional Responsibility: 37 C.F.R. §§ 10.23(a) (prohibiting disreputable or gross misconduct) (A.33, A.35, A.39, A.42, A.53); 10.23(b)(4) (prohibiting conduct involving dishonest, fraud, deceit, or misrepresentation)(A.34, 35); 10.23(b)(5)(prohibiting conduct that is prejudicial to the administration of justice) (A.34, A.35, A.39, A.42, A.53; A.60); 10.77(b) (prohibit handling a legal matter without preparation adequate in the circumstances) (A.35); 10.77(c) (prohibit neglecting a legal matter entrusted to the practitioner) (A.53, A.60); 10.84(a)(1) (a practitioner shall not intentionally fail to seek the lawful objectives of a client through reasonably available means permitted by law and the Disciplinary Rules) (A.35). The ALJ also concluded that Appellant violated the following USPTO Rules of Professional Conduct: 37 C.F.R. § 11.505 (Unauthorized Practice of Law) (A.21, A.24, A.42, A.48). After considering these violations and the relevant factors under 37 C.F.R. § 11.549(b), the ALJ ordered that a three (3) year suspension from the practice before the USPTO. (A.68).



In this appeal, briefs have been submitted by Appellant and the Director of the USPTO Office of Enrollment and Discipline ("OED Director"). For the reasons set forth below, the USPTO Director<sup>1</sup> affirms the ALJ's initial decision.

## I. FINDINGS OF FACT

### Background

1. Appellant was admitted to the bar of the Commonwealth of Pennsylvania on June 15, 1989. (A.4821).
2. He registered as a patent attorney before the USPTO on August 12, 1997. (A.3171).
3. Appellant submitted multiple documents in cases in Illinois, Massachusetts, and New Hampshire where it indicated that his *pro hac vice* admissions were pending. (A.3372; A.3841-2, A.3814-42; A.3855-78).
4. For various periods of time on three occasions between 2011 and 2014, Appellant was administratively suspended by the Pennsylvania bar for not satisfying his continuing legal education ("CLE") requirements or not paying his bar dues. (A.3174-3175).
5. Around 2004 or 2005, Appellant moved to Massachusetts. (Tr. at 417-18).
6. In January 2008, while living in Massachusetts, Appellant was charged with felony kidnapping following allegations of child abuse. (A.3806; Tr. 30). He was incarcerated between mid-February 2008 and mid-March 2008 and was then placed under house arrest. (A.3806; Tr. at 402, 420). The charges were later dismissed but the apparent impacts from them included the

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<sup>1</sup> The regulations at 37 C.F.R. § 11.1 define "USPTO Director" to mean "the Director of the United States Patent and Trademark Office, or an employee of the Office delegated authority to act for the Director of the United States Patent and Trademark Office in matters arising under this part." By Delegation of Authority No. 06-01 dated October 4, 2006, the Undersecretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office delegated to the General Counsel the authority to "exercise, pursuant to 35 U.S.C. § 3(a), the discretion reserved to the Undersecretary and Director in Parts 10 and 11 of 37 C.F.R."

fact that Appellant's wife left Massachusetts for Russia in early 2008 and, he claims, that she has refused to come back to the United States. (A.6; Tr. at 402, 420).

7. Appellant began to maintain a second residence in Canada, but he and his wife still owns their house in Massachusetts, Appellant still carries a Massachusetts driver's license, and he continued to use his Massachusetts address in his Massachusetts Bar application and various legal proceedings in which he purported to represent clients, including most of the proceedings at issue in this disciplinary matter. (Tr. at 421-22; A.2337, A.2405, A.2478; A.2764; A.2799; A.2810; A.2829; A.2863; A.2922; A.2940; A.2949-2951; A.2999).

8. After the filing and subsequent dismissal of the criminal charges against him, Appellant began representing people all around the country, "shift[ing] the majority of the focus of [his] practice to civil rights cases." (Tr. at 412, 419).

#### Practice in Massachusetts

9. Although he lived and practiced in Massachusetts for several years, Appellant was not and is not a member of that state's bar. He applied for admission on motion on November 17, 2010. (A. 3027-3076; A.4056; A.4068).

10. The Board of Bar Examiners denied Appellant's application in a letter dated February 21, 2012. (A.3013; A.4059-4060). The Board "concluded that [Appellant's] constant private practice in Massachusetts after May 2006 was unauthorized (and therefore illegal) (i) as he was not admitted to the Massachusetts bar at any point and (ii) as at least two well-respected judges (one state and one federal) located in Massachusetts had concluded that the [Appellant's] Massachusetts legal practice was both unauthorized and improper." (A.4959-4960). In the decision by the U.S. Magistrate Judge Kenneth P. Neiman of the U.S. District Court, District of Massachusetts, the court denied Appellant's request for admission *pro hac vice* in *Sheryl Pease*,

*et al. v Karen Burns, et al.*, 679 F.Supp.2d 161 (D. Mass 2010) based on several prior matters<sup>2</sup> where Appellant engaged in the unauthorized practice of law. (A.3053-3057). In the decision by Judge Richard A. Simons of the Berkshire County Probate and Family Court, the court vacated a prior decision to allow Appellant to practice *pro hac vice* in *In the Matter of the Estate of Jason Michael Litchfield*, Docket No. 02P-0585AD, due to Appellant's initiation of ten lawsuits in Massachusetts without having sought admission to the Massachusetts Bar. (A3065).

11. Appellant appealed the Board's decision on but the appeal was denied without hearing on March 26, 2014, by Massachusetts' Supreme Judicial Court. (A.3013; A.4054).

#### Practice in Illinois

12. On June 22, 2011, Respondent signed and filed the complaint in *Hankins v. Burton*, No. 4:11-cv-04048-SLD-JEH (C.D. Ill.). (A.2405; A.2421-36; A.5688). Below Appellant's electronic signature, the complaint states "Attorney for Plaintiff" and "Pending Admission *Pro Hac Vice*." (A.2436; Tr. at 295).

13. Respondent had not submitted a petition to be admitted *pro hac vice* prior to filing the complaint. (Tr. at 297-298).

14. On June 23, 2011, the Illinois District Court sent Appellant the paperwork necessary to seek *pro hac vice* admission, but Respondent never submitted the necessary motion. (Tr. at 298). On October 11, 2011, the Court entered an Order directing "Plaintiff or Plaintiff's Attorney to comply" with the Court's *pro hac vice* admission requirements, "or the case will be dismissed with prejudice." (A.3345; Tr. at 299). Despite the October 11, 2011, Order, Appellant

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<sup>2</sup> For example, in *Babeu v. Linker*, Civil Action No. 08-30127-MAP ("Babeu I") Appellant signed the complaint "pending admission pro hac vice" but failed to file a formal motion with the court. In *Babeu v. Linker*, Civil Action No. 09-30045-MAP ("Babeu II") Plaintiff filed a substantially similar complaint that was previously rejected, with the Appellant's assistance. In *Hohn v. Burke*, Civil Action No. 09-30143-MAP Plaintiff submitted a complaint pro se but indicated that it was "prepared with the aid of Louis A. Piccone, Esq.," who is "[a]dmitted in Pa and Patent Bar Only" and living in "Dalton, MA."

did not submit a motion to be admitted *pro hac vice*. (Tr. at 299-300). Instead, on October 24, 2011, the plaintiff in *Hankins* filed a "Notice of Pro Se Status" to "advise[] the court that she will proceed Pro Se, pending finding an attorney capable of representing her." (A.2437; A.3345).

15. Despite the plaintiff's notice of pro se status, despite the Court's Order to comply with its *pro hac vice* requirements, and despite the subsequent suspension of his license by the Pennsylvania bar, Appellant testified that he continued to advise and represent the plaintiff in *Hankins*. (Tr. at 301-302).

16. On March 12, 2014, the Court in *Hankins* adopted a magistrate judge's denial of entry of default against the sole remaining defendant and granted the defendant's motion to dismiss. (A.2438-51). A Notice of Appeal from the Court's order granting dismissal was filed on April 14, 2014. (A.2452-56). Although signed by the plaintiff, the Notice also contained the notation "THIS PLEADING PREPARED WITH THE AID OF LOUIS A. PICCONE." (A.2455). Appellant conceded he assisted the plaintiff with her case by preparing the notice of appeal while he was not authorized to practice law by Pennsylvania and not admitted *pro hac vice* to the Central District of Illinois. (Tr. at 302-303).

#### Practice in Iowa

17. On February 28, 2014, while Appellant was administratively suspended by the Pennsylvania bar, a complaint was filed in the District Court for the Northern District of Iowa in an action styled *Nunley v. Erdmann*, No. 5:14-cv-04016-LTS (N.D. Iowa). (A.2594-2615). Although the plaintiff Nunley signed the complaint pro se, plaintiff testified at a deposition that Appellant wrote the complaint. (A.2615; A.3672, A.3692-93, A.3714-15).

**Practice before the USPTO**

18. Appellant practiced before the USPTO as a trademark attorney and as the attorney-of-record for Lawless America Association. (A.3179). Appellant filed Trademark Application No. 85871932 on March 9, 2013, for the mark "Lawless America." (A.3176-3187; A.3264; Tr. at 255-256). Appellant is identified as the attorney-of-record and correspondent for the application. (A.2342-2343; Tr. at 257-258). At the time, Appellant was authorized to practice law based on his active license in Pennsylvania. (Tr. at 253, 255-56).

19. On June 27, 2013, the USPTO sent an Office Action concerning the Lawless application at Appellant's email address, requiring a response to the Office Action within six months of the date it was sent. (A.2348-2351; Tr. at 259-260, 412). A second Office Action followed on August 15, 2013, again sent to Appellant's email address and requiring a response within six months of the date it was sent. (A.2360-2365; Tr. at 260). Appellant sent a draft of a Response to Office Action to Mr. Windsor on February 12, 2014. (A.3303-3304; A.3309-3311). Appellant "participated heavily in the drafting" of the Response to Office Action filed on behalf of Mr. Windsor on February 18, 2014. (Tr. at 265, 273). Mr. Windsor did not draft the response. (A.3000). The draft contained both legal analysis and argument. (A.2366-2368). Appellant also remained the attorney-of-record at the time the Response to Office Action was submitted. (Tr. at 287). Further, the USPTO continued to send documents to him. (A.2382-2388; Tr. at 410-412).

**OED Disciplinary Proceeding**

20. On December 11, 2013, the OED Director opened an investigation into alleged misconduct by Mr. Piccone. (Tr. at 82-83)

21. The OED Director sent Appellant four (4) Requests for Information during the investigatory phase of the matter. (A.3556-3566 (October 27, 2014); A.4118-4123 (Feb. 19, 2014); A.4124-4134 (April 9, 2014); A.4137-4162 (June 25, 2014)).

22. Ultimately, on December 10, 2014, the OED Director issued a Complaint and Notice of Proceedings against Appellant under 35 U.S.C. § 2(b)(2)(D), § 32, and 37 C.F.R. §§ 11.32, 11.34. (A.84-111).

23. In the Complaint, the Appellant is charged with nine counts of professional misconduct through violations of the USPTO Code of Professional Responsibility ("PTO Code"), 37 C.F.R. §§ 10.20-10.112, and the USPTO Rules of Professional Conduct ("PTO Rules"), 37 C.F.R. §§ 11.101 through 11.901.2. (A87-108). Count 1 stems from Appellant's practice before the USPTO while his Pennsylvania law license was suspended (A.87-89); Counts 2 to 5 and 7 to 9 arise out of Appellant's conduct in various federal district courts where he attempted to represent plaintiffs in civil rights cases (A.89-96; A.102-108); and Count 6 involves Appellant's inadequate representation of a plaintiff in a contract dispute. (A.97-102).

24. After he was granted an extension of time to file his Answer, (A.116), Appellant filed four (4) pre-Answer motions on January 16, 2015,<sup>3</sup> seeking various forms of relief, such as to dismiss the case and to declare the matter a "contested" case. (A.118-133). The ALJ denied these motions on February 3, 2015. (A.159-166).

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<sup>3</sup> The four motions filed by Appellant were: 1) Respondent Louis A. Piccone's Motion to [sic] Allow the Filing of a Motion to Dismiss Prior to the Filing of an Answer; 2) Respondent Louis A. Piccone's Motion to Declare Matter Contested Case; 3) Respondent Louis A. Piccone's Motion to [sic] Deny Any Leave to Amend the Complaint Against Respondent to Include Additional Charges of Professional Misconduct Arising From Matters Which the USPTO has Already Had the Opportunity to Investigate and Which Could Have Been Brought in the Complaint Already Filed; and 4) Respondent Louis A. Piccone's Motion to Order the Patent and Trademark Office to Issue Him a Password So That He May Change His Address.

25. Appellant filed his Answer to the Complaint on February 9, 2015, denying liability for all violations and raising twenty affirmative defenses. (A.167-177).

26. On February 9, 2015, Appellant also filed "Respondent Louis A. Piccone's Motion to Dismiss All Counts of the December 10, 2014, Complaint." (A.178-181). In support of his motion, among the many arguments argued by Appellant, he alleges that the Complaint was invalid because the Deputy OED Director improperly signed the complaint rather than the OED Director, who was allegedly the only person with the authority to sign a complaint initiating disciplinary charges. (A.179). On March 3, 2015, the ALJ denied Appellant's motion based on a declaration signed by the OED Director supporting his Deputy's authority to sign for him in this case. (A.259-262). The ALJ concluded that the Deputy was not exercising his own authority, but rather "signed the complaint *on behalf of* Director Covey, and thereby sought to -- and did -- indicate the Director's approval of this exercise of the Director's own, uncontested, authority." (A.260).

27. On March 12, 2015, Appellant submitted "Respondent Louis A. Piccone's Motion for the Administrative Law Judge to Reconsider Her March 3, 2015, Decision to Deny Respondent's Motion to Dismiss Allcounts [sic] of the December 10, 2014 Complaint." (A.278-290). In that motion, Appellant again argued that the Deputy OED Director improperly signed the complaint due to lack of authority. (A.384). On March 26, 2015, the ALJ entered an "Order Denying Respondent's Motion for Reconsideration" (A.382-388) that again denied Appellant's argument due to lack of newly discovered evidence or manifest errors of law or fact. (A.385-386).

28. On March, 12, 2015, Appellant submitted "Respondent Louis A. Piccone's Motion for Discoveryrelating [sic] To The Attendance of Witnesses and To The Production Of Documents And An Extension Of Time On All Deadline In The Scheduling Order," (A.291-294), and

"Respondent Louis A. Piccone's Motion For Discovery relating [sic] To The Attendance Of Witnesses, To The Production Of Documents, And To Responses To Interrogatories." (A.295-302). On March 20, 2015, the ALJ entered an "Order Denying Appellant's Motion for an Extension of Time to File Answer [sic] and Motion For Discovery Relating to the Attendance of Witnesses, to the Production of Documents, and to Responses to Interrogatories" (A.361-365), which found that prior to the parties' exchange of their respective Prehearing Statements, a request of additional discovery is not reasonable. (A.364).

29. On March 17, 2015, Appellant submitted "Motion to Dismiss All Charges of Misconduct for [sic] Want to Territorial and/or Subject Matter Jurisdiction." (A.340-349), which argued that the USPTO had no jurisdiction to hear the matter because he was "outside of the territorial boundaries of the United States and outside of the territorial boundaries of the United States Patent and Trademark Office (USPTO) to enforce it's [sic] regulations" during the time when he allegedly provided aid to the pro se litigant. (A.341). On March 20, 2015, in "Order Denying Motion to Dismiss All Charged of Misconduct for [sic] Want of Territorial and/or Subject Matter Jurisdiction." (A.351-354), the ALJ denied the Motion finding that subject matter jurisdiction exists pursuant to an Interagency Agreement whereby the USPTO Director appointed the ALJ as the hearing officer in the disciplinary proceeding. (A.352). Also, the ALJ found that personal jurisdiction exists because the Appellant's registered status and practice before the USPTO establishes more than the necessary minimum contacts with the USPTO, and thus the ALJ. (A.352).

30. On April 24, 2015, Appellant filed "Respondent Louis A. Piccone's Renewed Motion for Discovery relating [sic] To The Attendance Of Witnesses, To the Production of Documents, and to Responses to Interrogatories." (A.646-653). On May 4, 2015, the ALJ entered "Order Denying



Respondent's Renewed Motion for Discovery Relating to the Attendance of Witnesses, to the Production of Documents, and to Responses to Interrogatories" (A.973-976), which again denied Appellant's attempt to conduct discovery because it did not detail how the discovery sought is reasonable and relevant, and would unduly burden the OED Director to fully comply with the request. (A.976).

31. On May 7, 2015, Appellant filed an Amended Answer. (A.988-1002).

32. By Order dated June 5, 2015 issued by the ALJ, all of Appellant's affirmative defenses, except for his statute of limitations defense, were stricken from the record. (A.1202-1211).

33. On August 25, 2015, the Tribunal granted Appellant's motion for additional time to conduct discovery in support of his statute of limitations defense. (A.1351-1358). This allowed Respondent to depose Marilyn J. Wellington, an official from the Massachusetts Board of Bar Examiners (A.1540-1677) and to submit an interrogatory to the OED Director. (A.1320-1331). The OED Director answered the interrogatory on September 15, 2015 (A.1370-1374), and, following the Tribunal's order granting Appellant's motion to compel (A.1465-1469), on October 9, 2015. (A.1678-1690).

34. On October 7, 2015, the OED filed "OED Director's Motion In Limine" requesting that the ALJ refuse the admission of any evidence obtained as a result of a seven subpoenas for the testimony of several USPTO employees. (A.1474-1480). The Appellant opposed the Motion In Limine on October 9, 2015, and filed "Opposition to the OED Director's Motion in Limine And/Or Request for Reconsideration" (A.1691-1694), which the ALJ construed as a motion for reconsideration because it had already ruled on the OED Director's Motion. The ALJ denied Appellant's October 9, 2015, request for reconsideration (A.1695-1698) because Appellant made no attempt to comply with the requirement under 37 C.F.R. § 11.38 to obtain from the

Tribunal permission to subpoena for hearing his proposed witnesses, and would have required Appellant to show that the testimony of the witnesses sought would be material and relevant to disputed issues in the proceeding. (A.1696).

35. On October 13-14, 2015, the hearing in this matter was held in Washington, D.C. (A.3).

36. Appellant (A.2015-2164) and the OED Director (A.1822-1866) filed their initial post-hearing briefs on January 22, 2016. The OED Director timely filed his reply brief on February 19, 2016. (A.2165-2189). Appellant missed the deadline for filing his reply brief. He eventually filed the document on February 29, 2016. (A.2195-2260). Nothing further was filed thereafter, and the record closed with that filing.

37. After a hearing, the ALJ issued a decision on June 16, 2016. (A.1-70).

## II. INITIAL DECISION BY ADMINISTRATIVE LAW JUDGE AND APPEAL

On June 16, 2016, the ALJ issued an Initial Decision and Order in Proceeding No. D2015-06. (A.1-A.70). That decision exhaustively detailed the procedural background of the disciplinary proceedings, made detailed findings of fact, and issued conclusions of law with regard to the 9 counts of professional misconduct set forth in the disciplinary complaint. (*Id.*) In sum, the ALJ concluded that Appellant engaged in a pattern of misconduct that violated multiple provisions of the PTO Code and the PTO Rules<sup>4</sup> when he engaged in the unauthorized practice of law, failed seek or adhere to *pro hac vice* admission standards, failed to comply with court orders, neglected client matters, and made false statements to the court. As a result of these violations, and after considering the relevant factors under 37 C.F.R. § 11.54(b), the ALJ ordered that Appellant should be suspended for a period of three (3) years from practice before the USPTO. (A.68).

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<sup>4</sup>Effective May 3, 2013, the USPTO Rules of Professional Conduct, 37 C.F.R. §§ 11.101 through 11.901, apply to persons who practice before the Office. Prior to May 3, 2013, the USPTO Code of Professional Responsibility applied to persons practicing before the Office. *See* 37 C.F.R. §§ 10.20-10.112.

On July 26, 2016, Appellant filed a pleading entitled "Mr. Louis A. Piccone's Appeal of the ALJ's Initial Decision of June 21, 2016." In response, on September 7, 2016, the OED Director filed the "OED Director's Emergency Motion For The USPTO Director To Refuse the Entry of Respondent's Non-Conforming Brief, Or In The Alternative, To Enlarge The Page Limit." ("Emergency Motion"). In that Emergency Motion, the OED Director alleged multiple grounds on which the Appellant Brief failed to conform to the minimum requirements for such filings, as set forth in the Agency's regulations at 37 C.F.R. § 11.55. *See* Emergency Motion, at 2-6.

On September 8, 2016, the OED Director's Emergency Motion was granted. *See* Order dated Sept. 8, 2016, at 1. Appellant's non-conforming brief was stricken from the record and he was permitted to file another brief that complied with the Agency's regulations. *See id.* A new briefing schedule was also set that ordered submission of Appellant Brief's in accordance with the requirements set forth at 37 C.F.R. § 11.55 by no later than October 10, 2016. *See id.* Appellant's September 12, 2016, Petition for Reconsideration of this Order was denied by the ALJ. *See* Order dated Sept. 16, 2016, at 3-4.

On October 10, 2016, Appellant submitted his Amended Appeal Brief. However, on October 31, 2016, the OED Director requested leave to file a "Motion to Strike Respondent's Appeal Brief" ("Second Motion to Strike"), asking the Director to refuse entry of Appellant's Amended Appeal Brief. On November 2, 2016, Appellant opposed the OED Director's request and motion. The OED Director's "Second Motion to Strike" was granted on November 23, 2016 and Appellant's July 26, 2016 Appellant's Brief was not entered. *See* Order dated November 23, 2016, at 4-5. Appellant was ordered to file Appellant Brief's in strict accordance with the requirements set forth at 37 C.F.R. § 11.55, by no later than December 16, 2016. *See id.*

On November 25, 2016, Appellant filed "Mr. Louis A. Piccone's Third Amended Appeal of the ALJ's Initial Decision of June 16, 2016" ("Third Amended Appeal Brief"). On December 22, 2016, the OED Director filed "Brief for Director of the Office of Enrollment and Discipline." Appellant's Reply was filed on January 4, 2017.

### III. DECISION

Appellant has been a registered patent attorney since August 12, 1997. (A.3171). As such, he is subject to the disciplinary authority of the Office. 37 C.F.R. § 11.19(a). For the conduct involved in this disciplinary case, Appellant was subject to the ethical requirements set forth in both the PTO Code and the PTO Rules. Violations of the PTO Code or PTO Rules must be proven by clear and convincing evidence. *See* 37 C.F.R. § 11.49; *see also Johnson*, PTO Proceeding No. 2014-12, at 2 (Dec. 31, 2015) (Initial Decision).

USPTO regulations permit a party to appeal an ALJ's initial decision to the USPTO Director within thirty days (30) of issuance of the initial decision. *See* 37 C.F.R. § 11.55(a). *See also* 35 U.S.C. § 2(b)(2)(d). On appeal, the USPTO Director has authority to conduct a *de novo* review of the factual record and may affirm, reverse, or modify the initial decision, or remand the matter to the hearing officer for such further proceedings as the USPTO Director may deem appropriate. *See* 37 C.F.R. §§ 11.55(f), 11.56(a).

Here, Appellant appeals from the June 16, 2016 initial decision of the ALJ entering judgment in favor of the Agency and suspending Appellant from the practice of patent, trademark, and other non-patent matters before the Office for three (3) years. In his Third Amended Appeal Brief, Appellant identified fifty-three (53) "disputed points of law" that he contends exist in ALJ's initial decision. He also challenges the sanction imposed by the ALJ.

The Director, having considered Appellant's Third Amended Appeal Brief, the OED Director's response brief, Appellant's reply brief, as well as the record of the proceedings before the ALJ, finds that there is ample factual and legal support for the ALJ's initial decision. Consequently, the initial decision of the ALJ is **AFFIRMED**.

**A. Initial Appeal Issues**

**1. Appellant's Appeal Brief and Reply Fail to Comply with the USPTO Filing Rules.**

The regulations at 37 C.F.R. §11.55 set forth the mandatory filing requirements for appeal filings submitted to the Director. These requirements include directing all appeal briefs to comply with the substantive requirements found in FRAP Rules 28(a)(2), (3), and (5) through (10) and 32(a)(4) through (6). *See* 37 C.F.R. §11.55(c) and (d). These rules require that appeal briefs, among other things, contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies," and for each issue, "a concise statement of the applicable standard of review." *See* FRAP 28(a)(8).

Appellant's Third Amended Appeal Brief was, as is apparent from the title of the pleading and as set forth at pages 11-12 of this Order, his third attempt to file an appeal brief that complied with the USPTO's requirements under 37 C.F.R. § 11.55. *See* Orders dated September 8, 2016 and November 23, 2016.

Appellant's first brief was filed on July 26, 2016. On September 8, 2016, in response to a motion filed by the OED Director, the USPTO Director struck that appeal brief, upon motion from the OED Director and on the basis that the brief did not conform to the filing requirements. *See* Order dated September 8, 2016. Specifically, that Order accepted the arguments of the OED Director that the appeal brief failed to conform to the USPTO's substantive filing requirements when the appeal brief was filed without a statement of fact or law, without any table of contents

or table of authorities, without a statement of the issues, without a statement of the case, without an argument summary, and without any citations of authority. *Id.*; *see also* Emergency Motion, at 4. In addition, the Order summarily accepted the OED Director's identification of various procedural requirements as to the form of the appeal brief, including type size and exceeding the page limit. *See* Order dated Sept. 8, 2016; Emergency Motion, at 4.

Appellant then filed an Amended Appeal Brief on October 10, 2016. Again, the OED Director requested leave to file a "Motion to Strike Respondent's Appeal Brief", asking the Director to refuse entry of Appellant's Amended Appeal Brief. *See* Second Motion to Strike, at 3-7. In doing so, the OED Director cited to numerous places where the Amended Appeal Brief again failed to comply with the substantive filing requirements under 37 C.F.R. § 11.55. These deficiencies included Appellant's incorporation by reference the entirety of the more than 5,700 pages of the administrative record, Appellant's failure to specifically cite to the record so that his claims may be properly identified, and a wholesale failure to specify which facts and issues of law that Appellant disagrees with, as well as a failure to supply the authorities and parts of the record on which Appellant relied in support of his contentions. *See* Second Motion to Strike at 3-4. The OED Director characterized the Appellant's non-conforming brief as "willful" since his initial appeal brief had been stricken from the record for failing to satisfy the requirements set forth in § 11.55. *See* Second Motion to Strike at 7-8. Appellant opposed the motion.

On November 23, 2016, the Director issued an order on the Second Motion to Strike, again concluding that Appellant's Amended Brief failed to comply with many of the USPTO's filing requirements, including Federal Rules of Appellate Procedure ("FRAP") Rule 28(a)(6)-(8). *See* Order dated Nov. 23, 2016, at 3. For example, although Appellant's Amended Brief identified 59 issues in his brief, many of the arguments did

not address a legal issue but instead merely made brief, conclusory statements of fact without any citations to the administrative record. *Id.* Further, the remaining legal issues lacked any substantive arguments of merit and/or were not supported in any way. *Id.* The Amended Appeal Brief was thus found to lack any substantive legal analysis of the issues presented, which made it impossible to evaluate the merits of his appeal. *Id.* at 3-4. Despite this holding, however, the Director afforded Appellant a third opportunity to file an appeal brief that “strictly complies with all of the Agency’s filing requirements, to include the incorporated Federal Rules of Appellate Procedure. *See* Order dated Nov. 23, 2016, at 4-5. (emphasis in original). Appellant was also warned that “[the] filing requirements will not be waived.” *Id.* at 5.

Despite being on notice of the filing requirements, Appellant submitted his Third Amended Appeal Brief that contains the same substantive flaws as the two initially filed, and previously stricken, briefs. It is comprised of 53 separate challenges to the ALJ’s opinion, most of which contain no substantive discussion or legal analysis. Most of the challenges are comprised only of a short paragraph, and some are comprised of two or three sentences. There are no citations to the administrative record as Appellant merely disputes the facts “contained in the record before the ALJ.” *See* Third Amended Appeal Brief, at 5. Similarly, the document contains virtually no legal citations. Appellant’s arguments are fairly characterized as conclusory statements of his belief and general denials. These flaws are significant, substantive, and make any meaningful review of his appeal difficult. These flaws are especially significant given his prior notice of the filing requirements, the fact that these types of flaws were identified as bases on which to strike his prior filings, and the fact that he was advised of the need to strictly comply with the filing requirements in this third brief. Thus, it is concluded that Appellant’s failure to, for a third time,

file an appeal brief that complies with the USPTO's substantive filing requirements provides an independent basis for rejecting all of Appellant's arguments and, thus, his appeal.<sup>5</sup>

Despite this conclusion, Appellant asserted more than a conclusory argument with regard to several issues in his Third Amended Brief. Thus, although those arguments are unsatisfactory under the filing rules, the substance of those issues will be further addressed further below.

## 2. The USPTO Has Disciplinary Jurisdiction Over the Appellant.

One of the discernable arguments in Appellant's Third Amended Appeal Brief is the argument that the USPTO "lacked territorial jurisdiction" over actions occurring outside the borders of the United States. *See* Third Amended Appeal Brief, at 10; Reply Brief, at 16. In his view, but without any legal citation,<sup>6</sup> the U.S. patent laws are "only enforceable within the territorial boundaries of the United States." Third Amended Appeal Brief, at 10; *see also* Reply Brief, at 16-17. As a result, he argues that any alleged misconduct by him that occurred while he resided outside the territorial borders of the United States is outside the disciplinary jurisdiction of the USPTO.<sup>7</sup> *Id.* This argument was rejected by the ALJ and, despite Appellant's belief to the contrary, is wholly without merit.

Congress vested the USPTO with plenary, statutory authority to promulgate regulations "govern[ing] the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office." 35 U.S.C. § 2(b)(2)(D); *see also Kroll v. Finnerty*, 242 F.3d 1359, 1364 (Fed. Cir. 2001) (stating that the USPTO has the "exclusive authority to

<sup>5</sup> It is noted that Appellant's Reply Brief suffers from the same flaws noted in this Order.

<sup>6</sup> Here again, Appellant does not provide citations to the record for his claims that he previously cited "binding precedent" to support this argument. Third Amended Appeal Brief, at 10. As already stated, this sort of challenge flies in the face of the USPTO briefing requirements, of which Appellant has been warned about on multiple occasions. Thus, having not provided either the necessary citations to the record or the alluded to legal citations, the Director will not mine the over 5,700 pages of administrative record to fill in the gaps in his argument.

<sup>7</sup> In making this argument, he also states that he did not engage in the unauthorized practice of law. (A.10). This argument is rejected for reasons stated later in this Order. *See infra*, at 23.



establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it."); *Haley v. Lee*, 2015 WL 5277880 at \*8 (E.D.Va., Sept. 8, 2015) (noting that "Congress gave the USPTO wide latitude to govern the conduct of the members of its bar") The Director of the USPTO may suspend or exclude a person from practice before the USPTO if the person is "shown to be incompetent or disreputable, or guilty of gross misconduct," or if the person violates regulations established by the Office. 35 U.S.C. § 32. Accordingly, the USPTO Director has authority to regulate practice before the Office in both patent and trademark matters, including the unauthorized practice of law before the Office. (*Id.*); *see also Haley*, at \*9 ("Congress also explicitly gives the USPTO the power to promulgate regulations related to the conduct of its members.")

Pursuant to its authority to regulate the conduct of practitioners, the USPTO enacted its former Code of Professional Responsibility, 37 C.F.R. §§ 10.20 *et seq.*, and the current Rules of Professional Conduct, 37 C.F.R. §§ 11.101 through 11.901, both of which include a number of mandatory "Disciplinary Rules" setting forth the minimum level of conduct below which no registered patent practitioner can fall without being subjected to disciplinary action. If a registered patent practitioner fails to comply with his or her professional obligations, the USPTO has the authority to suspend or exclude the practitioner from further practice before the Office. *See* 35 U.S.C. § 32; 37 C.F.R. § 11.19. Appellant has been registered as a patent attorney before the USPTO since August 12, 1997. (A. 3171). He has also practiced in trademark matters before the Office. (A.3176-3183, A.3218-3220; Tr. at 255-256). Both of those bases bind Appellant to comply with USPTO's disciplinary rules and subject him to the disciplinary jurisdiction of the office. 37 C.F.R. § 11.19(a).

There is no U.S. "residency" or "territorial" requirement contained in the plain language of any of the disciplinary rules. Rather, disciplinary jurisdiction is determined by § 11.19(a), which covers Appellant here as both a registered practitioner and someone who practices before the Office. And as the ALJ properly acknowledged in her Initial Decision, it would be absurd to recognize such an exception and allow practitioners to side-step the disciplinary rules by stepping foot outside the borders of the United States. (A.20). Consequently, Appellant's argument has no legal support whatsoever and is rejected.

In sum, since Appellant is registered patent attorney he is subject to the USPTO's disciplinary rules. There is no merit in Appellant's argument that a practitioner's physical residency at the time misconduct occurred affects the USPTO's disciplinary jurisdiction and he cites no authority for his position. Disciplinary jurisdiction is conveyed by 37 C.F.R. § 19(a) and the plain language of the USPTO's disciplinary rules don't contain such any "territorial" requirements.

### **3. The Disciplinary Complaint Was Properly Signed.**

Appellant also argues that the ALJ erred in denying Respondent's Motion to Dismiss by allegedly failing to address the USPTO's requirement that the Complaint be signed by the OED Director, in accordance with 37 C.F.R. § 11.34(a)(5), thus rendering the Complaint invalid. (Third Amended Appeal Brief, at 13-15). However, a review of the Administrative Record shows that the ALJ, in Orders dated March 3, 2015 and March 26, 2015, clearly and expressly addressed the signature requirement, finding that the Complaint as signed by a subordinate official "*per procuratorem, or on behalf of*" the Director was properly issued. (A.260; A.385-386). Finding that the OED Director sufficiently consented for the Deputy OED Director to sign the Complaint in his absence, as evidenced in the Declaration of William R. Covey, Deputy

General Counsel for Enrollment and Discipline and Director of the OED (A.260; A.202-203), the ALJ found no practical difference between a Complaint personally signed by the OED Director and a one signed "on behalf" of the OED Director (A.260). The ALJ also determined that exercising a "cure" for the deficiency would be a "useless act providing no legal significance." (A.386).

In his appeal brief, Appellant objects to the ALJ's decisions but does not provide any case law or authority to show why a signature made *per procuracionem* is not allowable for the Complaint nor does he address any legal or factual errors in ALJ's argument. Rather, Appellant merely asserts that the Complaint is invalid because it failed to meet the signature requirement of 11.34(a)(5). Third Amended Appeal Brief, at 14. Rather, he argues that the OED Director's delegation of authority was improper due to the absence of an express written delegation order from the USPTO Director authorizing such subdelegation. Third Amended Appeal Brief, at 15-16. Here again, though, Appellant does not provide any legal authority to support this argument.

As analyzed by the ALJ in her Orders dated March 2, 2015 and March 25, 2015, current case law clearly acknowledges that a subdelegation to a subordinate federal officer is "presumptively permissible absent affirmative evidence of a contrary congressional intent," *U.S. Telecom Ass'n v. F.C.C.*, 359 F.3d 554, 565 (D.C. Cir. 2004). (A.260; A.385-386). Here, Appellant has not identified any evidence of congressional intent to prohibit a delegation by the OED Director, nor are there any USPTO regulations implementing such restriction, thus the OED Director was free to delegate his authorities as necessary. Such delegation was evidenced in the Declaration of William R. Covey, Deputy General Counsel for Enrollment and Discipline and Director of the OED, where the OED Director consented to the Deputy signing on his behalf while he was out of the office (A.202-203), and the Position Description for the Supervisory Patent Attorney/Deputy

Director, OED, which contemplated that the Deputy OED Director may be delegated authority to act on behalf of the OED Director upon his absence from the office. (A.204-208). With regard to Appellant's argument that any execution of a delegation must be memorialized in writing from the USPTO Director to be effective, the USPTO regulations do not require such procedures, and Appellant has not provided any case law that dictates this requirement. Third Amended Appeal Brief, at 15-16. Appellant attempts to cite 37 C.F.R. § 11.2 as authority that the USPTO Director reserves the authority to delegate to an acting OED Director, however Respondent misunderstands the purpose of these regulations. Third Amended Appeal Brief, at 16. Section 11.2 speaks only to the USPTO Director's appointment authorities and the prescribed duties of the OED Director, and does address the delegable authorities of that position or the conditions under which they may be delegated. For this reason, the ALJ properly denied Appellant's Motion to Dismiss. Similarly, Appellant's Motion for Reconsideration was also properly denied as he failed to satisfy the requirements for reconsideration under 37 C.F.R. § 11.56(c) (requiring newly discovered evidence or to correct errors of law or fact). Appellant's arguments, here and before the ALJ, are merely amount to a disagreement with the ALJ's decision.

**4. Appellant Was Not Improperly Denied the Ability to Subpoena Witnesses at His Disciplinary Hearing.**

Appellant's next claim is that the ALJ erred in denying his ability to subpoena witnesses in her Orders dated March 20, 2015<sup>8</sup> and May 4, 2015<sup>9</sup>, arguing that the USPTO's regulations at 37 C.F.R. § 11.38 are not authorized and inconsistent with the provisions at 35 U.S.C. § 24. Third Amended Appeal Brief, at 7. Section 11.38 prohibits the submission of evidence obtained by a

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<sup>8</sup> Order Denying Respondent's Motion for an Extension of Time to File Answer [sic] and Motion for Discovery Relating to the Attendance of Witnesses, to the Production of Documents, and to Responses to Interrogatories, dated March 20, 2015. (A.361-365).

<sup>9</sup> Order Denying Respondent's Renewed Motion for Discovery relating to the Attendance of Witnesses, to the Production of Documents, and to Response to Interrogatories, dated May 4, 2015. (A.977).

subpoena issued under 35 U.S.C. § 24, unless leave to proceed is authorized by the hearing officer. Appellant claims that ALJ erred by “failing to read the plain and unambiguous meaning of 35 U.S.C. § 24”, which allows Appellant subpoena power. Third Amended Appeal Brief, at 17. Appellant asserts that that the language of 35 U.S.C. § 24 is “clear and unambiguous,” and that the additional procedural requirements at 37 C.F.R. § 11.38 are “illegal under 35 U.S.C. § 2, and unconstitutional” because an executive branch agency “is not authorized to restrict or negate a statute passed by congress.” Third Amended Appeal Brief, at 7.

The ALJ properly determined in her Orders that the provisions of 37 C.F.R. part 11 is authorized and consistent with 35 U.S.C. § 24, and that the USPTO properly exercised its rulemaking authority to address discovery matters. (A.363; A.974-A.975). The ALJ found that Congress intended the judicial subpoena power of 35 U.S.C. § 24 to be used “strictly in aid of the primary proceeding” conducted by PTO in accordance with USPTO’s rules. *Sheehan v. Doyle*, 513 F.2d 895, 898-99 (1st Cir. 1975). (A.363; A.975). Further, the court in *Abbott Labs v. Cordis Corp.*, 710 F.3d 1318, 1322-26 (Fed. Cir. 2013) found that “[35 U.S.C. § 24] only empowers district courts to issue subpoenas in proceedings for which the PTO has authorized parties to present evidence by means of deposition,” and does not afford a party in proceedings before the USPTO “discovery beyond that permitted by PTO discovery rules and rules of admissibility.” *Id.* at 1325-26. The court in *Abbott Labs* also specifically found that the provisions in 37 C.F.R. § 11.38 were not an “unconstitutional restriction.” In his appeal, Appellant ignores this case law, and expresses objections to the ALJ’s determinations, but cites no case law distinguishing the ALJ’s legal analysis or identifies any error in the ALJ’s decision other than to repeatedly assert his unsupported claims that 37 C.F.R. § 11.38 is unauthorized and inconsistent with 35 U.S.C. § 24. Third Amended Appeal Brief, at 7 and 17.

Appellant alludes to a double standard citing an incident where the Solicitor's Office allegedly went to the District Court to seek a subpoena for privileged documents after the ALJ issued a decision forbidding the discoverability of that information. Third Amended Appeal Brief, at 18. However, Appellant provides no details or any evidence in the record to support the allegation, such as whether the subpoenas were granted or whether the materials that were the subject of the subpoenas were allowed to be submitted into the record by the ALJ. Thus, this argument is dismissed as meritless.

Finally, Appellant attempts to argue that the ALJ erred when denying his request to subpoena USPTO Officials for failing to meet the discovery requirements at 37 C.F.R. § 11.52(d). Third Amended Appeal Brief, at 10. Again Appellant does not provide any legal authorities that justify his claim that the ALJ erred. The ALJ properly denied Appellant's pending Motion for Discovery for failing to explain in sufficient detail, for each request made, how the discovery sought is reasonable and relevant, contrary to the requirements of 37 C.F.R. § 11.52(d). (A.364). In his appeal, Appellant makes no legal arguments whatsoever addressing the ALJ's decision, thus in light of this lack of evidence, Appellant argument is determined to be without merit.

**B. Appellant Engaged in the Unauthorized Practice of Law.**

Appellant's only substantive arguments regarding the ALJ's findings of misconduct, and violations of disciplinary rules, is a series of confusing arguments regarding the ALJ's findings and conclusions that Appellant engaged in the unauthorized practice of law. As stated, these arguments fail on the independent grounds of failing to satisfy the USPTO's filing requirements. See supra, at 14-17. In addition, as further discussed below, Appellant's arguments also fail on the merits.

The prohibition against practitioners engaging in the unauthorized practice of law is set forth at 37 C.F.R. 11.505, which states “[a] practitioner shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.” The ALJ made multiple findings of Appellant having engaged in the unauthorized practice of law over a period of years and concluded that the misconduct was a pattern of misconduct, over a period of years, in multiple jurisdictions. (A.21, A.24, A.42, A.48). The ALJ noted the particular misconduct in those jurisdictions, examined the law governing practicing before those jurisdictions, and properly concluded that the Appellant engaged in the unauthorized practice of law in those jurisdictions.

Importantly, the ALJ also concluded that Appellant engaged in the unauthorized practice of law before the USPTO. (A.19). Between September 20, 2013, and August 13, 2014, Appellant’s license to practice law was suspended by the Supreme Court of Pennsylvania. (A.19). During that time, he was not permitted to practice before the USPTO. (A.19). The ALJ noted,

“[w]ith respect to practice before the PTO, “[o]nly an individual qualified to practice under § 11.14 of this chapter may represent an applicant, registrant, or party to a proceeding before the Office in a trademark case. 37 C.F.R. § 2.17(a). Any individual who is an attorney as defined in § 11.1 may represent others before the Office in trademark and other non-patent matters.” 37 C.F.R. § 11.14(a). An “attorney” is “an individual who is a member in good standing of the highest court of any State . . . and *not under an order of any court . . . suspending, enjoining, restraining, disbarring or otherwise restricting the attorney from practice before the bar of another State or Federal agency.*” 37 C.F.R. § 11.1 (emphasis in original).”

Despite being administratively suspended by the State of Pennsylvania, he continued to practice before the USPTO. He was the attorney-of-record and correspondent for Lawless America Association’s Trademark Application No. 85871932, for the mark “Lawless America.” (A.3176-3187; A.3264; Tr. at 255-256). Appellant is identified as the attorney-of-record and

correspondent for the application. (A.2342-2343; Tr. at 257-258). Appellant sent a draft of a Response to a USPTO Office Action to Mr. Windsor on February 12, 2014. (A.3303-3304; A.3309-3311). Appellant admitted that he "participated heavily in the drafting" of the Response to Office Action filed on behalf of Mr. Windsor on February 18, 2014. (Tr. at 265, 273). Mr. Windsor did not draft the response. (A.3000). The draft contained both legal analysis and argument. (A.2366-2368). Appellant also remained the attorney-of-record at the time the Response to Office Action was submitted. (Tr. at 287). Further, the USPTO continued to send documents to him. (A.2382-2388; Tr. at 410-412). This is the practice of law before the USPTO during a period of time that Appellant was unauthorized to practice law. *See* 37 C.F.R. § 11.5(b)(2) ("Practice before the Office in trademark matters includes, but is not limited to, consulting with or giving advice to a client in contemplation of filing a trademark application or other document with the Office; preparing and prosecuting an application for trademark registration; preparing an amendment which may require written argument to establish the registrability of the mark; and conducting an opposition, cancellation, or concurrent use proceeding; or conducting an appeal to the Trademark Trial and Appeal Board.); *see also* Trademark Manual of Examining Procedure ("TMEP"), at § 608.01.

Appellant claims that he was permitted to file materials with the USPTO in support of the pending Trademark application due to his position as a corporate officer with Lawless. *See* Reply Brief, at 13-14. This argument fails since, though a corporate officer is permitted to sign and submit some trademark pleadings, *see* TMEP §§ 611.02, 611.06(d), Appellant has not proffered as single piece of evidence in support of this position. And a review of the documents filed in connection with the Lawless America trademark application do not support this contention.



With respect to the Appellant's other arguments, all of the ALJ's findings and conclusions are supported by facts in the administrative record and supported by law. First, his attempts to characterize his actions as something less than the practice of law in the jurisdictions noted in the disciplinary complaint are completely without any support. Indeed, the ALJ's findings and conclusions rely on Appellant's own testimony and concessions that his actions constitute the practice of law in the various jurisdictions. Third, Appellant raises the argument that "Rule 5.5" in various jurisdictions that permit him to practice law in those jurisdictions on a temporary basis. See Third Amended Appeal at 23-25, 34. However, this argument was soundly rejected by the ALJ and it is rejected here for the reasons noted in the ALJ's opinion. In short, and as the ALJ noted, there is no evidence that in any of the jurisdictions for which he claims he properly acted on a "temporary" basis that his practice was, in fact, temporary or that his actions in those jurisdictions were permissible under those authorities. (A.30-32, A.38, A.46-47). To the contrary, the facts of the record as noted in the ALJ's opinion and this final order show a pattern of conduct in which he flouted the rules governing the practice of law across multiple jurisdictions. In all of the jurisdictions for which he practiced without an authorizing bar membership, he was required to receive authority of the courts. He unquestionably failed to do so. Thus, the ALJ properly rejected these arguments and, further, the ALJ's findings of misconduct are appropriate.

**C. The Penalty of a Three (3) Year Suspension Is Appropriate.**

The ALJ's initial decision concluded that Appellant violated USPTO's disciplinary rules and engaged in misconduct, and as a result, a three (3) year suspension from practice before the Office was the appropriate sanction. An ALJ initial decision that imposes exclusion or

suspension must explain the reason for imposing such a sanction after consideration of the following four factors:

- (1) Whether the practitioner has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the practitioner acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the practitioner's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

37 C.F.R. § 11.54(b)(1)-(4).

The Director of the USPTO reviews an appeal from an ALJ initial decision on the record before the ALJ. *See* 37 C.F.R. § 11.55(f); *see also Marinangeli v. Lehman*, 32 F. Supp. 2d 1, 5 (D.D.C. 1998). After such review, and as discussed below, the ALJ's initial decision to suspend Appellant for three (3) years from practicing before the USPTO included a careful and proper analysis of the four factors set forth in 37 C.F.R. § 11.54(b). The ALJ's sanction of a three-year suspension is warranted and thus upheld. Here, the ALJ properly considered and applied the four factors relevant to an exclusion or suspension under 37 C.F.R. § 11.54(b) and the findings are supported by both the administrative record and precedential case law. This analysis is discussed further, below.

1. **Whether the practitioner has violated a duty owed to a client, to the public, to the legal system, or to the profession.**

The ALJ properly noted, as already discussed, that Appellant on several occasions violated duties to his clients, the public, the legal system, and the profession when he repeatedly engaged in the unauthorized practice of law. (A.64). Noting USPTO case law that affirmed that

"[a]ttorneys who practice before the PTO are expected to 'assist in maintaining the integrity and competence of the legal profession' and aid in the prevention of the unauthorized practice of law." *Jaeger*, PTO Proceeding No. D2012-29 at 13 (quoting 37 C.F.R. §§ 10.21, 10.46), the ALJ stated that Appellant failed to prevent the unauthorized practice of law but instead engaged in and enabled it. (A.64). He did so in violation of court orders instructing him to obtain *pro hac vice* status, in disregard for his clients, and harmed the public by causing various states to waste resources he had no authority to bring in the first place. (A.64). These findings are amply supported in the record.

**2. Whether the practitioner acted intentionally, knowingly, or negligently.**

As to the second factor, the ALJ noted that Appellant's conduct was admittedly willful. (A.64). As support for this, the ALJ noted that "in case after case, [Appellant] was warned by various courts that his participation was improper until he obtained *pro hac vice* admission." (A.64). The ALJ noted three (3) specific instances of this behavior in Massachusetts and noted that Appellant, rather than disavow intent, has consistently maintained his belief that his actions were proper. (A.64). The ALJ's finding of willfulness thus has firm support in the record and is proper.

**3. The amount of the actual or potential injury caused by the practitioner's misconduct.**

In sanctioning Appellant, the ALJ also noted that Appellant's misconduct caused actual injury to his clients including dismissal (*Nolan, Babeu, Hohm, Katz I, Hankins, and Doe*). (A.64-A.65). Importantly, Appellant abandoned a client in a pending trademark matter before the USPTO, resulting in the applicant unable to gain trademark protection on his own. (A.65). These findings are amply supported in the record and not in dispute. As such, they were properly considered by the ALJ in determining Appellant's discipline.

**4. The existence of any aggravating or mitigating factors.**

Lastly, the ALJ identified four (4) aggravating and one (1) mitigating factors which were considered in determining the penalty. As aggravating, the ALJ noted Appellant's clear pattern of misconduct in four jurisdictions and despite repeated warnings that his behavior crossed ethical lines. (A.65). Appellant's misconduct violated multiple disciplinary rules. (A.65). Also, the ALJ noted with concern the fact that Appellant negligently engaged in untruthful behavior during the disciplinary process. (A.65-A.66). Appellant's behavior was identified as "willful" and, given his nearly two decades of legal practice prior to the first instance of misconduct here, there was "no excuse" for failing to comply with the Code or USPTO Rules. (A.66).

In mitigation, the ALJ noted that Appellant has no known disciplinary history and he offered some commendation for the fact that Appellant sought to represent underserved clients on a somewhat pro bono basis. (A.66). Considering all the required factors, and Appellant's arguments, the ALJ concluded that the three-year suspension requested by the OED Director was appropriate, "if not generous." (A.68). In reaching this conclusion, the ALJ also considered several cases that support the imposition of a 3-year suspension for Appellant. (*Id.*) Thus, Appellant's 3-year suspension here is consistent with past precedent.

In her review of the case law, the ALJ considered the fact that courts have repeatedly held that attorneys who continuously violate disciplinary rules over a lengthy period of time should receive a substantial suspension if not exclusion. (*Id.*) (citing *Hormann*, PTO Proceeding No. D08-04 at 21 (excluding attorney from the practice before the USPTO for neglect, dishonesty, fraud, deceit or misrepresentation, failure to notify, inadequate preparation, habitual violations of disciplinary rules, and failure to promptly deliver client property); *In the Matter of McAllister*, 265 Ga. 420, 420-21 (1995) (disbarring attorney engaged in multiple violations of state

disciplinary rules over three years, including abandoning legal matters entrusted to him, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and failing to respond to state disciplinary authorities); and *In the Matter of Hammock*, 278 Ga. 385, 387 (2004) (majority holding that a two-year suspension was proper when attorney failed to communicate with clients for months, misrepresented the status of their cases, had three prior disciplinary infractions and neglected clients' legal matters).

The AJL also considered instances where an attorney's record is free of prior disciplinary violations, like Appellant here, but nonetheless found disbarment justified. See *Hormann*, PTO Proceeding No. D08-04 at 21 (excluding attorney from the practice before the USPTO even though the record does not show a history of prior violations); *In the Matter of Shehane*, 276 Ga. 168, 170 (2003) (disbarring attorney, holding that even though "respondent has not been the subject of any prior disciplinary action during his eight-year membership in the State Bar of Georgia, we take very seriously his deliberate, deceitful acts to obfuscate the truth").

Finally, the ALJ also cited to *Kelber*, PTO Proceeding No. D2006-13 at 64, a case where the practitioner was sanctioned for instances of misrepresentation that "stretch[ed] and exceed[ed] the limits of trustworthiness, honesty and candor in several contexts over several years," but was only given a 60-day suspension. However, this case can be distinguished as the practitioner in *Kelber* was charged only with two fairly minor infractions; count 1 was fabrication of an exhibit introduced into evidence during a proceeding in 2003 and count 2 was misrepresentation in a letter submitted to OED in 2005 of his fitness to practice before the USPTO. When compared to Appellant's pattern of serious misconduct, *Kelber* is not determinative here. This, combined with the fact that a 3-year suspension is within the range of sanctions previously applied to the type of

misconduct found here, renders the ALJ's sanction supported prior precedent and thus reasonable.

In conclusion, the ALJ's sanction analysis complies with 37 C.F.R. § 11.54(b) and finds support in the record and in the case law noted by the ALJ concerning demonstrated patterns of misconduct over a lengthy period such as Appellant engaged in here. Consequently, the three-year suspension ordered by the ALJ fully supported and will not be disturbed.

#### **ORDER**

Having considered Appellant's appeal under 37 C.F.R. § 11.55 from the June 16, 2016 Initial Decision of the ALJ suspending Appellant from the practice of all patent, trademark, and other non-patent matters before the Office for three (3) years, it is **ORDERED** that the initial decision of the ALJ is **AFFIRMED**.

It is further:

**ORDERED** that 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 Appellant is admitted to practice, to courts where Appellant is known to be admitted, and to the public;

**ORDERED** that the USPTO dissociate Appellant's name from any Customer Numbers and the public key infrastructure ("PKI") certificate associated with those Customer Numbers;

**ORDERED** that Appellant 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; and

**ORDERED** that Appellant shall comply with the provisions of 37 C.F.R. § 11.58 governing the duties of disciplined practitioner.

**RECONSIDERATION AND APPEAL RIGHTS**

Any request for reconsideration of this decision must be filed within twenty (20) days from the date of entry of this decision pursuant to 37 C.F.R. § 11.56(c). Any request for reconsideration mailed to the USPTO must be addressed to:

Sarah T. Harris  
General Counsel  
United States Patent and Trademark Office  
600 Dulany St.  
P.O. Box 1450  
Alexandria, VA 22314

A copy of the request must also be served on the attorney for the Director of Enrollment and Discipline:

Robin Crabb  
Counsel for the Director of Office of Enrollment and Discipline  
600 Dulany St.  
P.O. Box 1450  
Alexandria, VA 22314


Any request hand-delivered to the USPTO must be hand-delivered to the Office of the General Counsel, in which case the service copy for the attorney for the Director shall be hand-delivered to the Office of Enrollment and Discipline.

If a request for reconsideration is not filed, and Appellant desires further review, Appellant is notified that he is entitled to seek judicial review on the record in 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.**

5/25/17

Date



Sarah T. Harris

General Counsel

United States Patent and Trademark Office

on delegated authority by

Michelle K. Lee

Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office

cc:

Louis A. Piccone

*Appellant*

Robin Crabb

*Associate Solicitors*

Counsel for the Director of Office of Enrollment and Discipline



**U.S. DEPARTMENT OF COMMERCE**  
**United States Patent and Trademark Office**

2-28-2018

(Date)

I hereby certify that this is a true and accurate copy of the Initial Decision in Disciplinary Proceeding No. D2015-06, *In the Matter of Louis A. Piccone*, by Susan L. Biro, Administrative Law Judge (ALJ) of the U.S. Environmental Protection Agency, in her capacity as a hearing officer authorized by interagency agreement with the USPTO, issued June 16, 2016.



By authority of the  
**DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE**

*Certifying Officer.*

Attachment 2

**UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE ADMINISTRATIVE LAW JUDGE**

**In the Matter of** )  
 )  
**Louis A. Piccone,** ) **Proceeding No. D2015-06**  
 )  
**Respondent** )

**INITIAL DECISION**

**Before:** Susan L. Biro  
Chief Administrative Law Judge, EPA<sup>1</sup>

**Issued:** June 16, 2016

**Appearances:**

**For Complainant:**

Robin Crabb, Esq.  
Tracy Kepler, Esq.  
Associate Solicitors  
Mail Stop 8  
Office of the Solicitor  
P.O. Box 1450  
Alexandria, VA 22313-1450

**For Respondent:**

Louis Piccone (pro se)  
270 Kipling Street  
Hawkesbury, Ontario  
Canada  
K6A-292

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<sup>1</sup> This Initial Decision is issued by the Chief Administrative Law Judge of the United States Environmental Protection Agency. The Administrative Law Judges of the Environmental Protection Agency are authorized to hear cases pending before the United States Department of Commerce, Patent and Trademark Office, pursuant to an Interagency Agreement effective for a period beginning May 15, 2014.

## I. PROCEDURAL HISTORY

This action was initiated December 10, 2014, when the Director of the Office of Enrollment and Discipline ("OED Director"), United States Patent and Trademark Office ("PTO"), issued a Complaint and Notice of Proceedings against Respondent Louis A. Piccone under 35 U.S.C. § 2(b)(2)(D), § 32, and 37 C.F.R. §§ 11.32, 11.34. The Complaint charges Respondent with nine counts of professional misconduct through violations of the PTO Code of Professional Responsibility ("PTO Code"), 37 C.F.R. §§ 10.20-10.112, and the PTO Rules of Professional Conduct ("PTO Rules"), 37 C.F.R. §§ 11.101 through 11.901.<sup>2</sup> The Complaint alleges, among other things, that Respondent's license to practice law in Pennsylvania was administratively suspended three times since 2011 and that he engaged in the unauthorized practice of law, failed to adhere to pro hac vice admission standards, failed to comply with court orders, neglected client matters, and made false statements to courts. The OED Director seeks to suspend Respondent from practice before the PTO.

After he was granted an extension of time to answer, Respondent filed four pre-Answer motions on January 16, 2015, seeking various forms of relief. They were the opening salvo in a barrage of motions that he continued to file in the nine months leading up to the hearing.<sup>3</sup> These first four motions, like most of his subsequent motions, were denied. *See* Order on Motions (February 3, 2015). Respondent filed his Answer to the Complaint on February 9, 2015, denying liability for all violations and raising nineteen affirmative defenses.

On March 4, 2015, the Tribunal entered an Order Scheduling Prehearing Procedures and Hearing. The parties filed their prehearing exchanges on April 10, 2015, and April 24, 2015. On May 7, 2015, after the OED Director challenged the qualified admissions and defenses contained in his original Answer, Respondent filed an Amended Answer. By Order dated June 5, 2015, all of Respondent's affirmative defenses, except for his statute of limitations defense, were stricken from the record.

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<sup>2</sup> Whether the PTO Code or the PTO Rules applies depends on the date of the alleged violation, as the PTO Rules replaced the PTO Code in 2013. *See* Changes to Representation of Others Before the United States Patent and Trademark Office, 78 Fed. Reg. 20179 (Apr. 3, 2013) (Final Rule). In transitioning to the PTO Rules in 2013, Part 10 of Title 37 of the C.F.R., the PTO Code, was removed and reserved and substantively replaced with the PTO Rules in Part 11. Thus, Part 10 applies to all of Respondent's conduct prior to May 3, 2013, when the Part 11 Rules became effective, and Part 11 applies thereafter. *See id.* The language of the sections of both the PTO Code and the PTO Rules charged in the Complaint has remained the same during the timespan in which Respondent is alleged to have engaged in misconduct. Consequently, citations to the PTO Code and to the PTO Rules in this Initial Decision do not reference a particular year. Relevant sections of the PTO Code that have been removed from Part 10 may be found, among other places, in the Lexis Nexis Code of Federal Regulations Archive.

<sup>3</sup> The record reflects that Respondent filed at least 35 motions before the October 2015 hearing, including numerous motions to dismiss, motions for summary judgment, and motions to reconsider prior rulings against him. Almost all of the motions were completely without merit and do not reflect positively on Respondent's legal acumen or judgment. Given his excessive number of filings, reference in this section of the decision is made only to Respondent's submissions that are of general consequence to this proceeding.

The Tribunal on July 10, 2015, scheduled a hearing for October 5, 2015, in Springfield, Massachusetts, a location requested by Respondent for the convenience of his witnesses.<sup>4</sup> However, on August 4, 2015, the Tribunal moved the hearing to Washington, D.C. at the OED Director's request after it became apparent Respondent would not be presenting any of the Massachusetts-based witnesses he had previously represented he intended to call to testify on his behalf.

On August 25, 2015, the Tribunal granted Respondent's motion for additional time to conduct discovery in support of his statute of limitations defense. This allowed Respondent to depose Marilyn J. Wellington, an official from the Massachusetts Board of Bar Examiners and to submit an interrogatory to the OED Director. The OED Director answered the interrogatory on September 15, 2015, and, following the Tribunal's order granting Respondent's motion to compel, on October 9, 2015.

The hearing in this matter was held October 13-14, 2015, in Washington, D.C.<sup>5</sup> At hearing, the OED Director elicited the live testimony of Dahlia George and the Respondent,<sup>6</sup> and submitted into evidence the written deposition testimony of three other witnesses – William Windsor, Brandonlyn Nunley, and Krista Lynn Hohn. Tr. at 243. The Tribunal also admitted into evidence 106 of the OED Director's Exhibits ("DX 1" to "DX 106").<sup>7</sup> Tr. at 7-8, 224-25, 241-43, 432. Respondent did not testify on direct<sup>8</sup> or call any other witnesses to testify on his behalf at hearing, but did submit into evidence the deposition testimony of Ms. Wellington, in lieu of her personal appearance. Tr. at 430. In addition, 17 of Respondent's Exhibits ("RX"), RX 1-8, 17-20, 23, 23A, and 65-67, were admitted into the record. Tr. at 395-97, 432.

The undersigned received the hearing transcript on October 29, 2015. By Order dated December 7, 2015, the transcript was conformed to reflect the testimony actually given. Thereafter, the parties filed their initial post-hearing briefs on January 22, 2016.<sup>9</sup> The OED

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<sup>4</sup> The hearing was initially set for June 2015. However, this Tribunal on May 13, 2015, granted the OED Director's request to move the hearing to a later date to allow him more time to define and clarify the issues.

<sup>5</sup> Citation to the hearing transcript will be in the following form: "Tr. at \_\_\_."

<sup>6</sup> Respondent objected to being called as a witness by the Director on the bases that he had appeared at hearing voluntarily and that testifying violated his constitutional rights to "effective assistance of counsel" and "access to the courts." Tr. at 244-49. The Tribunal overruled that objection. Tr. at 247-49.

<sup>7</sup> The court reporter failed to produce to this Tribunal the originals of the Director's exhibits as entered into evidence at hearing. As such, I have for the official record substituted my copy of the Director's exhibits as provided to the Tribunal prior to or at the hearing.

<sup>8</sup> Respondent did make a statement at hearing after being questioned by the Director regarding several of his exhibits and responded to a brief set of questions presented by this Tribunal. Tr. at 397-407, 412-30.

<sup>9</sup> The Agency's initial post-hearing brief is cited herein as "AB." The Respondent's initial post-

Director timely filed his reply brief ("ARB") on February 19, 2016. Respondent missed the deadline for filing his reply brief ("RRB").<sup>10</sup> He eventually filed the document on February 29, 2016. Nothing further was filed thereafter, and the record closed with that filing.

## II. LEGAL BACKGROUND

Congress has authorized the PTO to promulgate regulations governing "the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office[.]" 35 U.S.C. § 2(b)(2)(D). If an attorney does not comply with regulations issued under § 2(b)(2)(D), or if he is "shown to be incompetent or disreputable, or guilty of gross misconduct," the PTO may suspend or exclude the attorney from further practice before the PTO. 35 U.S.C. § 32. See also *Sheinbein v. Dudas*, 465 F.3d 493, 495 (Fed. Cir. 2006). "Under these statutes, the PTO has the exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it." *Kroll v. Finnerty*, 242 F.3d 1359, 1364 (Fed. Cir. 2001).

In 1985, the PTO issued regulations based on the American Bar Association ("ABA") Model Code of Professional Responsibility to govern attorney conduct and practice. See *Practice Before the Patent and Trademark Office*, 50 Fed. Reg. 5158 (Feb. 6, 1985) (Final Rule) (codified at 37 C.F.R. §§ 10.20-10.112). These rules set forth the PTO Code of Professional Responsibility ("PTO Code") and "clarif[ied] and modernize[d] the rules relating to admission to practice and the conduct of disciplinary cases." *Id.* They remained in effect through April 2013. That year, recognizing that most state bar organizations had adopted substantive disciplinary rules based on the newer ABA Model Rules of Professional Conduct, the PTO repealed its Code of Professional Responsibility and replaced it with the Rules of Professional Conduct ("PTO Rules") fashioned on the ABA's Model Rules. See *Changes to Representation of Others Before the United States Patent and Trademark Office*, 78 Fed. Reg. 20180 (Apr. 3, 2013) (Final Rule) (codified at 37 C.F.R. §§ 11.101-11.901). In making this change, the PTO sought to "provid[e]

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hearing brief ("RB") is 148 pages long. The Tribunal has read, and re-read, all of it and considered all of the arguments raised within it. In fact, the Tribunal has considered many of the arguments made in it multiple times, because Respondent mostly re-raised arguments and issues previously ruled upon by the Tribunal when addressing Respondent's copious prehearing motions. Any argument made by Respondent not expressly addressed in this Initial Decision is an argument found to be without merit and unworthy of further discussion.

<sup>10</sup> As has been his frequent practice throughout this proceeding, Respondent ignored the applicable rules of procedure and the instructions of this Tribunal with regard to filings as to his reply brief. First, he submitted his request for an extension informally by e-mail, rather than by motion. Second, he sent his e-mail not in advance of the deadline, but on the day his reply brief was due. Still, this Tribunal extended the deadline to February 26, 2016, just as Respondent requested. See *Order on Respondent's Informal Request to Extend Deadline for Filing Post-Hearing Reply Brief* (Feb. 22, 2016). Nevertheless, Respondent did not submit his reply brief until three days *after* the extended deadline he requested. Respondent's reply brief consists of 64 unnumbered pages. As such, citation to page numbers of Respondent's Reply Brief herein are to the page number provided by the software used when viewing the Portable Document Format ("PDF") version of the brief on this Tribunal's servers.

attorneys with consistent professional conduct standards, and large bodies of both case law and opinions written by disciplinary authorities that have adopted the ABA Model Rules.” *Id.* at 20180. It was also anticipated that professional conduct standards under the PTO Code would assist in the interpretation of the PTO Rules, which “fundamentally carry forward” the requirements of the PTO Code.<sup>11</sup> *See id.*

Both the PTO Code and the PTO Rules are relevant in this case. The PTO Code applies to conduct occurring prior to May 3, 2013, when the PTO Rules became effective. *Id.* The PTO Rules apply to conduct occurring after that date. The PTO Code is “mandatory in character and state[s] the minimum level of conduct below which no practitioner can fall without being subjected to disciplinary action.” 37 C.F.R. § 10.20(b); *see also Sheinbein*, 465 F.3d at 495-96. As indicated above, the PTO Rules carry that standard forward. Changes to Representation of Others Before the United States Patent and Trademark Office, 78 Fed. Reg. at 20181.

### III. BURDEN OF PROOF

The OED Director must prove alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49; 37 C.F.R. § 10.149; *Johnson*, PTO Proceeding No. D2014-12, slip op. at 2 (Dec. 31, 2014) (Initial Decision).<sup>12</sup> Likewise, it is Respondent’s burden to prove his affirmative defense(s) by clear and convincing evidence. *Johnson*, No. D2014-12, slip op. at 2. This standard “protect[s] particularly important interests . . . where there is a clear liberty interest at stake.” *Id.* at 3 (quoting *Thomas v. Nicholson*, 423 F.3d 1279, 1283 (Fed. Cir. 2005)) (quotation marks omitted). “Clear and convincing evidence” requires a level of proof that falls “between a preponderance of the evidence and proof beyond a reasonable doubt.” *Id.* (quoting *Addington v. Texas*, 441 U.S. 418, 424-25 (1979)) (quotation marks omitted). The evidence produced must be of such weight so as to “produce[ ] in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.” *Id.* (quoting *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001)) (quotation marks omitted). “Evidence is clear if it is certain, unambiguous, and plain to the understanding, and it is convincing if it is reasonable and persuasive enough to cause the trier of facts to believe it.” *Id.* (quoting *Foster v. Alliedsignal, Inc.*, 293 F.3d 1187, 1194 (10th Cir. 2002)) (quotation marks omitted).

### IV. FACTUAL BACKGROUND

Respondent was admitted to the bar of the Commonwealth of Pennsylvania on June 15, 1989. RX 1; Tr. at 252-53. He registered as a patent attorney before the PTO on August 12,

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<sup>11</sup> Also useful to understanding the PTO Code and PTO Rules are Comments and Annotations to the ABA Model Rules as well as decisions and opinions issued by state bars. *See Changes to Representation of Others Before the United States Patent and Trademark Office*, 78 Fed. Reg. 20180.

<sup>12</sup> The PTO case decisions cited here are publically accessible via the search portal available at: [https://e-foia.uspto.gov/Foia/DispatchOEDServlet?decisionType=&contractNo=D2001-14&respName=&txtInput\\_StartDate=&txtInput\\_EndDate=&docTextSearch=&page=60](https://e-foia.uspto.gov/Foia/DispatchOEDServlet?decisionType=&contractNo=D2001-14&respName=&txtInput_StartDate=&txtInput_EndDate=&docTextSearch=&page=60).

1997.<sup>13</sup> DX 1, 2; Tr. at 252. For various periods of time on three occasions between 2011 and 2014, Respondent was administratively suspended by the Pennsylvania bar for not satisfying his continuing legal education ("CLE") requirements or not paying his bar dues. DX 3.

Around 2004 or 2005, Respondent moved to Massachusetts. Tr. at 417-18. According to the resume he submitted to the record, Respondent worked for General Electric in Pittsfield, Massachusetts between 2005 and 2006, and then for Bene Pharma starting in the fall of 2006. RX 5 at 000008. In January 2008, while living in Massachusetts, Respondent was charged with felony kidnapping following allegations he sexually abused his three-year-old son. Tr. at 30; DX 58 at 5; RX 18 at 000167, 000174. He was incarcerated between mid-February 2008 and mid-March 2008 and was then placed under house arrest. DX 58 at 5; Tr. at 402, 420. The charges were later dismissed, but had a lasting impact: Respondent's wife left Massachusetts for Russia in early 2008 and, he says, she has refused to come back to the United States. Tr. at 402, 421; RB at 5. As such, Respondent began to maintain a second residence in Canada, but he and his wife still own their house in Massachusetts,<sup>14</sup> Respondent still carries a Massachusetts driver's license, and Respondent continued to use his Massachusetts address in his Massachusetts Bar application and various legal proceedings in which he purported to represent clients, including most of the proceedings at issue in this disciplinary matter. Tr. at 421-22; *see, e.g.*, RX 66 at 000449; DX 4 at 2; DX 9 at 1; DX 17 at 11; DX 58 at 4; DX 60 at 27; DX 62 at 1; DX 63 at 16; DX 70 at 1; DX 71 at 16; DX 77 at 1; DX 80 at 2; DX 81 at 1; DX 84 at 3.

The filing and subsequent dismissal of the criminal charges against him prompted Respondent to begin representing people all around the country who alleged they were also wronged by state child protective authorities, often in situations that, like his own, involved accusations of child abuse and the removal of children from their homes. "[M]any family's [sic] began contacting Mr. Piccone and asking for his help to contest the scandalous, usually baseless, allegations which [child protection agencies] made against them," Respondent argues. RB at 6. "The large majority of charges which concern the unauthorized practice of law concern

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<sup>13</sup> According to Respondent's evidence, he first filed an application for registration to practice before the PTO in 1991. RX 66 at 000493. On that application, he denied that he had any traffic violations for which the fine exceeded \$100. In a subsequent registration application, Respondent admitted he had traffic fines of more than \$100. The PTO then asked him to explain the discrepancy in the applications, which Respondent described as an inadvertent error resulting from inattention. A subsequent investigation by the PTO revealed that between 1985 and 1991 Respondent accumulated 38 traffic violations in four different states. The PTO therefore denied Respondent's application in December 1994 based on his lack of good moral character, lack of candor, and lack of truthfulness. Respondent appealed the decision to the PTO Commissioner. When the Commissioner did not act on the appeal, Respondent filed a complaint in the U.S. District Court for the Eastern District of Virginia seeking a writ of mandamus. Before the complaint was resolved, the PTO Commissioner, on May 6, 1997, reversed the initial denial of Respondent's application. RX 66 at 000493-94. Respondent subsequently filed a civil rights lawsuit against the PTO and various PTO officials for delaying his admission to the patent bar. That lawsuit was later dismissed on the defendants' motion. RX 66 at 000493, 000496.

<sup>14</sup> Whether Respondent still owns his home in Massachusetts is uncertain. Respondent indicated that as a result of the kidnapping charges, he and his family have completely exhausted their savings and assets and stopped making mortgage payments on the home. RB at 5-6.

objectively innocent family's [sic] devastated by the baseless, arbitrary and capricious actions taken by [child protection agencies] across the United States." RB at 6. Although licensed only in Pennsylvania and before the PTO, Respondent expanded his legal practice to multiple state and federal courts and "shifted the majority of the focus of [his] practice to civil rights cases." Tr. at 412, 419. Respondent considers himself an attorney of last resort for these clients: "[W]hen somebody is in a very particular circumstance, I try to help out." Tr. at 423; RB at 7. Most attorneys do not take these cases because the potential damages are too small, he said, making it difficult for clients to secure pro bono work. Tr. at 424. When someone calls him for help Respondent sincerely proclaimed, "it's hard for me to say no." Tr. at 424. Respondent believes the entire judicial system is biased against these pro se parties and has targeted him personally because of his efforts to represent these litigants:

[I]n most, if not all, of the cases that Mr. Piccone that form the subject of the these proceedings a United States Article III Judge, appointed by the President after confirmation hearings by the senate to ensure their qualification, stated that pro se litigants would not be able to proceed with their causes unless and until Mr. Piccone was admitted pro hac vice, or otherwise handle their matter. This circumstance is so coincidental as to comprise evidence, because every federal judge in the United States is aware of a pro se litigants right to represent themselves in a United States District Court . . . . It seems improbable that the highly qualified lawyers going into the federal judiciary would in multiple different states, would all be unaware of a pro se litigants [sic] right to represent themselves, but for a coordinated attempt to give these americans [sic] appearing before them a hard time. Moreover, all of these cases concerned child custody matters and now Mr. Piccone, like so many other attorneys who have fought the child custody establishment, has been under attack since . . . 2007.

RRB at 16-17, 19-20. He states further: "Each of the 9 different allegations of misconduct [in this proceeding] . . . is directly related to the malicious and politically motivated prosecution of Mr. Piccone and his family." RB at 6. Likewise, Respondent traces the origin of the grievance against him to the New Hampshire Attorney General's Office, ties it in with its transmittal to the Massachusetts Board of Bar Examiners and the "provable misconduct" and "missing documents galore" in the OED Director's Office, and concludes "[t]he odds of the coincidence upon coincidence upon happenstance upon bad luck necessary for all these circumstances to occur without there being some corrinated [sic] behind the scenes activity are so staggering as to make Mr. Piccone's selective prosecution a certainty." RRB at 19.

Although he lived and practiced in Massachusetts for several years, Respondent was not and is not a member of that state's bar. He applied for admission on motion on November 17, 2010. RX 66 at 000448; DX 88 at 2. The Board of Bar Examiners denied the application in a letter dated February 21, 2012. DX 88 at 5-6. The Board "concluded that [Respondent's] constant private practice in Massachusetts after May 2006 was unauthorized (and therefore illegal) (i) as he was not admitted to the Massachusetts bar at any point and (ii) as at least two well-respected judges (one state and one federal) located in Massachusetts had concluded that



the [Respondent's] Massachusetts legal practice was both unauthorized and improper."<sup>15</sup> DX 88 at 5-6. Respondent appealed the Board's decision on June 26, 2012. DX 87. His appeal was denied without hearing on March 26, 2014, by Massachusetts' Supreme Judicial Court. DX 87.

In his Complaint, the OED Director charged Respondent in nine counts with violating eleven different sections of the PTO Code and PTO Rules. Count 1 stems from Respondent's practice before the PTO while his Pennsylvania law license was suspended; Counts 2 to 5 and 7 to 9 arise out of Respondent's conduct in various federal district courts where he attempted to represent plaintiffs in civil rights cases; and Count 6 involves Respondent's inadequate representation of a plaintiff in a contract dispute. The dates of Respondent's alleged misconduct range from January 2007 through mid-October 2014.

#### V. RESPONDENT'S STATUTE OF LIMITATIONS DEFENSE

Following prehearing motions practice, Respondent's only remaining affirmative defense is that this action is barred by the statute of limitations. See RB at 98-129; Order on OED Director's Renewed Motion to Strike Respondent's First Though Twentieth Defenses (June 5, 2015). The applicable statute provides that a PTO disciplinary proceeding must "be commenced not later than . . . 1 year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the [PTO] as prescribed in the regulations . . ." 35 U.S.C. § 32. The regulations provide that "[a] complaint shall be filed within one year after the date on which the OED Director receives a grievance forming the basis of the complaint." 37 C.F.R. § 11.34(d). A grievance is defined in the regulations as "a *written submission* from any source received by the OED Director that presents possible grounds for discipline of a specified practitioner." 37 C.F.R. § 11.1 (emphasis added). It is Respondent's burden to prove this affirmative defense by clear and convincing evidence, that is to prove that the PTO received a "grievance" in regard to him *on or before December 10, 2013*, one year prior to the December 10, 2014, filing date. 37 C.F.R. § 11.49.

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<sup>15</sup> For example, in March 2010, a Massachusetts state court revoked Respondent's pro hac vice admission in a probate matter due to his misconduct. The court further observed Respondent had

maintained a law office [in] Massachusetts for at least the past five years. From that office, he initiated about ten lawsuits in the courts of this Commonwealth. This has involved filing pleadings, counseling clients and appearing before the courts of this Commonwealth. He has accomplished this without having sought admission to the Massachusetts Bar. Attorney Piccone is practicing law in the Commonwealth without becoming a member of the Bar and becoming subject to its disciplinary rules. His actions have violated Rule 5.5 of the Rules of Professional Responsibility.

RX 66 at 000486; DX 88 at 5. The state court found that "it is not in the interests of justice to allow [Respondent] to continue to appear as counsel of record in this case" and struck all of his filings. RX 66 at 000484. The federal judge in Massachusetts alluded to above who found Respondent's practice "unauthorized and improper" presided in *Pease v. Burns*, 679 F. Supp. 2d 161 (D. Mass. 2010), discussed below.

The evidence shows that on December 11, 2013, Marilyn Wellington, the executive director of the Massachusetts Board of Bar Examiners, called Dhalia George, a staff attorney in the PTO's Office of Enrollment and Discipline, to check on the status of Respondent's license with the PTO. Tr. at 50; RX 65 at 91 (Wellington Dep.). She was prompted to make this inquiry because she "had just learned that [Respondent was] administratively suspended in" Pennsylvania and "for someone who is licensed with the USPTO, this puts into question the status of the licensure with the USPTO." RX 65 at 87 (Wellington Dep.). Ms. Wellington was interested in Respondent's status with the PTO because of Respondent's application for admission on motion to the Massachusetts bar, "and [she] needed to understand [his] licensure status." RX 65 at 88 (Wellington Dep.).<sup>16</sup>

Initially Ms. Wellington left a voicemail for Ms. George, and after exchanging messages the two ultimately spoke in the mid-afternoon of December 11, 2013. Tr. at 50-51. "[Ms. Wellington] mentioned to me that Mr. Piccone is administratively suspended in the one jurisdiction in which he is licensed to practice law, and she wanted to see if, in fact, our records reflected the same issue," Ms. George testified. Tr. at 51. Ms. George told Ms. Wellington that she needed further documentation of this suspension from her. Tr. at 52. Shortly after the phone call, Ms. Wellington emailed Ms. George a copy of a web posting from Pennsylvania's disciplinary board showing Respondent was under administrative suspension. Tr. at 52-53; DX 86. The posting had apparently been forwarded to Ms. Wellington from the New Hampshire Department of Justice. DX 86 at 1. The OED Director has referred to this email as the written grievance "forming the basis of the complaint," and it is the only document that serves as such. Tr. at 154-55, 158-59.

Ms. Wellington did not recall any communications she had with the PTO in regard to Respondent prior to her conversation with Ms. George. RX 65 at 100-01 (Wellington Dep.). Nor did Ms. Wellington recall speaking with anyone else at the PTO other than Ms. George. RX 65 at 105 (Wellington Dep.). Her only conversation with the PTO with respect to Respondent was her phone call on December 11, 2013, and she knows of nobody else in her office who has spoken to the PTO about Respondent. RX 65 at 106 (Wellington Dep.). Further, under subpoena, Ms. Wellington searched the Massachusetts Board of Bar Examiner's records for documents concerning communications with the PTO about Respondent and found nothing. RX 65 at 109-11 (Wellington Dep.). Similarly, in response to this Tribunal's Orders and Respondent's interrogatory, the OED Director searched for written and oral communications in his office received prior to Ms. Wellington's December 11, 2013, email that presented possible grounds for disciplining Respondent. See Order Granting OED Director's Request for Extension of Deadline (Oct. 5, 2015); Order Granting Respondent's Motion to Compel (Oct. 6, 2015); OED Director's Response to this Tribunal's Order Dated October 5, 2015 (Oct. 9, 2015). The search found nothing to support Respondent's statute of limitations defense.

In response to Ms. Wellington's inquiry and written grievance, Ms. George began to investigate Respondent. Tr. at 82-83. Prior to Ms. Wellington contacting her on December 11,

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<sup>16</sup> Ms. Wellington did not recall the exact point she learned of the suspension of Respondent's law license in Pennsylvania. RX 65 at 83 (Wellington Dep.). Ms. Wellington first came to hear of Respondent through his application for admission to the Massachusetts bar, sometime after he filed his application in 2010. RX 65 at 73-74 (Wellington Dep.).

2013, Ms. George had never heard of Respondent. Tr. at 53. Nor had she been contacted by other individuals in other states regarding Respondent's misconduct. Tr. at 212-13. "We do share and exchange information with each bar. Sometimes they [sic] states will call us, and they will inquire about the issue about a practitioner, whether they are registered to practice with us or not," Ms. George said.<sup>17</sup> Tr. at 62. After beginning her investigation, Ms. George searched an internal database for previous interactions Respondent may have had with the OED but did not find "any prior disciplinary action for [Respondent]." Tr. at 97. Similarly, the OED's internal docketing system that Ms. George used never referred to any matters relating to an investigation of Mr. Piccone prior to December 11, 2013.<sup>18</sup> Tr. at 123.

The OED Director filed the Complaint in this matter on December 10, 2014, a day before the one-year anniversary of the date on which Ms. George received the grievance, *i.e.*, the e-mail, from Ms. Wellington. Nevertheless, Respondent argues the statute of limitations expired before the Complaint was filed, proclaiming that "[t]he OED Director received notice of information from multiple sources, on multiple occasions, more than 1 year before the filing date of the . . . Complaint, which triggered the initiation of the statute of limitations." RB at 99. *See generally*, RB at 98-129. Respondent strings together this argument not from evidence, but from supposition: According to Respondent, "numerous attorneys . . . and at least two federal judges [] had specific knowledge" of his misconduct and were under ethical and legal obligations to report this misconduct to relevant bar authorities, including the PTO. RB at 99-100. Therefore, he contends, this creates "the legal presumption that the government and its [sic] employees, such as Pennsylvania bar authority attorneys and federal judges acted according to the law, provid[ing] clear and convincing evidence that the statute of limitations resulted in the dismissal of all charges before the complaint was filed." RB at 100. So, for example, he argues, "when Mr. Piccone was administratively suspended on August 21, 2013, by the Supreme Court of Pennsylvania for failure to take CLE classes for financial reasons, the attorneys at the Pennsylvania Disciplinary Board were ethically obligated to report this suspension to the U.S.P.T.O. as one of Mr. Piccone's registered bar admissions." RB at 112. Respondent adds that "the OED Director was constructively noticed with Mr. Piccone's alleged misconduct by the issuance of published decisions, which put the public on notice of the alleged misconduct in a manner running the statute of limitations before the complaint was filed." RB at 100. Additionally, Respondent says a check he submitted to the OED Director that was returned for insufficient funds "was sufficient to trigger an investigation of Mr. Piccone and therefore sufficient to trigger the start of the statute of limitations period." RB at 128.

I find credible Ms. Wellington's testimony that she first contacted the OED Director about Respondent on December 11, 2013. I also find credible Ms. George's testimony that she

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<sup>17</sup> There is no centralized, multi-jurisdictional database in which such information about attorneys is collected. Tr. at 209-10. Rather, the PTO relies on its practitioners to voluntarily inform them when they have been disciplined elsewhere or on other jurisdictions to contact them when they discipline PTO practitioners. Tr. at 210-11. Generally, however, practitioners are not required to report administrative suspensions. Tr. at 215.

<sup>18</sup> Within his office, the OED Director keeps track of the statute of limitations based on the date the investigation is opened. Tr. at 144, 151. Respondent complains the PTO would not provide him a copy of the "docketing statement" with the statute of limitations date in his case and implies this evidences a cover up. Tr. at 401-02; *see also* RX 17 at 000127.

received no information about Respondent that could have served as a written grievance prior to the communication she received from Ms. Wellington on December 11, 2013. Finally, I find Respondent's argument to the contrary to be entirely unsubstantiated. Respondent calls this "a circumstantial case," but it is not even that. *See, e.g.*, Tr. at 108; RB at 99. There is certainly no direct evidence that anybody in the OED Director's office had any notice of any bad act by Respondent related to the violations charged in the Complaint prior to the conversation between Ms. Wellington and Ms. George on December 11. Nor is there even any circumstantial evidence in the record from which this could be reasonably inferred.<sup>19</sup> Respondent admitted as much at hearing:

The Tribunal: [Y]ou've already done depositions, interrogatories, document production through your FOIA and the document request, and there has been nothing, literally nothing that shows – in the record, as far as I reviewed up to today, that shows that a single document regarding you and the issues in the complaint was received by the Patent and Trademark Office before December 11, 2013.

Respondent: That's correct, Your Honor.

Tr. at 16.<sup>20</sup>

Further, Respondent's "constructive notice" argument is a nonstarter. The rules require a "written *submission* from any source *received* by the OED Director" to initiate a disciplinary investigation and start the statute of limitations. 37 C.F.R. § 11.1 (emphasis added). Respondent contends that his Pennsylvania license suspensions were published in "[t]he Pennsylvania Bulletin[,] . . . the official gazette for information published by the government of that commonwealth . . ." RB at 126. This "constitutes notice to the public of all facts stated therein," he adds. RB at 126. However, the rules do not provide that the OED Director can receive notice of a practitioner's misconduct by publication. In addition, there is no evidence in the record that these notices regarding Respondent exist,<sup>21</sup> and even if they did, there is certainly

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<sup>19</sup> One telling example of Respondent's complete inability to muster evidence in support of his defense is illustrated in his post-hearing brief, where he makes the assertion, "There can be no doubt that communications between the U.S.P.T.O. and the Pennsylvania Bar authorities took place, Ms. George admitted they did." RB at 113. Respondent then footnotes to the following as his "authority" for this claim: "See Hearing transcript page, line." RB at 113 and n.123. Of course, it is not so unusual for Respondent to make legal or factual claims without citing any authority for his stated propositions. Indeed, his filings contain many empty footnotes. *See, e.g.*, RRB at 20 n.19-22, 37 n.46-47, 38 n.50.

<sup>20</sup> Respondent subjected Ms. George, who for serious health reasons testified by video because she could not appear in person, to some four hours of wide-ranging and exhaustive cross-examination that ultimately revealed nothing to support his defense.

<sup>21</sup> Respondent cites to "REX AUTH, Exhibit 17." RB at 127 n.143. There is no REX AUTH, Exhibit 17. When he submitted his untimely Reply Brief on February 29, 2016, Respondent noted in the accompanying email that he "will be forwarding electronic copies of the REX

no evidence they were either submitted to or received by the OED Director. Similarly, Respondent's bounced-check argument is without merit. RB at 128. As the OED Director concedes, Respondent was among 2,300 other individuals who prior to December 11, 2013, submitted checks to the Office that were returned for non-payment. See OED Director's Response to this Tribunal's Order Dated October 5, 2015 at 6-7 (Oct. 9, 2015). Presumably, this could present grounds for discipline based on that specific act. But none of the allegations in the Complaint that initiated *this* proceeding involve or have any nexus with a bounced check. So even if the statute of limitations has expired for charging Respondent with bouncing a check before the PTO, that does not affect the statute of limitations for any of the violations actually charged in this proceeding.

Respondent's statute of limitations defense appears to have little to do with evidence and much to do with his belief in a conspiracy theory and the idea that the PTO and OED Director must be hiding the relevant documents. For example, despite his admission at hearing that he has no evidence of wrongdoing by the OED Director, even as recently as in his post-hearing Reply Brief Respondent continues to make unabashed claims that the OED Director "is still hiding statute of limitations information from this court." See RRB at 21-31. However, there is no evidence whatsoever of concealment.<sup>22</sup> Prior to hearing, the Tribunal specifically ordered the OED Director to search for and produce any written or oral communications that could serve as a grievance in this matter. See Order on Respondent's Motions for Extension of Time to Conduct Discovery and Third Request for Discovery (Aug. 25, 2015); Order Granting Respondent's Motion to Compel (Oct. 6, 2015). The OED Director fully complied with this and subsequent related orders on October 9, 2015, and his records search produced nothing to support Respondent's assertions. See OED Director's Response to this Tribunal's Order Dated October 5, 2015 (Oct. 9, 2015). In his post-hearing briefs, Respondent offers mere argument that the OED Director's search was not sufficiently comprehensive, and therefore, inadequate: "This Tribunal should dismiss all allegations against Mr. Piccone as a sanction for failing to conduct the search ordered by Judge Biro on October 5, 2015." RRB at 31. However, all the evidence available indicates that the OED Director did conduct the search ordered, and although Respondent would prefer to ignore Ms. Wellington's and Ms. George's direct testimony that no grievance existed until December 11, 2013, this Tribunal will not do so.

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AUTH exhibits." This office never received any such exhibits. Moreover, even if it had, it is unlikely they would have been admitted into evidence given their tardiness.

<sup>22</sup> For an example of the kind of evidence Respondent wants to rely on, see RX 17 at 000120. This is an email exchange between Ms. George and a contractor for the OED Director who was in charge of keeping files that Respondent obtained through a Freedom of Information Act request. Tr. at 114, 400. The content of the emails was entirely redacted. Yet, Respondent would contend they show the OED "has established procedure for denuding files of inconvenient documents" whereby Ms. George asks the contractor "to remove documents from the file when she received the more recent complaint." Tr. at 16. Although Respondent may find it convenient to his argument to imagine that is what these emails say, there is obviously no support for this proposition. Moreover, Ms. George testified under oath she had never asked the contractor to remove and dispose of material from an investigative file, nor did she know of anyone else who had done so. Tr. at 117.

Respondent makes a related argument in his Initial Brief that “the OED Director’ [is] the exclusive and single individual to whom allegations of misconduct could be reported which would start the statute of limitations.” RB at 101-06, 108-10. He contends this is the proper interpretation of 35 U.S.C. § 32 based on PTO’s enactment of 37 C.F.R. § 11.34(d). RB at 101. It is unclear why he makes this argument, because it does not help him. The OED Director treated the statute of limitations as beginning on a date earlier than when he personally learned of the misconduct— when his staff member Ms. George received the email from Ms. Wellington. Under Respondent’s assertion, the statute of limitations would not have started until after Ms. George notified the OED Director personally of her investigation. See Tr. at 86-87, 90. More confusingly, after first arguing that the statute of limitations should not start until the OED Director himself receives the grievance, Respondent then reverses course to complain that such an arrangement would be “arbitrary and capricious” because it would allow the “statute of limitations period [to] be freely manipulated” by investigators working on their own timeline before notifying the OED Director.<sup>23</sup> RB at 106, 109.

Regardless, nothing in the statute or regulations indicates Congress or the PTO intended that the OED Director himself must receive the grievance to start the statute of limitations and that receipt by a subordinate would not suffice. Cf. *Ethicon Endo-Surgery, Inc. v. Covidien LP*, 812 F.3d 1023, 1031 (Fed. Cir. 2016) (“When a statute delegates authority to a federal officer or agency, subdelegation to a subordinate federal officer or agency is presumptively permissible absent affirmative evidence of a contrary congressional intent.”). Moreover, in observing that the statute of limitations would not be triggered by receipt of a grievance by an employee outside of OED, the PTO during the rulemaking process referenced legislative history for the proposition that “[a] section 32 proceeding must be initiated . . . within 1 year of when the misconduct is reported to that *section* of the PTO charged with conducting section 32 proceedings.” Implementation of Statute of Limitations Provisions for Office Disciplinary Proceedings, 77 Fed. Reg. 45247, 45250 (July 31, 2012) (Final Rule) (citing Cong. Rec. S1372 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl)) (emphasis added). It further declared that “OED is charged with conducting section 32 proceedings.” *Id.* (emphasis added). The PTO could have referred to an *individual* within OED rather than the *section* of PTO charged with conducting section 32 proceedings. However, it did not, giving every indication that the PTO did not believe Congress expected the OED Director himself to receive every grievance that would initiate the statute of limitations.

In conclusion, Respondent has not proven by clear and convincing evidence his statute of limitations defense, and the Complaint here is found to have been timely filed.

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<sup>23</sup> It has not been uncommon for Respondent in this proceeding to make arguments which suggest an unwillingness or inability to grasp the significant issues and impact of the various stages in this proceeding. As just one example, he states in his Reply Brief that he “is still hopeful that during one of the increasing amount of litigation surrounding this disciplinary proceedings [sic], he will be able to take testimony of the major players at the USPTO in this matter, and show the breadth and depth of the government misconduct that has ruled at OED for more than two decades.” RRB at 10 n.8.

As stated above, Respondent's statute of limitations defense was the only defense remaining for hearing. All his other defenses were previously stricken by this Tribunal,<sup>24</sup> including Respondent's contention that: the OED Director lacks jurisdiction to discipline him; his conduct is protected speech; his conduct amounts to constitutionally-protected rights to free association and to petition and protest government action; he is the victim of selective prosecution; he is the subject of prosecutorial vindictiveness; he is the subject of prosecutorial misconduct; the OED Director is proceeding in bad faith; the OED Director is operating with unclean hands; laches apply; the PTO Rules and PTO Code are unconstitutionally vague and overbroad; the Complaint fails to state a claim; the Complaint fails to put him on notice of the alleged misconduct; he is shielded by mistake and inadvertence; the rules governing these proceedings are unlawful and deny him due process; the OED Director has lost, destroyed, or otherwise spoiled evidence; he lacked knowledge of any judicial order placing him in contempt, that he did not have any ability to comply with the order, and that he did not willfully disobey any such order; and that he did not have a full and fair opportunity to contest allegations of professional misconduct. See Order on OED Director's Renewed Motion to Strike Respondent's First Through Twentieth Defenses (June 5, 2015). Additionally, in prior orders, this Tribunal has specifically ruled it irrelevant that the Complaint was not personally signed by the OED Director but instead was signed by a subordinate acting for the Director (Order on Respondent's Motion to Dismiss (Mar. 3, 2015)); and that the OED Director is not acting outside of his constitutional or statutory authority (Order on Respondent's Motion to Dismiss Count 1 (May 5, 2015)).

Consequently, this Tribunal has previously addressed and disposed of Respondent's arguments in his post-hearing Brief and post-hearing Reply Brief that he is the victim of selective prosecution, that the OED Director has pursued this litigation in bad faith, and that this disciplinary proceeding was brought without lawful authority because the OED Director did not himself sign the Complaint. RB at 79-89, 129-46; RRB at 10-14, 16-21. Respondent argues those prior rulings are outdated because "[t]he evidence in this matter has changed substantially since Mr. Piccone originally filed [his prehearing motions]." RRB at 9. Actually, the evidence in this matter has not changed substantially, at least not in any way that favors Respondent. His arguments remain devoid of any factual support or evidentiary basis. So, while Respondent is correct that "[a] trial on the merits has taken place in which testimony was taken from Ms. Dalhia [sic] George, the lead investigator in this case and Mr. Piccone, the practitioner accused of misconduct" and that "numerous depositions have been conducted including those of Brandonlyn Nunley and Krista Hohn, two former clients of Mr. Piccone, and Marilyn Wellington, the Executive Director of the Massachusetts Board of Bar Examiners," none of these

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<sup>24</sup> Respondent asserts in his Reply Brief "a good faith basis to believe" that he was authorized to reassert previously stricken defenses based on the plural form of the word "defense" that appears in a scheduling order. RRB at 5. In fact, this Tribunal never authorized him to re-raise defenses that were already ruled upon. Additionally, it is a well-settled legal principle that the law-of-the-case doctrine precludes the possibility of revisiting prior rulings except in a handful of extraordinary circumstances, such as an intervening change in controlling law, new significant evidence, or clear error in prior decisions that cause manifest injustice. See, e.g., *Hulsey v. Astrue*, 622 F.3d 917, 924-25 (8th Cir. 2010); *United Artists Theatre Cir., Inc. v. Township of Warrington*, 316 F.3d 392, 397 n.4 (3d Cir. 2003); *Hanover Ins. Co. v. Am. Eng'g Co.*, 105 F.3d 306, 312-13 (6th Cir. 1997). None of those circumstances are present here.

sources provided sufficient evidence to support reconsideration of the validity of Respondent's other defenses. RRB at 9-10.

In his Reply Brief, Respondent also complains "[t]he OED Director [sic] is responsible for an approximately six (6) month delay in the initiation of the investigation of this matter resulting in the almost complete absence of any investigation occurring." RRB at 6-9. Aside from stating how he was actually prejudiced by such delay, Respondent conveniently overlooks the fact that he was offered multiple chances in the year prior to the filing of the Complaint to provide information and explain his version of events, and he squandered these opportunities. The OED Director submitted four Requests for Information to Respondent that he largely ignored.<sup>25</sup> DX 90, 91, 94, 99. As Ms. George testified, "I gave Mr. Piccone more than ample opportunity to explain his side of things, and to give me his facts, his version of the evidence, but I received nothing." Tr. at 180. Respondent cannot now gripe about the investigation not unfolding in a manner to his liking when he chose not to participate in its more formative stages.

Respondent also argues that the OED Director did not turn over to him exculpatory evidence as required by *Brady v. Maryland*, 373 U.S. 83 (1963).<sup>26</sup> RB at 89-98; RRB at 44-50. However, "*Brady* does not apply in this context." *Polidi v. Lee*, No. 1:15-cv-1030-TSE-MSN, slip op. at 4 (E.D. Va. Nov. 24, 2015). In *Polidi*, a petitioner sought judicial review of the PTO's decision to exclude him from practice following administrative disciplinary proceedings. That petitioner also argued the PTO was obligated to disclose information that would assist his defense. The Court observed that the United States Court of Appeals for the Fourth Circuit has held that "*Brady* only applies beyond criminal prosecutions to civil proceedings 'in those unusual cases where the potential consequences equal or exceed those of most criminal convictions.'" *Id.* (quoting *Fox ex rel. Fox v. Elk Run Coal Co., Inc.*, 739 F.3d 131, 138-39 (4th Cir. 2014)). "The qualifying 'unusual cases' are those in which the defendant faces a significant deprivation of liberty or in which the government's litigation tactics are particularly egregious." *Id.* Here, just as the case was in *Polidi*, Respondent does "not face a significant deprivation of liberty on par with a criminal conviction, e.g., commitment to the custody of the government, nor were the PTO's litigation tactics egregious or designed to make the case impossible to defend." *Id.* Consequently, Respondent's *Brady* argument is without merit.

## VI. COUNT 1

### A. Facts Relevant to the Violations

At the request of William Windsor, and on behalf of Lawless America Association,

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<sup>25</sup> Respondent did not begin to respond to the requests until the third attempt. And even then, his "response" was non-responsive to the substance of the questions posed. DX 95, 100.

<sup>26</sup> Specifically, he contends the OED Director acquired "a privilege log listing the dates of all communications between Ms. Nunley and Mr. Piccone which, on information and belief, demonstrates that Mr. Piccone did not communicate with Ms. Nunley, either orally, or in writing, until the spring of 2015." RB at 96. Also, he alleges counsel for the OED Director communicated with Ms. Hankins by phone and that she "made several positive statements about Mr. Piccone" that the OED Director failed to introduce to the record. RB at 97.



Respondent filed Trademark Application No. 85871932 on March 9, 2013, for the mark "Lawless America." DX 4 at 1-12; DX 7 at 21 (Windsor Dep.);<sup>27</sup> Tr. at 255-56. Lawless America Association was a non-profit association "chartered . . . to pursue the mission . . . of Lawless America, which is exposing government, judicial, and law enforcement corruption." DX 7 at 28; *see also* Tr. at 255. Respondent was the sole director of Lawless America Association and Mr. Windsor was its president. DX 7 at 28, 30-31, 34-35. As president, Mr. Windsor "was like the operating guy" and maintained control of the association's checkbook and checking account. DX 7 at 39-40. In the trademark application, Respondent listed himself as the attorney of record and the correspondent for the application. DX 4 at 4-5, 7-8; Tr. at 257-58. He was at that time authorized to practice law based on his active Pennsylvania license. Tr. at 253, 255-56.

On June 27, 2013, the PTO sent an Office Action to Lawless America Association at Respondent's email address. The Office Action required a response within six months of the date it was sent. DX 4 at 13; Tr. at 259-60, 412. On August 15, 2013, the PTO sent a second Office Action to Lawless America Association at Respondent's email address. The second Office Action required a response within six months of the date it was sent. DX 4 at 25; Tr. at 260. Sometime after the Office Actions were sent, Mr. Windsor discussed with Respondent the kind of proof he had of the earliest use of the Lawless America mark. DX 7 at 47, 61-62.

Shortly thereafter, by Order of the Supreme Court of Pennsylvania dated August 21, 2013, Respondent was, effective September 20, 2013, administratively suspended from the Pennsylvania bar for failing to complete required annual CLE. DX 3; Tr. at 253-55. Respondent never submitted a notice to the PTO that he was no longer the attorney of record for the Lawless America trademark application. Tr. at 291, 404-05. Further, there is no evidence in the record that the PTO received any notification that Respondent was administratively suspended or that he wished to withdraw from representation.

Even so, Respondent sent a draft of a "Response to Office Action" to Mr. Windsor on February 12, 2014. DX 7 at 60-61, 66-68; DX 4.<sup>28</sup> Mr. Windsor "suspect[s]" that Respondent sent the Response to him with instructions to sign and submit it to the PTO. DX 7 at 59. Mr. Windsor also signed a series of other documents that he received from Respondent after September 20, 2013, and that were responsive to pending office actions in the trademark

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<sup>27</sup> Respondent alleges the OED Director engaged in misconduct when deposing Mr. Windsor outside his presence. RRB at 34-37. Specifically, he contends he was "entitled as a matter of law to attend any deposition" and to receive district court decisions related to the deposition. RRB at 35. However, there is no evidence that the OED Director did anything to prevent Respondent's attendance and participation in the noticed deposition, and it was not the OED Director's responsibility to obtain publically-available court documents for Respondent. Respondent further argues the OED Director tried to mislead Mr. Windsor while deposing him, but the Tribunal has reviewed the entire deposition transcript and sees no evidence of such misconduct. RRB at 36.

<sup>28</sup> Mr. Windsor's memory of this time is somewhat clouded because he fell and fractured his skull in December 2013 and "was essentially out of commission for about four months." DX 7 at 26, 83-84.

application, including a "Declaration," "Statement of Legal Relationship," "Disclaimer," and "Submission of Substitute Specimens." DX 4 at 31-38; DX 7 at 65-66.

On February 14, 2014, the Response was submitted to the PTO, which received it February 18. The Response, which contains legal analysis and argument, was signed by Mr. Windsor, but he did not write it. DX 4 at 31-33; DX 7 at 57; Tr. at 262-63. Mr. Windsor "assume[s]" that Respondent wrote the document as "[t]here couldn't be anyone else" unless there was someone else working with Respondent. DX 7 at 57-59. Respondent concedes there were no other attorneys supervising his work and admits he "participated heavily in the drafting" of the Response to Office Action: "I can say that I did send [Mr. Windsor] a draft." Tr. at 265, 273-74. Respondent also concedes he was the attorney of record even though his name does not appear on the Response to Office Action and related documents.<sup>29</sup> Tr. at 287.

Eventually, Respondent told Mr. Windsor he was suspended and unable to offer legal assistance until his suspension was resolved. DX 7 at 55. Respondent testified he told Mr. Windsor about his suspension by phone "shortly after" he became aware of it, "in 2013 at some point closer in time to the suspension date . . . well before May 2014." Tr. at 270-71, 273, 288. However, Respondent's hearing testimony on this point conflicts with Mr. Windsor's: "He sent me an email I believe May of 2014 that said that because of his suspension, he was no longer in a position to provide any assistance." DX 7 at 78. Until that point, Mr. Windsor said he considered Respondent to be his attorney, although Mr. Windsor also indicated that he had generally known from his first contact with Respondent that "there were issues" with Respondent's license.<sup>30</sup> DX 7 at 77-79. Respondent testified that even though he thought he was operating within the proper ethical boundaries, at some point he decided to "scale back the help" he was providing Mr. Windsor because Mr. Windsor was "a little bit too loose of a cannon." Tr. at 290.

After receiving Respondent's email in May 2014, Mr. Windsor "kind of panicked." DX 7 at 78. Ultimately, Mr. Windsor did not succeed in getting a trademark for "Lawless America," and he is not actively pursuing one. DX 7 at 81. The PTO mailed a "Notice of Abandonment" of the trademark application to Respondent on October 28, 2014, although Respondent denies receiving it.<sup>31</sup> DX 4 at 52; Tr. at 291.

## **B. Argument and Discussion**

In Count 1, the OED Director alleges Respondent engaged in the unauthorized practice of law in violation of 37 C.F.R. § 11.505 based on his conduct in representing Mr. Windsor before

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<sup>29</sup> Respondent never asked for, and Mr. Windsor never paid, any money for the legal services or documents that Respondent provided. DX 7 at 77 (Windsor Dep.).

<sup>30</sup> Ms. George testified she "do[es] not know" whether Respondent contacted Mr. Windsor to advise him of Respondent's suspension in Pennsylvania. Tr. at 175.

<sup>31</sup> Respondent subsequently complied with CLE requirements and was reinstated to active status in Pennsylvania on August 13, 2014. DX 3; Tr. at 253-55.

the PTO after his state law license was suspended.<sup>32</sup> AB at 4, 16. Specifically, the OED Director alleges that an attorney of record in a trademark action who submits documents on behalf of a client is practicing law, and that practice is unauthorized if the attorney is not a member in good standing of the highest court of any state, district, or territory. AB at 15. Because Respondent remained the attorney of record in Mr. Windsor's trademark application and "participated heavily in the drafting" of documents after his Pennsylvania license was suspended, he practiced law without authorization, the OED Director argues. AB at 15-16. The OED Director further states that no evidence supports Respondent's contention that he notified Mr. Windsor of his suspension in 2013 and that this is inconsistent with his own actions. AB at 2. He urges the Tribunal to find Respondent's testimony on this point not credible. AB at 3. And even if Respondent's testimony is credible, "it is of no consequence to the question of whether Respondent committed the unauthorized practice of law," the OED Director concludes. AB at 3. "Even if Respondent had fully informed Mr. Windsor about his suspension, and obtained Mr. Windsor's consent to practice law on his behalf, Mr. Windsor's consent is not tantamount to authorization to practice law," the OED Director contends. AB at 3. Respondent cannot claim he did not realize he remained the attorney of record, the OED Director adds, because he continued to receive correspondence from the PTO that so notified him. AB at 3-4.

In response, Respondent re-raises several defenses that this Tribunal has already dismissed. He argues he "did not practice trademark law in the United States when he prepared, while in Canada, a response to office action for Mr. Windsor," so that "any actions [by] Mr. Piccone took place in Canada and did not constitute the practice of law within the United States before the U.S.P.T.O." RB at 67-68. *See also* RRB at 14-16 ("[T]he extraterritorial nature of all of Mr. Piccone's alleged misconduct during his 2013 administrative suspension acts as a complete bar to any finding of misconduct arising during the period of Mr. Piccone's administrative suspension, when Mr. Piccone was incontestably residing in another country."). He also contends he has faced selective prosecution, that his conduct "fell outside the scope of the subject regulation," that the PTO "condones and encourages the pro bono preparation of intellectual property work by non-attorneys," and that his "failure . . . to withdraw as attorney of record in Mr. Windsor's trademark application does not constitute misconduct." RB at 68. Respondent further argues that as a director of Lawless America Association he "never acted as an intermediary, nor as in representative capacity, and it was Mr. Windsor who signed and submitted a response to Office Action." RRB at 32-33.

In this instance, Respondent clearly practiced law before the PTO while his license was suspended in Pennsylvania, a violation of the PTO Rules. Under the PTO Rules, "[a] practitioner shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." 37 C.F.R. § 11.505. This rule corresponds to ABA Model Rule of Professional Conduct 5.5(a) and "proscribes practitioners from engaging in or aiding the unauthorized practice of law." *Changes to Representation of Others Before the United States Patent and Trademark Office*, 78 Fed. Reg. 20180, 20186. The

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<sup>32</sup> The Complaint alleges also a violation of 37 C.F.R. § 11.804(i). Compl. at 6. However, in his post-hearing brief, the OED Director does not address this violation, and he further observes that "with reference to this Count, the only charge pending is that the Respondent engaged in the unauthorized practice of law in violation of 37 C.F.R. § 11.505 . . ." AB at 3. Consequently, I find the OED Director has withdrawn any allegation that Respondent violated 37 C.F.R. § 11.804(i).

PTO is considered a jurisdiction under this rule. *Id. See also In re Peirce*, 128 P.3d 443, 444 (Nev. 2006) (concluding that “another jurisdiction” includes the PTO). The practice of law before the PTO has been described as “render[ing] to applicants . . . service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office . . . .” *Lacavera v. Dudas*, 441 F.3d 1380, 1381 (Fed. Cir. 2006) (quoting 35 U.S.C. § 2(b)(2)(D)). With respect to practice before the PTO, “[o]nly an individual qualified to practice under § 11.14 of this chapter may represent an applicant, registrant, or party to a proceeding before the Office in a trademark case.” 37 C.F.R. § 2.17(a). “Any individual who is an attorney as defined in § 11.1 may represent others before the Office in trademark and other non-patent matters.” 37 C.F.R. § 11.14(a). An “attorney” is “an individual who is a member in good standing of the highest court of any State . . . and *not under an order of any court . . . suspending, enjoining, restraining, disbarring or otherwise restricting the attorney from practice before the bar of another State or Federal agency.*” 37 C.F.R. § 11.1 (emphasis added).

Between September 20, 2013, and August 13, 2014, Respondent’s license to practice law was suspended by the Supreme Court of Pennsylvania. Consequently, during that time he was not an “attorney” under the PTO Rules and was prohibited from representing others before the Office in trademark matters. Despite this regulation, Respondent continued to practice law before the PTO. Specifically, as Respondent admits, he “participated heavily in the drafting” of the Response to Office Action filed on behalf of Mr. Windsor on February 18, 2014. Tr. at 273; *see also* RB at 69-70 (“Mr. Windsor asked for Mr. Piccone’s pro bono aid in preparing a Trademark application . . . . Mr. Piccone agreed and prepared a draft trademark application, which Mr. Windsor then apparently filed with the U.S.P.T.O.”).<sup>33</sup> The draft contained both legal analysis and argument. Respondent also remained the attorney of record at the time the Response to Office Action was submitted. *See, e.g., Jaeger*, PTO Proceeding No. D2012-29, slip op. at 9-11 (Feb. 6, 2013) (Initial Decision) (finding that respondent engaged in the unauthorized practice of trademark matters when, among other conduct, he acted as the attorney of record and submitted documents on behalf of a client in a proceeding before the PTO). His protest that he did not know the rules required him to withdraw “immediately when he was suspended” is belied by his 20 years of practice before the PTO and his claimed confidence in “his knowledge of the fundamental aspects of Trademark law.” RRB at 37-38. In fact, at hearing, Respondent admits he “knew that there was a rule for it.” Tr. at 410. Plus, the evidence indicates the PTO continued to send documents to Respondent after the Response to Office Action was filed and he allegedly “withdrew;” this would have put him on notice that the PTO still considered him the attorney of record. Tr. at 410-412; DX 4 at 31-42, 47.

But even if Respondent’s argument of lack of knowledge were accepted as true, ignorance of the PTO Rule does not excuse him from what should have been self-evident, *i.e.*, that he could not remain attorney of record, and more importantly, continue to engage in conduct constituting the practice law, while he was suspended by order of the highest court of the only

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<sup>33</sup> Given admissions like these, it is puzzling that Respondent tries to argue the OED Director has not produced sufficient evidence that he engaged in unauthorized law practice by preparing a response and having it submitted to the PTO. *See* RB at 70-71. And even if Mr. Windsor submitted a draft that was revised or altered from what Respondent provided him, the mere fact that Respondent advised him on the trademark application in the first place constitutes the practice of law before the PTO.

state in which he was licensed. This is not an “arcane and byzantine” rule, as Respondent suggests. RRB at 38. Moreover, Respondent offers nothing to negate the evidence that he drafted Mr. Windsor’s Response to Office Action. The exact date Respondent revealed his suspension to Mr. Windsor is irrelevant; by admitting that he drafted the Response to Office Action and that he did not withdraw as the attorney of record, Respondent admits he practiced law during a time he was not licensed to do so.<sup>34</sup>

The defenses to this conduct that Respondent offers post-hearing are defenses he has previously raised and that this Tribunal has found to be without merit, particularly his argument that his Canadian residency shields him from compliance with PTO ethics rules. RB at 72-77; *see also* Order Denying Motion to Dismiss All Charges of Misconduct for [sic] Want of Territorial and/or Subject Matter Jurisdiction (Mar. 20, 2015); Order on OED Director’s Renewed Motion to Strike Respondent’s First through Twentieth Defenses (June 5, 2015). There is no need to address these arguments further other than to reiterate the point that regardless of whether the Respondent was physically located outside the country, his practice in this case took place before the United States PTO. To that extent, he was practicing inside the United States. It is absurd to suggest a PTO practitioner is no longer bound by the PTO’s ethics rules when he steps outside this country’s border, yet may continue to practice before the Office in the United States. Additionally, Respondent’s repeated argument that he was the victim of selective prosecution was previously stricken, and regardless, he has not produced any evidence that he satisfied the elements of that defense.<sup>35</sup> *See* Order on OED Director’s Renewed Motion to Strike Respondent’s First through Twentieth Defenses, at 6 (June 5, 2015). As to Respondent’s contention that he did not act in a representative capacity, that is patently false. Setting aside the fact that there is no evidence beyond Mr. Windsor’s description of Respondent’s relationship to Lawless America Association, he is listed as the attorney of record in the trademark application and was clearly preparing documents on Mr. Windsor’s behalf; in short, the conduct he engaged in was clearly the conduct of an attorney acting on behalf of

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<sup>34</sup> In any event, the Tribunal does not find Respondent credible on the timing issue. It is entirely too self-serving for Respondent to claim after the fact that he provided verbal notification to Mr. Windsor in 2013, particularly when there is no corroborating evidence that he did so. Any nominally cautious and competent attorney would notify his client of his suspension in writing or at least create a written memorandum of the notice given for his own record purposes, and there is no document or testimony in the record to support Respondent’s assertion.

<sup>35</sup> Respondent has not shown “that the federal prosecutorial policy had both a discriminatory effect and a discriminatory intent.” *See* Order on OED Director’s Renewed Motion to Strike Respondent’s First Through Twentieth Defenses, at 6 (June 5, 2015) (citing *United States v. Darwich*, 574 F. App’x 582, 589 (6th Cir. 2014)). Instead, he tries to bolster his argument with an Internet posting that opines that LegalZoom is engaged in the unauthorized practice of law before the PTO because it assists individuals and businesses with trademark applications. RB at 79-81; RX 8 at 000016-000017. However, one person’s opinion – even if it was published on the Internet – that LegalZoom is engaged in the unauthorized practice of law before the PTO is hardly evidence “suggest[ing] an ulterior motive in the prosecution of Mr. Piccone.” RB at 82; RX 8 at 000016-000017. Respondent’s unsubstantiated “conspiracy theory” that he is being retaliated against by the OED Director acting in collusion with New Hampshire bar authorities, is also not evidence of discriminatory intent. RB at 82-86; Tr. at 289-90.

another individual or corporate entity.<sup>36</sup>

Consequently, I find that there is clear and convincing evidence in the record establishing that Respondent engaged in the unauthorized practice of law before the PTO in violation of 37 C.F.R. § 11.505 as alleged in Count 1.

## VII. COUNT 2

### A. Facts Relevant to the Violation

On June 22, 2011, Respondent signed and filed the complaint in *Hankins v. Burton*, No. 4:11-cv-04048-SLD-JEH (C.D. Ill.). DX 9 at 5; DX 10; Tr. at 292. Below Respondent's electronic signature, the complaint states "Attorney for Plaintiff" and "Pending Admission Pro Hac Vice." DX 10 at 16; Tr. at 295. The complaint in *Hankins* names seven individuals, four probation departments, two states, and one sheriff's office. DX 10 at 1. The complaint seeks relief pursuant to 42 U.S.C. § 1983 for 12 counts of alleged constitutional violations and one count of mental distress. DX 10 at 9-15; Tr. at 293.

Respondent did not submit a petition to be admitted pro hac vice concomitant with the filing of the complaint. Tr. at 297-98. On June 23, 2011, the Illinois District Court sent Respondent the paperwork necessary to seek pro hac vice admission, but Respondent never submitted the necessary motion. Tr. at 298. On October 11, 2011, the Court entered an Order directing "Plaintiff or Plaintiff's Attorney to comply" with the Court's pro hac vice admission requirements, "or the case will be dismissed with prejudice." DX 9 at 6; Tr. at 299. Despite the October 11, 2011, Order, Respondent did not submit a motion to be admitted pro hac vice. Tr. at 299-300. Instead, on October 24, 2011, the plaintiff in *Hankins* filed a "Notice of Pro Se Status" to "advise[] the court that she will proceed Pro Se, pending finding an attorney capable of representing her." DX 11; Tr. at 300.

Despite the plaintiff's notice of pro se status, despite the Court's Order to comply with its pro hac vice requirements, and despite the subsequent suspension of his license by the Pennsylvania bar,<sup>37</sup> Respondent testified that he continued to advise and represent the plaintiff in *Hankins*:

I would routinely help [the plaintiff] prepare pleadings. I would routinely give her advice on how to proceed. I would routinely try to help her in whatever way I could. . . . [E]ven after my license was administratively suspended and I had sought the advice from bar

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<sup>36</sup> Respondent even contradicts his own argument that he was not acting as an attorney in a representative capacity when he states "Mr. Piccone was representing the Lawless America Association." RRB at 44.

<sup>37</sup> As indicated above, Respondent was administratively suspended from the Pennsylvania bar, the only state bar to which he was admitted, from September 20, 2013 until August 13, 2014. DX 3; Tr. at 253-55.

authorities in Pennsylvania and the opinion of counsel, I tried to help whoever had pending litigation because I didn't want them to suffer, you know, any adverse consequences, and again I did that with the belief that what I was doing was not unethical and not illegal . . . .

Tr. at 301-02.

On March 12, 2014, the Court in *Hankins* adopted a magistrate judge's denial of entry of default against the sole remaining defendant and granted the defendant's motion to dismiss. DX 12 at 4-5, 14. A Notice of Appeal from the Court's order granting dismissal was filed April 14, 2014. Although signed by the plaintiff, the Notice also contained the notation "THIS PLEADING PREPARED WITH THE AID OF LOUIS A. PICCONE." DX 13 at 1, 4. Respondent concedes he assisted the plaintiff with her case by preparing the notice of appeal while he was not authorized to practice law by Pennsylvania and not admitted pro hac vice to the Central District of Illinois. Tr. at 302-03. Respondent suggests that at some point he tried to obtain counsel in Chicago to comply with pro hac vice requirements, but he could not find anyone willing to take a case pro bono or for a reduced fee. Tr. at 295-96. At hearing, Respondent stated he could not recall what the fee arrangement was with the plaintiff in *Hankins*. Tr. at 296-97.

The Local Rules for the United States District Court for the Central District of Illinois in effect at the time of Respondent's conduct state in pertinent part:

Any attorney licensed to practice law in any state or in the District of Columbia must be admitted to practice generally in this court on written motion of a member in good standing of the bar of this court, or upon the attorney's own motion accompanied by certification of good standing from the state in which the attorney is licensed.

DX 14 at 7, CDIL-LR 83.5(A).

The court does not permit pro hac vice admissions generally. At the discretion of the presiding judge, an attorney who is duly licensed to practice in any state or the District of Columbia may file a motion seeking leave to participate in a case while his or her application for admission to practice in the Central District of Illinois is pending.

DX 14 at 8, CDIL-LR 83.5(F).

All attorneys who appear in person or by filing pleadings in this court must be admitted to practice in this court in accordance with this Rule. Only attorneys so admitted may practice or file pleadings in this court . . . . Any person who, before his or her admission to the bar of this court, or during his or her suspension or disbarment, exercises in this district any of the privileges of a member of the bar in any action or proceedings pending in this court, or who pretends to be entitled to do so, may be adjudged guilty of contempt of court and appropriately sanctioned.

**B. Argument and Discussion**

The OED Director alleges in Count 2 that Respondent engaged in the unauthorized practice of law in violation of 37 C.F.R. § 11.505.<sup>38</sup> AB at 5. In particular, the OED Director points to Respondent's admission that he drafted the April 8, 2014 Notice of Appeal and gave legal advice to the plaintiff in *Hankins*. AB at 16. "The notice of appeal . . . affected Ms. Hankins' rights by preserving her right to appeal, and Respondent was required to exercise his legal judgment in determining when that notice should be filed, and what information was required to be included in the notice," the OED Director contends. AB at 16. Because these actions had to have taken place while his license was suspended, Respondent practiced law without authorization, the OED Director adds. AB at 17.

Respondent argues that the OED Director's case against him on this count "fail[s] as a matter of law, in view of the OED Director's failure to obtain any evidence of the communications between [Respondent] and Ms. Hankins." RB at 19. He says that he "provided assistance" to her "from the time she filed her initial complaint" to the present, and that he was admitted to practice before the U.S. District Court for the Central District of Illinois on October 1, 2015.<sup>39</sup> RB at 20. But the exact nature of the assistance he provided "is unknown" to the OED Director because Ms. Hankins did not provide testimony about their relationship, so the OED Director lacks sufficient evidence to prove his misconduct, Respondent concludes.<sup>40</sup> RB at 21. Respondent also argues "that the preparation of a notice of appeal does not require any legal knowledge, discretion and judgment reserved for the practice of law." RRB at 53. Respondent goes on to allege the OED Director acted in bad faith by contacting Ms. Hankins about this proceeding and again raises the jurisdictional shield of his Canadian residency. RB at 21-22.

As in Count 1, Respondent clearly practiced law before the U.S. District Court for the Central District of Illinois while his license was suspended in Pennsylvania, a violation of the PTO Rules. Under the PTO Rules, "[a] practitioner shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." 37 C.F.R. § 11.505. In the Central District of Illinois, the Court required attorneys to be

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<sup>38</sup> The OED Director expressly abandons his charge in the Complaint that Respondent engaged in other conduct adversely reflecting on his fitness to practice before the PTO in violation of 37 C.F.R. § 11.804(i). AB at 5.

<sup>39</sup> Respondent acknowledges his admission to practice before the district court in 2015 is not part of the record and that he did not find out about his admission until after the hearing in this proceeding. RB at 20-21. He asks this Tribunal to take judicial notice of his admission though he provides no evidence of it. *Id.* However, it does not matter whether this Tribunal does or does not take judicial notice of this fact because it is irrelevant to his prior unauthorized practice of law before the district court.

<sup>40</sup> Again, as in Mr. Windsor's case, this is a puzzling argument given Respondent's own admissions and documentary evidence of the type of assistance he provided.



licensed and in good standing with a state bar, and forbid any attorney from appearing, filing, or practicing before it without being generally admitted to do so by the Court. DX 14 at 7-8, CDIL-LR 83.5. Between September 20, 2013, and August 13, 2014, Respondent's license to practice law was suspended by the Supreme Court of Pennsylvania. DX 3; Tr. at 253-55. He also was not admitted to the Illinois Court pro hac vice during that period. Consequently, he was not permitted to appear, file, or practice before the Court in the Central District of Illinois during the time at issue here. Nevertheless, he signed and filed a complaint in that Court, and after he was suspended, continued to "routinely help [the plaintiff] prepare pleadings. . . . give her advice on how to proceed[,] . . . [and] routinely tr[ie]d to help her in whatever way [he] could." Tr. at 301-02. Moreover, Respondent admits preparing the plaintiff's Notice of Appeal while he was suspended by Pennsylvania. Tr. at 302-03. In Illinois, this constitutes the practice of law, regardless of how simple it was for Respondent to prepare the document. *See, e.g., Downtown Disposal Servs. v. City of Chicago*, 979 N.E.2d 50, 53 (Ill. 2012) (concluding that an attorney practiced law when he "merely filled in blanks on a simple form that did not require the use of any legal expertise" and observing that it is not "the simplicity of the form that is important but the fact that an appeal was pursued"). Thus, Respondent's argument that "[a]ny layperson can fill out a notice of appeal without the use of legal knowledge, discretion and judgment" will not save him. RRB at 54. There is more than sufficient evidence to prove his misconduct by a clear and convincing standard.<sup>41</sup>

Consequently, I find that Respondent filed documents and practiced law before the U.S. District Court for the Central District of Illinois without authorization to do so, in violation of 37 C.F.R. § 11.505 as alleged in Count 2.

## VIII. COUNTS 3, 4, and 7

### A. Background

Counts 3, 4, and 7 all involve Respondent's conduct before the U.S. District Court for the District of Massachusetts. Respondent first had contact with the district court as early as 2005 as a pro se guardian of his minor son in a civil rights action against a local school district. *Pease v. Burns*, 679 F. Supp. 2d 161, 162 (D. Mass. 2010).<sup>42</sup> Although he was not licensed in Massachusetts, the *Pease* court concluded Respondent had been practicing law in the state for

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<sup>41</sup> Respondent's unlawful practice is not mitigated by any subsequent pro hac vice admission to the court he might have obtained. RB at 20-21.

<sup>42</sup> *Pease* is a case that discusses Respondent's contacts with the U.S. District Court for the District of Massachusetts. In *Pease*, Respondent sought pro hac vice admission to the district court to represent the plaintiff in that litigation. The Court denied his motion on January 13, 2010. 679 F. Supp. 2d at 169. The *Pease* case does not itself form the basis of any of the misconduct charged by the OED Director. In denying Respondent's motion, however, the district court in *Pease* recounted Respondent's history appearing before it, including in cases that do form the bases of his alleged misconduct in this proceeding. To that end, this Tribunal takes judicial notice of the relevant facts as recounted in *Pease* and further finds instructive the *Pease* Court's interpretation of its own local rules. Also, Respondent introduced the *Pease* decision into the record as part of his exhibit 66. *See* RX 66 at 000467-000482.

some time prior to his contact with the district court based on his own admission in another case. 679 F. Supp. 2d at 166-67.

After 2005, Respondent's next known contact with the Massachusetts District Court came in 2008, when he filed a complaint ("*pre-Babeu*") for plaintiff Lucy Babeu that was the predecessor to a complaint ("*Babeu*") he filed for that same plaintiff that is the subject of Count 7 in this proceeding.<sup>43</sup> *Id.*; DX 61 at 2-3. Ms. Babeu signed the *pre-Babeu* complaint as did Respondent with the notation "pending admission pro hac vice." 679 F. Supp.2d at 162; DX 61 at 2-3. In response to a motion by the defendants, the district court ordered Respondent to formally move for admission pro hac vice. 679 F. Supp.2d at 162; DX 61 at 2-3. Respondent never filed a pro hac vice motion. 679 F. Supp.2d at 163; DX 61 at 2-3. Instead, another attorney entered an appearance for the plaintiff, but that attorney failed to oppose the defendants' motion to dismiss, and the district court dismissed the matter on its merits in a December 15, 2008, ruling. 679 F. Supp.2d at 162; DX 61 at 2-3.

Following *pre-Babeu*, Respondent engaged in the practice of law before the district court in Massachusetts in three cases that are the subject of this proceeding: *Babeu* (Count 7), *Hohn v. Burke* (Count 3), and *Doe v. Briggs* (Count 4). Respondent did not apply for admission to the Massachusetts bar until November 17, 2010, after *Babeu* and *Hohn* but prior to *Doe*. RX 66 at 000448. In the application, he indicated he had lived in Massachusetts since April 2005. RX 66 at 000451. As stated above, the Board of Bar Examiners denied the application in a letter dated February 21, 2012, upon concluding that Respondent's "constant private practice in Massachusetts after May 2006 was unauthorized (and therefore illegal) (i) as he was not admitted to the Massachusetts bar at any point and (ii) as at least two well-respected judges (one state and one federal) located in Massachusetts had concluded that the [Respondent's] Massachusetts legal practice was both unauthorized and improper."<sup>44</sup> DX 88 at 5-6.

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<sup>43</sup> At the time, Respondent was under house arrest and could not go more than five miles from his home.

<sup>44</sup> Respondent includes with his evidence a May 2013 decision by the Supreme Judicial Court of Massachusetts overturning a Board of Bar Examiners decision that a New Jersey-licensed applicant's practice in New York was illegal, and therefore did not meet Massachusetts' mandated five-year "engagement in the active practice of law" in "the seven years immediately preceding the filing of [a] petition for admission on motion." RX 19 at 000269, 000274. But in that case, the Board was wrong because New York had subsequently admitted the applicant to its bar, "thereby determining that his work [in New York] did not constitute a violation" of New York law. RX 19 at 000274. This is distinguishable from Respondent's case, where the Board was evaluating Respondent's conduct in Massachusetts against Massachusetts rules and law and found Respondent's conduct wanting. Additionally, the New York attorney was not appearing in court but was working as a contract attorney at a large law firm under the supervision of New York attorneys. In contrast, Respondent was appearing in Massachusetts courts in defiance of state and federal judges and was not under the supervision of any Massachusetts attorney.

## B. Facts Relevant to Count 7<sup>45</sup>

On March 17, 2009, a complaint was filed in *Babeu v. Linker*, No. 3:09-cv-30045-MAP (D. Mass.). DX 60; *Pease*, 679 F. Supp. 2d at 163; Tr. at 361. As in *pre-Babeu*, the plaintiff signed the complaint as a pro se litigant, however, below her name Respondent also signed the complaint along with the notation "Pending Admission *pro hac vice*." DX 60 at 27; Tr. at 364. In fact, Respondent drafted the complaint, which asserts 16 causes of action related to alleged constitutional violations. DX 60 at 10-24; Tr. at 361; RRB at 58 n.84. The complaint names ten defendants plus "John and Jane Doe A-Z." DX 60 at 1.

When Respondent filed the *Babeu* complaint, it was identical to the previously amended version of *pre-Babeu* except that it included "somewhat odd[ ]" editorial comments in the margin and Respondent's non-erased signature. DX 61 at 3; *Pease*, 679 F. Supp. 2d at 163. It gave no indication Respondent was admitted to practice before the Massachusetts District Court. DX 61 at 3-4; *Pease*, 679 F. Supp. 2d at 163.

On April 3, 2009, a magistrate judge filed a Report and Recommendation that the case be summarily dismissed under 28 U.S.C. § 1915(e)(2)(B). DX 61; *Pease*, 679 F. Supp. 2d at 163. Dismissal was prompted by the plaintiff's application to proceed *in forma pauperis* and the screening invoked by that application. DX 61 at 1. One of the reasons the magistrate judge recommended dismissal, aside from res judicata principles, the complaint's meritless claims, and the court's lack of subject matter jurisdiction, was because "the court is quite concerned that Plaintiff and [Respondent here] are attempting to play fast and loose with this court's rules governing appearances and practice by persons not members of the bar." DX 61 at 5; *Pease*, 679 F. Supp. 2d at 163.

After the magistrate judge recommended the *Babeu* complaint be dismissed, Respondent filed an objection on behalf of the plaintiff. *Pease*, 679 F. Supp. 2d at 165. In that filing he claimed he satisfied the requirements for seeking pro hac vice admission as outlined in Local Rule 83.5.3(b) and that his motion for such admission "will be submitted based upon a motion of a member of the bar of this court." *Id.* No motion was ever filed. *Id.* However, Respondent claimed in his objection that he signed the *Babeu* complaint "to indicate that an attorney was involved in the drafting of the complaint for a pro se litigant as ethically recommended" by a 2001 article about ghost writing. *Id.*<sup>46</sup> According to the article, ghost writing "circumvents Rule

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<sup>45</sup> Count 7 is addressed out of numerical turn because the misconduct occurred first in time relative to the misconduct in Counts 3 and 4, and the Count 7 misconduct provides context to Respondent's subsequent misconduct before the district court.

<sup>46</sup> The article, titled "Ghostbusters" and authored by Grace M. Jones, was not offered or admitted at the hearing. However, Respondent attached it to his Motion for Summary Judgment and/or Motion to Dismiss Counts III, IV and VII, filed May 8, 2015. This Tribunal agrees with the *Pease* court that the article assumes the ghostwriting lawyer is, as an initial matter, licensed to practice law in Massachusetts. Because Respondent was not licensed in Massachusetts or within the district court, by acknowledging writing various pleadings he "is in effect [admitting] that he is advising citizens of Massachusetts of their rights, with little, if any, ability on their part to do more on their own." Order Denying Respondent's Motion for Summary Judgment on Counts III, IV and VII, at 8-9 (July 6, 2015) (quoting *Pease*, 679 F. Supp. 2d at 165-66) (quotation marks

11 of the applicable Rules of Civil Procedure,” which usually addresses the signing of pleadings, “and may also violate any of a number of disciplinary rules.” *Id.*

Despite Respondent’s objection, a district court judge adopted the magistrate judge’s recommendation. In doing so, the district court ordered the Clerk of the Court to forward copies of that decision as well as the related 2008 filings from *pre-Babeu* “for investigation by the [Massachusetts] Board of Bar Overseers relating to the unorthodox efforts by one Louis A. Piccone, Esq. to purport to represent Plaintiff pro hac vice.”<sup>47</sup> DX 61 at 8; *Pease*, 679 F. Supp. 2d at 163.

At some point, Respondent told the plaintiff in *Babeu* he could not represent her without being admitted pro hac vice: “You know, I explained the entire circumstances to her. She was well aware of what the situation was.” Tr. at 362. He added:

I explained to her the whole situation. I said, listen, I’m a patent attorney. I do intellectual property law. I have handled civil rights cases in the past. I’m not admitted in Massachusetts. You know, the help I could give you has to be legal. It has to be ethical. It has to be of the type where we’re protecting both of ourselves, but I’ll do whatever I can to help you.

Tr. at 363.<sup>48</sup> Respondent states he did not submit a petition for admission pro hac vice at the time the *Babeu* complaint was filed because he “was unable to find local counsel to sponsor my admission despite diligent efforts . . .” Tr. at 364-65. At hearing, he did not recall ever submitting a petition for admission pro hac vice during the *Babeu* litigation. Tr. at 365. As indicated above by the court in *Pease*, there is no evidence in the record that he did. *See also* DX

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omitted). That is, by disclosing that he ghostwrote various legal documents filed on behalf of his clients in Massachusetts, Respondent is merely disclosing that he practiced law without a license in Massachusetts. The ethical debate about ghostwriting attorneys who are practicing in a jurisdiction where they are licensed but not signing court filings is an entirely separate and unrelated matter, and it does not provide Respondent any cover for practicing law without a license.

<sup>47</sup> According to the court in *Pease*, the referral for investigation was later forwarded by the Board of Bar Overseers to the Disciplinary Board of the Supreme Court of Pennsylvania. 679 F. Supp. 2d at 163.

<sup>48</sup> Among his exhibits, Respondent submits what he calls “the standard language that I include in my retainer agreements that talks about my not being admitted other than in Pennsylvania, because I tell everybody that both in writing and I give them a long and detailed explanation.” Tr. at 399; RX 7 at 000014. This exhibit consists of a single typed sentence on a blank page that states: “We have discussed the fact that I am not admitted to practice law in the State of [Specify] and that I will be required to petition the court to represent you in any particular litigation.” RX 7 at 000014. I give this exhibit almost no weight, as there is absolutely no foundation to support Respondent’s claim that he used it in the manner he says in any of the cases at issue in this proceeding. Further, Respondent admitted at hearing that he only “tr[ies] to” use the disclaimer “sometimes.” Tr. at 408.

59. "If you say there's nothing in the record, then I'll take your word for it," he testified at hearing under cross examination. Tr. at 365.

Under the Local Rules for the United States District Court for the District of Massachusetts:

An attorney who is a member of the bar of any United States District Court or the bar of the highest court of any state may appear and practice in this court in a particular case by leave granted in the discretion of the court, provided he files a certificate that (1) he is a member of the bar in good standing in every jurisdiction where he has been admitted to practice; (2) there are no disciplinary proceedings pending against him as a member of the bar in any jurisdiction; and (3) he is familiar with the Local Rules of the United States District Court for the District of Massachusetts; and provided further, his application for leave to practice in this court is on motion of a member of the bar of this court, who shall also file an appearance. An attorney seeking admission under this subsection may not enter an appearance or sign any papers until his application has been granted, except that the attorney may sign a complaint or any paper necessary to prevent entry of default for failure to answer or otherwise plead, provided such complaint or other paper is accompanied by his application for admission in proper form.

DX 21 at 10, LR 83.5.3(b). Additionally, the Local Rules for the United States District Court for the District of Massachusetts state:

(a) **Generally.** The filing of the complaint shall constitute an appearance by the attorney who signs it. All other appearances in a case shall be made by filing a notice of appearance containing the docket number of the case, name, address and telephone number of the person entering an appearance, in compliance with Rule 5.1(a)(1).

(b) **Appearance Pro Se.** A party who appears pro se shall so state in the initial pleading or other paper filed by him or in his notice of appearance. The words 'pro se' shall follow his signature on all papers subsequently filed by him in the same case.

DX 21 at 9, LR 83.5.2(a), (b).

### **C. Count 7 Argument and Discussion**

The OED Director alleges Respondent violated 37 C.F.R. §§ 10.23(a), 10.77(b), and 10.84(a) as a result of filing a complaint without taking any of the required steps to become admitted pro hac vice. AB at 11. The OED Director additionally alleges Respondent violated 37 C.F.R. §§ 10.23(b)(4) and 10.23(b)(5) by stating that he was "pending admission pro hac vice"

when such statement was false. AB at 11.<sup>49</sup> By not seeking pro hac vice admission, Respondent engaged in the unauthorized practice of law, the OED Director contends, and he failed to follow court rules or to "take the steps necessary to adequately prepare for the case, in the vein of neglect." AB at 24. He engaged in this misconduct despite being told by the Massachusetts District Court that he must be admitted pro hac vice to participate in the *Babeu* matter, the OED Director adds. AB at 24.

Respondent does not address Count 7 on its own; rather, he sets forth a broader argument that he applies generally to his practice before the Massachusetts District Court in Counts 3, 4, and 7. RB at 22-34. Respondent submits that there was no misconduct in these cases because:

1) all of Mr. Piccone's actions are in total compliance with governing law and procedure; 2) Mr. Piccone's underlying legal work was competent and recognized as so by the subject district court; 3) the causes of action being pursued in these cases were unpopular and all contacted in-state attorneys refused to either sponsor Mr. Piccone's admission or handle these cases on their own; 4) no damage was done to either the individuals to whom Mr. Piccone provided legal services, or the Courts; and, 5) Mr. Piccone's actions were in the best tradition of seeking equal justice for all Americans, including those unable to otherwise find effective representation.

RB at 22-23. In particular, Respondent argues that all of his conduct in Massachusetts "was cloaked in the authority" of Massachusetts Rule of Professional Conduct 5.5(c). RB at 23-24. Rule 5.5(c)(2) states:

A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

...

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized[.]

Mass. R. Prof'l Conduct 5.5(c)(2). Respondent contends this means he was allowed

'to provide legal services' in Massachusetts 'on a temporary basis' 'in' each of the *Babeu*, *Hohn* and *Doe* matters as these litigations were both potential proceedings (before the complaint was filed) and pending proceedings (once the complaint was filed) because Mr. Piccone, 'reasonably' expected to be admitted pro hac vice to handle those matters, or, was expecting to be generally admitted to practice before the Bar in Massachusetts, or, because a pro se litigant is 'a

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<sup>49</sup> The OED Director expressly abandons his charge in the Complaint that Respondent engaged in other misconduct under this count in violation of 37 C.F.R. § 10.23(b)(6). AB at 12.

person the lawyer is assisting is authorized by law to appear in such proceeding.'

RB at 24. Respondent says he believed he would receive pro hac vice admission because admission is routine and motions for such "are generally granted as a matter of course." RB at 25. Yet in the same breath, Respondent also points out that during *Babeu* and *Hohn*, he "was unable to find local counsel to sponsor his admission, so he was unable to apply, and the [district court] was unable to decide at that earlier time period whether Mr. Piccone should be admitted to practice or not." RB at 25. He goes on: "Yet because no decision had been issued, Mr. Piccone remained under a reasonable belief that he would be admitted. . . . Mr. Piccone had a reasonable belief because he had done nothing inappropriate as he was not engaging in the unauthorized practice of law . . . ." RB at 25-26. Further, his practice was "temporary," he suggests, because "[t]he law unquestionably allows for the 'temporary' practice by an out of state attorney to handle one litigation before this court and one litigation can routinely take up to several years to fully adjudicate." RB at 26. He contends "'temporary' should therefore be defined to include the routine or average term of such litigation, ie several years." RB at 26.

Respondent's reliance on Rule 5.5(c) is misplaced. Although Rule 5.5 describes permissible conduct by an out-of-state attorney practicing in Massachusetts, it does not negate the minimal requirements put in place by the federal district court to appear and practice before it specifically. That is, compliance with Rule 5.5 does not necessarily equal compliance with the Local Rules of the Massachusetts District Court. Local Rule 83.5.3(b) grants the court discretion in determining whether to allow a motion to appear pro hac vice. *Pease*, 679 F. Supp. 2d at 164. The local rule is grounded in 28 U.S.C. § 1654, which states that "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." *See id.*; *see also* Fed. R. Civ. P. 83 (authorizing district courts to adopt local rules); *Panzardi-Alvarez v. United States*, 879 F.2d 975, 980 (1st Cir. 1989) ("Admission before the Bar traditionally has been considered primarily and initially subject to control by the admitting court and this control is subject to review only by reason of abuse of discretion or constitutional infirmities in the exercise of the control.").

As stated above, Local Rule 83.5.3(b) expressly requires an attorney wishing to "appear and practice" before the district court to file and certify that (1) he is a member of the bar in good standing in every jurisdiction where he is admitted to practice; (2) no disciplinary proceedings are pending against him; and (3) he is familiar with the Local Rules *and a member of the district court's bar has appeared and moved for his admission*. DX 21 at 10; LR 83.5.3(b) (emphasis added). Further, until the attorney's application is granted, he "may not enter an appearance or sign any papers" submitted to the district court. *Id.* "[T]he filing of the complaint shall constitute an appearance by the attorney who signs it." DX 21 at 9, LR 83.5.2(a).

In this instance, Respondent clearly violated the local court rules by appearing and practicing before it without taking the necessary steps to gain pro hac vice admission. He did this when he filed and signed the *Babeu* complaint along with the notation "Pending Admission pro hac vice." DX 60 at 27; Tr. at 364.<sup>50</sup> He also practiced law by drafting the complaint, which

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<sup>50</sup> Respondent suggests the local rules apply only "where an out of state attorney files a complaint that is submitted under that out of state attorney's signature. In each of the *Hohn*, *Doe*

asserts 16 causes of action related to alleged constitutional violations. DX 60 at 10-24; Tr. at 361. In Massachusetts, the practice of law includes

directing and managing the enforcement of legal claims and the establishment of the legal rights of others, where it is necessary to form and to act upon opinions as to what those rights are and as to the legal methods which must be adopted to enforce them, the practice of giving or furnishing legal advice as to such rights and methods and the practice, as an occupation, of drafting documents by which such rights are created, modified, surrendered or secured.

*In re Hrones*, 933 N.E.2d 622, 628 (2010) (quoting *Matter of an Application for Admission to the Bar of the Commonwealth*, 1012 n.4, 822 N.E.2d 1206 (2005)). Clearly, crafting a sophisticated civil rights lawsuit for a client and then causing the commencement and directing the prosecution of that lawsuit in federal court involves the practice of law under this definition. With or without the application of Massachusetts Rule 5.5, Respondent appeared and practiced before the district court when he did not have leave to do so.

Moreover, even if Rule 5.5 applied, Respondent had no reasonable expectation that authorization to practice in the district would be forthcoming, because he did not seek pro hac vice admission in the first place. No matter how routinely such motions are granted, or how easy it may be "to find local counsel when out of state counsel is paying cash," no pro hac vice admission will be offered by the court without an attorney first requesting it. It is unreasonable to believe otherwise, yet Respondent proceeded on the basis "that it's always reasonable to expect pro hac vice admission." Tr. at 35. It is not. Indeed, even if this Tribunal were to accept Respondent's argument that "motions for pro hac vice admission are generally granted as a matter of course," this presumes a scenario where the practitioner has satisfied the prerequisites for submitting a motion in the first place. RB at 25. Courts are not going to routinely admit applicants like Respondent who have not recruited local counsel and provided the necessary supporting documentation for their application. It is further unreasonable for Respondent to expect he would be able to meet the pro hac vice requirements given his many supposed difficulties obtaining local counsel. Even if "it is always possible" to find local counsel, that does not mean it is reasonable or likely, and Respondent himself recognized he was the "attorney

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and *Babeu* cases, the Complaints were appropriately submitted under the signatures of the pro se litigants." RB at 27; see also RRB at 50-53. Thus, he concludes, "Mr. Piccone's signature on those complaints was unnecessary to meet the filing requirements for a complaint, and therefore irrelevant to LR 83.5." RB at 27. Setting aside the fact that he *did* sign the *Babeu* complaint, this broad claim that he can ignore the rules of the court by not signing documents is nonsensical, and it is not supported by any authority. Similarly, Respondent cannot hide behind the signature of his "pro se" client, as he attempts to when he argues that because pro se litigants may prosecute their own complaints as a matter of law he need not apply for pro hac vice admission at the time the complaint is filed. RB at 28. Referring to his clients as "pro se" is a fiction Respondent created. He was clearly representing them in a legal capacity, and given the complexity of their claims, they cannot have meaningfully participated in drafting the pleadings at issue in this proceeding. Respondent further overlooks the fact that in addition to signing the *Babeu* complaint, he was clearly orchestrating and directing the litigation in that case as well as in *Hohn* and *Doe*, the cases that are the subject of Count 3 and Count 4.



of last resort” and that it is “virtually impossible” to find attorneys willing to take cases like the ones for which he sought local representation. RB at 28; Tr. at 424. In any event, aside from conclusory statements offered in his testimony, Respondent has not produced any evidence that depicts the “diligent effort” he allegedly undertook to find local counsel. This precludes any real evaluation of the reasonableness of his expectation that his efforts would lead to pro hac vice admission. Consequently, Respondent’s pro hac vice admission cannot have been “reasonably expect[ed],” and it certainly was not “pending.”<sup>51</sup>

Additionally, Respondent cannot salvage his conduct under Rule 5.5 by claiming his practice in Massachusetts or before the district court was “temporary.” It was in fact anything but “temporary,” even by his exaggerated definition of the term. Indeed, as recounted in *Pease*, for some time Respondent had “been practicing law in Massachusetts without being authorized to do so.” 679 F. Supp. 2d at 165. He had appeared before the district court at least as early as 2005, and in connection with the *Babeu* litigation appeared in 2008 and 2009 for both *pre-Babeu* and *Babeu*. See *Pease*, 679 F. Supp. 2d at 162-63. Further, a state court judge in 2010 characterized Respondent as having maintained a law office in Massachusetts since at least 2005. RX 66 at 000486; DX 88 at 5. As Respondent was attempting to represent multiple clients in more than “one litigation” while he was domiciled in Massachusetts, this Tribunal reaches the same conclusion that Judge Neiman did in *Pease*: “[T]he legal services which [Respondent] has provided in Massachusetts, as described, can hardly be deemed to have been provided on a temporary basis, given the multiple cases in which he has been involved.” 679 F. Supp. 2d at 168. See also Mass. R. Prof’l Conduct 5.5(b)(1) (“A lawyer who is not admitted to practice in [Massachusetts] shall not . . . establish an office or other systematic and continuous presence in this jurisdiction for the practice of law.”).

Furthermore, this Tribunal has previously found Respondent’s Rule 5.5 argument unavailing. For example, in regard to Rule 5.5, I denied Respondent’s motion for summary judgment after finding that

the examples [Rule 5.5] gives of such allowable services are ‘meetings with the client, interviews of potential witnesses, and the review of documents.’ Mass. R. Prof. C. 5.5. The Rule explicitly omits from allowable “temporary services” the signing and/or filing of any pleadings. Moreover, while Massachusetts District Court Local Rule 83.5 appears to allow the appearance and signing of a complaint by a foreign attorney, it restricts such activity, stating it is permissible only ‘provided that the complaint or other paper is accompanied by his application for admission in proper form.’

Order Denying Respondent’s Motion for Summary Judgment on Counts III, IV and VII, at 12 (July 6, 2015). The evidence presented at hearing confirmed that “the complaints and/or motions [Respondent] drafted, signed and filed in [*Babeu*, *Hohn*, and *Doe*] were not accompanied, or even closely followed, by a motion for *pro hac vice* admission.” *Id.*

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<sup>51</sup> Respondent’s suggestion that his expectation was reasonable until he was denied pro hac vice admission in *Pease* is unpersuasive. RB at 30-31. The court’s local rules clearly state what is required for pro hac vice admission. It was not necessary for a judge to enforce those rules before reasonably concluding that Respondent had not satisfied them.

Finally, because Respondent was engaged in the unauthorized practice of law, it is irrelevant to the fact of this misconduct how competent his work was, how meritorious the causes of action being pursued were, whether he managed to not harm his client or the court, or whether he was the only lawyer who would take the case. The reasons for and consequences of Respondent's actions do not change the nature of his liability for his unauthorized practice.

Under 37 C.F.R. § 10.23(a), “[a] practitioner shall not engage in disreputable or gross misconduct.” This rule is based on the statutory language in 35 U.S.C. § 32, quoted above. See Practice Before the Patent and Trademark Office, 50 Fed. Reg. 5158 Table 2. In response to a comment when the rule was proposed, the PTO declared that “disreputable” and “gross misconduct” “need no further definition in the rules,” and instead referred to the discussion of “disreputable” in *Poole v. United States*, Civil Action No. 84-0300, 1984 U.S. Dist. LEXIS 15351 (D.D.C. June 29, 1984). Practice Before the Patent and Trademark Office, 50 Fed. Reg. 5158. The Court in *Poole* said that “[w]ith respect to attorneys or other agents, ‘disreputable’ conduct has generally included ‘unprofessional’ conduct and . . . was well understood to include ‘any conduct violative of the ordinary standard of professional obligation and honor.’” 1984 U.S. Dist. LEXIS 15351, at \*7. See also *Schroeder*, PTO Proceeding No. D2014-08, slip op. at 7 (May 18, 2015) (Initial Decision) (“Nothing should be done or left undone by an attorney which tends to bring the profession into disrepute or to lessen in any degree the confidence of the public in the profession.”).

Here, Respondent engaged in disreputable or gross misconduct when he engaged in the unauthorized practice of law by continuing to practice and appear before the Massachusetts District Court without seeking pro hac vice admission. He drafted, signed, and filed (or directed the filing of) the complaint in *Babeu* in violation of the court's local rules. Additionally, he initiated the *Babeu* lawsuit after he was instructed by the district court in the *pre-Babeu* matter to seek pro hac vice admission. Finally, he represented to the district court that his pro hac vice admission was “pending” when in fact he had made no such application. His violation of the court's rules and practice of law without the court's authorization amounts to disreputable and gross misconduct. Consequently, Respondent's unauthorized practice of law in *Babeu* violated 37 C.F.R. § 10.23(a).

Under 37 C.F.R. § 10.23(b)(4), “[a] practitioner shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” This rule is based on the ABA's Model Code of Professional Responsibility Disciplinary Rule 1-102 (1980). See Practice Before the Patent and Trademark Office, 50 Fed. Reg. 5158 Table 2. A practitioner may violate it by, for example, practicing law when not licensed to do so. See, e.g., *Disciplinary Counsel v. Stemper*, 103 Ohio St. 3d 104, 105 (2004) (attorney violated Ohio ethics rule barring conduct involving dishonesty, fraud, deceit, or misrepresentation when she “did not comply with . . . terms of her suspension and instead continued to present herself as a licensed attorney and actively engage[d] in the practice of law”); *Corbin*, Proceeding No. D2001-14, slip op. at 3-5 (Aug. 1, 2002) (Initial Decision) (practicing before PTO while suspended by state bars in Ohio and Colorado). In *Kentucky Bar Ass'n v. Thornsberry*, a Kentucky attorney represented a client in Ohio, where he was not authorized to practice. 354 S.W.3d 526, 526 (Ky. 2011). He associated with a local attorney and signed the complaint as lead counsel with a motion pro hac vice to be filed. *Id.* However, he never filed the motion, despite several reminders. *Id.* at 526-27. The Kentucky bar suspended his license for 30 days, finding that he violated several ethical rules, including the rule making it “professional misconduct for a lawyer to . . . engage in conduct involving dishonesty,

deceit or misrepresentation.” *Id.* at 528 (quotation marks omitted). Similarly, in *Quinary Proceedings Against Stuligross*, a Wisconsin lawyer was suspended for two years for presenting a large number of divorce clients in Illinois without obtaining pro hac vice admission there and after filing false/misleading petitions for pro hac vice admission. 208 Wis. 2d 201, 203 (1997). This, and his use on pleadings of the identification number of the attorney he was associated with, constituted a violation of Wisconsin’s ethics rule prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation.” *Id.* at 205.

Here, Respondent engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation when he signed the *Babeu* complaint, indicated pro hac vice admission was pending, and then never filed any actual motion seeking such admission. He knew that pro hac vice admission was not “pending” because he knew he had not taken the steps to obtain it, namely, obtaining local counsel and filing the necessary documents. This conduct is made more egregious by the fact that prior litigation, such as *pre-Babeu*, clearly put Respondent on notice that he was expected to seek pro hac vice admission before appearing and practicing before the court. Consequently, Respondent’s unauthorized practice of law in *Babeu* violated 37 C.F.R. § 10.23(b)(4).

Under 37 C.F.R. § 10.23(b)(5), “[a] practitioner shall not engage in conduct that is prejudicial to the administration of justice.” This rule is based on the ABA’s Model Code of Professional Responsibility Disciplinary Rule 1-102 (1980). *See Practice Before the Patent and Trademark Office*, 50 Fed. Reg. 5158 Table 2. “Generally, an attorney engages in such conduct when his or her conduct impacts negatively the public’s perception or efficacy of the courts or legal profession.” *Schroeder*, PTO Proceeding No. D2014-08 at 9 (quoting *Attorney Grievance Comm’n of Md. v. Rand*, 981 A.2d 1234, 1242 (Md. 2009)) (quotation marks omitted). This might include an attorney’s failure to adequately or properly represent a client, tardiness or absence from trial, failure to appear on behalf of a client, failure to communicate with a client, failure to prosecute a claim, or failure to inform a client of his suspension. *See, e.g., Attorney Grievance Comm’n of Md. v. Brown*, 353 Md. 271, 286 (1999). However, “there is no typical form of conduct that prejudices the administration of justice. . . . The common thread . . . is that . . . the attorney’s act hampered the efficient and proper operation of the courts or of ancillary systems upon which the courts rely.” *Iowa Supreme Ct. Bd. Of Prof’l Ethics & Conduct v. Steffes*, 588 N.W.2d 121, 123 (Iowa 1999).

Here, Respondent engaged in conduct prejudicial to the administration of justice when he continued to practice and appear before the Massachusetts District Court without authorization and without seeking pro hac vice admission. He claimed pro hac vice admission was “pending” but knew he had not taken the steps necessary to obtain it. By not complying with the district court’s local rules and by ignoring the Court’s prior directives to obtain admission pro hac vice, Respondent “hampered the efficient and proper operation of the courts” and the “ancillary systems upon which the courts rely.” Consequently, Respondent’s unauthorized practice of law in *Babeu* violated 37 C.F.R. § 10.23(b)(5).

Under 37 C.F.R. § 10.77(b), “[a] practitioner shall not handle a legal matter without preparation adequate in the circumstances.” This rule is based on the ABA’s Model Code of Professional Responsibility Disciplinary Rule 6-101 (1980). *See Practice Before the Patent and Trademark Office*, 50 Fed. Reg. 5158 Table 2. “Inadequate preparation must be judged on a case-by-case basis,” though it may be more likely to be found where the violation occurred with

some degree of willfulness. See *Halvonik*, Disciplinary Proceeding No. D96-03, slip op. at 17 (Mar. 4, 1999) (Final Decision) (declining to adopt ALJ's finding of a violation for inadequate preparation of a first draft of a client's patent application and observing the facts did not rise to the level of a willful violation). "The adjective 'willful' is defined as 'done deliberately; not accidental or without purpose: intentional, self-determined.'" *In re Discipline of Lopez*, 153 Wash. 2d 570, 611 (2005) (quoting Webster's Third New International Dictionary of the English Language 2617 (2002)); see also Black's Law Dictionary 1630 (8th ed. 2004) (defining "willful" as "[v]oluntary and intentional").

Here, Respondent orchestrated the *Babeu* litigation without adequate preparation. Specifically, he practiced and appeared before the Massachusetts District Court without taking the necessary steps to obtain pro hac vice admission. This in itself might arguably be negligent and without willful or deliberate intent. However, Respondent was put on notice during the *pre-Babeu* litigation that he had to seek pro hac vice admission to appear and practice before the district court. The fact that he then filed or directed the filing of the *Babeu* complaint without following the court's earlier instruction indicates he willfully sought to litigate his client's claims without taking the steps necessary to become admitted to appear and practice in the district. To that end, he intentionally sought to handle a legal matter without adequate preparation. Consequently, Respondent's unauthorized practice of law in *Babeu* violated 37 C.F.R. § 10.77(b).

Under 37 C.F.R. § 10.84(a)(1), "[a] practitioner shall not intentionally fail to seek the lawful objectives of a client through reasonably available means permitted by law and the Disciplinary Rules" except as otherwise provided. This rule is based on the ABA's Model Code of Professional Responsibility Disciplinary Rule 7-101 (1980). See *Practice Before the Patent and Trademark Office*, 50 Fed. Reg. 5158 Table 2. This may include, for example, an attorney's failure to prosecute his clients' cases. See *Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Hohenadel*, 634 N.W.2d 652, 654-55 (Iowa 2001).

Here, Respondent pursued lawful objectives of his client – her civil rights claims – through unlawful means by appearing and practicing before the Massachusetts District Court without being authorized to do so. As stated above, this Tribunal concludes Respondent intentionally failed to follow the law in this regard because the court had previously put him on notice in the *pre-Babeu* proceedings that he was not permitted to participate in the litigation without being admitted pro hac vice. Even with this notice, he attempted to litigate the case anyway. By failing to use "means permitted by law," Respondent was unable to lawfully prosecute his client's case. Consequently, Respondent's unauthorized practice of law in *Babeu* violated 37 C.F.R. § 10.84(a)(1).

Consequently, I find by clear and convincing evidence that Respondent appeared and practiced law without authorization before the U.S. District Court for the District of Massachusetts in violation of 37 C.F.R. §§ 10.23(a), 10.23(b)(4), 10.23(b)(5), 10.77(b), and 10.84(a), as alleged in Count 7 of the Complaint.

#### **D. Facts Relevant to Count 3**

On August 21, 2009, a complaint was filed in *Hohn v. Burke*, No. 3:09-cv-30143-MAP (D. Mass.). DX 17; Tr. at 305. The plaintiff signed the complaint pro se. Beneath her signature

block a notation states: "COMPLAINT PREPARED WITH THE AID OF LOUIS A. PICCONE, ESQ. Admitted in Pa and Patent Bar Only, 519 Kirchner Road, Dalton, MA 01226." DX 17 at 11; Tr. at 305-06; DX 22 at 7-8 (Hohn Dep.). The complaint in *Hohn* includes three named defendants and John and Jane Doe 1-20. DX 17 at 1; Tr. at 306. It seeks various forms of relief under 42 U.S.C. § 1983 for seven counts of alleged constitutional violations and one count of mental distress. DX 17 at 5-10; Tr. at 306.

Respondent drafted the complaint and provided it to the plaintiff, although he testified he is not sure whether the draft he prepared is the exact document that was filed nor does he recall how many hours he spent drafting it. Tr. at 306-07, 309; *see also* RRB at 58 n.84

("[Respondent] admit[s] to providing substantial assistance" in preparing the complaint.). The plaintiff did not recall writing the complaint herself, and during her deposition she did not understand the legal significance of various terms used in the document. DX 22 at 9-12 (Hohn Dep.). Regardless, Respondent "agree[s] that [he] provided legal services to Ms. Hohn prior to the filing of the complaint in Massachusetts." Tr. at 317.

On August 28, 2009, the district court in *Hohn* issued an Order in response to the plaintiff's motion for leave to proceed *in forma pauperis* that stated in part:

Accordingly, the court hereby ORDERS the clerk to forward a copy of this memorandum and order, together with a copy of the underlying complaint, to the Office of Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania for its consideration and review. Given that Mr. Piccone is evidently licensed in Pennsylvania, that jurisdiction would appear to have the most appropriate power to impose sanctions deemed appropriate.

DX 19 at 2; Tr. at 315-16. Respondent concedes he knew he was required to have local counsel to seek admission pro hac vice in the *Hohn* matter. Tr. at 312. However, he claims he could not find any:

[M]y recollection is that when I couldn't find local counsel to sponsor my admission pro hac vice and the Federal Court, you know, indicated that I was skirting the rules that I just told Ms. Hohn, you know, '[K]eep in touch. We'll see what we can do in the future. I have my application for the Massachusetts bar pending, so let's see what happens with that.'<sup>52</sup>

at 314-15. Respondent was not admitted pro hac vice at the time the complaint was filed, nor any time while the case was pending. Am. Answer, ¶ 25.

The accuracy of this statement and Respondent's "recollection" is questionable. Respondent did not apply for admission to the Massachusetts bar until November 17, 2010, long after *Hohn* was dismissed. RX 66 at 000448. According to Ms. Hohn, there is a "[g]ood possibility" that Respondent told her he was not permitted to practice law in Massachusetts, and she remembers telling her at some point that he was pursuing his license in that state. But, she does not recall when she learned this. DX 22 at 19-20 (Hohn Dep.).

On January 21, 2010, the defendants in *Hohn* moved to dismiss the complaint. DX 18. The Court granted the motion on February 18, 2010, dismissing the case in its entirety. DX 19 at 2-3; DX 20; Tr. at 317.

### E. Count 3 Arguments and Discussion

The OED Director alleges Respondent violated 37 C.F.R. §§ 10.23(a) and 10.23(b)(5) by engaging in the unauthorized practice of law before the U.S. District Court for the District of Massachusetts.<sup>53</sup> AB at 6. Respondent's misconduct arose when he appeared or participated in the *Hohn* proceeding without complying with the rules regulating admission to the Court, the OED Director asserts. AB at 6. According to the OED Director, this was particularly troubling because Respondent already knew he was "playing fast and loose" with the Court's rules due to prior admonishment for similar behavior in *Babeu*. AB at 18-19. "Respondent's involvement in *Hohn*, in that he drafted the complaint and seemingly orchestrated the litigation without ever being admitted to practice pro hac vice, constituted the unauthorized practice of law," the OED Director concludes. AB at 19. And the unauthorized practice of law, he adds, constitutes disreputable or gross misconduct and conduct prejudicial to the administration of justice. AB at 19.

Respondent makes the same argument here that is discussed above under Count 7. RB at 22-34. He also noted at hearing his general practice when not admitted pro hac vice was "to help [clients] using the rooted, unbundled services that attorneys are allowed to provide . . . ." Tr. at 313. According to Respondent,

[a]pparently, because of the legal services crisis in the United States among poor people, the bar associations across the country have issued a variety of decisions that say that when a client doesn't have a lot of money and they want to hire an attorney for just a small part of what would otherwise be a very expensive litigation, for example, that they are allowed to do that and the attorney is allowed to do that as well so long as the client understands what the circumstances are surrounding the services . . . . So unbundled refers to instead of a catch-all relationship with the client, the attorney is just providing very limited legal services on a pay-for-fee basis, for example.

Tr. at 425-26.

In *Hohn*, the "complaint . . . was not signed by Piccone but was admittedly 'PREPARED WITH THE AID OF LOUIS A. PICCONE, ESQ., ADMITTED IN PA AND PATENT BAR ONLY.'" *Pease*, 679 F. Supp. 2d at 166 (quoting DX 17 at 11). By Respondent's own admission, he drafted the complaint and provided it to the plaintiff, and "agree[s] that [he] provided legal services to Ms. Hohn prior to the filing of the complaint in Massachusetts." Tr. at 306-07, 309, 317. At the very least, this conduct amounts to practicing law before the Massachusetts District Court. That Respondent did not take the final step of actually signing his

The OED Director expressly abandons his charge in the Complaint that Respondent engaged in other misconduct under this count in violation of 37 C.F.R. §§ 10.23(b)(4) and 10.23(b)(6). AB at 6.

name is not a sufficiently sized fig leaf to cover the nakedness of his behavior: Respondent was practicing law before the district court without being admitted to do so and without seeking permission to do so. He appears merely to have withheld his signature to skirt the court's prior admonitions in the *Babeu* and *pre-Babeu* matters to obtain pro hac vice admission.

As in *Babeu*, Respondent cannot rely on Massachusetts Rule 5.5. And even if he could, there is no evidence he "reasonably expect[ed]" to gain pro hac vice admission in *Hohn* because, as in *Babeu*, he never sought such admission. Indeed, as the court noted in *Pease*, Respondent "never indicated that he intended" to seek pro hac vice admission in *Hohn*. 679 F. Supp. 2d at 168. Without meeting these basic prerequisites, it was impossible for Respondent to be admitted pro hac vice. Consequently, Respondent cannot in good faith claim that he "reasonably expect[ed]" to be admitted pro hac vice.

Further, for the same reasons stated in *Babeu*, Respondent's practice in Massachusetts or before the district court in *Hohn* was not "temporary." Respondent had twice appeared and practiced before the Massachusetts District Court in *Babeu* and *pre-Babeu*. And Respondent's reliance on an "unbundled" legal services paradigm provides him no help because, as with Rule 5.5 and the Ghostbuster's article, such services presume an attorney is authorized to practice law in the first place. Respondent's conduct might have been authorized "ghostwriting" if he were permitted to practice in Massachusetts or before the district court, but he was not. Additionally, the "unbundling" of legal services as Respondent describes them refers to ways to limit the scope of representation. See also ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 07-446 at 1 (May 5, 2007) (describing the "unbundling" of legal services as occurring when "a lawyer performs only specific, limited tasks instead of handling all aspects of a matter" and referencing Model Rule of Professional Conduct 1.2(c) on limiting the scope of representation). This concept does not mean an attorney unlicensed or unauthorized to practice law in a jurisdiction is suddenly qualified to do so without meeting the admission requirements of the jurisdiction in which he is practicing.

As previously stated, under § 10.23(a), "[a] practitioner shall not engage in disreputable or gross misconduct;" and under § 10.23(b)(5), "[a] practitioner shall not engage in conduct that is prejudicial to the administration of justice." In *Hohn*, Respondent engaged in disreputable or gross misconduct, as well as conduct prejudicial to the administration of justice, when after warnings from the court in prior cases he "drafted the complaint and seemingly orchestrated the litigation without ever being admitted to practice pro hac vice." RB at 19. This is no less than the unauthorized practice of law, which on its face qualifies as disreputable or gross misconduct or conduct prejudicial to the administration of justice. See, e.g., *Jaeger*, PTO Proceeding No. D2012-29 at 11. In drafting and filing a complicated civil complaint on Ms. Hohn's behalf without actually appearing as her attorney, Respondent "set [her] adrift . . . to pursue the seven sophisticated causes of action drafted by him."<sup>54</sup> *Pease*, 679 F. Supp. 2d at 166. "This is the

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<sup>54</sup> Respondent observes the purpose of Rule 5.5 is to "protect[ ] the public against rendition of legal services by unqualified persons" and that he could not have provided incompetent legal services because courts referred to pleadings he drafted as "sophisticated." RB at 33. "All reviewing third parties can be said to have considered Mr. Piccone's work product on behalf of indigent clients at least, competent," he concludes. RB at 33. Certainly, the legal causes of action set forth in these complaints were sophisticated. But from this Tribunal's perspective, Respondent's representation was much less so, and his work in *Babeu*, *Hohn*, and *Doe* could

very consequence which, taken together, the Massachusetts licensing requirements and [that] district's rules of admission, pro hac vice included, were designed to avoid." *Id.* At the very least, "by obviously aiding [Ms. Hohn's] case without admission in this jurisdiction," Respondent was "playing fast and loose" with the district court's rules. *Id.* at 164. Respondent's defiance of state bar and federal court rules violated "the ordinary standard of professional obligation and honor," "hampered the efficient and proper operation of the courts or of ancillary systems upon which the courts rely," and constitute disreputable or gross misconduct or conduct prejudicial to the administration of justice.

Based upon the foregoing, the record establishes by clear and convincing evidence that Respondent violated 37 C.F.R. §§ 10.23(a) and 10.23(b)(5) as alleged in Count 3.

#### F. Facts Relevant to Count 4

On January 24, 2013, a complaint was filed in *Doe v. Briggs*, No. 3:13-cv-30019-MAP (D. Mass.). DX 25; Tr. at 317. The plaintiffs signed the complaint pro se. DX 25 at 54. The complaint was against nine named defendants, "John and Jane Doe 1-10," and contained a host of constitutional violations alleged in 282 paragraphs. DX 25; Tr. at 323. Also on January 24, 2013, the plaintiffs filed a motion for leave to proceed under a pseudonym. DX 26. At the bottom of the motion was the notation: "THIS AND ALL RELATED DOCUMENTS WERE PREPARED WITH THE AID OF LOUIS A. PICCONE, ESQ., ADMITTED PA ONLY." DX 26 at 2.

Respondent admits he prepared a draft of the complaint but does not know if the draft is what was filed. Tr. at 317, 323; *see also* RRB at 58 n.84 ("[Respondent] admit[s] to providing substantial assistance" in preparing the complaint.). He further stated:

I recall meeting with these people. It was a young couple at the time. I remember having several meals with them. I remember going through a wealth of documentation regarding their case. They had been able to get their documents from their attorney, so they had a voluminous amount of documents.

Tr. at 323. Respondent agrees that he provided legal services to the plaintiffs. Tr. at 326. Respondent was not admitted pro hac vice at the time the complaint was filed, nor at any time while the case was pending. Am. Answer, ¶ 32. Respondent's application for admission to the Massachusetts bar was denied by the Board of Bar Examiners in February 2012.<sup>55</sup> DX 88 at 6.

On April 2, 2013, a federal magistrate judge entered a Report and Recommendation that

easily be described as incompetent given his inability or unwillingness to follow court rules and orders or to recognize the deleterious effect his actions and inactions would have on his clients' cases.

<sup>55</sup> Respondent appealed this denial. However, given that the Board had denied Respondent's request for admission because he was illegally practicing law in Massachusetts, it would be unreasonable to characterize Respondent's admission to the bar as "pending" simply because there was an open appeal. His appeal was denied in March 2014. DX 87.



the complaint be dismissed. DX 27. Dismissal was based in part on the magistrate judge's perception that Respondent "was drafting documents on behalf of pro se individuals and thereafter leaving them adrift in an unknown legal sea." DX 27 at 3-4. The magistrate judge added:

Presently, then, this court is left with the following facts: (1) a complaint which was obviously drafted by an attorney but not signed by one . . . and (5), in the background, a Pennsylvania attorney who resides in Massachusetts and, through various artifices, attempts to practice law in jurisdictions in which he is not admitted. Piccone either does what he has attempted to do here, *i.e.*, have the *pro se* plaintiff indicate that documents filed were "prepared with the aid of Louis Piccone, 'Esq.," or stay in the shadows, or file pleadings with the hope (sometimes fulfilled) that another attorney may subsequently move for his admission *pro hac vice*. In the court's view, these are not the actions of an attorney who simply wishes to assist an individual *pro bono* until a duly authorized attorney can properly take over. Rather, they are the calculated actions of an individual who has too often proven himself to be ill-equipped to provide adequate legal representation. . . . In all, Piccone has an unfortunate record of compounding the problems of *pro se* litigants, first, by having it appear they could proceed *pro se* and, second, by being ill-prepared himself when given the opportunity to function as an attorney. The case at bar appears to be more of the same, leading directly to Plaintiffs' failure to appear for a motion hearing despite the warning that, otherwise, their motion would be denied and their case dismissed.

DX 27 at 5-7.

On May 13, 2013, the district court adopted the magistrate judge's recommendation and dismissed the plaintiffs' case. DX 28; Tr. at 333-34, 338. The Court stated in its Order:

[O]f equal concern, this lawsuit, like others, appears to be choreographed by an individual who is not a member of the Bar of this court, Louis Piccone. Judge Neiman's Recommendation details Piccone's disturbing attempts in prior litigation to involve himself in a quasi-attorney role, sometimes, it would appear, to the detriment of the actual litigants. It is long past time for Piccone to stop what smacks of an unauthorized practice of law. Indeed, one disturbing aspect of this case is the impossibility of discerning how much the actual Plaintiffs are responsible for the unresponsive behavior that has led to the dismissal of this case, and how much they may have relied on incompetent legal advice from Piccone . . . . A non-member of the Bar of this court with a far from reassuring history is again attempting to insert himself into a case from the sidelines with untoward results.

DX 28 at 3-4; Tr. at 337. Respondent testified at hearing that he believed the judges were biased against him, never intended to admit him to practice in the district court, and dealt with him in bad faith. Tr. at 330. "The Court didn't want to hear the cases because they were unpopular cases in Massachusetts at that time." Tr. at 331. He also stated that the judges referred him to the Massachusetts and Pennsylvania bar disciplinary authorities, but neither state viewed his conduct as requiring discipline. Tr. at 337.

#### G. Count 4 Arguments and Discussion

The OED Director alleges in Count 4 that Respondent violated 37 C.F.R. §§ 10.23(a), 10.23(b)(5), and 11.505<sup>56</sup> by engaging in the unauthorized practice of law before the U.S. District Court for the District of Massachusetts.<sup>57</sup> At the time the *Doe* complaint was submitted, the OED Director states, Respondent had been placed on notice by the court three times – in *Babeu*, *Hohn*, and *Pease* – that "aiding pro se defendants while not admitted pro hac vice was the unauthorized practice of law, and would be so considered by the U.S. District Court for the District of Massachusetts." AB at 20. Even so, "Respondent chose to again draft the complaint in *Doe*, and seemingly orchestrate the litigation" without ever gaining admission to practice in Massachusetts or the district court, the OED Director complains. AB at 20. Further, by not signing the complaint, Respondent sought to downplay his role in the litigation, the OED Director alleges, and the judges specifically warned Respondent about his actions. AB at 20.

Respondent makes the same arguments he made in Counts 3 and 7 in response to the *Hohn* and *Babeu* allegations. RB at 22-34.

As in *Babeu* and *Hohn*, it is clear Respondent violated 37 C.F.R. §§ 10.23(a), 10.23(b)(5), and 11.505 while representing the Does. As previously stated, under § 10.23(a), "[a] practitioner shall not engage in disreputable or gross misconduct;" under § 10.23(b)(5), "[a] practitioner shall not engage in conduct that is prejudicial to the administration of justice;" and under § 11.505 "[a] practitioner shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." Respondent admits that he prepared a draft of the complaint, provided legal services to the plaintiffs, and was not admitted to practice in Massachusetts or before the district court at the time the complaint was filed or while the case was pending. Tr. at 317, 323, 326; Am. Answer, ¶ 32. He engaged in this behavior in direct violation of L.R. 83.5.3. DX 21 at 9-10. Perhaps more damningly, Respondent's actions in *Doe* occurred after the Court specifically warned him in *Babeu*, *Hohn*, and *Pease* that he was violating its rules. There was no ambiguity for Respondent to cling to in *Doe*; his continual violation of the rules can only be interpreted as an intentional disregard for regulations governing the practice of law. Moreover, for the reasons stated in the analysis of Counts 3 and 7, Respondent's arguments and his reliance on Massachusetts Rule of Professional Conduct 5.5(c) do not negate his misconduct. Respondent continued in *Doe* to practice law before the district court without authorization, which also constituted disreputable or gross

<sup>56</sup> Respondent's conduct in this count took place during a time period, January 24, 2013, to May 13, 2013, that overlaps both the PTO Rules and the PTO Code.

<sup>57</sup> The OED Director expressly abandons his charge in the Complaint that Respondent engaged in other misconduct under this count in violation of 37 C.F.R. §§ 10.23(b)(4) and 10.23(b)(6). AB at 7.

misconduct and conduct prejudicial to the administration of justice.

Consequently, the record establishes by clear and convincing evidence that Respondent violated 37 C.F.R. §§ 10.23(a), 10.23(b)(5), and 11.505 as alleged in Count 4.

## **IX. COUNT 5**

### **A. Facts Relevant to Count 5**

By Order of the Supreme Court of Pennsylvania dated August 21, 2013, Respondent was, effective September 20, 2013, administratively suspended from the Pennsylvania bar for failing to complete required annual CLE. DX 3; Tr. at 253-55; 344-45. Respondent wrote a letter, dated October 29, 2013, and addressed to the chief disciplinary counsel of the Pennsylvania Disciplinary Board, requesting an extension of time to complete his CLE requirements and an advisory opinion regarding his preparation of pleadings on behalf of third parties for submission to state and federal courts while under suspension. RX 6 at 000011-000012. "I wanted to contact the Bar Association so they knew what I was going to try and do because if they had any problem with it, I would have expected them to contact me and, you know, correct me if I was inappropriate," he said. Tr. at 398-99. The record does not reflect the Board's response, if any, to this letter.

On February 28, 2014, while Respondent was suspended, a complaint was filed in the District Court for the Northern District of Iowa in an action styled *Nunley v. Erdmann*, No. 5:14-cv-04016-LTS (N.D. Iowa). DX 34; Tr. at 339. The plaintiff signed the complaint pro se. DX 34 at 22. The complaint alleges seven counts of constitutional violations pursuant to 42 U.S.C. § 1983 and five state law claims. DX 34 at 10-21. It names two defendants plus "John and Jane Doe 1-10". DX 34 at 1.

The plaintiff testified that Respondent wrote the complaint – by which she means "he writes it out and I look at it" or "I'll write my draft out. I'll send it to [Respondent]. Then he touches it up a little bit, and then I read it again, I touch it up, he touches it up, vice versa." DX 44 at 20-21, 40-42 (Nunley Dep.). She added:

He's given me the legal procedures that I have rights on, and . . . I write down what happened in the incident, and then he puts the legal terms to it, and I looked some of it up also . . . . He would take my words and legalize it, write it legally. That's what a lawyer does under my understanding.

DX 44 at 41, 43 (Nunley Dep.).

On June 6, 2014, some of the defendants filed a partial motion to dismiss. DX 35. On July 9 and July 15, 2014, the plaintiff filed motions for extension of time and stated she was "receiving help from an out of state attorney. The attorney needs more time to research the issues in the defendant's brief." DX 36 at 1; DX 37 at 1. Respondent was providing help to the plaintiff at this time but claims he does not know if he is the "out of state attorney" referred to in the filings. Tr. at 342-43. However, Ms. Nunley states that no attorney other than Respondent was involved in the case. DX 44 at 38 (Nunley Dep.).

On August 11, 2014, the plaintiff filed her opposition to the defendants' motion to dismiss. The document is signed by the plaintiff and notes she is pro se. However, the document also contains the following notation at the end: "THIS AND ALL RELATED DOCUMENTS WERE PREPARED WITH THE AID OF LOUIS A. PICCONE, ESQ., ADMITTED PA ONLY." DX 39 at 9. Respondent admits he drafted the opposition to the motion but contends it was "substantially changed from the draft that [he] prepared." Tr. at 343. Regarding the phrase "admitted PA only,"

[n]ormally I would put something in that qualification that indicates that I was admitted in PA because that gave the Court and opposing counsel an opportunity to know what state I was admitted in, because if I just put Louis A. Piccone, Esquire, for example, they wouldn't have the information to know what state to contact if they wanted to, you know, find out about me, for example. Because in the past when I've represented people pro hac vice, a lot of times the Judge will excuse himself from the proceedings right there and then, go into his chambers and call the Pennsylvania Disciplinary Board to find out whether, for example, I'm admitted in good standing at that time or whatever other information they want to find out. And so the intention of that, having something on the document that says PA, is to give the Judge and opposing counsel knowledge about what state I'm admitted in.

Tr. at 358-59. Respondent did not ever correct his statement to reflect his suspension. Tr. at 359.

On August 13, 2014, after complying with CLE requirements, Respondent's Pennsylvania law license was reinstated to active status. DX 3; Tr. at 253-55, 345. He had not told the plaintiff in *Nunley* he was administratively suspended from the practice of law. DX 44 at 35 (Nunley Dep.).

On August 15, 2014, the plaintiff filed a motion for extension of time, which stated that she was "receiving help from an out of state attorney. The attorney needs more time to research the issues in the defendant's brief." DX 41 at 1.

On September 23, 2014, the plaintiff in *Nunley* filed an amended complaint. It is signed by the plaintiff as a pro se litigant but also contains the notation: "THIS AND ALL RELATED DOCUMENTS WERE PREPARED WITH THE AID OF LOUIS A. PICCONE, ESQ., ADMITTED PA ONLY." DX 40 at 22. Respondent concedes he was involved in the *Nunley* case prior to the filing of the amended complaint. Tr. at 340.

On October 23, 2014, the plaintiff filed a motion for extension of time that stated she was "prosecuting this case with the aid of an out-of-state attorney who is currently helping undersigned pro bono publico" and the attorney needed additional time for research. DX 42 at 1. The motion is signed by the plaintiff as a pro se litigant but also contains the notation: "THIS AND ALL RELATED DOCUMENTS WERE PREPARED WITH THE AID OF LOUIS A. PICCONE, ESQ., ADMITTED PA ONLY." DX 42 at 2.

Respondent was later admitted pro hac vice to the Northern District of Iowa in July 2015; however, he no longer is admitted to practice before the court. Tr. at 340, 349. He handled the plaintiff's case on a contingency fee basis and intends to continue to provide her with legal assistance.<sup>58</sup> Tr. at 349, 354.

Under the Local Rules of the United States District Courts for the Northern and Southern Districts of Iowa:

**d. Appearance and Withdrawal.**

**1. Who May Appear Generally.** Only a member of the bar of the district may appear as a lawyer in the courts of the district, except where pro hac vice appearance is permitted by the court[.]

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**3. Pro Hac Vice Admission.** A lawyer who is not a member of the bar of the district may be admitted to practice in a particular case pro hac vice by filing a motion asking to be admitted pro hac vice. By asking to be admitted pro hac vice, the lawyer agrees that in connection with the lawyer's pro hac vice representation, the lawyer will submit to and comply with all provisions and requirements of the Iowa Rules of Professional Conduct, or any successor code adopted by the Iowa Supreme Court.

**A. Written Motion.** To be admitted pro hac vice, a lawyer must file a written motion to appear pro hac vice on a form available from the Clerk of Court. This form is attached to these rules as appendix C. The motion must contain the following:

- (1) An indication that the lawyer is a member in good standing of the bar of any United States district court or the highest court of any state, territory, or insular possession of the United States;
- (2) A statement by the lawyer seeking pro hac vice admission agreeing, in connection with the lawyer's pro hac vice representation, to submit to and comply with all provisions and requirements of the rules of conduct applicable to lawyers admitted to practice before the state courts of Iowa; and
- (3) In civil cases only, a statement explaining how the lawyer intends to comply with the associate counsel requirements contained in subsection d.4 of this rule.

**B. Civil Cases.** A lawyer who files a motion for admission pro hac vice in a civil case must submit contemporaneously to the Clerk of Court the following:

- (1) A pro hac vice admission fee of \$75.00;

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<sup>58</sup> At hearing, Respondent indicated his general practice was to "tell each client that if I was admitted pro hac vice for the federal part of their case that would influence whether it was contingency fee litigation or not." Tr. at 313.

(2) A completed and signed lawyer registration form for the ECF system (this form is appended to the ECF Procedures Manual, and may be found on the court's website at the web address given in Local Rule 1.i); and

(3) Any other documentation required by the court for registration in the ECF system, as described in the ECF Procedures Manual.

If a lawyer files a motion for admission pro hac vice in a civil case and the motion is granted, and the Clerk of Court does not receive the documentation required for registration in the ECF system within 14 days after the filing of the motion, the court may enter an order revoking the admission pro hac vice.

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**4. Associate Counsel Requirement.** Except parties proceeding pro se or lawyers appearing in criminal cases and complying with the requirements of subsection d.2 of this rule, any lawyer who is not qualified to practice under section "b"<sup>59</sup> of this rule must, in each proceeding in which the lawyer appears, associate with counsel who is so qualified. The qualified associate counsel must enter a written appearance with his or her name, law firm, office address, telephone number, facsimile number, and e mail address, which will be entered of record. Thereafter, all materials required to be served upon the nonqualified lawyer also must be served upon the qualified associate counsel. A lawyer not qualified to practice under section "b" or subsection d.2 of this rule must not tender any document to the Clerk of Court for filing unless, at the time of the tender, qualified associate counsel has entered a written appearance on behalf of the party represented by the nonqualified lawyer and has signed the document.

LR 83.1(d); DX 43 at 13-15 (emphasis added).

#### **B. Argument and Discussion on Count 5**

The OED Director alleges Respondent engaged in the unauthorized practice of law in violation of 37 C.F.R. § 11.505; made a false statement of fact to a tribunal in violation of 37 C.F.R. § 11.303(a)(1); and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of 37 C.F.R. § 11.804(c). According to the OED Director, Respondent's unauthorized practice occurred in two different ways: "[H]is sole state license to practice law was administratively suspended during the entirety of the time when the Opposition (as well as other legal documents specified in the complaint) was drafted and filed; and . . . [he

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<sup>59</sup> Admission under section "b" refers to lawyers "currently in good standing as a lawyer admitted to practice in the state courts of Iowa," who have satisfied the minimum legal education requirements for federal practice, or government lawyers in good standing and permanently stationed in Iowa. LR 83.1(b); DX 43 at 11.

provided] legal services to Ms. Nunley for approximately one year prior to filing for admission pro hac vice.” AB at 8-9. The Opposition that Respondent drafted was a substantive legal document containing legal argument and analysis, and its creation entailed the practice of law under Iowa standards, the OED Director contends. AB at 21. Independent of his license suspension, the OED Director further states that Respondent’s “failure to become admitted pro hac vice for nearly a year while he advised the pro se plaintiff and drafted documents on her behalf constitutes” its own violation of § 11.505. AB at 22. Plus, the OED Director observes, Respondent continued this conduct even “while he was aware that the OED was investigating him for allegations that he had engaged in the unauthorized practice of law.” AB at 23; DX 92. Respondent’s false statement and fraud-related misconduct arose from the inclusion of the title “ESQ.” and the phrase “ADMITTED PA ONLY” next to his name in the opposition filed August 11, 2014, while he was suspended in Pennsylvania, the OED Director adds. AB at 9. “As Respondent could not practice law, he could not include “Esq.” in his signature, nor could he lead the court to believe that he was in good standing to practice in Pennsylvania,” the OED Director asserts. AB at 22.

As with his cases in the Massachusetts District Court, Respondent first falls back on Iowa Rule of Professional Conduct 5.5, which is essentially a verbatim copy of the Massachusetts rule.<sup>60</sup> RB at 35. He also argues in regard to his administrative suspension that “there is insufficient evidence of record with which to conclude, by clear and convincing evidence, what services Mr. Piccone provided, the extent of whatever services Mr. Piccone provided, when those services were provided, or, for example, how those services were provided.”<sup>61</sup> RB at 35. Next, Respondent contends that allegations of fraud, misrepresentation, and deceit “are misguided and legally baseless” because his statements were in fact all true. RB at 39. Specifically, he says, there is no question that he has been admitted to practice law in Pennsylvania since 1989, so he was “technically” admitted at the time of his filings even if his license was under suspension. RB at 40-41. The point of including this information on the *Nunley* filings “was to give the knowledge to the Court and opposing counsel, the exact information which they would need if they had a problem with Mr. Piccone,” he adds. RB at 41. And, he states further, “all of the alleged false statements were made by a person other than Mr. Piccone.” RB at 41.

There is no question Respondent engaged in the unauthorized practice of law in violation of 37 C.F.R. § 11.505. Between September 20, 2013, and August 13, 2014, Respondent’s only license to practice law was suspended, yet during that time there is clear and convincing evidence that he drafted the complaint for the plaintiff, the opposition to the defendants’ motion to dismiss, and other filings in between. This evidence is the plaintiff’s own testimony plus the

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<sup>60</sup> Both rules track the ABA’s Model Rule of Professional Conduct 5.5.

<sup>61</sup> Respondent further complains that the OED Director sought information from Ms. Nunley covered by the attorney-client privilege. However, this Tribunal has not admitted any privileged information into evidence, and when necessary, has limited the extent to which the OED Director could obtain such information from Respondent or third parties. *See, e.g.*, Order on OED Director’s Motion for Leave to Depose Witnesses and to Authorize Discovery (May 19, 2015). To the extent Respondent disagrees with decisions made by the U.S. District Court for the Northern District of Iowa related to information it ordered Ms. Nunley to release, he must lodge his protests in that forum.

express indications on the documents themselves that they and *all others* were “prepared with the aid” of Respondent. Additionally, Respondent admitted he was helping the plaintiff during this time and preparing documents for her. This is the practice of law. As the Iowa Supreme Court has stated:

[T]he practice of law includes the obvious: representing another before the court. But the practice of law includes out-of-court services as well. For example, one who gives legal advice about a person’s rights and obligations under the law is practicing law. Or one who prepares legal instruments affecting the rights of others is practicing law. Or one who approves the use of legal instruments affecting the rights of others is practicing law.

*Iowa Supreme Court Comm’n on Unauthorized Practice of Law v. Sturgeon*, 635 N.W.2d 679, 684 (Iowa 2001). In this case, Respondent gave legal advice and prepared legal instruments all while his license was suspended. Respondent’s reliance on Iowa’s Rule 5.5 is irrelevant as to this point. Likewise, Respondent’s conduct was also unauthorized because he did not obtain pro hac vice admission during this period. The district court’s local rules state that only members of its bar “may appear as a lawyer in the courts of the district” except where pro hac vice admission is authorized. LR 83.1(d); DX 43 at 13. As in Massachusetts, Respondent’s effort to avoid signing any documents himself in an attempt to not “appear” before the Court does not free him from complying with pro hac vice requirements. Indeed, the local rules contemplate that pro hac vice admission is prerequisite to “practice in a particular case,” and as stated above, Respondent was practicing in the *Nunley* case. LR 83.1(d); DX 43 at 13. In that regard, his failure to seek pro hac vice admission provides independent grounds for violating 37 C.F.R. § 11.505.

However, there is insufficient evidence that Respondent ran afoul of 37 C.F.R. §§ 11.303(a)(1) and 11.804(c) by appending to his name “ESQ.” and “ADMITTED PA ONLY.” Under § 11.303(a)(1), “[a] practitioner shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the practitioner.” This rule corresponds to ABA Model Rule of Professional Conduct 3.3. *Changes to Representation of Others Before the United States Patent and Trademark Office*, 78 Fed. Reg. at 20184. It “sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process.” ABA Model Rule 3.3 cmt. 2. Additionally, “[t]here are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation.” ABA Model Rule 3.3 cmt. 3. Under § 11.804(c), “[i]t is professional misconduct for a practitioner to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” This rule corresponds to ABA Model Rule of Professional Conduct 8.4 and “provides for discipline involving a variety of acts constituting misconduct.” *Changes to Representation of Others Before the United States Patent and Trademark Office*, 78 Fed. Reg. at 20188. Like 37 C.F.R. § 10.23 of the USPTO Code that “set forth specific examples of misconduct that constitute a violation of the rules[,]” the examples set out in § 11.804 “generally continue to be violations under the new USPTO Rules.” *Id.* In Iowa, “[m]isrepresentation requires proof of intent to deceive.” *Iowa Supreme Court Atty. Disciplinary Bd. v. Kersenbrock*, 821 N.W.2d 415, 421 (Iowa 2012); *see also Iowa Supreme Court Bd. of Prof’l Ethics & Conduct v. Smith*, 569 N.W.2d 499, 501 (Iowa 1997) (stating “[t]he key question is whether the effect of the lawyer’s conduct is to mislead rather than to inform”).



Although it is certainly possible that Respondent intended to deceive the district court by not revealing his suspension, the OED Director has not presented clear and convincing evidence that Respondent's actions were anything more than negligent, and they were arguably truthful. Respondent had in fact been "admitted" to the Pennsylvania bar since 1989. There is no evidence in the record that an administrative suspension in Pennsylvania means an attorney is no longer "admitted" to the bar. But even if this was the case, there is no evidence Respondent *knew* he was not "admitted" in Pennsylvania because of his suspension. Nor has it been shown he intentionally sought to mislead the district court as to that fact. The most that could be inferred from the OED Director's evidence is that Respondent simply did not engage in the necessary due diligence to determine how to most accurately describe his status. Otherwise, it is reasonable and plausible that Respondent included the label "ESQ." and the phrase "ADMITTED PA ONLY" for the reasons he said he did – merely to identify himself as a Pennsylvania-licensed attorney should the court or opposing parties have questions. *See* Tr. at 358-59; RB at 39-41.

Consequently, I find by clear and convincing evidence that Respondent violated 37 C.F.R. § 11.505, but did not violate §§ 11.303(a)(1) and 11.804(c), as alleged in Court 5.

## X. COUNT 6

### A. Facts Relevant to Count 6

On January 8, 2007, a plaintiff filed the civil complaint in *Nolan v. Primagency, Inc.*, No. 1:07-cv-00134-RJS (S.D.N.Y.). DX 46. Respondent on August 6, 2007, moved for pro hac vice admission to the New York District Court to represent the plaintiff.<sup>62</sup> DX 48. The Court granted his motion on August 10, 2007. DX 46 at 2; DX 48 at 7.

On September 28, 2007, the Court held a show cause hearing to determine why a default judgment should not be entered against the defendants. DX 46 at 3; DX 49 at 3; DX 54 at 1. The defendant was ordered to file a pre-motion letter by October 5, 2007, and the plaintiff was ordered to respond by October 10, 2007. DX 46 at 3; DX 49 at 3; DX 54 at 1. A pre-motion conference was scheduled for October 16, 2007. DX 46 at 3; DX 49 at 3.

The Court received nothing from the defendant until his counsel appeared at a conference on October 16, 2007. DX 54 at 2. Respondent similarly asserted he received nothing from the defendant until October 11, 2007, and Respondent then filed his response with a judge who was no longer assigned to the case. DX 54 at 2. Consequently, the Court on October 16, 2007, ordered the plaintiff to submit a letter in opposition to the defendant's pre-motion letter by October 19, 2007. DX 50; DX 54 at 2. The Court also ordered the parties to appear at a pre-motion conference on November 1, 2007. DX 50.

Respondent did not submit a response on behalf of the plaintiff by October 19, 2007, as ordered. DX 54 at 2. Rather, in a letter dated October 19, 2007, and filed October 21, 2007, Respondent sought leave to submit an amended complaint. DX 47; DX 51; DX 54 at 2. This violated court practices. DX 54 at 2.

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<sup>62</sup> The *Nolan* Plaintiff was a friend of the Respondent who had dated one of Respondent's sisters. Tr. at 402.

At a conference on November 1, 2007, the district court ordered Respondent to file his amended complaint no later than November 2, 2007. DX 54 at 2-3. Respondent failed to do so in accordance with the court's rules. DX 54 at 3. Also during the November 1, 2007, conference, the Court ordered the parties to submit a proposed case management plan by December 10, 2007. The parties failed to do so. After several emails from the Court, Respondent finally submitted a "draft" case management plan to chambers and asked for permission to move for default judgment. The Court later noted the parties, including Respondent, "collectively failed to meet every single directive outlined" in the November 1, 2007 Order. DX 54 at 3.

On January 3, 2008, the court ordered the parties to complete a case management plan and scheduling order no later than 4 p.m. January 9, 2008, and by that time to submit a joint status letter "explaining what has transpired in this case since the last conference on November 1, 2007, including the parties' failure to comply with Court Orders." DX 53 at 1; DX 54 at 3-4. The parties were further instructed to appear at a status conference on January 14, 2008. DX 53 at 1. At the status conference, the Court intended to address "whether sanctions are appropriate for the parties' failure to comply with prior Court orders in this case." DX 53 at 2.

When the district court never received any joint status letter as it had ordered, it scheduled another conference with the parties. That conference was then twice rescheduled at Respondent's request on fewer than 24 hours notice and set for January 30, 2008. Respondent did not appear on that date but his client did. DX 54 at 4.

On February 1, 2008, the Court entered an Order noting that Respondent had "repeatedly failed to comply with the Court's orders and [had] consistently failed to abide by both the rules of the Southern District of New York's Electronic Case Filing system and this Court's Individual Practices." DX 54 at 4. The Court further Ordered Respondent to appear at a hearing on February 21, 2008, and show cause why sanctions should not be entered against him and the case dismissed. DX 54 at 4.

On March 3, 2008, the district court in New York imposed civil contempt sanctions on Respondent in the amount of \$750. DX 55; DX 56 at 2; Tr. at 360. The Court further directed Respondent to, by March 17, 2008, properly file the amended complaint in the Court's electronic case system; submit a courtesy copy to chambers in accordance with the judge's individual practices; confer with defense counsel about a joint case management plan; submit a proposed plan to the court; and submit a joint status letter outlining all that had happened in the case since November 1, 2007. DX 55 at 3; DX 56 at 2. In describing Respondent's conduct, the court stated that

it is clear that Mr. Piccone was less than diligent. Mr. Piccone was given several chances to properly file documents and to make submissions to the Court. At best, Mr. Piccone does not know how to file documents properly and has made no attempt to learn how to do so. At worst, Mr. Piccone is simply ignoring the Court's orders without explanation and to the detriment of his client.

DX 55 at 3. The Order further warned that failure to comply would result in dismissal of the case. DX 55 at 4; DX 56 at 2.

At a conference on April 8, 2008, the Court observed that Respondent had failed to comply with even one of the directives in its March 3, 2008 order. DX 56 at 3. At that hearing, Respondent "admitted on the record that he had not complied with any of the directives . . . and that his failure to comply with [the Court's orders] was due to personal issues . . ." DX 56 at 3. On April 16, 2008, due to Respondent's failure to comply with the Court's directives, the district court dismissed the plaintiff's case with prejudice. DX 56. In dismissing the case, the court noted that "it is without question that plaintiff's failures in this case are solely attributable to his counsel, Mr. Piccone . . . ."

[T]he Court has given plaintiff numerous opportunities to be heard in relation to his failure to follow court orders. Prior admonishments and warnings have been wholly ineffective. Indeed, the Court previously issued a civil contempt sanction against Mr. Piccone in the amount of \$750.00 in order to induce his compliance with future orders . . . . As of the date of this Order, that sanction has not been paid. Moreover, as noted above, counsel has not complied with *any* of the directives contained in [the March 3, 2008 order].

DX 56 at 9-10.

In a letter to the OED dated August 26, 2014, Respondent offered the following explanation for his general failure to comply with Court orders in the *Nolan* matter:

In January 2008, I was falsely and maliciously charged with the ridiculous and provably baseless felony of kidnapping three minors<sup>63</sup> by numerous authorities in Western Massachusetts. During the prosecution of those criminal charges, I was incarcerated while awaiting trial (for approximately 30 days between mid-February, 2008, and mid-March, 2008). Then after posting bail, I was placed under a five (5) mile radius house arrest using a GPS monitor placed on ankle. I was therefore unable to attend court in another state (New York) or respond to the Order To Show Cause. I advised the client in that matter that he should attend all court hearings which I was unable to attend, and explain the circumstances of my predicament to the presiding Judge. All criminal charges were later dismissed on motion. Because it was impossible for me to comply with any court orders emanating from that litigation involving John Nolan, I believe I had a viable and persuasive defense to any contempt allegations against me.

DX 58 at 5.

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<sup>63</sup> The minors were Respondent's children, one of whom he was accused of abusing. RB at 63. After the local Child Protective Services Agency made the accusation, Respondent and his wife temporarily fled the United States with their children. Respondent's Mot. for Summary Judgment at 1-2 (May 8, 2015).

## B. Arguments and Discussion on Count 6

The OED Director alleges Respondent engaged in disreputable or gross misconduct in violation of 37 C.F.R. § 10.23(a); engaged in conduct prejudicial to the administration of justice in violation of 37 C.F.R. § 10.23(b)(5); neglected a matter entrusted to the practitioner in violation of 37 C.F.R. § 10.77(c); and failed to seek the lawful objectives of his client through reasonably available means in violation of 37 § C.F.R. 10.84(a).<sup>64</sup> AB at 10. Specifically, the OED Director alleges that Respondent violated all of these rules by not complying with court orders, including the November 1, 2007, January 3, 2008, and March 3, 2008 orders to, by March 17, 2008, properly file the plaintiff's amended complaint via the court's electronic case system; to submit a courtesy copy of the amended complaint to chambers in accordance with the judge's practices; to confer with the defense regarding a joint proposed case management plan; and to submit a proposed plan and joint status letter to the court by March 17, 2008. AB at 10, 23; DX 55 at 3. In addition to Respondent's failure to abide by the court's Orders, the OED Director further states that he violated the above rules because he "failed to take meaningful action to protect the interests of his client during the time he was occupied by his encounter with local authorities." AB at 10, 23-24.

Respondent contends it is difficult for him to piece together the events of the *Nolan* litigation because he "has little recollection of the facts of this matter and . . . is therefore in the unenviable position of having to speculate what he would have done, what actually happened without records being available." RB at 53 and n.57. Even so, he attempts to argue, filing by filing, that the record of the *Nolan* proceeding is not what it seems and that the court's ultimate finding of contempt was in error. RB at 53-67. For example, he contends he "made every reasonable attempt" to file the amended complaint as instructed but was thwarted by the court clerk; that it is unclear at this point whether he was in fact obligated to send a courtesy copy to the judge's chambers; and that he did confer with opposing counsel as ordered by the court. RB at 58-61. Additionally, he notes that he became unavailable because he was

involved with the emergency organization of a defense to civil and criminal misconduct and getting his family situated in another location, or else out of the country or incarcerated in maximum security solitary confinement, twenty three hours per day in a cell where Mr. Piccone did not have access to a computer, internet, his court files, contact numbers for his clients, etc.

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<sup>64</sup> The Complaint also charges Respondent with engaging in "other conduct that adversely reflects on [his] fitness to practice" before the PTO in violation of 37 C.F.R. § 10.23(b)(6). Compl. at 18-19. However, in his post-hearing brief, the OED Director does not address this violation. Consequently, I find the OED Director has dismissed or abandoned this allegation. And even if he has not, "[t]he PTO's appellate tribunal has held that 'to be 'other' conduct within the scope [of] Section 10.23(b)(6), conduct must not be prohibited by Section 10.23(b)(1)-(5).'" *Kelber*, PTO Proceeding No. D2006-13, slip op. at 47 (Sept. 23, 2008) (Initial Decision) (citing *Moatz v. Colitz*, 68 U.S.P.Q.2d at 1102-1103). Thus, if Respondent's conduct is found to violate other provisions of § 10.23(b), then it cannot violate § 10.23 (b)(6). *Schroeder*, PTO Proceeding No. D2014-08 at 10 n.11; *Johnson*, PTO Proceeding No. D2014-12 at 6; *Lane*, PTO Proceeding No. 99-04, slip op. at 16 (Dec. 3, 2002) (Final Decision). As noted below, Respondent's conduct violates 37 C.F.R. § 10.23(b)(5).

RB at 62. "All of these facts are consistent with the Court knowing that a serious emergency had arisen which required Mr. Piccone's full attention and prevented him from attending previously scheduled conferences," Respondent adds. RB at 65. He further contends that this Tribunal cannot rely on the district court's decisions because they were based on a preponderance of the evidence rather than clear and convincing evidence. RB at 65.

It is not the role of this administrative Tribunal to undo the express findings of the U.S. District Court for the Southern District of New York, particularly when those findings were made more than eight years ago and Respondent admitted his misconduct on the record in that proceeding. See DX 56 at 3. This Tribunal finds the Court's determinations, made contemporaneously with Respondent's misconduct, far more credible than Respondent's years-after-the-fact attempt to interpret and draw inferences from a docket for a case about which he admits having "little recollection." Moreover, Respondent is wrong as to the burden applied when he was found in contempt; the Court clearly stated the standard it used: "A party may be held in civil contempt for failure to comply with a court order if . . . the proof of noncompliance is clear and convincing." DX 55 at 2. And even if this Tribunal were to blindly accept Respondent's many unsubstantiated excuses for not following the Court's instructions prior to being held in contempt, Respondent has offered no reason for failing to remedy these issues in the nearly month-and-a-half that followed before the case was dismissed. Indeed, Respondent had ample time after he was released from confinement in mid-March to address the issues raised by the Court before the case was thrown out in mid-April. Respondent's arguments are thus unavailing.

Consequently, the question is whether Respondent's general non-compliance with district court orders in the *Nolan* matter violated the rules alleged. Under 37 C.F.R. § 10.23(a), "[a] practitioner shall not engage in disreputable or gross misconduct." As stated above, guidance as to this standard was provided in *Poole*, where the court said that "[w]ith respect to attorneys or other agents, 'disreputable' conduct has generally included 'unprofessional' conduct and . . . was well understood to include 'any conduct violative of the ordinary standard of professional obligation and honor.'" 1984 U.S. Dist. LEXIS 15351, at \*7. Respondent's non-compliance with court orders in *Nolan* obviously meets this standard, as this was the sole reason the plaintiff's case was dismissed.

Under 37 C.F.R. § 10.23(b)(5), "[a] practitioner shall not engage in conduct that is prejudicial to the administration of justice." As previously stated, "[g]enerally, an attorney engages in such conduct when his or her conduct impacts negatively the public's perception or efficacy of the courts or legal profession." *Schroeder*, PTO Proceeding No. D2014-08 at 9 (quoting *Attorney Grievance Comm'n of Md. v. Rand*, 981 A.2d 1234, 1242 (Md. 2009)) (quotation marks omitted). This might include an attorney's failure to adequately or properly represent a client, tardiness or absence from trial, failure to appear on behalf of a client, failure to communicate with a client, failure to prosecute a claim, or failure to inform a client of his suspension. See, e.g., *Attorney Grievance Comm'n of Md. v. Brown*, 353 Md. 271, 286 (1999). This describes Respondent's conduct in *Nolan*: his failure to comply with court orders, his failure to adequately and properly represent his client, his absences and failures to appear at scheduled conferences and hearings, his failure to prosecute the plaintiff's claim, and his other general inadequacies as an attorney negatively impacted his client and the public perception of the legal profession.

Under 37 C.F.R. § 10.77(c), “[a] practitioner shall not neglect a legal matter entrusted to the practitioner.” This rule is based on the ABA Model Code of Professional Responsibility Disciplinary Rule 6-101 (1980). See *Practice Before the Patent and Trademark Office*, 50 Fed. Reg. 5158 Table 2. “A showing of willfulness is not necessary in order to prove neglect.” *Colitz*, PTO Proceeding No. 1999-04, slip op. at 40 (Dec. 3, 2002) (Final Decision) (citing *Klein*, 6 U.S.P.Q.2d 1528, 1583 (1988)). Neglect has been shown where, for example, the respondent has failed “to timely respond, or respond at all to correspondence from the PTO, requests for more information, and various notices” or where he has “failed to communicate with . . . clients whose patent applications were abandoned by his lack of cooperation with the PTO” and failed to take “corrective action to revive the applications.” *Hormann*, PTO Proceeding No. D08-04, slip op. at 15 (July 8, 2009) (Initial Decision). In this instance, although appearing before a federal district court rather than the PTO, Respondent failed to timely respond or to respond at all to the district court’s orders, correspondence, requests for more information, and various notices. He further failed to take corrective action to prevent his client’s case from being dismissed, even when he had the opportunity to do so. To that extent Respondent entirely neglected the legal matters that Mr. Nolan had entrusted to him.

Under 37 C.F.R. § 10.84(a)(1), “[a] practitioner shall not intentionally fail to seek the lawful objectives of a client through reasonably available means permitted by law and the Disciplinary Rules” except as otherwise provided. This rule is based on the ABA Model Code of Professional Responsibility Disciplinary Rule 7-101 (1980). See *Practice Before the Patent and Trademark Office*, 50 Fed. Reg. 5158 Table 2. This may include, for example, an attorney’s failure to prosecute his clients’ cases. See *Iowa Supreme Court Bd. of Prof’l Ethics & Conduct v. Hohenadel*, 634 N.W.2d 652, 654-55 (Iowa 2001). In the *Nolan* proceedings, Respondent failed to prosecute his client’s case by failing to follow instructions from the court, and this is precisely what led to the case’s dismissal. However, while his conduct appears to be negligent, perhaps grossly so, the OED Director has not presented clear and convincing evidence that it was “intentional,” nor has the OED Director attempted to argue it was such. To that end, I cannot find Respondent in violation of this rule.<sup>65</sup>

Consequently, the evidence clearly and convincingly establishes that Respondent violated 37 C.F.R. § 10.23(a), 37 C.F.R. § 10.23(b)(5), and 37 C.F.R. § 10.77(c), but did not violate 37 § C.F.R. 10.84(a) as alleged in Count 6.

## **XL COUNT 8**

### **A. Facts Relevant to Count 8**

On May 6, 2010, a complaint was filed in the United States District Court of New Hampshire in a matter styled *Katz v. McVeigh*, No. 1:10-cv-00178-PB (D.N.H.) (“*Katz I*”). DX 63; Tr. at 367. The plaintiff signed the complaint as a pro se litigant, however, below her name

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<sup>65</sup> The OED Director was specifically instructed to “provide authority and argument for why Respondent’s conduct violated [each] specific rule independent of the other rules.” See, e.g., Post Hearing Scheduling Order (Nov. 2, 2015). While he did that in some instances, in others he did not. This is one such instance. The OED Director should be wary of attempting to prosecute multiple rule violations based on the same underlying conduct without providing independent support and analysis for each rule violated.

Respondent also signed the complaint along with the notation "Attorney for Plaintiffs Pending Admission Pro Hac Vice." DX 63 at 16; Tr. at 367. An additional notation stated: "THIS COMPLAINT WAS PREPARED BY LOUIS A. PICCONE, ESQ. FOR THE PRO SE PLAINTIFFS AND FILED SO AS TO [sic] PRESERVE AS MANY OF THE PLAINTIFFS [sic] CAUSES OF ACTIONS TO AVOID ANY STATUTE OF LIMITATIONS ISSUES. THIS COMPLAINT WILL BE AMENDED UPON APPEARANCE OF COUNSEL." DX 63 at 16.

Respondent did not file a petition for admission pro hac vice at the time he filed the complaint in *Katz I*. Tr. at 368-69. But the same day the complaint was filed, the New Hampshire District Court entered an order stating that:

The Local Rules for the District of New Hampshire provide that an attorney may, at the discretion of the court, on motion by a member of our bar, be permitted to practice before this court in a particular action. Any attorney so admitted shall at all times be associated with a member of the bar of this court. Our records indicate that no motion(s) for pro hac vice admission of [Respondent] has been received. Unless said motion(s) with the required fee is filed within thirty (30) days, the case may be referred to a judicial officer for appropriate action.

DX 62 at 3. Subsequently, Respondent submitted at least two motions to extend time to find local counsel on June 8, 2010, and July 12, 2010. DX 62 at 3; DX 67; DX 68; Tr. at 369. However, he says his efforts to secure local counsel were fruitless:

Both [the plaintiff]; her husband, Arnold Grodman, and I spent a lot of time calling attorneys trying to find local counsel. We searched the internet. We searched the Yellow Pages. We talked to criminal attorneys who were appointed by the state to represent the Grodmans, and I believe we were unable to find local counsel at that point.

Tr. at 369-70. The motion filed July 12, 2010, indicated that Respondent "intends to seek admission to the New Hampshire bar by waiving into same, and the bar of this court, based upon his current admission to the Pennsylvania bar," and that he would not need local counsel. DX 68 at 1. Respondent was apparently unsuccessful on this front as well. He never obtained admission to practice before in New Hampshire or before the New Hampshire District Court. DX 69.

On September 29, 2010, the district court dismissed the case without prejudice for failure to comply with Fed. R. Civ. P. 4(m) and the court's local rules regarding visiting attorneys. DX 62 at 3; DX 69; Tr. at 370, 372. Respondent testified the case was dismissed because the plaintiff "made a decision to abandon" it, although he could not recall when that decision was made. Tr. at 370.

Under the Local Rules for the United States District Court for the District of New Hampshire:

**(b) Pro Hac Vice Admissions.** Any attorney who is a member in good standing of the bar of any court of the United States or of the highest court of any state may appear and practice before this court in that action at the court's discretion and on motion by a member of the bar of this court who is actively associated with him or her in a particular action. The court may at any time revoke such permission for good cause without a hearing. An attorney so permitted to practice before this court in a particular action shall at all times remain associated in the action with a member of the bar of this court upon whom all process, notices, and other papers shall be served, who shall sign all filings submitted to the court and whose attendance is required at all proceedings, unless excused by the court.

An attorney for the United States who is not eligible for admission under subsection (a) of this rule may apply for admission under this subsection.

**(1) Supporting Affidavit.** An affidavit from the attorney seeking admission pro hac vice shall be attached to the motion for admission. The affidavit must include:

- (A) the attorney's office address and telephone number;
- (B) a listing of court(s) to which the attorney has been admitted to practice and the date(s) of admission;
- (C) a statement that the attorney is in good standing and eligible to practice in the court(s);
- (D) a statement that the attorney is not currently suspended or disbarred in any jurisdiction;
- (E) a statement describing the nature and status of any (1) previously imposed or pending disciplinary matters involving the attorney, and (2) prior felony or misdemeanor criminal convictions; and
- (F) a statement disclosing and explaining any prior denials or revocations of pro hac vice status in any court.

**(2) Fee for Admission.** A motion for admission pro hac vice must be accompanied by a fee as published on the court's website. The court will not refund the fee if the motion is denied.

DX 66 at 13-14; LR 83.2(b) (emphasis added).



## **B. Arguments and Discussion on Count 8**

The OED Director alleges Respondent engaged in conduct prejudicial to the administration of justice in violation of 37 C.F.R. § 10.23(b)(5).<sup>66</sup> AB at 12. Specifically, he contends that Respondent violated the rule when he failed to comply with the May 6, 2010, court order regarding visiting attorneys. AB at 25.

Respondent argues his “inability to find an attorney to sponsor his admission on behalf of indigent clients who do not have the funds to immediately pay local counsel is not misconduct. There is no deceptive intent or misrepresentation involved.” RB at 44. He further contends the complaint had to be filed quickly to avoid statute of limitations problems. RB at 45. Additionally, as he suggested in regard to his Massachusetts cases, Respondent asserts his clients signed the complaint and were entitled to represent themselves, which negated his need to be admitted pro hac vice. RB at 46.

Under 37 C.F.R. § 10.23(b)(5), “[a] practitioner shall not engage in conduct that is prejudicial to the administration of justice.” In this case, it does not appear Respondent violated this rule. Unlike the cases in prior counts, there is evidence in the record that Respondent was pursuing local counsel so that he could appear pro hac vice. Although it may have been inappropriate for him to file the complaint in the first place without fully complying with Local Rule 83.2, Respondent testified statute of limitations concerns required that he act with haste:

[B]y the time Elena Katz contacted me the matter was already several years old, and if my recollection serves me correctly, she was unable to afford the money to pay a process server to serve the original complaint and so I told her let's – you know, if we can't find local counsel, let's file again so that we preserve as much of the statute of limitations period as we could to go back in time to what I believed was very egregious Child Protective Services actions against this family.

Tr. at 375. Accepting the veracity of this testimony, and evidence that local counsel was actually sought but never located, I am hesitant to find that Respondent violated the PTO Code in this instance.<sup>67</sup> Also notable is the language of the May 6, 2010 Order, which states only that “the case *may* be referred to a judicial officer for appropriate action” unless a motion for pro hac vice admission is filed. DX 62 at 3 (emphasis added). That is, the Order was couched in permissive rather than mandatory language, and noncompliance resulted in referral to a judicial officer for further consideration rather than a specific consequence. While this put Respondent on notice that he would need to find local counsel if he wished to further participate in the litigation, it did not in itself mean misconduct occurred when none was found.

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<sup>66</sup> The OED Director expressly abandons his charge in the Complaint that Respondent engaged in other conduct adversely reflecting on his fitness to practice law in violation of 37 C.F.R. § 10.23(b)(6). AB at 13.

<sup>67</sup> Ms. George, the investigating attorney in this matter, also concedes that an unsuccessful search for local counsel is “[n]ot on its face” misconduct. Tr. at 197.

Consequently, I find Respondent did not violate 37 C.F.R. § 10.23(b)(5) as alleged in Count 8.

## **XII. COUNT 9**

### **A. Facts Relevant to Count 9**

On September 17, 2010, shortly before the dismissal of *Katz I*, a another complaint was filed with the United States District Court of New Hampshire in *Katz v. McVeigh*, No. 1:10-cv-00410-JL (D.N.H.) ("*Katz II*"). DX 71; Tr. at 372-73. The plaintiff signed the complaint as a pro se litigant, but below her name Respondent also signed the complaint along with the notation "Attorney for Plaintiffs Pending Admission Pro Hac Vice." DX 71 at 15; Tr. at 374. An additional notation stated: "THIS COMPLAINT WAS PREPARED BY LOUIS A. PICCONE, ESQ. FOR THE PRO SE PLAINTIFFS AND FILED SO AS TO PRESERVE AS MANY OF THE PLAINTIFFS [sic] CAUSES OF ACTIONS TO AVOID ANY STATUTE OF LIMITATIONS ISSUES. THIS COMPLAINT WILL BE AMENDED UPON APPEARANCE OF COUNSEL." DX 71 at 16. *Katz II* involved the same plaintiffs and similar claims as *Katz I*. Tr. at 372-73.

Respondent does not recall filing a petition for admission pro hac vice at the time he filed the complaint in *Katz II*. Tr. at 374-75. On November 15, 2010, a local attorney filed on behalf of Respondent a motion for his admission pro hac vice. DX 73; Tr. at 375-76. The district court granted the motion on November 30, 2010, on the condition that Respondent complete an online form in the court's online docketing system. DX 70 at 12-13.

On December 22, 2010, the Court issued an Order indicating there was no evidence of service and warning that the case would be dismissed if proof of service was not filed by January 18, 2011, or if an extension of time was not requested. DX 75. On March 3, 2011, Respondent moved to amend the complaint but failed to attach a certificate of service to his motion. DX 76. The same day, the Court instructed Respondent to file a certificate of service. DX 70 at 15. On March 22, 2011, Respondent had not complied with the court's instructions and the court sua sponte withdrew the motion. DX 70 at 16.

On April 22, 2011, in response to an emergency motion by the defendants, the district court ordered the plaintiffs to file any objections to the defendants' motion by April 27, 2011. DX 85 at 5. No objection was filed by that date and the Court granted the motion as unopposed. DX 85 at 5. Then, around 11:30 p.m. on April 28, 2011, the plaintiffs filed an untimely objection without any explanation for its tardiness. DX 85 at 5. This required the Court to issue yet another order on the emergency motion. DX 85 at 5.

On August 2, 2011, the district court entered an order scheduling an evidentiary hearing for August 22, 2011, at which the plaintiffs were specifically ordered to appear along with Respondent. DX 78 at 3. On Friday, August 19, 2011, around 6 p.m., Respondent submitted a motion requesting that only one of the plaintiffs be required to attend. DX 79; DX 85. That motion was denied as "inappropriate under the circumstances." DX 70 at 22; DX 85 at 6. Also on August 2, 2011, by order of the Supreme Court of Pennsylvania, Respondent was, effective September 1, 2011, administratively suspended from the Pennsylvania bar for failing to complete

required annual CLE. DX 3 at 1. On September 18, 2011, because his pro hac vice status was premised on his Pennsylvania bar license, Respondent moved to withdraw due to his administrative suspension. DX 80; Tr. at 376. The district court granted the motion the next day. DX 70 at 23.

On October 11, 2011, after complying with CLE requirements, Respondent's suspension was lifted and he was reinstated to active status. DX 3 at 1. On October 25, 2011, Respondent submitted a notice of appearance in *Katz II* to indicate his representation of the plaintiffs again. DX 82; Tr. at 376-77. The defendants objected to his notice of appearance, in part due to his "pattern of late, untimely filings and repetitive, confusing amendments that do nothing to advance the case . . ." DX 83 at 2. Respondent testified this opposition grew out of a "windstorm of legal activity" prompted by state interests following the filing of the complaint. Tr. at 383-84.

On October 28, 2011, the district court struck Respondent's notice of appearance and ordered him to seek admission pro hac vice again. DX 70 at 25. Respondent moved for admission pro hac vice on November 2, 2011. DX 84. The court denied Respondent's request for pro hac vice admission on April 20, 2012. DX 85; Tr. at 381. In its Order, the district court recounted several other cases in which Respondent's conduct was called into question, including *Nolan*, *Babeu*, *Hohn*, *Katz I*, and *Hankins* and in the instant case before it. DX 85 at 2-3. Specifically, the Court stated:

In a number of those other proceedings, Piccone simply ignored the court's orders directing him to make filings or take some other action – in some cases, repeatedly. Many of these failures were completely unexplained (at least based on anything discernable from the orders or dockets in those cases) and all of them required the court in question to expend resources unnecessarily. Moreover, Piccone has engaged in similar conduct in this proceeding, to similar effect . . . . Based on these deficiencies, as well as his like deficiencies in the other cases described supra, the court finds that Piccone "has engaged in a pattern of behavior that has resulted in the wasting of judicial resources" and, as such, makes his admission pro hac vice inappropriate. . . . This conclusion draws further support from Piccone's persistent failure to explain or justify his demonstrated inability to comply with court orders and deadlines. Piccone did not provide any contemporaneous explanation for any of the missed or untimely filings in this case, and does not provide one now.

DX 85 at 4, 6.

#### **B. Arguments and Discussion on Count 9**

The OED Director alleges Respondent engaged in conduct prejudicial to the administration of justice in violation of 37 C.F.R. § 10.23(b)(5) and neglected a matter entrusted to him in violation of 37 C.F.R. § 10.77(c) "by repeatedly failing to file documents in a timely manner and repeatedly failing to comply with court orders and rules regarding practice, service,

and factual support for motions.”<sup>68</sup> AB at 14. Through its local rules, the New Hampshire District Court retains discretion to decide which attorneys may appear before it, the OED Director contends, and the language of those rules “does not authorize practice by an attorney prior to the court exercising its ‘discretion,’ or prior to the filing of a motion.” AB at 25. At the time *Katz II* was filed, the court had in *Katz I* already advised Respondent to obtain pro hac vice admission, the OED Director notes, but Respondent still did not attempt to do so when he filed the complaint. AB at 25.

Respondent claims he is not to blame for not filing a certificate of service with the March 3, 2011, motion to amend the complaint. RB at 48. Rather, he says the OED Director has not shown it was not local counsel who made that filing. RB at 48. In support, Respondent notes other filing errors on the docket that occurred after he withdrew as counsel when his license was suspended. RB at 48-50. He further contends that “some of New Hampshire’s finest most respected attorneys, and law firms,” also made filing errors, and that this does not amount to misconduct. RB at 50. Regarding his late notification that not all of the plaintiffs could attend the August 22, 2011 evidentiary hearing, Respondent contends a babysitter canceled at the last minute “and there was no deceptive intent on behalf on anyone involved.” RB at 51. He adds he did not support his request with an affidavit because any necessary facts were all alleged in the complaint. RB at 51. Respondent also argues the district court could have sanctioned him and did not. RB at 52.

Under 37 C.F.R. § 10.23(b)(5), “[a] practitioner shall not engage in conduct that is prejudicial to the administration of justice.” As previously stated, “[g]enerally, an attorney engages in such conduct when his or her conduct impacts negatively the public’s perception or efficacy of the courts or legal profession.” *Schroeder*, PTO Proceeding No. D2014-08 at 9 (quoting *Attorney Grievance Comm’n of Md. v. Rand*, 981 A.2d 1234, 1242 (Md. 2009)) (quotation marks omitted). This might include an attorney’s failure to adequately or properly represent a client, tardiness or absence from trial, failure to appear on behalf of a client, failure to communicate with a client, failure to prosecute a claim, or failure to inform a client of his suspension. See, e.g., *Attorney Grievance Comm’n of Md. v. Brown*, 353 Md. 271, 286 (1999).

This describes Respondent’s conduct in *Katz II*: he failed to secure pro hac vice admission prior to the filing of the complaint despite being directed to do so in *Katz I* and despite the fact he was not admitted to practice law in New Hampshire; he failed to issue summons or provide proof of service in accordance with the Federal Rules of Civil Procedure; he failed to attach a certificate of service to the March 3, 2011, motion to amend, and when instructed by the court to file a certificate of service, did not comply, prompting the court to withdraw the motion; and he ignored the court’s instructions regarding the deadline for objecting to the defendants’ emergency motion and filed an untimely response. In short, he “simply ignored the court’s orders directing him to make filings or take some other action – in some cases, repeatedly.” DX 85 at 4. Respondent’s attempt to blame local counsel for not filing a certificate of service falls

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<sup>68</sup> The Complaint also charges Respondent with engaging in “other conduct that adversely reflects on [his] fitness to practice” before the PTO in violation of 37 C.F.R. § 10.23(b)(6). Compl. at 25. However, in his post-hearing briefs, the OED Director does not address this violation. Consequently, I find the OED Director has withdrawn or abandoned this allegation. And even if he has not, because Respondent’s conduct violates 37 C.F.R. § 10.23(b)(5), it cannot also violate 37 C.F.R. § 10.23(b)(6). See *supra* n.64.

flat, as aside from lacking any evidentiary support, the docket sheet clearly denotes Respondent was the filer. DX 70 at 15, Dkt. 32. The argument that other lawyers made filing errors is also an empty one. As illustrated in this very proceeding and in various other counts of the Complaint, Respondent consistently ignores filing instructions; the errors in *Katz II* are not errors made in isolation. Regardless, the only attorney's conduct at issue in this proceeding is Respondent's. The record does not fully illuminate the court's instructions to Respondent regarding the requirement that he file an affidavit with his motion to excuse one of the plaintiffs from the August 22, 2011, hearing, but frankly, it does not need to, because Respondent's misconduct is clear even without taking this incident into account. The sum of Respondent's conduct in *Katz II*, as outlined above, is prejudicial to the administration of justice because it impacts negatively the public's perception or efficacy of the courts or legal profession.

Under 37 C.F.R. § 10.77(c), "[a] practitioner shall not neglect a legal matter entrusted to the practitioner." This rule is based on the ABA Model Code of Professional Responsibility Disciplinary Rule 6-101 (1980). *See Practice Before the Patent and Trademark Office*, 50 Fed. Reg. 5158 Table 2. "A showing of willfulness is not necessary in order to prove neglect." *Colitz*, PTO Proceeding No. 99-04, slip op. at 40 (December 3, 2002) (Final Decision) (citing *Klein*, 6 U.S.P.Q.2d 1528, 1583 (1988)). Neglect has been shown where, for example, the respondent has failed "to timely respond, or respond at all to correspondence from the PTO, requests for more information, and various notices" or where he has "failed to communicate with . . . clients whose patent applications were abandoned by his lack of cooperation with the PTO" and failed to take "corrective action to revive the applications." *Hormann*, PTO Proceeding No. D08-04, slip op. at 15 (July 8, 2009) (Initial Decision).

For the reasons outlined above recounting Respondent's behavior that violated 37 C.F.R. § 10.23(b)(5), Respondent also violated 37 C.F.R. § 10.77(c). His conduct clearly amounts to neglect as he failed to timely respond to the district court's instructions and failed to take corrective actions to cure his filing errors.

Consequently, there is clear and convincing evidence in the record that establishes that Respondent violated 37 C.F.R. §§ 10.23(b)(5) and 10.77(c) as alleged in Count 9.

### XIII. PENALTY

#### A. Legal Standards

Four factors must be considered before sanctioning a practitioner: (1) whether the practitioner has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the practitioner acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the practitioner's misconduct; and (4) the existence of any aggravating or mitigating factors. 37 C.F.R. § 11.54(b); *Schroeder*, PTO Proceeding No. D2014-08 at 10. The analysis of these factors is interrelated. *Burmeister*, PTO Proceeding No. D1999-10, slip op. at 10 (Mar. 16, 2004) (Initial Decision). The ABA Standards for Imposing Lawyer Sanctions ("ABA Standards")<sup>69</sup> provide guidance as to the existence of

<sup>69</sup> The ABA Standards are available on the ABA's website at: [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/corrected\\_standards\\_sanctions\\_may](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/corrected_standards_sanctions_may)

aggravating or mitigating factors. *Schroeder*, PTO Proceeding No. D2014-08 at 12; *see also Chae*, PTO Proceeding No. D2013-01, slip op. at 4 (Oct. 21, 2013) (Final Order). According to the ABA Standards, aggravating factors are outlined in black letter rules:

(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution; [and] (k) illegal conduct, including that involving the use of controlled substances.

ABA Standards at 18-19,<sup>70</sup> Rule 9.2. Similarly, mitigating factors are also outlined in black letter rules:

(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical disability; (i) mental disability or chemical dependency including alcoholism or drug abuse . . . (j) delay in disciplinary proceedings; (k) imposition of other penalties or sanctions; (l) remorse; [and] (m) remoteness of prior offenses.

ABA Standards at 19-20, Rule 9.3. According to the ABA Standards, “[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct.” ABA Standards at 8.

An important function of disciplinary sanctions is to deter others from similar conduct, and general deterrent effects should be considered when analyzing misconduct. *Hill*, PTO Proceeding No. 2001-06, slip op. at 12 (July 26, 2004) (Final Decision). Indeed, “[w]e start from the premise that protection of the public and bar, not punishment, is the primary purpose of attorney discipline and that we must accordingly consider relevant mitigating and aggravating circumstances.” *Burmeister*, PTO Proceeding No. D1999-10 at 11 (quoting *Coombs v. State Bar of California*, 779 P.2d 298, 306 (Cal. 1989)) (quotation marks omitted). “Honesty and integrity, are chief among the virtues the public has a right to expect of lawyers. Any breach of that trust

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<sup>70</sup> The pages of the ABA Standards are not numbered. Consequently, page numbers in this decision that refer to that document cite the page numbers displayed when the document is viewed in a PDF reader.

is misconduct of the highest order and warrants severe discipline.” *Ruffenach*, 486 N.W.2d 387, 391 (Minn. 1992) (citing *In re Holmay*, 464 N.W.2d 723, 725 (Minn. 1991)). “The ultimate issue to be decided in disbarment proceedings is whether the respondent is fit to practice.” *Id.* (citing *Harary v. Blumenthal*, 555 F.2d 1113, 1116 (2d Cir. 1977) (upholding disbarment of certified public accountant from practice before the Internal Revenue Service)). “Attorneys who practice before the PTO have a duty to represent their clients competently and zealously, and to maintain ‘the integrity and competence of the legal profession.’” *Kang*, PTO Proceeding No. D2012-24, slip op. at 8 (Nov. 26, 2012) (Initial Decision on Default). (citing 37 C.F.R. §§ 10.21, 10.76, 10.83); *see also, e.g., Robinson*, Proceeding No. D2009-48, slip op. at 12 (May 26, 2010) (Initial Decision). The length of time for which a respondent has engaged in misconduct is also a factor when determining the appropriate severity of a penalty. *Hormann*, PTO Proceeding No. D08-04 at 21.

### **B. The Parties’ Arguments**

The OED Director asks the Tribunal to suspend Respondent from practice before the PTO “for a minimum of three years” and further declares the Tribunal “would be justified if it chose to exclude” Respondent from PTO practice entirely.<sup>71</sup> AB at 39-40.

As to the first factor, the OED Director argues Respondent violated a duty owed to his clients, the public, the legal system, and the profession “because the legal interests of people assisted by those who are not qualified to act as attorneys can be irreparably damaged.” AB at 29. “Respondent’s unauthorized practice of law caused clear harm to the clients involved and to the courts that expended resources unnecessarily in an attempt to bring Respondent’s conduct into compliance with the rules. In case after case, Respondent was the direct or indirect cause of his clients’ cases being dismissed or derailed.” AB at 29.

Under the second factor, the OED Director contends there is “damning evidence” that Respondent willfully continued to engage in misconduct, particularly because he was repeatedly notified in multiple cases that he was ignoring court requirements. AB at 29. “Respondent has steadfastly continued to provide legal services while administratively suspended from the practice of law, and without becoming properly admitted to practice before the relevant court,” the OED Director notes. AB at 30. “Respondent is either unable to determine what the rules require, or unwilling to conform his conduct to the rules . . . . In either circumstance, there is a high probability that if left unchecked, Respondent would present a hazard to his clients, the courts, and the profession.” AB at 30. What makes Respondent even more dangerous, the OED Director points out, is that he has not admitted his conduct was mistaken, nor has he shown any remorse or suggested he would have done anything differently. AB at 31. In fact, he continually argues his conduct was entirely permissible, the OED Director adds. AB at 31.

Regarding the third factor, the OED Director asserts Respondent’s misconduct has caused harm in the form of dismissed cases, sanctions, and the unnecessary expenditure of resources by courts and opposing parties. AB at 32; ARB at 12. “The harm to clients, the courts, the public, and the legal profession as a result of Respondent’s misconduct is profound[.]” argues the OED

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<sup>71</sup> In the Complaint, the OED Director asked for an order “suspending or excluding Respondent from practice before the [PTO].” Compl. at 25.

Director: AB at 32.

Under the fourth factor, the OED Director argues several aggravating factors exist, including a pattern of misconduct; multiple offenses; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge the wrongful nature of his conduct; and Respondent's substantial experience practicing law. AB at 34-37. The OED Director also acknowledges a mitigating factor: "Respondent has no prior disciplinary record before the [PTO], and no known public disciplinary record in any state." AB at 37.

Respondent does not specifically address the 37 C.F.R. § 11.54(b) factors or the aggravating and mitigating black letter rules within the ABA Standards.<sup>72</sup> Rather, he constructs his argument around the ABA Standards' broader theoretical framework, which asks what ethical duty the lawyer violated, what the lawyer's mental state was, and what the extent of the harm he caused was. RRB at 57.

Respondent, perhaps unsurprisingly, concludes he "does not appear to have violated any of these duties on the one hand, and appears to have fulfilled other duties which Attorneys are ethically obligated to pursue." RRB at 57. As to his mental state, Respondent concedes his conduct "was clearly thought out" and "took into account all existing law of which he was aware." RRB at 58-59. But he asks for leniency given that his actions were "taken with a mistaken belief that his actions were entirely authorized by law and completely ethical" attempts to serve "indigent clients who were being steamrolled by government." RRB at 59. Finally, Respondent contends his actions "were not the cause of any actual or potential injury" to any of the people he represented, although he acknowledges the many instances in which their cases were dismissed. RRB at 59. He suggests that even if he were properly admitted to practice, the cases would still be dismissed because the United States Court of Appeals for the First Circuit "has refused to follow binding Supreme Court precedent." RRB at 60. Ultimately, the aggravating circumstances put forth by the OED Director are "transparently bogus," Respondent asserts. RRB at 66.

Respondent further contends there are "substantial and important mitigating circumstances" that should impact any penalty decision, including that he "has no history of public or private discipline for a period of 27 years." RRB at 63. He also claims "he was acting in an unselfish manner to promote the goal of integrity in the legal profession" by offering his services pro bono. RRB at 63. He believes he "cooperated fully with the OED investigation and these disciplinary proceedings to the extent possible considering the radical difference between the parties on how these proceedings should be conducted. . . ." RRB at 63. Respondent describes his character and reputation as "good" and says he is known for "hard work[ ] and a willingness to actually fight for his clients." RRB at 64. For example, he points to declarations from Mr. Nolan and Ms. Katz submitted with prior motions in which they state he "did not damage them" and "improved their opinion of the legal profession." RRB at 66. Besides, he suggests, many of the allegations against him "are stale" and are "difficult to contest because memories have dulled, witnesses are no longer available, and documents have been destroyed or

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<sup>72</sup> In fact, Respondent intentionally chose not to address the matter of sanctions at all in his initial post-hearing brief. See RB at 147. He has arguably abandoned this issue. Nevertheless, this Initial Decision explains why the argument he eventually offers in his reply brief is wrong.



are otherwise unavailable.” RRB at 64. Additionally, Respondent argues other bar authorities investigated him and “found that no public or private sanctions were appropriate.” RRB at 65.

### C. Discussion, Findings, and Conclusions

After considering the parties’ arguments, this Tribunal concludes that a three (3) year suspension is appropriate.

First, Respondent on several occasions violated duties to his clients, the public, the legal system, and the profession. He did this by repeatedly practicing law when he was not authorized or licensed to do so. “Attorneys who practice before the PTO are expected to ‘assist in maintaining the integrity and competence of the legal profession’ and aid in the *prevention* of the unauthorized practice of law.” *Jaeger*, PTO Proceeding No. D2012-29 at 13 (quoting 37 C.F.R. §§ 10.21, 10.46) (emphasis added). Rather than prevent unauthorized law practice, Respondent engaged in and enabled it. Although he did not act in direct violation of a prior disciplinary order, Respondent’s behavior shows “a failure to respect the authority of the legal system and merits disbarment or suspension” because he violated court orders instructing him to obtain pro hac vice admission before continuing to practice. *Id.* at 14. His behavior also shows disregard for his clients because it directly led to the dismissal of their cases, and he harmed the public by causing various states to waste resources defending against litigation he was not authorized to bring in the first place.

Second, Respondent’s conduct was willful. As he admits, his actions were “clearly thought out.” RRB at 58. Indeed, Respondent has not argued that his alleged wrongful conduct was unintentional or did not occur; rather, he admits the conduct then argues his actions were “taken under a good faith and legally based mistaken belief” that they were permissible. RRB at 59. However, in case after case, he was warned by various courts that his participation was improper until he obtained pro hac vice admission. For example, after the Massachusetts District Court warned Respondent that pro hac vice admission was necessary in *Babeu*, he disregarded the court’s instructions a few months later when the complaint was filed in *Hohn*. And a few years after that, Respondent initiated the litigation in *Nunley* despite the fact he was at that point under investigation by the OED Director. Indeed, throughout these proceedings, Respondent has maintained that his actions were proper:

I stand by my proposition that I have done nothing wrong, that my actions were completely authorized by Rule 5.5 of the Supreme Judicial Courts of Massachusetts rules, which specifically authorize an out-of-state attorney to provide services to an in-state client under certain circumstances. And that being the case, I think that the Judge was obviously incorrect, and I stand by my reasoning 100 percent.

Tr. at 316. Clearly, Respondent believed he was in the right and all the court authorities were in the wrong, so he continued to represent indigent clients willfully and with deliberate intent without being admitted to the courts or jurisdiction where he was practicing.

Third, Respondent’s misconduct actually injured his clients. For example, in *Nolan*, his client’s case was dismissed after Respondent repeatedly failed to follow court orders.

Complaints in *Babeu*, *Hohn*, and *Katz I*<sup>73</sup> were all dismissed due to Respondent's failure to gain pro hac vice admission and to properly prosecute his clients' cases. In *Hankins*, the plaintiff's case was dismissed after she was left to proceed pro se when Respondent failed to gain pro hac vice admission. Similarly, the *Doe* matter was dismissed in part due to Respondent's camouflaged participation, described above by the court as the "calculated actions of an individual who has too often proven himself to be ill-equipped to provide adequate legal representation." DX 27 at 5-7. Before the PTO itself, Mr. Windsor was left in a lurch in the midst of his trademark application, for which he was unable to gain approval on his own. In each of these cases, the nature of Respondent's harm has been accurately described by other courts: He pushed his clients into litigation before "leaving them adrift in an unknown legal sea." DX 27 at 4; see also *Pease*, 679 F. Supp. 2d at 166.

Fourth, there are several aggravating factors and one mitigating factor to consider. In Respondent's case, perhaps most significant is his clear pattern of misconduct. This pattern is largely outlined in the above discussion of harm Respondent caused. In at least four jurisdictions, Massachusetts, New Hampshire, Illinois, and Iowa, and over the course of many years, Respondent engaged in essentially the same unauthorized behavior despite multiple warnings from multiple courts that he had crossed ethical lines. Similarly, Respondent's actions constituted multiple violations, both in terms of the number of different rules violated as well as repeated violations of the same rule. All of this is especially problematic because it suggests Respondent is unwilling or unable to change his conduct without some disciplinary action.

Also of concern are two occasions in which the OED Director contends Respondent submitted false evidence, false statements, or engaged in other deceptive practices during the disciplinary process. First, the OED Director accuses Respondent of falsely testifying as to when he notified Mr. Windsor of his suspension. AB at 34-36. Respondent claimed he told Mr. Windsor he was suspended "shortly after" he became aware of his suspension "in 2013 . . . well before May 2014." Tr. at 270-71, 273, 288. He first made this argument at hearing and only after trying to evade the question. See Tr. at 266-73. His claim conflicts with Mr. Windsor's testimony as to when he first learned of Respondent's suspension: "[Respondent] sent me an email I believe May of 2014 that said that because of his suspension, he was no longer in a position to provide any assistance." DX 7 at 78 (Windsor Dep.). Second, the OED Director contends Respondent lied prior to hearing when he claimed he had "notified the *Nolan* court in writing of his arrest and incarceration in January 2008." AB at 36. Specifically, Respondent stated in a prehearing motion: "Prior to leaving the United States, Respondent made arrangements with his then client John Nolan to attend all court hearings and request a continuance until Respondent returned to the United States. Respondent also filed written communications with the Court advising the Court of Respondent's family emergency." Respondent Louis A. Piccone's Motion for Summary Judgment on Count VI Regarding Allegations of Misconduct in *Nolan* at 2 (May 8, 2015) (emphasis added). Respondent identified no corroborating evidence in his motion, such as the written communication he supposedly filed, and he has not produced any such evidence since his motion was denied. Given the evidence of Respondent's conduct on these two occasions, I find his explanations lack credibility and that his statements were, therefore, untruthful. Less clear is whether these statements were offered with the intent to deceive or were made negligently. Because the OED Director has not provided

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<sup>73</sup> And Respondent lost the ability to appear in *Katz II* due to his prior misconduct, leaving the plaintiff to fend for herself in litigation into which Respondent had led her.

sufficient evidence that Respondent intended to deceive this Tribunal, I will conclude Respondent's actions were negligent – simply another manifestation of his general sloppiness – and find them only mildly aggravating.

More concerning is Respondent's refusal to acknowledge that his conduct was wrong. As discussed above in relation to Respondent's willfulness, Respondent has maintained throughout this proceeding that he is right and everyone else is wrong. This "demonstrate[s] that Respondent does not recognize the seriousness of his misconduct." *Schroeder*, PTO Proceeding No. D2014-08 at 12. Moreover, it raises the concern that if left to his own devices Respondent would continue to repeat the violations he has already committed.

Finally, Respondent has been admitted to practice law since 1989, nearly two decades prior to the first instance of misconduct. This is plenty of time for him to develop a basic understanding of the rules of ethics. Likewise, Respondent has been a member of the patent bar since 1997. He has no excuse for failing to understand and comply with the PTO Code or PTO Rules.

Favoring Respondent is the fact that there are no known prior bar disciplinary proceedings in which he has been involved.<sup>74</sup> AB at 37; RRB at 63; *see also* RX 2 at 000003. At first blush, it also seems commendable that Respondent sought to represent underserved clients on a pro bono basis. "It seems like I've spoken to a million attorneys asking them if they're willing to take a case either on pro bono or on half of a contingency fee litigation for acting as local counsel. And, you know, the takers are next to none," he testified. Tr. at 296. However, at least "some of the cases" he accepted were actually taken on a contingency fee basis, and the litigants paid the court and filing fees. Tr. at 296, 415.<sup>75</sup> They might also have to pay the costs of service, postage, or making copies. Tr. at 416-17. As Respondent admits, that is not the same as working pro bono. Tr. at 296. Additionally, Respondent was asked to produce copies of all the executed fee agreements that relate to matters in this case, and he provided none. Tr. at 409. There is also no indication in the record of the real reason Respondent could not find local counsel. How comprehensive were his searches? Did he offer local counsel reasonable terms and compensation? What kind of working relationship did he propose? Did his cases have legal merit? Did Respondent present himself in a professional manner? There are any number of reasons local attorneys passed on his requests for assistance that may have nothing to do with a disinterest in pro bono work.

Of course, Respondent's intentions are almost beside the point.<sup>76</sup> Regardless of his

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<sup>74</sup> However, Respondent claims that other bar authorities investigated him and did not initiate disciplinary proceedings. There is no other evidence in the record on this point.

<sup>75</sup> "I would always represent the people for free in [related] state court proceedings. If I'm admitted, I ask for a contingency fee in the federal litigation," he said at hearing. Tr. at 297.

<sup>76</sup> As the writer Samuel Johnson reminds us, "Hell is paved with good intentions." JAMES BOSWELL, *LIFE OF SAMUEL JOHNSON*, LL.D 484 (London, Printed for Charles Dilly, in the Poultry 1791); *see also* FRED R. SHAPIRO, *THE YALE BOOK OF QUOTATIONS* 619 (New Haven, Yale University Press 2006) (quoting the proverb as stated by St. Francis de Sales, who attributes its origins to the 12th-Century French abbot St. Bernard of Clairvaux: "L'enfer est plein de

motivations, the quality of legal representation Respondent provided was poor, and he left his clients to fend for themselves when he ignored court orders and did not obtain pro hac vice admission. If nothing else, these already-destitute clients lost filing fees and incurred other court costs for no reason.<sup>77</sup> Respondent's argument that his clients were happy with his work means little. Whether the client is happy is not the sole criteria for whether an attorney acted appropriately. Attorneys could do any number of unethical things that make their clients happy. Moreover, the client is not necessarily positioned to know what rights she has lost due to her attorney's incompetence or dereliction of duty. Further, even if his clients realized they were damaged by Respondent's actions, it is unlikely he could make them whole because he did not carry any malpractice insurance and was not possessed of significant assets. Tr. at 426; RB at 5-6.

Respondent's contention that he "cooperated fully with the OED investigation and these disciplinary proceedings" does not pan out. RRB at 63. Indeed, he embarked on stalling efforts right from the start. On four occasions, Ms. George submitted to Respondent questions<sup>78</sup> about his conduct: February 19, 2014, April 9, 2014, June 25, 2014, and October 9, 2014. DX 57; DX 91; DX 94; DX 99. Respondent received the February request by the end of April 2014, according to a voicemail he left for Ms. George. DX 92; DX 93. On July 10, 2014, after receiving the June request for information, he emailed Ms. George to request extra time to respond.<sup>79</sup> DX 95. He asked again for more time in a July 30, 2014, email, in which he protested signing an agreement that would toll the statute of limitations. DX 97. Finally, on August 26, 2014, Respondent emailed a letter that for the first time provided partial answers to some of the questions posed in the OED Director's first request for information sent in February. DX 58. However, because his letter was not fully responsive, the OED Director had to send the fourth request for information in October. DX 99. Respondent answered with another request for an extension. DX 100.

Clearly, Respondent had little interest in helping the OED Director clarify the nature and context of Respondent's actions or even in explaining his side of the story. Given conduct like this, he cannot now claim his behavior during the investigation should mitigate the penalty he faces. Moreover, this Tribunal found Respondent to be similarly obstructive after the Complaint was submitted in this case. He was habitually untimely, both in his filings and in his appearance at hearing. He filed many motions and pleadings that were long on pages but short on legal research and analysis. Indeed, many of the motions Respondent filed – and there were far, far

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bonnes volontes ou desirs," or, "Hell is full of good intentions or desires").

<sup>77</sup> "[F]or the most part all fees were paid by the litigants," Respondent testified. Tr. at 415.

<sup>78</sup> The OED Director is authorized to request information and evidence regarding possible grounds for discipline of a practitioner from the grievant, the practitioner, or "any person who may reasonably be expected to provide information and evidence needed in connection with the grievance or investigation." 37 C.F.R. § 11.22(f).

<sup>79</sup> Respondent claimed his mailbox had been vandalized, making deliveries difficult. DX 95. Ms. George noted in a July 29, 2014, email to Respondent that the requests for information were delivered by UPS to a side door, and that the state of Respondent's mailbox would not prevent delivery. DX 96.

too many – were so lacking in substance that their primary purpose can only have been to delay proceedings and/or waste legal and judicial resources. It would not be a stretch to say that Respondent exhibited before this Tribunal many of the frustrating behaviors that likely led to the disciplinary action against him in the first place, in that the representation he provided himself was no better than what he provided his clients.

Given all of these considerations, the three-year suspension requested by the OED Director is appropriate, if not generous. As set forth above, this Initial Decision finds Respondent liable for 18 willful violations of the PTO Code and PTO Rules over a period of more than five years. “Courts have repeatedly held that attorneys who continuously violate disciplinary rules over a lengthy period of time should receive a substantial suspension if not exclusion.” *Hormann*, PTO Proceeding No. D08-04 at 21; *see also In the Matter of McAllister*, 265 Ga. 420, 420-21 (1995) (disbarring attorney engaged in multiple violations of state disciplinary rules over three years, including abandoning legal matters entrusted to him, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and failing to respond to state disciplinary authorities); and *In the Matter of Hammock*, 278 Ga. 385, 387 (2004) (majority holding that a two-year suspension was proper; two dissenting justices claiming disbarment appropriate when attorney failed to communicate with clients for months, misrepresented the status of their cases, had three prior disciplinary infractions and neglected clients’ legal matters). “Serious and willful violations of disciplinary rules, even when an attorney holds a record free of violations, may justify disbarment.” *Hormann*, PTO Proceeding No. D08-04 at 21; *see also In the Matter of Shehane*, 276 Ga. 168, 170 (2003) (disbarring attorney, holding that even though “respondent has not been the subject of any prior disciplinary action during his eight-year membership in the State Bar of Georgia, we take very seriously his deliberate, deceitful acts to obfuscate the truth”).

Respondent’s conduct is not limited to an isolated instance of misrepresentation. Rather, it “represents stretching and exceeding the limits of trustworthiness, honesty and candor in several contexts over several years.” *Kelber*, PTO Proceeding No. D2006-13 at 64. Moreover, Respondent’s behavior demonstrates he would, if allowed, continue to engage in this misconduct, because he does not recognize his wrongdoing. Consequently, a three-year suspension is appropriate in light of the factors of 37 C.F.R. § 11.54(b) and the above considerations.

#### **ORDER**

After careful and deliberate consideration of the above facts and conclusions as well as the factors identified in 37 C.F.R. § 11.54(b):

**IT IS HEREBY ORDERED** that Respondent **Louis A. Piccone**, PTO Registration No. 41,452, is suspended for a period of three (3) years from practice before the Patent and Trademark Office.

Respondent’s attention is directed to 37 C.F.R. § 11.58 regarding the duties of suspended practitioners, and 37 C.F.R. § 11.60 concerning petition for reinstatement.

The facts and circumstances of this proceeding shall be fully published in the U.S. Patent and Trademark Office’s official publication.

37 C.F.R. § 11.55, any appeal by Respondent from this Initial Decision, must be filed with the U.S. Patent and Trademark Office at the address provided in 37 C.F.R. § 1.1(a)(3)(ii) within 30 days of the date of this Initial Decision. Such appeal must include exceptions to the Chief Administrative Law Judge's Decision and supporting reasons therefor. Failure to file such an appeal in accordance with 37 C.F.R. § 11.55 will be deemed both an acceptance by Respondent of the Initial Decision and that party's waiver of rights to further administrative or judicial review.

FORWARDED



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Susan L. Biro  
Chief Administrative Law Judge

June 16, 2016  
Washington, D.C.

**U.S. DEPARTMENT OF COMMERCE**  
**United States Patent and Trademark Office**

2-28-2018

(Date)

I hereby certify that this is a true and accurate copy of the Final Order Under 37. C.F.R. § 11.56(c) in Disciplinary Proceeding No. D2015-06, *In the Matter of Louis A. Piccone*, issued February 9, 2018.



By authority of the  
**DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE**

*Hannah J. Robinson*

*Certifying Officer.*

Attachment 3

**BEFORE THE UNDER SECRETARY OF COMMERCE  
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE  
UNITED STATES PATENT AND TRADEMARK OFFICE**

In the Matter of	)	
	)	
Louis A. Piccone,	)	Proceeding No. D2015-06
	)	
Appellant.	)	

**FINAL ORDER UNDER 37 C.F.R. § 11.56(c)**

Pursuant to 37 C.F.R. § 11.56(c), Louis A. Piccone ("Appellant") requests the Director of the United States Patent and Trademark Office ("USPTO" or "Office") to reconsider the Final Order Under 37 C.F.R. § 11.55 ("Final Order"), issued on May 25, 2017, which affirmed the June 16, 2016 Initial Decision of the Chief Administrative Law Judge ("ALJ") Susan L. Biro in the above-captioned disciplinary matter. In that Final Order, the USPTO Director imposed on Appellant a three-year suspension from the practice of patent, trademark, and other non-patent law before the Office.

After consideration of the briefs submitted by Appellant and the Director of the Office of Enrollment and Discipline ("OED Director"), for the reasons set forth below, the USPTO Director **DENIES** Appellant's request for reconsideration.

**I. PROCEDURAL HISTORY**

On June 14, 2017, by Appellant Louis A. Piccone ("Appellant") submitted a timely filed untitled petition determined to be a Request for Reconsideration pursuant to 37 C.F.R. § 11.56(c) ("Request") requesting the USPTO to reconsider the May 25, 2017 order. In that Request, Appellant argues for the dismissal of the USPTO Director's May 25, 2017 Final Order affirming the June 16, 2016 Initial Decision of the ALJ due to errors in law and fact in the USPTO



Director's finding that Appellant engaged in the unauthorized practice of law (*See Request*, at 2-9) and that Appellant's appeal brief failed to comply with the USPTO filing rules set forth in 37 C.F.R. § 11.55. *See Request*, at 9-19.

On June 19, 2017, the OED Director filed with the USPTO Director the "OED Director's Motion to File Response to Respondent's Untitled Petition" moving for permission to file a response to address the issues raised in Respondent's Request for Reconsideration, and requesting until July 7, 2017 to do so, which was granted by the USPTO Director on June 21, 2017.

On June 23, 2017, Appellant filed a petition requesting that the USPTO Director reverse the June 21, 2017 Order and deny the OED Director's Motion, but this petition was denied by the USPTO Director on June 30, 2017.<sup>1</sup>

On July 7, 2017, the OED Director timely filed the "OED Director's Response to Respondent's Request for Reconsideration Pursuant to 37 C.F.R. § 11.56(c)" ("Response") responding to the Appellant's Request. In that Response, the OED Director argues that the newly discovered evidence submitted by the Appellant did not meet the standard of review for reconsiderations under 37 C.F.R. § 11.56(c) because the evidence submitted was not "newly discovered" and was substantially similar to evidence already in the record (*See Response*, at 6-9), and that the USPTO Director did not commit any errors in law or fact in determining that Appellant engaged in the unauthorized practice of law that warrant dismissal of the Final Order. *See Response*, at 9-12. In addition, the OED Director argues that the USPTO Director correctly

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<sup>1</sup> Although the General Counsel of the USPTO signed and issued this Order on June 30, 2017, as indicated in the June 30, 2017 email transmittal to parties, the date was inadvertently omitted from the signature page. This omission amounts to harmless error as it did not prejudice or otherwise result in any harm to parties, nor did it substantively affect or change any obligation or deadline imposed on the parties by the Order previously issued on June 21, 2017.

determined that Appellant's brief failed to comply with the USPTO filing rules set forth in 37 C.F.R. § 11.55. *See* Response, at 12-14.

Appellant timely filed a reply, "Louis A. Piccone's Reply to the OED Director's July 7, 2017, Opposition to Mr. Piccone's June 24, 2017, Petition for Reconsideration" ("Reply") on August 3, 2017, arguing that the USPTO Director committed an error in law as the regulations authorize him as a corporate officer to practice before the USPTO in trademark matters (*See* Reply, at 3-8), and that Appellant provided sufficient citations to the Administrative Record in accordance with the regulations at 37 C.F.R. § 11.56(a). *See* Reply, at 8-12.

## II. LEGAL STANDARD

Following a final decision of the USPTO Director, either party may make a single request for reconsideration or modification of the decision by the USPTO Director if such request is filed within twenty days from the date of entry of the decision, and the request is based on newly discovered evidence, or an error of law or fact, and the requestor must demonstrate that any newly discovered evidence could not have been discovered any earlier by due diligence. *See* 37 C.F.R. § 11.56(c).

The standard of review governing requests under § 11.56(c) has not been defined beyond what appears in the regulations. However, although the Federal Rules of Civil Procedure are not applicable in administrative proceedings,<sup>2</sup> the courts have at times looked to them for useful guidance in judging actions taken by the USPTO.<sup>3</sup> Because the standard of review used by federal courts for motions to alter or amend a judgment under Rules 59(e) and 60 of the Federal Rules of Civil Procedure are most similar to Requests for Reconsideration pursuant to § 11.56(c), that standard is applied here to Appellant's Request.

<sup>2</sup> *See Bender v. Dudas*, No. 04-13012006 WL 89831, at \*23 (D.D.C. Jan. 13, 2006).

<sup>3</sup> *See Garritsen v. Shirai*, 979 F.2d 1524, 1532 (Fed. Cir. 1992).

Federal courts have clarified that the standard of review for Rules 59(e) and 60 are narrow and limited to only certain circumstances involving new evidence, or to correct errors of law or fact. See *Hutchinson v. Stator*, 994 F.2d 1076, 1081 (4th Cir. 1993). Any new evidence submitted must not have been available before the issuance of the final decision. See *Boryan v. United States*, 884 F.2d 767, 771 (4th Cir. 1989) (“Evidence that is available to a party prior to entry of judgment, therefore, is not a basis for granting a motion for reconsideration as a matter of law.”) (citing *Frederick S. Wyle P.C. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985)).

Reconsideration “would be appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.” *Above the Belt, Inc. v. Mel Bohaman Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D.Va. 1983); *United States v. Ali*, No. 13-3398, 2014 WL 5790996, at \*3 (D. Md. Nov. 5, 2014).

It is long-settled that requests for reconsideration<sup>4</sup> are not a vehicle to state a party’s disagreement with a final judgment. See *Hutchinson*, 994 F.2d at 1082 (“mere disagreement does not support a Rule 59(e) motion”); *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007), *cert. denied*, 552 U.S. 1040 (2007) (stating that a Rule 59(e) motion cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment). A request for reconsideration should not be used to rehash “arguments previously presented” or to submit evidence which should have been previously submitted. *Wadley v. Park at Landmark, LP*, No. 1:06CV777, 2007 WL 1071960, at \*2 (E.D. Va. 2007) (citing *Hutchinson*, 994 F.2d at 1081-82); *Above the Belt, Inc.*, 99 F.R.D. at 101 (holding improper a motion for reconsideration “to ask the Court to rethink what the Court had already thought through—rightly

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<sup>4</sup> Such requests refer to either motions to alter or amend a judgment (Fed. R. Civ. P. 59(e)), or motions for relief from a judgment or order (Fed. R. Civ. P. 60).

or wrongly”); *Durkin v. Taylor*, 444 F. Supp. 879, 889 (E.D. Va. 1977) (stating that Rule 59(e) is not intended to give “an unhappy litigant one additional chance to sway the judge”).

While requests for reconsideration are permitted, they are seldom granted. These types of motions are extraordinary remedies reserved only for extraordinary circumstances. *See Dowell v. State Farm Fire & Cas. Auto. Ins. Co.*, 993 F.2d 46, 48 (4th Cir. 1993) (limiting relief under Rule 60(b)(6) to “extraordinary circumstances”); *Projects Mgmt. Co. v. DynCorp Int’l, LLC*, 17 F. Supp. 3d 539, 541 (E.D. Va. 2014), *aff’d*, 584 F. App’x 121 (4th Cir. 2014) (reconsideration of a judgment after its entry is an “extraordinary remedy which should be used sparingly”) (quoting *Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998)); *see also Netscape Commc’ns Corp. v. ValueClick, Inc.*, 704 F. Supp. 2d 544, 546 (E.D. Va. 2010)).

Thus, the standard of review for a Request for Reconsideration under § 11.56(c) is very high, and such requests should be granted sparingly and only in extraordinary circumstances. For the reasons discussed below, Appellant has not made any arguments or submitted any evidence that satisfies the standard of review.

## II. LEGAL ANALYSIS

### A. Appellant’s “new evidence” fails to meet the standard required under 37 C.F.R. § 11.56(c).

In his Request, Appellant attempts to submit newly discovered evidence in the form of an affidavit from William Windsor dated June 1, 2017 (“Windsor Affidavit”) to support his claim that the May 25, 2017 Final Order warrants dismissal. The affidavit appears to contain statements from Mr. Windsor attesting to the fact that he asked Appellant to serve as an officer of Lawless America Association and to file a trademark application on behalf of the organization. *See Windsor Affidavit*, at 1 para. 2, 3, 4, & 5; 2 para. 7 & 8. Under the standard set forth in 37 C.F.R. § 11.56(c), Appellant must demonstrate that the “newly discovered evidence

could not have been discovered any earlier by due diligence.” 37 C.F.R. § 11.56(c). Any evidence that was available or could have been available, with due diligence, to parties prior to entry of judgment do not meet this standard. *See Boryan*, 884 F.2d at 771 (“Evidence that is available to a party prior to entry of judgment, therefore, is not a basis for granting a motion for reconsideration as a matter of law.”) Appellant fails to meet this standard as Appellant has not satisfactorily demonstrated that Mr. Windsor’s affidavit could not have been submitted prior to this Request. Appellant submits Mr. Windsor’s affidavit to “clarify[] his testimony taken by the USPTO.” Request, at 20. Mr. Windsor’s deposition was taken by the USPTO on June 9, 2015, but this is the first attempt by Appellant to submit this affidavit despite having ample opportunities starting with the time immediately following Mr. Windsor’s deposition, continuing throughout the hearing before the ALJ, and finally during Appellant’s hearing appeal before the USPTO Director. However, Appellant never before attempted to submit any affidavit or otherwise “clarify” Mr. Windsor’s deposition testimony. Appellant’s attempt to now submit this evidence for the first time is not appropriate as a successful reconsideration request is reserved for only evidence that “could not have been discovered any earlier by due diligence,” a standard that this evidence clearly fails to meet since Appellant could have taken and submitted any clarifications of Mr. Windsor’s testimony prior to this Request. Thus, Appellant has not met the due diligence required under 37 C.F.R. § 11.56(c).

Even if Appellant had shown that he exercised the requisite due diligence, the information contained in Mr. Windsor’s affidavit cannot be considered “newly discovered.” Appellant’s allegedly “new” information attempts to support Appellant’s general argument that he could not have engaged in the unauthorized practice of law because he was designated as an

officer of Lawless America Association, pursuant to 37 C.F.R. § 11.14(e)(3). Mr. Windsor's affidavit states:

2. There came a point of time in 2013 when I created a not for profit business association called the "Lawless America Association". I asked Mr. Piccone in 2013 whether he would become the "Director" of the "Lawless America Association" and he consented. Soon afterward I made Mr. Piccone the Director of the association at the same time I held the position of "President".

\* \* \* \* \*

4. On or about, March 13, 2013, Mr. Piccone, filed a trademark application with the United States Patent and Trademark Office ("USPTO") seeking trademark protection for the mark "Lawless America".

Windsor Affidavit, at 1 para. 2 & 4.

However, Appellant has not demonstrated that the information being offered is not substantially similar to what already appears in the record. Appellant's argument was raised previously in his disciplinary proceeding, specifically during his appeal, and the allegedly "new" evidence that Appellant attempts to now submit – Appellant's status as an officer of Lawless America Association – appears to be substantially the same information that appears in the deposition of Mr. Windsor taken on June 9, 2015. (See Administrative Record, at A.3243-A.3338). For example, in his deposition, Mr. Windsor testified that Mr. Piccone was the Director of Lawless America Association:

Q. So are you saying that at the time that the trademark application was filed on or around March 9, 2013, Mr. Piccone was the director of Lawless America Association?  
A: I believe so.

Administrative Record, at A.3273-74.

This information was available to the ALJ and the USPTO Director who both found that despite this information, evidence in the record – which includes Mr. Windsor's deposition testimony – showed that Appellant acted in a representative capacity in Lawless America Association's application before the USPTO. The evidence that Appellant now attempts to

submit does not provide any "new" information that was not already considered and rejected, and thus fails to show that he has met the standard of review required under 37 C.F.R. § 11.56(c).

**B. Appellant's Request does not identify any errors in law or fact that warrant reversal of the Final Order.**

In his Request, Appellant argues that the USPTO Director committed errors in law or fact that warrant dismissal of the May 25, 2017 Final Order. However, the bulk of Appellant's request does nothing more than raise the same arguments made during the hearing appeal before the USPTO Director, which is not proper for a request for reconsideration.

Appellant reasserts the argument raised in his appeal that he did not engage in the unauthorized practice of law because he was in fact authorized to practice before the USPTO as a designated officer of the trademark applicant corporate entity, Lawless America Association, pursuant to 37 C.F.R. § 11.14(e)(3). *See* Request, at 3-9; Reply, at 3-8. However, as already stated, this argument was considered and rejected by the USPTO Director in the Final Order, who found that substantial evidence in the record did not support the contention that Appellant filed documents in connection with the Lawless America trademark application as a corporate officer. *See* Final Order, at 25. To the contrary, the USPTO Director found that the records support the conclusion that Appellant acted in the capacity as an attorney during the period when he was administratively suspended from the practice of law. *See* Final Order, at 24-26.

Appellant attempts to argue an error in law by claiming that that even if he did not act intentionally as a corporate official under the authority granted under 37 C.F.R. § 11.14(e)(3), that authority would automatically "cloak his actions in the full authority provided by the USPTO to corporate officers," thereby rendering moot the USPTO's claim that he was engaged in the unauthorized practice of law. Reply, at 5-6. However, Appellant's interpretation that this

authority would spontaneously spring into effect to legitimize his actions is not supported by any legal authority or analysis, nor is it an interpretation that the USPTO has expressly provided through either its regulations or guidance, therefore it is rejected. Appellant's arguments raised in his Request and Reply merely amount to the rehashing of arguments previously presented, which is improper. *See Above the Belt, Inc.*, 99, F.R.D. at 101 (holding improper a motion for reconsideration "to ask the Court to rethink what the Court had already thought through—rightly or wrongly."). Thus, because the Request functions as little more than reiteration of Appellant's prior argument, it would be improper to grant reconsideration.

Appellant also attempts to argue that the USPTO Director erred by relying on an allegedly "flawed" interpretation of the Trademark Manual of Examining Procedure's (TMEP) guidance at §§ 611.02 and 611.06(d). Appellant argues that the TMEP's guidance violated the Administrative Procedure Act's ("APA") procedural rulemaking requirements for an improper interpretation of 37 C.F.R. § 11.14(e)(3). He alleges that the USPTO's interpretation of the regulations was allegedly narrow, restrictive, and is "so different" from the regulations to be misleading, and thus, such interpretation should have been promulgated by rulemaking rather than issued as mere guidance. Request, at 7-8. However, Appellant offers no legal analysis that the TMEP violates the procedural rulemaking requirements of the APA nor has Appellant provided any legal analysis of any error in law or fact made by the USPTO Director in determining that Appellant engaged in the unauthorized practice of law. Therefore, this argument is rejected.

In addition, Appellant reasserts the argument raised in his appeal that that his appeal brief was proper and that the USPTO Director committed an error in law by disposing of many of the claims for lack of legal citations and analysis. *See Request*, at 9-19. In support of his argument,



Appellant provides a discussion of the many ways in which his appeal brief contained legal citations and analysis. For example, Appellant argues that he did in fact provide 27 legal citations that included cites to the C.F.R. and U.S.C., and the names and dates relevant pleadings in the Administrative Record. *See Request*, at 17-18; *Reply*, at 11-12. He admits that some of the legal arguments presented are only one sentence in length and omit any citations to the record or legal authority, but claims that each legal issue has to be read in the context of the entire brief. *See Request*, at 12-13. For those arguments that were truncated, he found it unnecessary to fully repeat some arguments in his appeal brief since they were laid out in full in the record, which was fully accessible to the USPTO Director (*See Request*, at 15-16) and permissible under the regulations at 37 C.F.R. § 11.56(a), which allow reliance on the "whole record" rather than portions thereof (*Reply*, at 9-12). However, Appellant's arguments all ignore the substantive deficiency specifically raised in the USPTO Director's Orders dated September 8, 2016 and dated November 23, 2016, wherein the USPTO Director refused entry of Appellant's first two appeal briefs for failing to adequately present the applicable standard of review and provide an adequate legal analysis demonstrating the errors committed by the ALJ in the Initial Decision. Appellant's arguments address only the ways in which he met the literal requirements for a brief, and ignores the USPTO Director's objection to the lack of substantive legal analysis. Thus, Appellant's arguments merely amount to a mere disagreement with the USPTO's determination, which is not a basis for granting a request for reconsideration.

Finally, Appellant attempts to argue that the USPTO Director committed an error in law by failing to consider the fact that the Massachusetts and Pennsylvania State bars chose not impose any discipline for the conduct that served as the basis for the USPTO Director's determination that Appellant engaged in the unauthorized practice of law. *See Response*, at 19;

Reply, at 1-3. However, this information is irrelevant to the Request as state law is inapplicable in this matter. It is long-settled that "the State maintains control over the practice of law within its borders except to the limited extent necessary for the accomplishment of federal objectives." *Sperry v. State of Fla.*, 373 U.S. 379, 402 (1963). This is so even when attorney discipline is predicated on actions purportedly taken while working on a patent case or claim. *See Kroll v. Finnerty*, 242 F.3d 1359, 1365 (Fed. Cir. 2001). Under *Sperry*, a state may not enjoin a patent practitioner from preparing patent applications and other legal instruments to be filed before the USPTO since regulating admission and disciplinary issues before the USPTO lies within its exclusive jurisdiction. *See Sperry*, 373 U.S. at 385; *Kroll*, 242 F.3d at 1364. This is because the Office possesses "exclusive authority to establish qualifications and procedures for admitting persons to practice before the USPTO, and to suspend or exclude those patent practitioners from practicing before the USPTO," *see Kroll*, 242 F.3d at 1364. In addition, Appellant's argument concerning the non-action of the Massachusetts and Pennsylvania State bars fails to satisfy the standard of review for reconsiderations, which requires a demonstrated error in law or fact made by the USPTO Director in the final decision. The mere fact that the USPTO Director imposed discipline on Appellant, whereas the state bars did not, is not sufficient evidence to show that an error in law or fact was made by the USPTO Director. Thus, for the reasons above, this argument is rejected.

### III. Appellant's Requests

Included in Appellant's Request are three additional requests for consideration by the USPTO Director: a request that the disciplinary matter be reopened and amended pursuant to 37 C.F.R. § 11.55(h) to include "include all documents filed in this matter both before the ALJ and that material before the USPTO Director," and an affidavit from Mr. William Windsor (*See*

Request, at 19-20); a request to correct the Administrative Record to include all documents making up the Administrative Record including Appellant's subpoenas and Touhy-related documents (*See Request*, at 21); and a request for clarification of the charges after the USPTO Director's May 25, 2017, decision. (*See Request*, at 21).

Appellant makes his request to reopen the disciplinary matter to include additional documents (*See Request*, at 20) under 37 C.F.R. § 11.55(h), which provides that "[a]ny request to reopen a disciplinary proceeding on the basis of newly discovered evidence must demonstrate that the newly discovered evidence could not have been discovered by due diligence." However, the exact nature of Appellant's first request is unclear as Appellant's objective appears to be to submit additional documents for consideration by the USPTO Director, but Appellant cites to the legal authority to reopen a disciplinary proceeding. Notwithstanding Appellant's true objective, what is clear is that Appellant has failed to meet the standard under § 11.55(h) as Appellant has not provided any newly discovered evidence to support his request to reopen the disciplinary hearing. Appellant offers no documentary evidence or any legal analysis to support his request, thus there appears to be no justification to warrant the reopening of the disciplinary matter. With regard to Appellant's request to admit an affidavit clarifying Mr. Windsor's testimony taken by the USPTO (*See Request*, at 19-20), Appellant provides as support only the justification that he was prevented from participating in Mr. Windsor's deposition because it was rescheduled at the last moment. *Id.* at 20. However, as discussed above, this document is not considered "newly discovered evidence" as it appears to be substantially the same information provided by Mr. Windsor's previous testimony given during the proceeding before the ALJ. Appellant had opportunity after Mr. Windsor's testimony before the USPTO to submit this affidavit, but did

not. Appellant's justifications do not warrant the reopening of the disciplinary matter, thus Appellant's request is **DENIED**.

Appellant also makes a renewed request to correct the Administrative Record to include all documents including Appellant's subpoenas and Touhy-related documents, Appellant cites to no legal authority nor provides any new justification for the request other than to allege that the USPTO "lost" records because they are allegedly missing from the record. *See Request*, at 21. In an Order dated March 8, 2017, the USPTO Director determined that the Administrative Record was complete, and Appellant's renewed request does not provide any additional justification or argument that would warrant reversing that determination, thus, Appellant's request is **DENIED**.

Finally regarding Appellant's request for clarification of the charges after the USPTO Director's May 25, 2017, decision, this request is not appropriate because it is outside the scope of a proper request for reconsiderations under the regulations at 37 C.F.R. § 11.56. The USPTO directs Appellant to review the May 25, 2017 Final Order for more information. Thus, Appellant's request is **DENIED**.


#### **IV. Petition for the Suspension of Rules**

Appellant includes in his Request a Petition to Waive Any Applicable Regulation Pursuant to 37 C.F.R. § 11.183, in the event that his Request is not granted. *See Request*, at 21-22. However, the regulation cited by Appellant, 37 C.F.R. § 11.183, does not exist. If Appellant is attempting to cite to the provision at 37 C.F.R. § 1.183, which allows for petitions to the Director for the waiver of any regulation in 37 C.F.R. Part 1 in an extraordinary situation when justice requires, that regulation is inapplicable. By its terms, § 1.183 allows for the waiver of only those regulations in 37 C.F.R. Part 1, which set forth the rules of practice in patent cases. Appellant was disciplined under 37 C.F.R. Part 11, which governs practitioners before the

USPTO, for nine counts of professional misconduct through violations of the USPTO Code of Professional Responsibility, 37 C.F.R. §§ 10.20 through 10.112, and the USPTO Rules of Professional Conduct, 37 C.F.R. §§ 11.101 through 11.901.2.<sup>5</sup> These provisions clearly do not fall under the scope of § 1.183. Therefore, the waiver provision at § 1.183 is not applicable here. Assuming that Appellant intended to cite to the suspension of rules provision for disciplinary matters at 37 C.F.R. § 11.3, Appellant does not identify those regulations he is requesting to be waived, nor does he demonstrate the extraordinary situation that is required for granting a petition under this provision. Appellant's only support for his request are his claims of innocence on each of the charges against him, the political nature of this prosecution, and the large number of issues contained in the record. *See* Request, at 22. However, these claims are asserted without any additional evidence or information that justifies waiving the rules. Because Appellant's request fails to identify the regulation to be waived or demonstrate any extraordinary circumstances that meet the standard under § 11.3, this request is **DENIED**.

**IT IS SO ORDERED.**

2/9/18  
Date

  
\_\_\_\_\_  
Sarah T. Harris  
General Counsel  
United States Patent and Trademark Office

on delegated authority by

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

cc:

<sup>5</sup> The USPTO Code of Professional Responsibility applies to practitioner misconduct that occurred prior to May 3, 2013, while the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 et seq., apply to a practitioner's misconduct occurring after May 2, 2013.

cc:

Louis Piccone



Robin Crabb  
*Associate Solicitor*  
Sydney O. Johnson  
*Senior Counsel for Enrollment and Discipline Litigation*  
Mail Stop 8  
Office of the Solicitor  
P.O. Box 1450  
Alexandria, VA 22313-1450



*Counsel for the OED Director*

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. Disciplinary Docket No. 3  
:   
LOUIS ALFRED PICCONE : Board File No. C1-18-177  
:   
: (United States Patent and Trademark  
: Office, Proceeding No. D2015-06)  
:   
: Attorney Reg. No. 55347  
:   
: (Out of State)

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing documents upon the person and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by Certified Mail and First Class Mail addressed as follows:

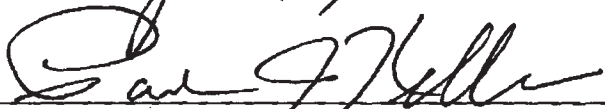
Louis Alfred Piccone, Esquire (613) 632-4798  
519 Kirchner Rd.  
Dalton, MA 01226

Service by First Class Mail and email addressed as follows:

Louis Alfred Piccone, Esquire  
593 McGill St.  
Hawkesbury, Ontario  
Canada K6A-1R1 lpiccone@aol.com

Dated:

*June 15, 2018*

  
\_\_\_\_\_  
Paul J. Killion, Attorney Registration No. 20955  
Chief Disciplinary Counsel

**CERTIFICATE OF COMPLIANCE**

I certify that this pleading complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature: Michael D. Gottsch

Name: Michael D. Gottsch

Attorney No. (if applicable): 39421