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In the Matter of Discipline of Peirce, 122 Nev. Adv. Op. No. 8 (Feb. 9, 2006)¹

PROFESSIONAL RESPONSIBILITY – DISCIPLINE OF ATTORNEY

Summary

Petition for reciprocal discipline of attorney based on a suspension from the United States Patent and Trademark Office (USPTO).

Disposition/Outcome

Attorney suspended for two years, the reciprocal punishment from the USPTO.

Factual and Procedural History

In July of 2004, Matthew Peirce, a member of the Nevada bar who was also admitted to practice before the USPTO, had twenty four counts filed against him by the USPTO's Director of Enrollment and Discipline. Three of the counts were for Peirce's alleged association with invention promotion companies, and twenty one counts were for alleged negligence in handling clients' patent applications.

The negligence counts were for rendering bad legal advice, failed communication, and negligent patent application filings related to several clients. The association counts were for splitting fees with an invention promotion company and failing to disclose that arrangement to the client. Peirce admitted the twenty one negligence counts and denied the three association counts, admitting he associated with the companies but asserting that the associations did not include any misconduct. The Director and Peirce stipulated to ten of the counts, and Peirce was given a two year suspension from practice before the USPTO, after which he could apply for reinstatement. In accordance with SCR 114(1), Peirce notified the State Bar of Nevada regarding the USPTO's discipline.

Discussion

USPTO as a "Jurisdiction":

Peirce first argued the requirement under SCR 114(1), which requires attorneys to notify the Nevada State Bar when they have been disciplined by another jurisdiction, does not include the USPTO within the definition of "another jurisdiction."

The court held that several prior cases ruled that discipline by the USPTO should be given the same distinction as that from another state. It also cited similarities between the USPTO and other state bars, such as its admission process, disciplinary procedures, and professional conduct rules as further reason to treat it as a separate jurisdiction. The court therefore held that the USPTO is included in the definition of "another jurisdiction."

¹ By Andrea Jundt

Appropriate Discipline

SCR 114(1) states that the State of Nevada should impose the same discipline as the other jurisdiction did unless one of the exceptions applies. Peirce argued that one of these such exceptions applied, that the misconduct warranted substantially different discipline in Nevada, and that he should be accorded a hearing for consideration by a panel to determine whether the reciprocal discipline should be applied. However, the court held that SCR 114(1) does not provide for a hearing unless an exception applies.

Peirce argued that he should be awarded a lesser punishment because a suspension from a specialized court differs in kind and scope from a suspension by a state supreme court, which would prohibit him from appearing in any of the state's courts. However, the court held that that argument would only be valid if the misconduct was related to some specialized requirement for practice before that specialized court, but since it was not, his argument was unpersuasive.

Conclusion

The court held that because Peirce was found by the USPTO to have violated equivalents to SCR 151 (competence), SCR 153 (diligence), SCR 154 (communication), and SCR 188 (professional independence of a lawyer), the suspension from the Nevada State courts was appropriate, in accordance with the USPTO suspension.