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§ 11.2 Director of the Office of Enrollment and Discipline.

(a) *Appointment.* The USPTO Director shall appoint a Director of the Office of Enrollment and Discipline (OED Director). In the event of ~~the absence of the OED Director or~~ a vacancy in the office of the OED Director, the USPTO Director may designate an employee of the Office to serve as acting OED Director. The OED Director ~~and any acting OED Director~~ shall be an active member in good standing of the bar of a State.

(b) *Duties.* The OED Director shall:

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§ 11.2 Director of the Office of Enrollment and Discipline.

(a) *Appointment.* The USPTO Director shall appoint a Director of the Office of Enrollment and Discipline (OED Director). In the event of a vacancy in the office of the OED Director, the USPTO Director may designate an employee of the Office to serve as acting OED Director. The OED Director shall be an active member in good standing of the bar of a State.

(b) *Duties.* The OED Director shall:

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(4) Conduct investigations of all matters involving possible violations by practitioners and persons granted limited recognition of an imperative Rule of Professional Conduct coming to the attention of the OED Director as information or a complaint, whether from within or from outside the USPTO, where the apparent facts, if true, may warrant discipline. Conduct investigations of all matters involving possible violations of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804 by other individuals identified in § 11.19(a)(2) coming to the attention of the OED Director as information or a complaint, whether from within or from outside the USPTO, where the apparent facts, if true, may warrant discipline. Except in matters meriting summary dismissal because the complaint is clearly unfounded on its face or falls outside the disciplinary jurisdiction of the USPTO, no disposition shall be recommended or undertaken by the OED Director until the accused practitioner shall have been afforded an opportunity to respond to the information or complaint received by the OED Director.

(5) With the consent of three members of the Committee on Discipline, initiate disciplinary proceedings under § 11.32, and perform such other duties in connection with investigations and disciplinary proceedings as may be necessary.

(6) Without the prior approval of a member of the Committee on Discipline, dismiss a complaint or close an investigation without issuing a warning; and otherwise conclude an investigation as provided for in §§ 11.22(e) or (m).

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(4) Conduct investigations of matters involving possible grounds for discipline of practitioners coming to the attention of the OED Director. Except in matters meriting summary dismissal, no disposition shall be recommended or undertaken by the OED Director until the accused practitioner shall have been afforded an opportunity to respond to a reasonable inquiry by the OED Director.

(5) With the consent of a panel of three members of the Committee on Discipline, initiate disciplinary proceedings under § 11.32 and perform such other duties in connection with investigations and disciplinary proceedings as may be necessary

(6) Oversee the preliminary screening of information and evidence, and close investigations as provided for in § 11.22.

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~~(7) File with the USPTO Director certificates of convictions of practitioners or other individual practicing before the Office who have been convicted of crimes, and certified copies of disciplinary orders concerning attorneys issued in other jurisdictions.~~

~~(c) Petition to OED Director. Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director. Any such petition not filed within 30 days from the action complained of may be dismissed as untimely. The filing of a petition will not stay the period for taking other action, including the timely filing of an application for registration, which may be running, nor act as a stay of other proceedings. Any request for reconsideration waives a right to appeal by petition to the USPTO Director under paragraph (d) of this section, and if not filed within 30 days after the final decision of the OED Director may be dismissed as untimely.~~

~~(d) Review of OED Director's decision. An individual dissatisfied with a final decision of the OED Director, except for a decision dismissing a complaint pursuant to § 11.22(f) or closing an investigation under § 11.22(m)(1), may seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee set forth in § 1.21(a)(5). A decision dismissing a complaint or closing an investigation is not subject to review by petition. Any such petition to the USPTO Director waives a right to seek reconsideration. Any petition not filed within 30 days after the final decision of the OED Director may be dismissed as untimely. Any petition shall be limited to the facts of record. Briefs or memoranda, if any, in support of the petition shall accompany or be embodied therein. The petition will be~~

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(c) Petition to OED Director regarding enrollment or recognition. Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director accompanied by payment of the fee set forth in § 1.21(a)(5)(i). Any such petition not filed within sixty days from the mailing date of the action or notice from which relief is requested will be dismissed as untimely. The filing of a petition will neither stay the period for taking other action which may be running, nor stay other proceedings. A final decision by the OED Director may be reviewed in accordance with the provisions of paragraph (d) of this section.

(d) Review of OED Director's decision regarding enrollment or recognition. A party dissatisfied with a final decision of the OED Director regarding enrollment or recognition may seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee set forth in § 1.21(a)(5)(ii). Any such petition to the USPTO Director waives a right to seek reconsideration from the OED Director. Any petition not filed within thirty days after the final decision of the OED Director may be dismissed as untimely. Briefs or memoranda, if any, in support of the petition shall accompany the petition. The petition will be

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decided on the basis of the record made before the OED Director. The USPTO Director in deciding the petition will consider no new evidence. Copies of documents already of record before the OED Director shall not be submitted with the petition. ~~No oral hearing on the petition will be held except when considered necessary by the USPTO Director.~~ Any request for reconsideration of the decision of the USPTO Director may be dismissed as untimely if not filed within 30 days after the date of said decision.

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decided on the basis of the record made before the OED Director. The USPTO Director in deciding the petition will consider no new evidence. Copies of documents already of record before the OED Director shall not be submitted with the petition. An oral hearing will not be granted except when considered necessary by the USPTO Director. Any request for reconsideration of the decision of the USPTO Director may be dismissed as untimely if not filed within thirty days after the date of said decision.

(e) *Petition to USPTO Director in disciplinary matters.* Petition may be taken to the USPTO Director to invoke the supervisory authority of the USPTO Director in appropriate circumstances in disciplinary matters. Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support of the petition must accompany the petition. Where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition. The OED Director may be directed by the USPTO Director to file a reply to the petition, supplying a copy to the petitioner. An oral hearing will not be granted except when considered necessary by the USPTO Director. The mere filing of a petition will not stay an investigation, disciplinary proceeding or other proceedings. Any petition under this part not filed within thirty days of the mailing date of the action or notice from which relief is requested may be dismissed as untimely. Any request for reconsideration of the decision of the USPTO Director may be dismissed as untimely if not filed within thirty days after the date of said decision.

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~~(e) Reconsideration of matters decided by a former OED Director or USPTO Director. Matters which have been decided by one OED Director or USPTO Director will not be reconsidered by his or her successor except if a request for reconsideration of the decision is filed within the 30-day period permitted to request reconsideration of said decision provided for in paragraphs (c) and (d) of this section.~~

§ 11.3 Suspension of rules, qualified immunity.

(a) Except as provided in paragraph (b) of this section, in an extraordinary situation, when justice requires, any requirement of the regulations of this Part which is not a requirement of statute may be suspended or waived by the USPTO Director or the designee of the USPTO Director, *sua sponte* or on petition of any party, including the OED Director or the OED Director's representative, subject to such other requirements as may be imposed.

~~(b) No petition to waive any provision of §§ 11.19, 11.24, 11.100 through 11.901, or to waive the provision in this paragraph shall be granted for any reason.~~

(c) No petition under this section shall stay a disciplinary proceeding unless ordered by the USPTO Director or a hearing officer.

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§ 11.3 Suspension of rules.

(a) Except as provided in paragraph (b) of this section, in an extraordinary situation, when justice requires, any requirement of the regulations of this Part which is not a requirement of statute may be suspended or waived by the USPTO Director or the designee of the USPTO Director, *sua sponte*, or on petition by any party, including the OED Director or the OED Director's representative, subject to such other requirements as may be imposed.

(b) No petition under this section shall stay a disciplinary proceeding unless ordered by the USPTO Director or a hearing officer

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~~(d) Complaints submitted to the OED Director or any other official of the Office shall be qualifiedly privileged for the purpose that no claim or action in tort predicated thereon may be instituted or maintained. The OED Director, and all staff, assistants and employees of the Office of General Counsel, Solicitor's Office, the Office of Enrollment and Discipline, and the members of the Committee on Discipline, the Committee on Enrollment, the employees of the Office providing regrades of examinations, and employees of the Office developing questions for the registration examination shall be immune from disciplinary complaint under this Part for any conduct in the course of their official duties.~~

§ 11.5 Register of attorneys and agents in patent matters; practice before the Office.

The provisions of the sole paragraph of § 11.5 adopted in the final rules on July 26, 2004 would be renumbered as § 11.5(a) as in the column to the right.

(b) Practice before the Office.

Practice before the Office includes law-related service that comprehends all matters connected with the presentation to the Office or any of its officers or employees relating to a client's rights, privileges, duties, or responsibilities under the laws or regulations administered by the Office for the grant of a patent, registration of a trademark, or ~~conduct of other non-patent law~~. Such presentations include preparing necessary documents,

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§ 11.5 Register of attorneys and agents in patent matters; practice before the Office.

(a) A register of attorneys and agents is kept in the Office on which are entered the names of all individuals recognized as entitled to represent applicants having prospective or immediate business before the Office in the preparation and prosecution of patent applications. Registration in the Office under the provisions of this part shall entitle the individuals so registered to practice before the Office only in patent matters.

(b) Practice before the Office. Practice before the Office includes, but is not limited to, law-related service that comprehends any matter connected with the presentation to the Office or any of its officers or employees relating to a client's rights, privileges, duties, or responsibilities under the laws or regulations administered by the Office for the grant of a patent, or registration of a trademark, or for enrollment or disciplinary matters. Such presentations include preparing necessary documents in contemplation of filing the documents with the Office, representing a client through documents or at interviews, hearings, and meetings, as

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corresponding and communicating with the Office, and well as communicating with and advising a client concerning matters pending or contemplated to be presented before the Office. Practice before the Office:

(1) In patent matters includes, but is not limited to, preparing and prosecuting any patent application, ~~considering and advising a client as to the patentability of an invention under statutory criteria;~~ considering the advisability of relying upon alternative forms of protection that may be available under State law; ~~participating in~~ drafting the specification or claims of a patent application; ~~participation in~~ drafting an amendment or reply to a communication from the Office that may require written argument to establish the patentability of a claimed invention; ~~participating in~~ drafting a reply to a communication from the Office regarding a patent application, and ~~participating in the drafting of a~~ communication for a public use, interference, or reexamination proceeding;

(2) In trademark matters includes, but is not limited to, preparing and prosecuting an application for trademark registration; preparing an amendment which may require written argument to establish the registrability of the mark; conducting an opposition, cancellation, or concurrent use proceeding; or an appeal to the Trademark Trial and Appeal Board; and

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corresponding and communicating with the Office, and representing a client through documents or at interviews, hearings, and meetings, as well as communicating with and advising a client concerning matters pending or contemplated to be presented before the Office. Nothing in this section proscribes a practitioner from employing non-practitioner assistants under the supervision of the practitioner to assist the practitioner in preparation of said presentations.

(1) *Practice before the Office in patent matters.* Practice before the Office in patent matters includes, but is not limited to, preparing and prosecuting any patent application, consulting with or giving advice to a client in contemplation of filing a patent application or other document with the Office, considering the advisability of relying upon alternative forms of protection that may be available under State law, drafting the specification or claims of a patent application; drafting an amendment or reply to a communication from the Office that may require written argument to establish the patentability of a claimed invention; drafting a reply to a communication from the Office regarding a patent application, and drafting a communication for a public use, interference, reexamination proceeding, petition, appeal to the Board of Patent Appeals and Interferences, or other proceeding.

(2) *Practice before the Office in trademark matters.* 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 registration 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.

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~~(3) In private as well as other professional matters includes conduct reflecting adversely on a person's fitness to practice law, such as, but not limited to, the good character and integrity essential for a practitioner in patent, trademark or other non-patent law matters.~~

§ 11.14 Individuals who may practice before the Office in trademark and other non-patent matters.

(a) *Attorneys.* Any individual who is an attorney may represent others before the Office in trademark and other non-patent matters. An attorney is not required to apply for registration or recognition to practice before the Office in trademark and other non-patent matters. Registration as a patent attorney does not entitle an individual to practice before the Office in trademark matters.

(b) *Non-lawyers.* Individuals who are not attorneys are not recognized to practice before the Office in trademark and other non-patent matters, except that individuals not attorneys who were recognized to practice before the Office in trademark matters under this chapter prior to January 1, 1957, will be recognized as agents to continue practice before the Office in trademark matters.

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§ 11.14 Individuals who may practice before the Office in trademark and other non-patent matters.

(a) *Attorneys.* Any individual who is an attorney may represent others before the Office in trademark and other non-patent matters. An attorney is not required to apply for registration or recognition to practice before the Office in trademark and other non-patent matters. Registration as a patent attorney does not itself entitle an individual to practice before the Office in trademark matters.

(b) *Non-lawyers.* Individuals who are not attorneys are not recognized to practice before the Office in trademark and other non-patent matters, except that individuals not attorneys who were recognized to practice before the Office in trademark matters under this chapter prior to January 1, 1957, will be recognized as agents to continue practice before the Office in trademark matters. Except as provided in the preceding sentence, registration as a patent agent does not itself entitle an individual to practice before the Office in trademark matters.

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(c) *Foreigners.* Any foreign attorney or agent not a resident of the United States who shall prove to the satisfaction of the OED Director that he or she is registered or in good standing before the patent or trademark office of the country in which he or she resides and practices, may be recognized for the limited purpose of representing parties located in such country before the Office in the presentation and prosecution of trademark matters, provided: the patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark matters before the Office. Recognition under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain.

(d) Recognition of any individual under this section shall not be construed as sanctioning or authorizing the performance of any act regarded in the jurisdiction where performed as the unauthorized practice of law.

(e) No individual other than those specified in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Office in trademark matters. Any individual may appear in a trademark or other non-patent matter in his or her own behalf. Any individual may appear in a trademark matter for:

- (1) A firm of which he or she is a member,
- (2) A partnership of which he or she is a partner, or

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(c) *Foreigners.* Any foreign attorney or agent not a resident of the United States who shall file a written application for reciprocal recognition under paragraph (f) of this section and prove to the satisfaction of the OED Director that he or she is registered or in good standing before the patent or trademark office of the country in which he or she resides and practices and is possessed of good moral character and reputation, may be recognized for the limited purpose of representing parties located in such country before the Office in the presentation and prosecution of trademark matters, provided: the patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark matters before the Office. Recognition under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain.

(d) Recognition of any individual under this section shall not be construed as sanctioning or authorizing the performance of any act regarded in the jurisdiction where performed as the unauthorized practice of law.

(e) No individual other than those specified in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Office in trademark matters on behalf of a client. Any individual may appear in a trademark or other non-patent matter in his or her own behalf. Any individual may appear in a trademark matter for:

- (1) A firm of which he or she is a member,
- (2) A partnership of which he or she is a partner,

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(3) A corporation or association of which he or she is an officer and which he or she is authorized to represent, if such firm, partnership, corporation, or association is a party to a trademark proceeding pending before the Office.

(f) *Application for reciprocal recognition.* An individual seeking reciprocal recognition under paragraph (c) of this section, in addition to providing evidence satisfying the provisions of paragraph (c) of this section, shall apply in writing to the OED Director for reciprocal recognition, and shall pay the application fee required by §§ 1.21(a)(1)(i) ~~and (a)(6)~~ of this subchapter.

§ 11.15 Refusal to recognize a practitioner.

Any practitioner authorized to appear before the Office may be suspended, excluded, or reprimanded in accordance with the provisions of this Part. Any practitioner who is suspended or excluded under this part ~~or removed under § 11.11(b)~~ shall not be entitled to practice before the Office in patent, trademark, or other non-patent matters.

~~11.16 Financial books and records~~
11.17 [Resvered]

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(3) A corporation or association of which he or she is an officer and which he or she is authorized to represent, if such firm, partnership, corporation, or association is a party to a trademark proceeding pending before the Office.

(f) *Application for reciprocal recognition.* An individual seeking reciprocal recognition under paragraph (c) of this section, in addition to providing evidence satisfying the provisions of paragraph (c) of this section, shall apply in writing to the OED Director for reciprocal recognition, and shall pay the application fee required by § 1.21(a)(1)(i) of this subchapter.

§ 11.15 Refusal to recognize a practitioner.

Any practitioner authorized to appear before the Office may be suspended, excluded, or reprimanded in accordance with the provisions of this Part. Any practitioner who is suspended or excluded under this Part shall not be entitled to practice before the Office in patent, trademark, or other non-patent matters while suspended or excluded.

§ 11.16 - 11.17 [Reserved]

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§ 10.18 Signature and certificate for correspondence filed in the Office.

(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, and all documents filed with a hearing officer in a disciplinary proceeding, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Office must bear a signature, personally signed by such practitioner, in compliance with § 1.4(d)(1) of this subchapter.

(b) By presenting to the Office or hearing officer in a disciplinary proceeding (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and violations of the provisions of this section may jeopardize the ~~validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom;~~ and

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§ 11.18 Signature and certificate for correspondence filed in the Office.

(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, and all documents filed with a hearing officer in a disciplinary proceeding, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Office must bear a signature, personally signed by such practitioner, in compliance with § 1.4(d)(1) of this subchapter.

(b) By presenting to the Office or hearing officer in a disciplinary proceeding (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or knowingly and willfully makes any false, fictitious, or fraudulent statements or representations, or knowingly and willfully makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001 and any other applicable criminal statute, and violations of the provisions of this section may jeopardize the probative value of the paper; and

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(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of ~~prosecution~~ before the Office;

(ii) The other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

~~(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom.~~ Violations of any of paragraphs (b)(2) (i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the USPTO Director, or hearing officer, which may include, but are not limited to, any combination of--

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(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office;

(ii) The other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of any of paragraphs (b)(2) (i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions or actions as deemed appropriate by the USPTO Director, which may include, but are not limited to, any combination of--

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- (1) ~~Holding certain facts to have been established;~~
 - (2) ~~Returning papers;~~
 - (3) Precluding a party from ~~filing~~ a paper, or presenting or contesting an issue;
 - (4) ~~Imposing a monetary sanction;~~
 - (5) Requiring a terminal disclaimer ~~for the period of the delay;~~ or
 - (6) Terminating the proceedings in the Office.
- (d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 11.303(e)(4).

§ 11.19 Disciplinary jurisdiction.

(a) ~~Individuals subject to disciplinary jurisdiction. The following individuals are subject to the disciplinary jurisdiction of the Office:~~

(1) ~~Practitioners.~~ All practitioners engaged in practice before the Office; all practitioners administratively suspended under § 11.11(b); ~~all practitioners who have resigned under § 11.11(d);~~ all practitioners inactivated under § 11.11(c); all practitioners authorized under § 11.6(d) to take testimony; and all practitioners reprimanded, suspended, or excluded from the practice of law by a duly constituted authority, including by the USPTO Director.

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- (1) Striking the offending paper;
 - (2) Referring a practitioner's conduct to the Director of Enrollment and Discipline for appropriate action;
 - (3) Precluding a party or practitioner from submitting a paper, or presenting or contesting an issue;
 - (4) Affecting the weight given to the offending paper;
 - (5) Requiring a terminal disclaimer; or
 - (6) Terminating the proceedings in the Office.
- (d) Any practitioner violating the provisions of this section may also be subject to disciplinary action.

§ 11.19 Disciplinary jurisdiction.

(a) All practitioners engaged in practice before the Office; all practitioners administratively suspended under § 11.11(b); all practitioners registered to practice before the Office in patent cases; all practitioners inactivated under § 11.11(c); all practitioners authorized under § 11.6(d) to take testimony; and all practitioners reprimanded, suspended, or excluded from the practice of law by a duly constituted authority, including by the USPTO Director are subject to the disciplinary jurisdiction of the Office. Practitioners who have resigned under § 11.11(e) shall also be subject to such jurisdiction with respect to conduct undertaken prior to the resignation and conduct in regard to any practice before the Office following the resignation.

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~~(2) *Other individuals.* An applicant for patent (§ 1.41(b) of this subchapter) representing himself, herself, or representing himself or herself and other individuals who are applicants pursuant to §§ 1.31 or 1.33(b)(4) of this subchapter; an individual who is an assignee as provided for under § 3.71(b) of this subchapter; and an individual appearing in a trademark or other non-patent matter pursuant to § 11.14(e), whether representing a firm, corporation, or association are subject to the disciplinary jurisdiction of the Office, including §§ 11.19(e)(2), (d) and (e); 11.20(a)(2), and (b); 11.21-11.23; 11.24; 11.25-11.28; 11.32-11.45, and 11.49-11.60.~~

~~(b) *Jurisdiction of courts and voluntary bar associations.* Nothing in these rules shall be construed to deny to any State or Federal Court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt. Further, nothing in these rules shall be construed to prohibit any State or Federal Court, or a voluntary or mandatory bar association from censuring, reprimanding, suspending, disbarring, or otherwise disciplining its members, including registered practitioners for conduct regarding practice before the Office in any matter.~~

~~(e) *Misconduct- grounds for discipline.*~~
~~(1) *Practitioners.* Acts or omissions by a practitioner (including a suspended, excluded, or inactive practitioner), acting individually or in concert with any other person or persons constituting gross misconduct, violating the imperative USPTO Rules of Professional Conduct, or the oath taken by practitioner shall constitute misconduct and shall be~~

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(b) *Grounds for discipline.* The following, whether done individually by a practitioner or in concert with any other person or persons and whether or not done in the course of providing legal services to a client, or in a matter pending before the Office, constitute grounds for discipline. Grounds for discipline include:

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~~grounds for discipline, whether or not the act or omission occurred in the course of providing legal services to a client, or in a matter pending before the Office. Grounds for discipline include:~~

- ~~(i) Conviction of a crime (see §§ 11.24, 11.803(d) and 11.804(b));~~
- ~~(ii) Discipline imposed in another jurisdiction (see §§ 11.24 and 11.803(e)(1) and (f)(4));~~
- ~~(iii) Failure to comply with any order of a Court disciplining a practitioner, or any order of the USPTO Director disciplining a practitioner;~~
- ~~(iv) Failure to respond to a written inquiry from OED Director in the course of an investigation into whether there has been a violation of the imperative USPTO Rules of Professional Conduct without asserting, in writing, the grounds for refusing to do so; or~~
- ~~(v) Violation of the imperative USPTO Rules of Professional Conduct. See § 11.100(a).~~

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- (1) Conviction of a serious crime;
- (2) Discipline on ethical grounds imposed in another jurisdiction or disciplinary disqualification from participating in or appearing before any Federal program or agency;
- (3) Failure to comply with any order of a Court disciplining a practitioner, or any final decision of the USPTO Director in a disciplinary matter;
- (4) Violation of the imperative USPTO Rules of Professional Conduct; or
- (5) Violation of the oath or declaration taken by the practitioner. See § 11.8.

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~~(2) *Other individuals.* Acts or omissions by applicants for patent (§ 1.41(b) of this subchapter) representing themselves, or an individual applicant representing himself or herself and other individuals who are applicants pursuant to §§ 1.31 or 1.34(b)(4) of this subchapter; an individual who an assignee as provided for under § 3.71(b) of this subchapter; and an individual appearing in a trademark or other non-patent matter pursuant to § 11.14(e), whether representing a firm, corporation, or association who violate the provisions of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804 shall constitute misconduct and shall be grounds for discipline.~~

(d) Petitions to disqualify a practitioner in *ex parte* or *inter partes* matters in the Office are not governed by §§ 11.19 through 11.806 and will be handled on a case-by-case basis under such conditions as the USPTO Director deems appropriate.

(e) Unauthorized practice of law matters may be referred to the appropriate authority in the jurisdiction(s) where the act(s) occurred.

§ 11.20 Disciplinary sanctions.

(a) Types of discipline. ~~(1) For practitioners.~~ The USPTO Director, after notice and opportunity for a hearing, may impose on a practitioner ~~shown to be incompetent or disreputable, who is guilty of gross misconduct, or who violates a Rule of Professional Conduct currently in effect in the Office,~~ any of the following types of discipline:

(i) Exclusion from practice before the Office ~~in patent, trademark or other non-patent law;~~

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(c) Petitions to disqualify a practitioner in *ex parte* or *inter partes* matters in the Office are not governed by §§ 11.19 through 11.806 and will be handled on a case-by-case basis under such conditions as the USPTO Director deems appropriate.

(d) The OED Director may refer the existence of circumstances suggesting unauthorized practice of law to the authorities in the appropriate jurisdiction(s).

§ 11.20 Disciplinary sanctions.

(a) Types of discipline. The USPTO Director, after notice and opportunity for a hearing, and where grounds for discipline exist, may impose on a practitioner the following types of discipline:

(1) Exclusion from practice before the Office;

Originally Proposed Rule

(ii) Suspension from practice before the Office in patent, trademark or other non-patent law for an indefinite period, or appropriate fixed period of time not to exceed five years. Any order of suspension may include a requirement stated in the order that the practitioner satisfy certain conditions prior to reinstatement, including furnishing proof of rehabilitation;

(iii) Reprimand; or

(iv) Probation for not more than three years. Probation may be imposed *in lieu* of or in addition to any other disciplinary sanction. Any conditions of probation shall be stated in writing in the order imposing probation. The order shall also state whether, and to what extent, the practitioner or other person shall be required to notify clients of the probation. The order shall establish procedures for the supervision of probation. Violation of any condition of probation shall make the practitioner subject to revocation of probation, and the disciplinary sanction stated in the order imposing probation.

(2) *For Other Individuals.*

Revised Proposed Section

(2) Suspension from practice before the Office for an appropriate period of time;

(3) Reprimand; or

(4) *Probation.* Probation may be imposed *in lieu* of or in addition to any other disciplinary sanction. Any conditions of probation shall be stated in writing in the order imposing probation. The order shall also state whether, and to what extent, the practitioner shall be required to notify clients of the probation. The order shall establish procedures for the supervision of probation. Violation of any condition of probation shall be cause for the probation to be revoked, and the disciplinary sanction to be imposed for the remainder of the probation period. Revocation of probation shall occur only after an order to show cause why probation should not be revoked is resolved adversely to the practitioner.

Originally Proposed Rule

(b) *Conditions imposed with discipline.* When imposing discipline, the practitioner, ~~or other individual~~ may be required to make restitution either to persons financially injured by the practitioner's, ~~or other individual's~~ conduct ~~or to an appropriate client's~~ security trust fund, or both, as a condition of probation or of reinstatement. Any other reasonable condition may also be imposed, including a requirement that the practitioner ~~or other individual~~ take and pass a professional responsibility examination.

§ 11.21 Warnings.

~~*Warning.* A warning is not a disciplinary sanction. The OED Director, ~~in consultation with and consent from a panel of the Committee on Discipline,~~ may conclude an investigation with the issuance of a warning. The warning shall contain a brief statement of facts ~~and relevant~~ imperative USPTO Rules of Professional Conduct ~~upon which the warning is based.~~ The warning shall be ~~final and not reviewable.~~~~

§ 11.22 Investigations.

(a) The OED Director is authorized to investigate possible ~~violations of an imperative Rule of Professional Conduct by practitioners; or possible violations of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804 by other individuals identified in § 11.19(a)(2). See § 11.2(b)(2).~~ The investigation may ~~be based on~~ information from any source whatsoever, ~~or on a complaint where alleged or presented facts, if true, may warrant discipline.~~ The ~~information need not be in the form of a~~ complaint.

Revised Proposed Section

(b) *Conditions imposed with discipline.* When the USPTO Director imposes discipline, the practitioner may be required to make restitution either to persons financially injured by the practitioner's conduct or to an appropriate client's security trust fund, or both, as a condition of probation or of reinstatement. Such restitution shall be limited to the return of unearned practitioner fees or misappropriated client funds. Any other reasonable condition may also be imposed, including a requirement that the practitioner take and pass a professional responsibility examination.

§ 11.21 Warnings.

A warning is not a disciplinary sanction. The OED Director may conclude an investigation with the issuance of a warning. The warning shall contain a brief statement of facts and imperative USPTO Rules of Professional Conduct relevant to the facts.

§ 11.22 Investigations.

(a) The OED Director is authorized to investigate possible grounds for discipline. An investigation may be initiated when the OED Director receives a grievance, information or evidence from any source suggesting possible grounds for discipline. Neither unwillingness nor neglect by a grievant to prosecute a charge, nor settlement, compromise, or restitution with the grievant, shall in itself justify abatement of an investigation.

Originally Proposed Rule

(b) Any practitioner, other individual (~~see § 11.19(a)(2)~~), or nonpractitioner possessing knowledge or information concerning a possible violation of an imperative Rule of Professional Conduct currently in effect before the Office by a practitioner may report the violation to the OED Director. The OED Director may require that the report be presented in the form of an affidavit or declaration.

~~(c) *Initiation of investigations.* An investigation may be initiated upon complaint or information. A staff attorney under the supervision of the OED Director shall conduct all investigations. Neither unwillingness nor neglect by a complainant to prosecute a charge, nor settlement, compromise, or restitution, shall in itself justify abatement of an investigation.~~

~~(d)(1) *Complaints.* A complaint is a communication by a person outside the Office alleging or presenting facts of possible misconduct by a practitioner or other individual (~~see § 11.19(a)(2)~~). A complaint shall be in writing and shall contain a brief statement of the facts upon which the complaint is based. The complaint need not be a sworn statement.~~

~~(2) *Information.* Information is one or more written communications from any source alleging or containing facts that, if true, may warrant discipline for misconduct by a practitioner or other individual (~~see § 11.19(a)(2)~~). The information need not be a sworn statement.~~

Revised Proposed Section

(b) Any person possessing information or evidence concerning possible grounds for discipline of a practitioner may report the information or evidence to the OED Director. The OED Director may request that the report be presented in the form of an affidavit or declaration.

(c) Information or evidence coming from any source which presents or alleges facts suggesting possible grounds for discipline of a practitioner will be deemed a grievance.

Originally Proposed Rule

~~(e) Preliminary screening of complaints and information. Under the supervision of the OED Director, a staff attorney shall examine all complaints and information. The staff attorney, after such preliminary inquiry as appears appropriate, shall determine whether the complaint or information is to be docketed. A complaint or information shall be docketed if it:~~

~~(1) Is not unfounded on its face;~~

~~(2) Contains allegations or information which, if true, would constitute a violation of the practitioner's oath or an imperative Rule of Professional Conduct currently in effect before the Office that would merit discipline; and~~

~~(3) Is within the jurisdiction of the Office.~~

~~(f) Decision not to docket and notice to complainant. If OED Director determines that a matter is not to be docketed, the OED Director shall so notify the complainant and the practitioner or other individual (see § 11.19(a)(2)), giving a brief statement of the reasons therefor. The OED Director's decision is final and not subject to review.~~

~~(g) Docketing of complaint or information; notification to complainant. A docketed complaint or information shall be assigned a docket number with the first two digits showing the fiscal year in which the complaint is docketed. Complainants shall be promptly advised in writing by the OED Director or a staff attorney of the docketing of the complaint.~~

~~(h) Notification. The OED Director or staff attorney shall promptly notify the practitioner or other individual (see~~

Revised Proposed Section

(d) *Preliminary screening of information or evidence.* The OED Director shall examine all information or evidence concerning possible grounds for discipline of a practitioner.

(e) *Notification of investigation.* The OED Director shall notify the practitioner

Originally Proposed Rule

§ 11.19(a)(2)) in writing when a formal investigation into a practitioner's or other individual's conduct has been initiated. This notice shall include a copy of the complaint, information, or other relevant documents upon which the investigation is based, a request for a written response from the practitioner or other individual, and any questions reasonably likely to elicit answers, records, and information helpful in the conduct of the investigation.

~~(i) *Duty to reply; response.*—A practitioner, or other individual (see § 11.19(a)(2)) under investigation has an obligation to reply to the OED Director's written inquiries in the conduct of an investigation. The reply shall set forth the position of the practitioner or other individual under investigation with respect to allegations contained in the complaint, facts contained in the information, and all inquiries by the OED Director. The reply shall be filed with the OED Director within thirty calendar days after the mailing date of the notice in paragraph (h) of this section. A single extension of time shall be granted to reply to an inquiry upon written request of the practitioner or other individual (see § 11.19(a)(2)), and in no case shall the extension of time exceed thirty days.~~

~~(j) *Request for information by OED Director.* (1) In the course of the investigation, the OED Director may request information concerning the practitioner's actions from:~~

- ~~(i) The complainant,~~
- ~~(ii) The practitioner,~~
- ~~(iii) Another individual as defined by § 11.19(a)(2), or~~
- ~~(iv) Any party who may reasonably be expected to have information.~~

Revised Proposed Section

in writing of the initiation of an investigation into whether a practitioner has engaged in conduct constituting possible grounds for discipline.

(f) Request for information and evidence by OED Director. (1) In the course of the investigation, the OED Director may request information and evidence regarding possible grounds for discipline of a practitioner from:

- (i) The grievant,
- (ii) The practitioner, or
- (iii) Any person who may reasonably be expected to provide information and evidence needed in connection with the grievance or investigation.

Originally Proposed Rule

(2) The OED Director, ~~or staff attorney or other representative~~ may also request information from a ~~non-complaining~~ client after obtaining either the consent of the practitioner or, ~~upon a written showing of good cause, the authorization of the Director (see § 11.23(a)).~~ Neither a request for, nor disclosure of, information shall constitute a violation of any of the Rules of Professional Conduct contained in §§ 11.100 *et seq.*

~~(k) Request for financial records by OED Director. In the course of an investigation, the OED Director, alone or through a staff attorney, may examine financial books and records maintained by a practitioner for the practice before the Office, including, without limitation, any and all trust accounts, fiduciary accounts, and operating accounts maintained by the practitioner or his or her law firm. The OED Director, alone or through a staff attorney, may also examine any trust account maintained by a practitioner whenever the OED Director reasonably believes that the trust account may not be in compliance with the Rules of Professional Conduct. In the exercise of this authority, the OED Director or staff attorney may seek the assistance of State bar counsel to obtain such summons and subpoenas as he or she may reasonably deem necessary for the effective conduct of an investigation or an examination of a trust account. In every case in which the OED Director or staff attorney initiates examination of a trust account, or seeks any summons or subpoena in the conduct of an examination of or an investigation concerning said trust account, other than on the basis of a complaint against the~~

Revised Proposed Section

(2) The OED Director may request information and evidence regarding possible grounds for discipline of a practitioner from a non-grieving client either after obtaining the consent of the practitioner or upon a finding by a Contact Member of the Committee on Discipline, appointed in accordance with § 11.23(d), that good cause exists to believe that the possible ground for discipline alleged has occurred with respect to non-grieving clients. Neither a request for, nor disclosure of, such information shall constitute a violation of any of the Rules of Professional Conduct contained in §§ 11.100 *et seq.*

Originally Proposed Rule

practitioner, the OED Director or staff attorney shall file a written statement as part of the record in the case setting forth the reasons supporting the belief that the subject trust account may not be in compliance with the Rules of Professional Conduct. After State bar counsel agrees to seek such summons and subpoenas, a copy of the written statement shall be delivered to the practitioner whose trust account is the subject of the investigation.

~~(1) Failure to reply to OED Director. If a practitioner, or other individual (see § 11.19(a)(2)) fails to reply to the request for information sought under paragraph (j) of this section, fails to provide requested financial records sought under paragraph (k) of this section, or replies evasively in the conduct of an investigation, the OED Director may request the Committee on Discipline to enter an appropriate finding of probable cause of violating § 11.804(d).~~

~~(m) Disposition of investigation. Upon the consideration of an investigation, the OED Director may:~~

~~(1) Close the investigation with neither a warning, nor disciplinary action; or~~

~~(2) Issue a warning to the practitioner or other individual (see § 11.19(a)); or~~

~~(3) Institute formal charges with the prior approval of the Committee on Discipline; or~~

~~(4) Enter into a diversion agreement with the approval of the USPTO Director (see § 11.26).~~

Revised Proposed Section

(g) *Disposition of investigation.* Upon the conclusion of an investigation, the OED Director may:

(1) Close the investigation without issuing a warning or taking disciplinary action;

(2) Issue a warning to the practitioner;

(3) Institute formal charges upon the approval of the Committee on Discipline; or

(4) Enter into a settlement agreement with the practitioner and submit the same for approval of the USPTO Director.

Originally Proposed Rule

(n) *Closing investigation with no warning.* The OED Director shall terminate an investigation and decline to refer a matter to the Committee on Discipline if the OED Director determines that:

(1) The ~~complaint~~ is unfounded; or

(2) The ~~complaint~~ is not within the jurisdiction of the Office; or

(3) As a matter of law, the conduct ~~questioned or alleged~~ does not constitute ~~misconduct~~, even if the conduct may involve a legal dispute; or

~~(4) The available evidence shows that the practitioner, or other individual (see § 11.19(a)(2)) did not engage or did not willfully engage in the misconduct questioned or alleged; or~~

~~(5) There is no credible evidence to support any allegation of misconduct on the part of the practitioner, or other individual (see § 11.19(a)(2)), or~~

~~(6) The available evidence could not reasonably be expected to support any allegation of misconduct under a “clear and convincing” evidentiary standard.~~

Revised Proposed Section

(h) *Closing investigation without issuing a warning or taking disciplinary action.* The OED Director shall terminate an investigation and decline to refer a matter to the Committee on Discipline if the OED Director determines that:

(1) The information or evidence is unfounded;

(2) The information or evidence relates to matters not within the jurisdiction of the Office;

(3) As a matter of law, the conduct about which information or evidence has been obtained does not constitute grounds for discipline, even if the conduct may involve a legal dispute; or

(4) The available evidence is insufficient to conclude that there is probable cause to believe that grounds exist for discipline.

Originally Proposed Rule

§ 11.23 Committee on Discipline.

(a) The USPTO Director shall appoint a Committee on Discipline. The Committee on Discipline shall consist of at least three employees of the Office, ~~plus at least three alternate members who also are employees of the Office.~~ None of the Committee members ~~or alternates~~ shall report directly or indirectly to the OED Director or ~~the General Counsel.~~ Each Committee member and ~~the alternates~~ shall be a member in good standing of the bar of the highest court of a State. The Committee members ~~and alternates~~ shall select a Chairperson from among themselves. ~~The Committee or its panels shall meet at regular intervals with the OED Director.~~ Three Committee members ~~or alternates~~ so selected will constitute a panel of the Committee.

(b) *Powers and duties of the Committee on Discipline.* The Committee shall have the power and duty:

(1) ~~To appoint two or more panels of its members and alternates, each consisting of at least three Committee members or alternates, who shall review information and evidence presented by the OED Director;~~

(2) ~~To meet as a panel at the request of the OED Director and, after reviewing evidence presented by the OED Director, shall by majority vote, to determine whether there is probable cause to bring charges under § 11.32 against a practitioner or other individual (see § 11.19(a)(2)). When probable cause is found regarding a practitioner or other individual (see § 11.19(a)(2)), no Committee member or alternate on the panel, employee under the direction of the OED Director, or employee under the direction of the Deputy General Counsel for Intellectual Property shall participate in rendering a decision on any complaint filed against the practitioner or other individual;~~

Revised Proposed Section

§ 11.23 Committee on Discipline.

(a) The USPTO Director shall appoint a Committee on Discipline. The Committee on Discipline shall consist of at least three employees of the Office. None of the Committee members shall report directly or indirectly to the OED Director or any employee designated by the USPTO Director to decide disciplinary matters. Each Committee member shall be a member in good standing of the bar of the highest court of a State. The Committee members shall select a Chairperson from among themselves. Three Committee members will constitute a panel of the Committee.

(b) *Powers and duties of the Committee on Discipline.* The Committee shall have the power and duty to:

(1) Meet in panels at the request of the OED Director and, after reviewing evidence presented by the OED Director, by majority vote of the panel, determine whether there is probable cause to bring charges under § 11.32 against a practitioner; and

Originally Proposed Rule

(3) ~~To assign a Contact Member to review and approve or suggest modifications of recommendations by the OED Director for dismissals, and warnings; and~~

(4) ~~To~~ prepare and forward its own probable cause findings and recommendations to the OED Director.

(c) No discovery shall be authorized of, and no member of ~~or alternate to~~ the Committee on Discipline shall be required to testify about, deliberations of the Committee on Discipline or of any panel.

Revised Proposed Section

(2) Prepare and forward its own probable cause findings and recommendations to the OED Director.

(c) No discovery shall be authorized of, and no member of the Committee on Discipline shall be required to testify about deliberations of, the Committee on Discipline or of any panel.

(d) The Chairperson shall appoint the members of the panels and a Contact Member of the Committee on Discipline.

Originally Proposed Rule

§ 11.24 Interim suspension and discipline based upon reciprocal discipline.

(a) *Notification.* A practitioner who has been disbarred (including disbarred or excluded on consent) or suspended by a disciplinary court, or who has resigned in lieu of a disciplinary proceeding ~~before or while an investigation is pending~~ shall notify the OED Director in writing of the same ~~within ten days from the date he or she is so suspended, disbarred, excluded or disbarred on consent, or has resigned.~~ Upon learning that a practitioner subject to the disciplinary jurisdiction of the Office has been ~~disbarred, suspended or has resigned in lieu of disciplinary action,~~ the OED Director shall obtain a certified copy of the record of the suspension, ~~disbarment or resignation from the disciplinary court,~~ and file the same with the USPTO Director ~~and the hearing officer if a disciplinary proceeding is pending at the time.~~ Every attorney who has been ~~suspended, or disbarred, or who has resigned~~ shall be disqualified from practicing before the Office in patent, trademark, and other non-patent cases, as a practitioner, ~~during the time of suspension, disbarment, or resignation.~~

(b) *Notice to Show Cause and Interim Suspension.* (1) ~~Following~~ receipt of a certified copy of the record, the USPTO Director ~~shall enter an order suspending the practitioner from practice before the Office and afford the practitioner an opportunity to show cause, within 40 days, why an order for identical disciplinary action should not be entered. Upon response, and any reply by the OED Director authorized by the USPTO Director, or if no response is timely filed, the USPTO Director will enter an appropriate order.~~

Revised Proposed Section

§ 11.24 Reciprocal discipline.

(a) *Notification of OED Director.* Within thirty days of being disbarred or suspended by a disciplinary court, or being disciplinarily disqualified from participating in or appearing before any Federal program or agency, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of the same. A practitioner is deemed to be disbarred if he or she is disbarred, excluded on consent, or has resigned in lieu of a disciplinary proceeding. Upon receiving notification from any source or otherwise learning that a practitioner subject to the disciplinary jurisdiction of the Office has been so disciplined or disciplinarily disqualified, the OED Director shall obtain a certified copy of the record or order regarding the disbarment, suspension, or disciplinary disqualification and file the same with the USPTO Director. The OED Director shall, in addition, without Committee on Discipline authorization, file with the USPTO Director a complaint complying with § 11.34 against the practitioner predicated upon the disbarment, suspension, or disciplinary disqualification. The OED Director shall request the USPTO Director to issue a notice and order as set forth in paragraph (b) of this section.

(b) *Notification served on practitioner.* Upon receipt of a certified copy of the record or order regarding the practitioner being so disciplined or disciplinarily disqualified together with the complaint, the USPTO Director shall forthwith issue a notice directed to the practitioner in accordance with § 11.35 and to the OED Director containing:

Originally Proposed Rule

~~(2) After said notice and opportunity to show cause why identical disciplinary action should not be taken, and if one or more material facts set forth in paragraphs (c)(1) through (c)(4) of this section are in dispute, the USPTO Director may enter any appropriate disciplinary sanction upon any practitioner who is admitted to practice before the Office for failure to comply with the Rules of Professional Responsibility.~~

~~(3) The other provisions of this part providing a procedure for the discipline of a practitioner do not apply to proceedings pursuant to this section~~

~~(e) *Proof of misconduct.* (1) In all proceedings under this section, a final adjudication in a disciplinary court shall establish conclusively the misconduct clearly disclosed on the face of the record upon which the discipline is predicated. A certified copy of the record of suspension, disbarment, or resignation shall be conclusive evidence of the commission of professional misconduct in any reciprocal disciplinary proceeding based thereon.~~

Revised Proposed Section

(1) A copy of the record or order regarding the disbarment, suspension or disciplinary disqualification;

(2) A copy of the complaint; and

(3) An order directing the practitioner to inform the USPTO Director, within forty days of the date of the notice, of:

(i) Any argument that the practitioner was not disbarred, suspended or disciplinarily disqualified; and

(ii) Any claim by the practitioner, predicated upon the grounds set forth in paragraphs (d)(1)(i) through (d)(1)(iii) of this section, that the imposition of the identical discipline would be unwarranted and the reasons for that claim.

(c) Effect of Stay in Other Jurisdiction. In the event the discipline imposed by the disciplinary court or disciplinary disqualification imposed in the Federal program or agency has been stayed, any reciprocal discipline imposed by the USPTO may be deferred until the stay expires.

(d) Hearing and discipline to be imposed. (1) The USPTO Director shall hear the matter on the documentary record unless the USPTO Director determines that an oral hearing is necessary. After expiration of the forty days from the date of the notice pursuant to provisions of paragraph (b) of this section, the USPTO Director shall consider any timely filed response and

Originally Proposed Rule

~~However, nothing this paragraph (c) shall preclude the practitioner from demonstrating at the hearing provided for under paragraph (b) of this section by clear and convincing evidence the existence of one or more of material facts in paragraphs (c)(1)(i) through (c)(1)(iv) of this section as a reason for not imposing the identical discipline. The practitioner shall bear the burden of demonstrating, by clear and convincing evidence that the identical discipline should not be imposed because:~~

~~(i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or~~

~~(ii) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject; or~~

~~(iii) The imposition of the same discipline by the Office would result in grave injustice; or~~

~~(iv) The misconduct established warrants substantially different discipline in the Office.~~

~~(2) If the practitioner does not satisfy the practitioner's burden of showing the existence of one of material facts of paragraphs (c)(1)(i), (c)(1)(ii) or (c)(1)(iii) of this section, then a final determination by a disciplinary court that a practitioner has been guilty of professional misconduct shall conclusively establish the misconduct for the purpose of a reciprocal disciplinary proceeding in the Office.~~

Revised Proposed Section

impose the identical discipline unless the practitioner or OED Director clearly and convincingly demonstrates, or the USPTO Director finds, that it clearly appears upon the face of the record from which the discipline is predicated, that:

(i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject; or

(iii) The imposition of the same discipline by the Office would result in grave injustice.

(2) If the USPTO Director determines that any of the elements of paragraphs (d)(1)(i) through (d)(1)(iii) of this section exist, the USPTO Director shall enter an appropriate order.

Originally Proposed Rule

(d) *Reciprocal discipline-action where practice has ceased.* (1) If the practitioner has promptly notified the OED Director of his or her discipline in another jurisdiction, and otherwise establishes to the satisfaction of the USPTO Director, by affidavit or otherwise, that the practitioner has voluntarily ceased all practice before the Office, and the OED Director confirms the same, the USPTO Director will favorably consider that the effective date of any suspension or disbarment be imposed *nunc pro tunc* to the date respondent voluntarily ceased all practice before the Office. The USPTO Director will not favorably consider retroactive effectiveness of a suspension or disbarment if the practitioner has not also complied with the provisions of § 11.58, as such section would apply if voluntary cessation from all practice before the Office were treated as a suspension ordered by the USPTO Director.

Revised Proposed Section

(e) *Conclusiveness of adjudication in a disciplinary court or Federal agency or program.* In all other respects, a final adjudication in a disciplinary court or Federal agency or program that a practitioner, whether or not admitted in that jurisdiction, has been guilty of misconduct shall establish conclusively the ground for discipline for purposes of a disciplinary proceeding in this Office.

(f) *Reciprocal discipline - action where practice has ceased.* Upon request by the practitioner, reciprocal discipline may be imposed *nunc pro tunc* only if the practitioner promptly notified the OED Director of his or her discipline or disciplinary disqualification in another jurisdiction, and establishes by clear and convincing evidence that the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58. The effective date of any suspension or disbarment imposed *nunc pro tunc* shall be the date the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58.

Originally Proposed Rule

~~(2) Action when reciprocal discipline is not recommended.~~ If the USPTO Director concludes that reciprocal discipline should not be imposed, the USPTO Director shall accept the facts found by the disciplinary court unless he or she makes a finding under paragraphs (e)(1)(i), (e)(1)(ii) or (e)(1)(iii) of this section. In the absence of such a finding, the USPTO Director shall enter an appropriate order.

~~(e) Appropriate Order.~~ The USPTO Director may impose the identical discipline unless the practitioner demonstrates by clear and convincing evidence, or the USPTO Director finds said evidence on the face of the record on which the discipline is predicated, that one or more of the grounds set forth in paragraph (a) of this section exists. If the USPTO Director determines that the identical discipline should not be imposed, the USPTO Director shall enter an appropriate order, including entry of a different sanction on the practitioner, or referral of the matter to a hearing officer for further consideration and recommendation.

~~(f) Reinstatement following discipline.~~ A practitioner may petition for reinstatement under conditions set forth in § 11.60 no sooner than after completion of the suspension, disbarment, or probation, and conditions for reinstatement to the bar of the highest court of the State where the practitioner was suspended or disbarred.

Revised Proposed Section

(g) *Reinstatement following reciprocal discipline proceeding.* A practitioner may petition for reinstatement under conditions set forth in § 11.60 no sooner than completion of the period of reciprocal discipline imposed, and compliance with all provisions of § 11.58.

Originally Proposed Rule

§ 11.25 Interim suspension and discipline based upon conviction of committing a serious crime or other crime coupled with confinement or commitment to imprisonment.

~~(a) *Serious crimes.* If the serious crime for which the practitioner was convicted involves moral turpitude *per se*, the practitioner shall be excluded, or if the conduct underlying the offense involved moral turpitude, the practitioner shall be excluded. A conviction shall be deemed a felony if the judgment was entered as a felony irrespective of any subsequent order suspending sentence or granting probation.~~

~~(b) *Other crime coupled with confinement or commitment to imprisonment.* Every practitioner convicted of a crime in a court of the United States, or of any state, district, territory of the United States, or of a foreign country shall be disqualified from practicing before the Office in patent, trademark or other non-patent law matters as attorney or patent agent during the actual time of confinement or commitment to imprisonment and during release from actual confinement on condition of probation or parole.~~

~~(e) *Notification.* A practitioner who has been convicted of a serious crime in a court of the United States, or of any state, district, territory of the United States, or of a foreign country, except as to misdemeanor traffic offenses or traffic ordinance violations, not including the use of alcohol or drugs, or a practitioner who is convicted of any other crime and is confined or committed to imprisonment shall inform the OED Director within ten days from the date of such conviction. Upon learning that a practitioner has been convicted of~~

Revised Proposed Section

§ 11.25 Interim suspension and discipline based upon conviction of committing a serious crime.

(a) Notification of OED Director.

Upon being convicted of a crime in a court of the United States, any State or a foreign country, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of the same within thirty days from the date of such conviction. Upon being advised or learning that a practitioner subject to the disciplinary jurisdiction of the Office has been convicted of a crime, the OED Director shall make a preliminary determination whether the crime constitutes a serious crime warranting immediate interim suspension. If the crime is a serious crime, the OED Director shall file with the USPTO Director proof of the conviction and request the USPTO Director to issue a notice and order set forth in paragraph (b)(2) of this section. The OED Director shall in addition, without Committee on Discipline authorization, file with the USPTO Director a complaint against the practitioner complying with § 11.34 predicated upon the conviction of a serious crime. If the crime is not a serious crime, the OED Director shall process the matter in the same manner as any other information or evidence of a possible violation of an imperative Rule of Professional Conduct coming to the attention of the OED Director.

Originally Proposed Rule

~~a serious crime or another crime coupled with confinement or commitment to imprisonment, the OED Director shall obtain a certified copy of the conviction or docket entry, and file the same with the USPTO Director.~~

~~(d) Notice to show cause and interim suspension. (1) Following receipt of a certified copy of the court record or docket entry of the conviction, the USPTO Director shall enter an order suspending the practitioner in the interim from practice before the Office until the time for appeal has elapsed, if no appeal has been taken, or until the judgment or conviction has been affirmed on appeal, or has otherwise become final, and until further order of the USPTO Director. The USPTO Director may, *sua sponte*, decline to impose or may set aside, the suspension when it appears to be in the interest of justice to do so, with due regard being given to maintaining the integrity of, and confidence in, the profession of law. Upon a conviction becoming final, or imposition of a sentence or probation, the USPTO Director shall afford the practitioner an opportunity to show cause, within 40 days, why an order disciplining the practitioner should not be entered. Upon or if no response is timely filed, the USPTO Director shall enter an appropriate order.~~

Revised Proposed Section

(b) Immediate interim suspension and referral for disciplinary proceeding. All proceedings under this section shall be handled as expeditiously as possible.

(1) The USPTO Director has authority to place a practitioner on interim suspension. The USPTO Director may refer any portion of the interim suspension proceeding to a hearing officer with appropriate directions.

(2) Notification served on practitioner. Upon receipt of a certified copy of the court record, docket entry or judgment demonstrating that the practitioner has been so convicted together with the complaint, the USPTO Director shall forthwith issue a notice directed to the practitioner in accordance with § 11.35(a), (b) or (c), and to the OED Director, containing:

(i) A copy of the court record, docket entry, or judgment of conviction;

(ii) A copy of the complaint; and

(iii) An order directing the practitioner to inform the USPTO Director, within forty days of the date of the notice, of any predicate challenge establishing that interim suspension may not properly be ordered, such as the crime did not constitute a serious crime or that the practitioner is not the individual found guilty.

(3) Hearing and interim suspension. The matter shall be heard on the documentary record for the order for interim suspension and the practitioner's assertion of any predicate challenge.

Originally Proposed Rule

~~(2) After said opportunity to show cause why disciplinary action should not be taken, and if one or more material facts are in dispute, the USPTO Director may enter an order disciplining any practitioner recognized to practice before the Office for failure to comply with the Rules of Professional Responsibility.~~

~~(3) The other provisions of this Part providing a procedure for the discipline of a practitioner do not apply to proceedings pursuant to this section to discipline a practitioner convicted of a serious crime or a practitioner who is convicted of a crime and is confined or committed to imprisonment.~~

(e) *Proof of guilt.* A certified copy of the court record or docket entry of the conviction shall be conclusive evidence of the guilt of the crime of which the practitioner has been convicted, and of any imposed confinement or commitment to imprisonment. However, nothing this paragraph (e) shall preclude the practitioner from demonstrating in said hearing afforded by the USPTO Director, by clear and convincing evidence, material facts to be considered when determining if a serious crime was committed and whether a disciplinary sanction should be entered.

Revised Proposed Section

(i) The USPTO Director shall place a practitioner on interim suspension immediately upon proof that the practitioner has been convicted of a serious crime, regardless of the pendency of any appeal.

(ii) *Termination.* The USPTO Director has authority to terminate an interim suspension. In the interest of justice, the USPTO Director may terminate an interim suspension at any time upon a showing of extraordinary circumstances, after affording the OED Director an opportunity to respond to a request to terminate interim suspension.

(4) *Referral for disciplinary proceeding.* Upon entering an order of interim suspension, the USPTO Director shall refer the matter to the OED Director for institution of a formal disciplinary proceeding. A disciplinary proceeding so instituted shall be stayed by the hearing officer until all direct appeals from the conviction are concluded. Review of the initial decision of the hearing officer shall be pursuant to § 11.55.

(c) *Proof of conviction and guilt.* (1) *Conviction in the United States.* For purposes of a hearing for interim suspension and a hearing on the formal charges in a complaint filed as a consequence of the conviction, a certified copy of the court record, docket entry, or judgment of conviction in a court of the United States or any State shall be conclusive evidence that the practitioner committed the crime and was convicted. The sole issue before the hearing officer shall be the nature and extent of the discipline to be imposed as a consequence of the conviction.

Originally Proposed Rule

Revised Proposed Section

(2) *Conviction in a foreign country.*
For purposes of a hearing for interim suspension and on the formal charges filed as a result of a finding of guilt, a certified copy of the court record, docket entry, or judgment of conviction in a court of a foreign country shall be conclusive evidence of the conviction and of any imposed confinement or commitment to imprisonment, and *prima facie* evidence of the practitioner's commission of the crime of which the practitioner has been convicted. However, nothing in this paragraph shall preclude the practitioner from demonstrating in any hearing by clear and convincing evidence:

(i) That the procedure in the foreign country was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process and rebut the *prima facie* evidence of guilt; or

(ii) Material facts to be considered when determining if a serious crime was committed and whether a disciplinary sanction should be entered.

Originally Proposed Rule

(g) *Crime determined not to be serious crime.* If the USPTO Director determines under paragraph (d) of this section not only that the crime is not a serious crime, but also that the practitioner has not been confined or committed to imprisonment, an order shall be entered reinstating the practitioner immediately. The proceeding shall continue (without referral of the matter to the Committee on Discipline under § 11.23) on a complaint pursuant to § 11.34 that the OED Director files within the time set by the order, and an answer pursuant to § 11.35 that the practitioner files within the time set by the order. A disciplinary proceeding may continue before the hearing officer, and the hearing officer may hold such hearings and receive such briefs and other documents under §§ 11.35 through 11.53, as the hearing officer deems appropriate. However, the proceeding before the hearing officer shall not be concluded until all direct appeals from conviction of the crime have been completed

(f) If the USPTO Director finds that the offense involves moral turpitude *per se*, or that the conduct underlying the offense involves moral turpitude, the practitioner shall be excluded. If the USPTO Director finds that the practitioner was convicted of a crime and has been incarcerated, regardless of whether the offense involved moral turpitude, the practitioner shall be suspended or excluded and shall not be eligible for reinstatement during the time of confinement or commitment to imprisonment or release from actual confinement on conditions of probation or parole. If the USPTO Director finds that the practitioner has been convicted of a serious crime without being

Revised Proposed Section

(d) *Crime determined not to be serious crime.* If the USPTO Director determines that the crime is not a serious crime, the matter shall be referred to the OED Director for investigation under § 11.22 and processing as is appropriate.

Originally Proposed Rule

incarcerated, the USPTO Director may either continue the suspension or exclude the practitioner from practice before the Office. A copy of the USPTO Director's decision shall be served on the practitioner by certified mail, or any other available means, and upon the OED Director.

(h) *Reinstatement.* - (1) *Upon reversal, vacation or setting aside of conviction.* A practitioner suspended or excluded under this section may file with the USPTO Director, at any time, a certificate demonstrating that the conviction, for which interim suspension was imposed, has been reversed, vacated or set aside by a court having jurisdiction of the criminal matter. Upon the filing of the certificate, the USPTO Director shall promptly enter an order reinstating the practitioner, but the reinstatement shall not terminate any other disciplinary proceeding then pending against the practitioner, the disposition of which shall be determined by the USPTO Director or hearing officer before whom the matter is pending, on the basis of all available evidence.

(2) *Following conviction of a crime coupled with confinement or commitment to imprisonment.* Any practitioner convicted of a crime and confined or committed to imprisonment, and who is disciplined in whole or in part in regard thereto, may petition for reinstatement under conditions set forth in § 11.60 no sooner than five years following discharged after completion of service of his or her sentence, or after completion of service under probation or parole, whichever is later.

Revised Proposed Section

(e) *Reinstatement.* (1) *Upon reversal of a finding of guilt or a conviction.* If a practitioner suspended solely under the provisions of paragraph (b) of this section demonstrates that the underlying finding of guilt or conviction of serious crimes has been reversed or set aside, the order for interim suspension shall be vacated and the practitioner be placed on active status unless the finding of guilt was reversed or the conviction was set aside with respect to less than all serious crimes for which the practitioner was found guilty or convicted. The vacating of the interim suspension will not terminate any other disciplinary proceeding then pending against the practitioner, the disposition of which shall be determined by the hearing officer before whom the matter is pending, on the basis of all available evidence other than the finding of guilt or conviction.

(2) *Following conviction of a serious crime.* Any practitioner convicted of a serious crime and disciplined in whole or in part in regard to that conviction, may petition for reinstatement under conditions set forth in § 11.60 no sooner than five years after being discharged following completion of service of his or her sentence, or after completion of service under probation or parole, whichever is later.

Originally Proposed Rule

(i) ~~Other crimes not coupled with confinement or commitment to imprisonment.~~ Upon being notified by a practitioner or upon receipt of a certified copy of a court record demonstrating that a practitioner has been found convicted of a crime other than a serious crime, and that the practitioner has not been confined or committed to imprisonment, the OED Director shall investigate the matter under § 11.22 and proceed as appropriate under §§ 11.26, 11.27, 11.28, and/or 11.32.

§ 11.26 Diversion.

(a) ~~Availability of diversion.~~ Subject to the limitations in paragraph (b) of this section, the OED Director may offer diversion to a practitioner under investigation for a disciplinary violation.

(b) Limitations on diversion

(c) Procedures for diversion

(d) Content of diversion program

(e) Proceedings after completion or termination of diversion program.

Revised Proposed Section

(f) Notice to clients and others of interim suspension. An interim suspension under this section shall constitute a suspension of the practitioner for the purpose of § 11.58.

§ 11.26 Settlement.

Before or after a complaint under § 11.24 is filed, a settlement conference may occur between the OED Director and the practitioner. Any offers of compromise and any statements made during the course of settlement discussions shall not be admissible in subsequent proceedings. The OED Director may recommend to the USPTO Director any settlement terms deemed appropriate, including steps taken to correct or mitigate the matter forming the basis of the action, or to prevent recurrence of the same or similar conduct. A settlement agreement shall be effective only upon entry of a final decision by the USPTO Director.

Originally Proposed Rule

§ 11.27 Exclusion by consent.

(a) *Required affidavit.* The OED Director may confer with a practitioner concerning possible violations by the practitioner of the Rules of Professional Conduct whether or not a disciplinary proceeding has been instituted. A practitioner who is subject of an investigation or a pending disciplinary proceeding based on allegations of misconduct, and who desires to resign or settle the matter may only do so by consenting to exclusion and delivering to the OED Director an affidavit declaring the consent of the practitioner to exclusion and stating

(1) That the consent is freely and voluntarily rendered, that the practitioner is not being subjected to coercion or duress, and that the practitioner is fully aware of the implication of consenting to exclusion;

(2) That the practitioner is aware that there is currently pending an investigation into, or a proceeding involving, allegations of misconduct, the nature of which shall be specifically set forth in the affidavit;

(3) That the practitioner ~~submits the consent because the practitioner knows that if disciplinary proceedings based on the alleged misconduct were brought, the practitioner could not successfully defend against them; and~~

(4) That it may be conclusively presumed, for the purpose of determining any request for reinstatement under § 11.60, that the alleged facts on which the complaint was based are true and ~~that the practitioner violated one or more Rules of Professional Conduct.~~

Revised Proposed Section

§ 11.27 Exclusion on consent.

(a) *Required affidavit.* The OED Director may confer with a practitioner concerning possible violations by the practitioner of the Rules of Professional Conduct whether or not a disciplinary proceeding has been instituted. A practitioner who is the subject of an investigation or a pending disciplinary proceeding based on allegations of grounds for discipline, and who desires to resign, may only do so by consenting to exclusion and delivering to the OED Director an affidavit declaring the consent of the practitioner to exclusion and stating:

(1) That the practitioner's consent is freely and voluntarily rendered, that the practitioner is not being subjected to coercion or duress, and that the practitioner is fully aware of the implications of consenting to exclusion;

(2) That the practitioner is aware that there is currently pending an investigation into, or a proceeding involving allegations of misconduct, the nature of which shall be specifically set forth in the affidavit to the satisfaction of the OED Director;

(3) That the practitioner acknowledges that, if and when he or she applies for reinstatement under § 11.60, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that:

(i) The facts upon which the investigation or complaint is based are true, and

Originally Proposed Rule

(b) *Action by the USPTO Director.* Upon receipt of the required affidavit, the OED Director shall file the affidavit and any related papers with the USPTO Director for review and approval. Upon such approval, the USPTO Director will enter an order excluding the practitioner on consent.

(c) When an affidavit under paragraph (a) of this section is received after a complaint under § 11.34 has been filed, the OED Director shall notify the hearing officer. The hearing officer shall enter an order transferring the disciplinary proceeding to the USPTO Director, who may enter an order excluding the practitioner on consent.

(d) *Reinstatement.* Any practitioner excluded ~~by~~ consent under this section cannot petition for reinstatement for five years. A practitioner excluded on consent who intends to reapply for admission to practice before the Office must comply with the provisions of § 11.58, and apply for reinstatement in accordance with § 11.60. ~~Willful~~ failure to comply with the provisions of § 11.58 constitutes grounds for denying an application for reinstatement.

Revised Proposed Section

(ii) The practitioner could not have successfully defended himself or herself against the allegations in the investigation or charges in the complaint.

(b) *Action by the USPTO Director.* Upon receipt of the required affidavit, the OED Director shall file the affidavit and any related papers with the USPTO Director for review and approval. Upon such approval, the USPTO Director will enter an order excluding the practitioner on consent and providing other appropriate actions. Upon entry of the order, the excluded practitioner shall comply with the requirements set forth in § 11.58.

(c) When an affidavit under paragraph (a) of this section is received after a complaint under § 11.34 has been filed, the OED Director shall notify the hearing officer. The hearing officer shall enter an order transferring the disciplinary proceeding to the USPTO Director, who may enter an order excluding the practitioner on consent.

(d) *Reinstatement.* Any practitioner excluded on consent under this section may not petition for reinstatement for five years. A practitioner excluded on consent who intends to reapply for admission to practice before the Office must comply with the provisions of § 11.58 and apply for reinstatement in accordance with § 11.60. Failure to comply with the provisions of § 11.58 constitutes grounds for denying an application for reinstatement.

Originally Proposed Rule

§ 11.28 ~~Incompetent and i~~Incapacitated practitioners.

- ~~(a) Scope of disability proceedings.~~
- ~~(b) Appointment of counsel~~
- ~~(c) Proceedings before the hearing officer.~~
- ~~(e) Incapacitation due to disability or addiction.~~
- ~~(f) Further proceedings for matters in paragraphs (d) and (e) of this section.~~
- ~~(g) Self-reported incapacitation due to disability or addiction; no intent to continue representation.~~

~~(h) Holding in abeyance a disciplinary proceeding because of disability or addiction. -~~(1) *Practitioner's motion.* In the course of a disciplinary proceeding under § 11.32, but before ~~an initial decision is mailed,~~ the practitioner ~~therein~~ may file a motion requesting the hearing officer to enter an order holding such proceeding in abeyance based on the contention that the practitioner is suffering from a disability or addiction that makes it impossible for the practitioner to adequately defend the charges in the disciplinary proceeding. The practitioner's motion shall be accompanied by all pertinent medical records and in all cases must include a signed form acknowledging the alleged incapacity by reason of disability or addiction.

Revised Proposed Section

§ 11.28 Incapacitated practitioners in a disciplinary proceeding.

(a) *Holding in abeyance a disciplinary proceeding because of incapacitation due to a current disability or addiction.* (1) *Practitioner's motion.* In the course of a disciplinary proceeding under § 11.32, but before the date set by the hearing officer for a hearing, the practitioner may file a motion requesting the hearing officer to enter an order holding such proceeding in abeyance based on the contention that the practitioner is suffering from a disability or addiction that makes it impossible for the practitioner to adequately defend the charges in the disciplinary proceeding.

(i) *Content of practitioner's motion.* The practitioner's motion shall, in addition to any other requirement of § 11.43, include or have attached thereto:

(A) A brief statement of all material facts;

(B) Affidavits, medical reports, official records, or other documents setting forth or establishing any of the material facts on which the practitioner is relying;

(C) A statement that the practitioner acknowledges the alleged incapacity by reason of disability or addiction;

Originally Proposed Rule

Revised Proposed Section

(D) Written consent that the practitioner be transferred to disability inactive status if the motion is granted; and

(E) A written agreement by the practitioner to not practice before the Office in patent, trademark or other non-patent cases while on disability inactive status.

(ii) *Response.* The OED Director's response to any motion hereunder shall be served and filed within fourteen days after service of the practitioner's motion unless such time is shortened or enlarged by the hearing officer for good cause shown, and shall set forth the following:

(A) All objections, if any, to the actions requested in the motion;

(B) An admission, denial or allegation of lack of knowledge with respect to each of the material facts in the practitioner's motion and accompanying documents; and

(C) Affidavits, medical reports, official records, or other documents setting forth facts on which the OED Director intends to rely for purposes of disputing or denying any material fact set forth in the practitioner's papers.

Originally Proposed Rule

(2) *Disposition of practitioner's motion.* The hearing officer shall decide the motion and any response thereto. If the motion satisfies paragraph (h)(1) of this section, the hearing officer shall:

(i) Enter a temporary order holding the disciplinary proceeding in abeyance (but not any investigation instituted by the OED Director with respect to the practitioner);

(ii) Submit to the USPTO Director a report that includes a petition, prepared by the OED Director, seeking from the USPTO Director an order immediately transferring the practitioner to disability inactive status and otherwise precluding the practitioner from practice before the Office in patent, trademark and other non-patent law until a determination is made of the practitioner's capability to resume practice before the Office in a proceeding instituted by the practitioner under paragraph (h)(2)(i) of this section; and

(iii) If the OED Director raises a genuine issue as to any material fact concerning the practitioner's self-alleged disability or addiction, to enter an order referring such issue(s) to the hearing officer for an evidentiary hearing pursuant to paragraph (e) of this section. The temporary abeyance order shall remain in effect until a determination is made by the hearing officer that the practitioner is not incapacitated and that resumption of the matters held in abeyance would be proper and advisable.

Revised Proposed Section

(2) *Disposition of practitioner's motion.* The hearing officer shall decide the motion and any response thereto. The motion shall be granted upon a showing of good cause to believe the practitioner to be incapacitated as alleged. If the required showing is made, the hearing officer shall enter an order holding the disciplinary proceeding in abeyance. In the case of addiction to drugs or intoxicants, the order may provide that the practitioner will not be returned to active status absent satisfaction of specified conditions. Upon receipt of the order, the OED Director shall place the practitioner on disability inactive status, give notice to the practitioner, cause notice to be published, and give notice to appropriate authorities in the Office that the practitioner has been placed on disability inactive status. The practitioner shall comply with the provisions of § 11.58, and shall not engage in practice before the Office in patent, trademark and other non-patent law until a determination is made of the practitioner's capability to resume practice before the Office in a proceeding under paragraph (c) or paragraph (d) of this section.

Originally Proposed Rule

~~(i) *Determination of practitioner's recovery and removal of disability or addiction.*— (1) *Scope of rule.* This section applies to disability matters involving allegations that a practitioner's prior disability or addiction has been removed, including proceedings for reactivation or for resumption of disciplinary matters being held in abeyance.~~

~~(2) *Reactivation.* Any practitioner transferred to disability inactive status for incapacity by reason of disability or addiction shall be entitled to file a motion for reactivation once a year beginning at any time not less than one year after the initial effective date of suspension, or once during any shorter interval provided by the USPTO Director's order of suspension or any modification thereof. In addition to complying with all applicable rules, such motion shall conform to the requirements of paragraph (f)(3) of this section, and include all alleged facts showing that the practitioner's disability or addiction has been removed and that the practitioner is fit to resume practice before the Office.~~

~~(3) *Contents of motion for reactivation.* A motion for reactivation alleging that a practitioner has recovered from a prior disability or addiction shall be accompanied by all available medical reports or similar documents relating thereto and shall also include allegations specifically addressing the following matters:~~

Revised Proposed Section

(b) *Motion for reactivation.* Any practitioner transferred to disability inactive status in a disciplinary proceeding may file with the hearing officer a motion for reactivation once a year beginning at any time not less than one year after the initial effective date of inactivation, or once during any shorter interval provided by the order issued pursuant to paragraph (a)(2) of this section or any modification thereof. If the motion is granted, the disciplinary proceeding shall resume under such schedule as may be established by the hearing officer.

(c) *Contents of motion for reactivation.*
(1) A motion by the practitioner for reactivation alleging that a practitioner has recovered from a prior disability or addiction shall be accompanied by all available medical reports or similar documents relating thereto. The hearing officer may require the practitioner to present such other information as is necessary.

Originally Proposed Rule

(i) The nature of the prior disability or addiction, including its beginning date and the most recent date (both dates approximate if necessary) on which the practitioner was still afflicted with the prior disability;

(ii) The relationship between the prior disability or addiction and the practitioner's incapacity to continue to practice before the Office during the period of such prior disability or addiction;

(iii) In the case of prior addiction, for an appropriate prior period (including the entire period following any suspension thereof), the dates or period (approximate if necessary) for each and every occasion on or during which the practitioner used any drugs or intoxicants having the potential to impair the practitioner's capacity to practice before the Office, whether or not such capacity was in fact impaired;

(iv) A brief description of the supporting medical evidence (including names of medical or other experts) that the practitioner expects to submit in support of the alleged recovery and rehabilitation;

(v) A written statement disclosing the name of every medical expert (such as psychiatrist, psychologist, or physician) or other expert and hospital by whom or in which the practitioner has been examined or treated during the period since the date of suspension for disability or addiction;

(vi) The practitioner's written consent, to be provided to each medical or other expert or hospital identified in paragraph (i)(3)(v) of this section, to divulge such

Revised Proposed Section

Originally Proposed Rule

information and records as may be required by any medical experts who are appointed by the hearing officer or who examine the practitioner pursuant to his or her consent at the OED Director's request; and

(vii) ~~The practitioner's written consent (without further order from a hearing officer, the USPTO Director, or the OED Director) to submit to an examination of qualified medical experts (at the practitioner's expense) if so requested by the OED Director.~~

(4) *Resumption of disciplinary proceeding held in abeyance.* The OED Director may file a motion requesting the hearing officer to terminate a prior order holding in abeyance any pending proceeding because of the practitioner's disability or addiction. The hearing officer shall decide the matter presented by the OED Director motion hereunder based on the affidavits and other admissible evidence attached to the OED Director's motion ~~or~~ the practitioner's response. If there is any genuine issue as to one or more material facts, the hearing officer will hold an evidentiary hearing in which the following procedures shall apply:

(i) ~~If the prior order of abeyance was based solely on the practitioner's self-alleged contention of disability or addiction,~~ the OED Director's motion under paragraph (e)(1) of this section shall operate as a show cause order placing the burden on the practitioner to establish by a preponderance of the evidence that the prior self-alleged disability or addiction continues to make it impossible for the practitioner to defend himself/herself in the underlying proceeding being held in abeyance; ~~and~~

Revised Proposed Section

(d) *OED Director's motion to resume disciplinary proceeding held in abeyance.*

(1) The OED Director, having good cause to believe a practitioner is no longer incapacitated, may file a motion requesting the hearing officer to terminate a prior order holding in abeyance any pending proceeding because of the practitioner's disability or addiction. The hearing officer shall decide the matter presented by the OED Director's motion hereunder based on the affidavits and other admissible evidence attached to the OED Director's motion and the practitioner's response. The OED Director bears the burden of showing by clear and convincing evidence that the practitioner is able to defend himself or herself. If there is any genuine issue as to one or more material facts, the hearing officer will hold an evidentiary hearing.

(2) The hearing officer, upon receipt of the OED Director's motion under paragraph (d)(1) of this section, may direct the practitioner to file a response. If the hearing officer requires the practitioner to file a response, the practitioner must present clear and convincing evidence that the prior self-alleged disability or addiction continues to make it impossible for the practitioner to defend himself or herself in the underlying proceeding being held in abeyance.

Originally Proposed Rule

(ii) ~~If such prior order of abeyance was based on a finding supported by affirmative evidence of the practitioner's disability or addiction, the burden shall be on the OED Director to establish by a preponderance of the evidence that the prior evidence of disability or addiction was erroneous or that the practitioner's disability or addiction has been removed and full recovery therefrom has been achieved.~~

~~(j) Action by the hearing officer when practitioner is not incapacitated. If, in the course of a proceeding under this section or a disciplinary proceeding, the hearing officer determines that the practitioner is not incapacitated from defending himself/herself, or is not incapacitated from practicing before the Office, the hearing officer shall take such action as is deemed appropriate, including the entry of an order directing the resumption of the disciplinary proceeding against the practitioner.~~

§§ 11.29-11.31 [Reserved]

Revised Proposed Section

(e) *Action by the hearing officer.* If, in deciding a motion under paragraph (b) or (d) of this section, the hearing officer determines that there is good cause to believe the practitioner is not incapacitated from defending himself or herself, or is not incapacitated from practicing before the Office, the hearing officer shall take such action as is deemed appropriate, including the entry of an order directing the reactivation of the practitioner and resumption of the disciplinary proceeding.

§§ 11.29-11.31 [Reserved]

Originally Proposed Rule

§ 11.32 Initiating a disciplinary proceeding; reference to a hearing officer.

If after conducting an investigation under § 11.22(a) the OED Director is of the opinion that ~~a practitioner has violated an imperative USPTO Rule of Professional Conduct, or that an other individual (see § 11.19(a)(2)) has violated any of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804, the OED Director, except for complying with the provisions of §§ 27 or 28 for a practitioner, shall, after complying where necessary with the provisions of 5 U.S.C. 558(c), call a meeting of a panel of the Committee on Discipline. The panel of the Committee on Discipline shall then determine as specified in § 11.23(b) whether disciplinary proceeding shall be instituted under paragraph (b) of this section. If the panel of the Committee on Discipline determines that probable cause exists to believe that a Rule of Professional Conduct has been violated, the OED Director shall institute a disciplinary proceeding by filing a complaint under § 11.34. The complaint shall be filed in the Office of the USPTO Director. A disciplinary proceeding may result in a reprimand, or suspension or exclusion of a practitioner from practice before the Office. Upon the filing of a complaint under § 11.34, the USPTO Director will refer the disciplinary proceeding to a hearing officer.~~

§ 11.33 [Reserved]

Revised Proposed Section

§ 11.32: Initiating a disciplinary proceeding.

If after conducting an investigation under § 11.22(a) the OED Director is of the opinion that grounds exist for discipline under § 11.19(b)(3)-(5), the OED Director, and after complying where necessary with the provisions of 5 U.S.C. 558(c), shall convene a meeting of a panel of the Committee on Discipline. The panel of the Committee on Discipline shall then determine as specified in § 11.23(b) whether a disciplinary proceeding shall be instituted. If the panel of the Committee on Discipline determines that probable cause exists to bring charges under § 11.19(b)(3)-(5), the OED Director shall institute a disciplinary proceeding by filing a complaint under § 11.34.

§ 11.33 [Reserved]

Originally Proposed Rule

§ 11.34 Complaint.

(a) A complaint instituting a disciplinary proceeding shall:

(1) Name the practitioner or ~~other individual (see § 11.19(a)(2))~~ who may then be referred to as the “respondent”;

(2) Give a plain and concise description of the respondent’s alleged ~~violations of the imperative USPTO Rules of Professional Conduct~~;

(3) State the place and time, not less than thirty days from the date the complaint is filed, for filing an answer by the respondent;

(4) State that a decision by default may be entered if an answer is not timely filed by the respondent; and

(5) Be signed by the OED Director.

(b) A complaint will be deemed sufficient if it fairly informs the respondent of any violation of the imperative USPTO Rules of Professional Conduct that form the basis for the disciplinary proceeding so that the respondent is able to adequately prepare a defense. ~~If supported by the facts presented to the Committee on Discipline, the complaint may include alleged violations even if the specific violations were not in the finding of the probable cause decision.~~

Revised Proposed Section

§ 11.34 Complaint.

(a) A complaint instituting a disciplinary proceeding under § 11.25(b)(4) or 11.32 shall:

(1) Name the practitioner who may then be referred to as the “respondent”;

(2) Give a plain and concise description of the respondent’s alleged grounds for discipline;

(3) State the place and time, not less than thirty days from the date the complaint is filed, for filing an answer by the respondent;

(4) State that a decision by default may be entered if an answer is not timely filed by the respondent; and

(5) Be signed by the OED Director.

(b) A complaint will be deemed sufficient if it fairly informs the respondent of any grounds for discipline, and where applicable, the imperative USPTO Rules of Professional Conduct that form the basis for the disciplinary proceeding so that the respondent is able to adequately prepare a defense.

(c) The complaint shall be filed in the manner prescribed by the USPTO Director.

Originally Proposed Rule

§ 11.35 Service of complaint.

(a) A complaint may be served on a respondent in any of the following methods:

(1) By delivering a copy of the complaint personally to the respondent, in which case the individual who gives the complaint to the respondent shall file an affidavit with the OED Director indicating the time and place the complaint was handed to the respondent.

(2) By mailing a copy of the complaint by “Express Mail” or first-class mail to:

(i) A respondent who is a registered practitioner at the address for ~~which separate notice was last received by the OED Director~~, or

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

(3) By any method mutually agreeable to the OED Director and the respondent.

(4) In the case of a respondent who resides outside the United States, by sending a copy of the complaint by any delivery service that provides ability to ~~electronically follow the progress of~~ delivery or attempted delivery, to:

(i) A respondent who is a registered practitioner at the last address ~~for which separate notice was last received by the OED Director~~; or

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

Revised Proposed Section

§ 11.35 Service of complaint.

(a) A complaint may be served on a respondent in any of the following methods:

(1) By delivering a copy of the complaint personally to the respondent, in which case the individual who gives the complaint to the respondent shall file an affidavit with the OED Director indicating the time and place the complaint was handed to the respondent.

(2) By mailing a copy of the complaint by “Express Mail,” first-class mail, or any delivery service that provides ability to confirm delivery or attempted delivery to:

(i) A respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11, or

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

(3) By any method mutually agreeable to the OED Director and the respondent.

(4) In the case of a respondent who resides outside the United States, by sending a copy of the complaint by any delivery service that provides ability to confirm delivery or attempted delivery, to:

(i) A respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11; or

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

Originally Proposed Rule

~~(5) In the case of a respondent being an other individual (see § 11.19(a)(2)) by sending a copy of the complaint by any delivery service providing tracking and delivery or attempted delivery records, including the U.S. Postal Service to:~~

~~(i) The last address for the other individual (see § 11.19(a)(2)) for which notice was last received by the Office in an application; or~~

~~(ii) At the last address for the other individual (see § 11.19(a)(2)) known to OED; or~~

(b) If a copy of the complaint cannot be delivered to the respondent through any one of the procedures in paragraph (a) of this section, the OED Director shall serve the respondent by causing an appropriate notice to be published in the Official Gazette for two consecutive weeks, in which case the time for filing an answer shall be thirty days from the second publication of the notice. Failure to timely file an answer will constitute an admission of the allegations in the complaint in accordance with paragraph (d) of § 11.34, and the hearing officer may enter an initial decision on default.

(c) If the respondent is known to the OED Director to be represented by an attorney under § 11.40(a), a copy of the complaint shall also be served on the attorney in the manner provided for in paragraph (a) or (b) of this section, ~~in addition to the complaint being served on respondent.~~

Revised Proposed Section

(b) If a copy of the complaint cannot be delivered to the respondent through any one of the procedures in paragraph (a) of this section, the OED Director shall serve the respondent by causing an appropriate notice to be published in the Official Gazette for two consecutive weeks, in which case, the time for filing an answer shall be thirty days from the second publication of the notice. Failure to timely file an answer will constitute an admission of the allegations in the complaint in accordance with paragraph (d) of § 11.36, and the hearing officer may enter an initial decision on default.

(c) If the respondent is known to the OED Director to be represented by an attorney under § 11.40(a), a copy of the complaint shall be served on the attorney in lieu of the respondent in the manner provided for in paragraph (a) or (b) of this section.

Originally Proposed Rule

§ 11.36 Answer to complaint.

(a) *Time for answer.* An answer to a complaint shall be filed within the time set in the complaint that shall be not less than thirty days.

(b) *With whom filed.* The answer shall be filed in writing with the hearing officer. The hearing officer may extend the time for filing an answer once for a period of no more than thirty days upon a showing of good cause, provided a motion requesting an extension of time is filed within thirty days after the date the complaint is served on respondent. A copy of the answer shall be served on the OED Director.

(c) *Content.* The respondent shall include in the answer a statement of the facts that constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the complaint. The respondent shall not deny a material allegation in the complaint that the respondent knows to be true or state that respondent is without sufficient information to form a belief as to the truth of an allegation when in fact the respondent possesses that information. The respondent shall also state affirmatively special matters of defense.

Revised Proposed Section

§ 11.36 Answer to complaint.

(a) *Time for answer.* An answer to a complaint shall be filed within the time set in the complaint but in no event shall that time be less than thirty days from the date the complaint is filed.

(b) *With whom filed.* The answer shall be filed in writing with the hearing officer at the address specified in the complaint. The hearing officer may extend the time for filing an answer once for a period of no more than thirty days upon a showing of good cause, provided a motion requesting an extension of time is filed within thirty days after the date the complaint is served on respondent. A copy of the answer, and any exhibits or attachments thereto, shall be served on the OED Director.

(c) *Content.* The respondent shall include in the answer a statement of the facts that constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the complaint. The respondent shall not deny a material allegation in the complaint that the respondent knows to be true or state that respondent is without sufficient information to form a belief as to the truth of an allegation when in fact the respondent possesses that information. The respondent shall also state affirmatively in the answer special matters of defense and any intent to raise a disability as a mitigating factor. If respondent intends to raise a special matter of defense or disability, the answer shall specify its nexus to the misconduct, and the reason it provides a defense or mitigation. A respondent who fails to do so cannot rely on a special matter of defense or disability. The hearing officer may, for good cause, allow the respondent to file the statement late, grant additional hearing preparation time, or make other appropriate orders.

Originally Proposed Rule

(d) *Failure to deny allegations in complaint.* Every allegation in the complaint that is not denied by a respondent in the answer shall be deemed to be admitted and may be considered proven. The hearing officer at any hearing need receive no further evidence in respect of that allegation. Failure to timely file an answer will constitute an admission of the allegations in the complaint, and may result in entry of default judgment.

~~(e) *Reply by the OED Director.* No reply to an answer is required by the OED Director unless ordered by the hearing officer, and any affirmative defense in the answer shall be deemed to be denied. The OED Director may, however, file a reply if he or she chooses.~~

(f) *Notice of intent to raise disability in mitigation.* - (1) *Respondent's notice.* If respondent intends to raise an alleged disability in mitigation pursuant to § 11.28, respondent shall file by delivery to the OED Director and hearing officer notice of said allegation no later than the date that the answer to the complaint is due. The notice shall specify the disability, its nexus to the misconduct, and the reason it provides mitigation. Failure to deliver the notice of intent to raise an alleged disability in mitigation shall operate as a waiver of the right to raise an alleged disability in mitigation, subject to the provisions of paragraph (f)(3) of this section. ~~of intent to raise an alleged disability in mitigation may operate as a waiver of the right to raise an alleged disability in mitigation.~~

Revised Proposed Section

(d) *Failure to deny allegations in complaint.* Every allegation in the complaint that is not denied by a respondent in the answer shall be deemed to be admitted and may be considered proven. The hearing officer at any hearing need receive no further evidence with respect to that allegation.

(e) *Default judgment.* Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment.

Originally Proposed Rule

Revised Proposed Section

~~(2) *Conditions of practice.*— If a respondent files a notice pursuant to paragraph (f)(1) of this section, the hearing officer, after providing the OED Director with an opportunity to reply to said notice, shall forthwith issue an order providing for appropriate conditions under which the respondent shall practice before the Office. Said order may include the appointment of monitor(s) depending upon the particular circumstances of the case.~~

~~(i) *Monitors.*— Should the hearing officer appoint monitors, the monitor(s) shall report to the hearing officer and OED Director on a periodic basis to be determined by the hearing officer. The monitoring shall remain in effect during the pendency of the disciplinary proceeding or until order of the USPTO Director. The monitor(s) shall respond to the OED Director's inquiries concerning such monitoring and may be called by the OED Director or respondent to testify regarding sanctions.~~

~~(ii) *Waiver.*— The filing of the notice pursuant to paragraph (f)(1) of this section is deemed to constitute a waiver by respondent of any claim of the right to withhold from the OED Director information coming to the attention of a monitor.~~

~~(3) *Late filed notice.*— (i) *Notice filed 30 or more days before scheduled hearing.*— If respondent wishes to raise an alleged disability in mitigation after the date prescribed in paragraph (f)(1) of this section, but no later than 30 days before the date scheduled by the hearing officer for the hearing, respondent shall file a motion with the hearing officer, on notice to the OED Director, setting forth good cause why respondent should be allowed to raise a plea in mitigation out~~

Originally Proposed Rule

Revised Proposed Section

~~of time. The OED Director may consent in writing to the grant of the motion. The hearing officer may grant or deny the motion, with or without an evidentiary hearing. Leave to assert the plea in mitigation shall be freely granted when justice so requires, and in the absence of a showing of prejudice by the OED Director. An order by the hearing officer granting such a motion may include the provisions in paragraphs (f)(2), (f)(2)(i), and (f)(2)(ii) of this section, or, in circumstances where the hearing officer determines it to be just and appropriate, may be conditioned upon respondent's consent to an interim suspension pending disposition of the disciplinary proceeding.~~

~~(ii) Notice filed within 30 days after scheduled hearing. If a respondent wishes to raise an alleged disability in mitigation after the date prescribed in paragraph (f)(3)(i) of this section, respondent shall file a motion with the hearing officer, containing the showing prescribed in paragraph (f)(3)(i) of this section; however, such a motion will be granted only on the condition that respondent consent to an interim suspension pending disposition of the disciplinary proceeding.~~

~~(4) Violations of conditions of practice. If a monitor reports that respondent has violated a term or condition under which respondent is continuing to practice, the OED Director may request the hearing officer to schedule the matter for a hearing on the issue of whether the monitoring shall be lifted, and respondent suspended, pending final disposition of the disciplinary proceeding.~~

Originally Proposed Rule

~~(5) *Motion to vacate or modify suspension.* A respondent suspended pursuant to paragraphs (f)(3)(i) or (f)(4) of this section may file a motion at any time with the hearing officer to vacate or modify the suspension. If respondent's motion presents a *prima facie* case that respondent is significantly rehabilitated from the alleged disability, the matter will be considered by the hearing officer at an evidentiary hearing on the issue of rehabilitation. Reinstatement pursuant to this paragraph shall be subject to monitoring and waiver provisions of paragraphs (f)(2), (f)(2)(i), and (f)(2)(ii) of this section. Respondent shall have the burden of proving, by clear and convincing evidence, significant rehabilitation from the alleged disability.~~

~~§ 11.37 Supplemental complaint.~~

~~False statements in an answer, motion, notice, or other filed communication may be made the basis of a supplemental complaint.~~

~~§ 11.38 Contested case.~~

~~Upon the filing of an answer by the respondent, a disciplinary proceeding shall be regarded as a contested case within the meaning of 35 U.S.C. 24. Evidence obtained by a subpoena issued under 35 U.S.C. 24 shall not be admitted into the record or considered unless leave to proceed under 35 U.S.C. 24 was previously authorized by the hearing officer.~~

Revised Proposed Section

§ 11.37 [Reserved]

§ 11.38 Contested case.

Upon the filing of an answer by the respondent, a disciplinary proceeding shall be regarded as a contested case within the meaning of 35 U.S.C. 24. Evidence obtained by a subpoena issued under 35 U.S.C. 24 shall not be admitted into the record or considered unless leave to proceed under 35 U.S.C. 24 was previously authorized by the hearing officer.

Originally Proposed Rule

§ 11.39 Hearing officer; appointment; responsibilities; review of interlocutory orders; stays.

(a) *Appointment.* A hearing officer, appointed by the USPTO Director under 5 U.S.C. 3105 or 35 U.S.C. 32, shall conduct disability or disciplinary proceedings as provided by this Part.

(b) *Independence of the Hearing Officer.* (1) A hearing officer appointed in accordance with paragraph (a) of this section shall not be subject to first level ~~and~~ second level supervision, ~~review or direction~~ of the USPTO Director.

(2) A hearing officer appointed in accordance with paragraph (a)(1) of this section shall not be subject to supervision, ~~review or direction~~ of the person(s) investigating or prosecuting the case.

(3) A hearing officer appointed in accordance with paragraph (a)(1) of this section shall be impartial, shall not be an individual who has participated in any manner in the decision to initiate the proceedings, and shall not have been employed under the immediate supervision of the practitioner.

(4) A hearing officer appointed in accordance with paragraph (a) of this section shall be admitted to practice law and have suitable experience and training to conduct the hearing, reach a determination and render an initial decision in an equitable manner.

(c) *Responsibilities.* The hearing officer shall have authority, consistent with specific provisions of these regulations, to:

- (1) Administer oaths and affirmations;
- (2) Make rulings upon motions and other requests;
- (3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

Revised Proposed Section

§ 11.39 Hearing officer; appointment; responsibilities; review of interlocutory orders; stays.

(a) *Appointment.* A hearing officer, appointed by the USPTO Director under 5 U.S.C. 3105 or 35 U.S.C. 32, shall conduct disciplinary proceedings as provided by this Part.

(b) *Independence of the Hearing Officer.* (1) A hearing officer appointed in accordance with paragraph (a) of this section shall not be subject to first level or second level supervision by the USPTO Director or his or her designee.

(2) A hearing officer appointed in accordance with paragraph (a) of this section shall not be subject to supervision of the person(s) investigating or prosecuting the case.

(3) A hearing officer appointed in accordance with paragraph (a) of this section shall be impartial, shall not be an individual who has participated in any manner in the decision to initiate the proceedings, and shall not have been employed under the immediate supervision of the practitioner.

(4) A hearing officer appointed in accordance with paragraph (a) of this section shall be admitted to practice law and have suitable experience and training to conduct the hearing, reach a determination, and render an initial decision in an equitable manner.

(c) *Responsibilities.* The hearing officer shall have authority, consistent with specific provisions of these regulations, to:

- (1) Administer oaths and affirmations;
- (2) Make rulings upon motions and other requests;
- (3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

Originally Proposed Rule

(4) Authorize the taking of a deposition of a witness in lieu of personal appearance of the witness before the hearing officer;

(5) Determine the time and place of any hearing and regulate its course and conduct;

(6) Hold or provide for the holding of conferences to settle or simplify the issues;

(7) Receive and consider oral or written arguments on facts or law;

(8) Adopt procedures and modify procedures from time-to-time as occasion requires for the orderly disposition of proceedings;

(9) Make initial decisions under §§ 11.24, 11.25, and 11.154;

~~(10) Engage in no *ex parte* discussions with any party on the merits of the complaint, beginning with appointment and until the final agency decision is issued; and~~

(11) Perform acts and take measures as necessary to promote the efficient, timely and impartial conduct of any disciplinary proceeding.

(d) *Time for making initial decision.* The hearing officer shall set times and exercise control over a disciplinary proceeding such that an initial decision under § 11.54 is normally issued within nine months of the date a complaint is filed. The hearing officer may, however, issue an initial decision more than nine months after a complaint is filed if in his or her opinion there exist unusual circumstances which preclude issuance of an initial decision within nine months of the filing of the complaint.

Revised Proposed Section

(4) Authorize the taking of a deposition of a witness in lieu of personal appearance of the witness before the hearing officer;

(5) Determine the time and place of any hearing and regulate its course and conduct;

(6) Hold or provide for the holding of conferences to settle or simplify the issues;

(7) Receive and consider oral or written arguments on facts or law;

(8) Adopt procedures and modify procedures for the orderly disposition of proceedings;

(9) Make initial decisions under §§ 11.25 and 11.54; and

(10) Perform acts and take measures as necessary to promote the efficient, timely, and impartial conduct of any disciplinary proceeding.

(d) *Time for making initial decision.* The hearing officer shall set times and exercise control over a disciplinary proceeding such that an initial decision under § 11.54 is normally issued within nine months of the date a complaint is filed. The hearing officer may, however, issue an initial decision more than nine months after a complaint is filed if there exist circumstances in his or her opinion that preclude issuance of an initial decision within nine months of the filing of the complaint.

Originally Proposed Rule

(e) *Review of interlocutory orders.*
The USPTO Director will not review an interlocutory order of a hearing officer except:

(1) When the hearing officer shall be of the opinion:

(i) That the interlocutory order involves a controlling question of procedure or law as to which there is a substantial ground for a difference of opinion, and

(ii) That an immediate decision by the USPTO Director may materially advance the ultimate termination of the disciplinary proceeding, or

(2) In an extraordinary situation where the USPTO Director deems that justice requires review.

(f) *Stays pending review of interlocutory order.* If the OED Director or a respondent seeks review of an interlocutory order of a hearing officer under paragraph (b)(2) of this section, any time period set for taking action by the hearing officer shall not be stayed unless ordered by the USPTO Director or the hearing officer.

Revised Proposed Section

(e) *Review of interlocutory orders.*
The USPTO Director will not review an interlocutory order of a hearing officer except:

(1) When the hearing officer shall be of the opinion:

(i) That the interlocutory order involves a controlling question of procedure or law as to which there is a substantial ground for a difference of opinion, and

(ii) That an immediate decision by the USPTO Director may materially advance the ultimate termination of the disciplinary proceeding, or

(2) In an extraordinary situation where the USPTO Director deems that justice requires review.

(f) *Stays pending review of interlocutory order.* If the OED Director or a respondent seeks review of an interlocutory order of a hearing officer under paragraph (b)(2) of this section, any time period set for taking action by the hearing officer shall not be stayed unless ordered by the USPTO Director or the hearing officer.

(g) The hearing officer shall engage in no *ex parte* discussions with any party on the merits of the complaint, beginning with appointment and ending when the final agency decision is issued.

Originally Proposed Rule

§ 11.40 Representative for OED Director or respondent.

(a) A respondent may represent himself or herself, or be represented by an attorney before the Office in connection with an investigation or disciplinary proceeding. The attorney shall file a written declaration that he or she is an attorney within the meaning of § 11.1(e) and shall state:

(1) The address to which the attorney wants correspondence related to the investigation or disciplinary proceeding sent, and

(2) A telephone number where the attorney may be reached during normal business hours.

(b) ~~The USPTO Director shall designate at least two disciplinary attorneys under the aegis of the General Counsel to act as representatives for the OED Director. The disciplinary attorneys prosecuting disciplinary proceedings shall not consult with the General Counsel and the Deputy General Counsel for General Law regarding the proceeding. The General Counsel and the Deputy General Counsel for General Law shall remain insulated from the investigation and prosecution of all disciplinary proceedings in order that they shall be available as counsel to the USPTO Director in deciding disciplinary proceedings. However, the Deputy General Counsel for Intellectual Property Law and Solicitor shall not remain insulated from the investigation and prosecution of disciplinary proceedings, and thus shall not be available to counsel the USPTO Director in deciding such proceedings.~~

Revised Proposed Section

§ 11.40 Representative for OED Director or respondent.

(a) A respondent may represent himself or herself, or be represented by an attorney before the Office in connection with an investigation or disciplinary proceeding. The attorney shall file a written declaration that he or she is an attorney within the meaning of § 11.1 and shall state:

(1) The address to which the attorney wants correspondence related to the investigation or disciplinary proceeding sent, and

(2) A telephone number where the attorney may be reached during normal business hours.

(b) The Deputy General Counsel for Intellectual Property and Solicitor, and attorneys in the Office of the Solicitor shall represent the OED Director. The attorneys representing the OED Director in a disciplinary proceedings shall not consult with the USPTO Director, the General Counsel, or the Deputy General Counsel for General Law regarding the proceeding. The General Counsel and the Deputy General Counsel for General Law shall remain screened from the investigation and prosecution of all disciplinary proceedings in order that they shall be available as counsel to the USPTO Director in deciding disciplinary proceedings unless access is appropriate to perform their duties. After a final decision is entered in a disciplinary proceeding, the OED Director and attorneys representing the OED Director shall be available to counsel the USPTO Director, the General Counsel, and the Deputy General Counsel for General Law in any further proceedings.

Originally Proposed Rule

~~(c) Upon serving a complaint pursuant to § 11.34, the members of the Committee on Discipline, and the disciplinary attorneys prosecuting a disciplinary proceeding shall not participate in rendering a decision on the charges contained in the complaint.~~

§ 11.41 Filing of papers.

(a) The provisions of § 1.8 of this subchapter do not apply to disciplinary proceedings. All papers filed after the complaint and prior to entry of an initial decision by the hearing officer shall be filed with the hearing officer at an address or place designated by the hearing officer.

(b) All papers filed after entry of an initial decision by the hearing officer shall be filed with the USPTO Director. A copy of the paper shall be served on the OED Director. The hearing officer or the OED Director may provide for filing papers and other matters by hand, by “Express Mail,” or by ~~facsimile followed in a specified time by the original hard copy.~~

Revised Proposed Section

§ 11.41 Filing of papers.

(a) The provisions of § 1.8 and 2.197 of this subchapter do not apply to disciplinary proceedings. All papers filed after the complaint and prior to entry of an initial decision by the hearing officer shall be filed with the hearing officer at an address or place designated by the hearing officer.

(b) All papers filed after entry of an initial decision by the hearing officer shall be filed with the USPTO Director. A copy of the paper shall be served on the OED Director. The hearing officer or the OED Director may provide for filing papers and other matters by hand, by “Express Mail,” or by other means.

Originally Proposed Rule

§ 11.42 Service of papers.

(a) All papers other than a complaint shall be served on a respondent who is represented by an attorney by:

(1) Delivering a copy of the paper to the office of the attorney; or

(2) Mailing a copy of the paper by first-class mail, "Express Mail," or other delivery service to the attorney at the address provided by the attorney under § 11.40(a)(1); or

(3) Any other method mutually agreeable to the attorney and a representative for the OED Director.

(b) All papers other than a complaint shall be served on a respondent who is not represented by an attorney by:

(1) Delivering a copy of the paper to the respondent; or

(2) Mailing a copy of the paper by first-class mail, "Express Mail," or other delivery service to the respondent at the address to which a complaint may be served or such other address as may be designated in writing by the respondent; or

(3) Any other method mutually agreeable to the respondent and a representative of the OED Director.

(c) A respondent shall serve on the representative for the OED Director one copy of each paper filed with the hearing officer or the OED Director. A paper may be served on the representative for the OED Director by:

Revised Proposed Section

§ 11.42 Service of papers.

(a) All papers other than a complaint shall be served on a respondent who is represented by an attorney by:

(1) Delivering a copy of the paper to the office of the attorney; or

(2) Mailing a copy of the paper by first-class mail, "Express Mail," or other delivery service to the attorney at the address provided by the attorney under § 11.40(a)(1); or

(3) Any other method mutually agreeable to the attorney and a representative for the OED Director.

(b) All papers other than a complaint shall be served on a respondent who is not represented by an attorney by:

(1) Delivering a copy of the paper to the respondent; or

(2) Mailing a copy of the paper by first-class mail, "Express Mail," or other delivery service to the respondent at the address to which a complaint may be served or such other address as may be designated in writing by the respondent; or

(3) Any other method mutually agreeable to the respondent and a representative of the OED Director.

(c) A respondent shall serve on the representative for the OED Director one copy of each paper filed with the hearing officer or the OED Director. A paper may be served on the representative for the OED Director by:

Originally Proposed Rule

(1) Delivering a copy of the paper to the representative; or

(2) Mailing a copy of the paper by first-class mail, “Express Mail,” or other delivery service to an address designated in writing by the representative; or

(3) Any other method mutually agreeable to the respondent and the representative.

(d) Each paper filed in a disciplinary proceeding shall contain therein a certificate of service indicating:

(1) The date of which service was made; and

(2) The method by which service was made.

(e) The hearing officer or the USPTO Director may require that a paper be served by hand or by “Express Mail.”

(f) Service by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service.

Revised Proposed Section

(1) Delivering a copy of the paper to the representative; or

(2) Mailing a copy of the paper by first-class mail, “Express Mail,” or other delivery service to an address designated in writing by the representative; or

(3) Any other method mutually agreeable to the respondent and the representative.

(d) Each paper filed in a disciplinary proceeding shall contain therein a certificate of service indicating:

(1) The date of which service was made; and

(2) The method by which service was made.

(e) The hearing officer or the USPTO Director may require that a paper be served by hand or by “Express Mail.”

(f) Service by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service.

Originally Proposed Rule

§ 11.43 Motions.

Motions may be filed with the hearing officer. The hearing officer will determine ~~on a case-by-case basis~~ the time period for response to a motion and whether replies to responses will be authorized. No motion shall be filed with the hearing officer unless such motion is supported by a written statement by the moving party that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement. If the parties prior to a decision on the motion resolve issues raised by a motion ~~by~~ the hearing officer, the parties shall promptly notify the hearing officer.

§ 11.44 Hearings.

(a) The hearing officer shall preside at hearings in disciplinary proceedings. The hearing officer shall set time and place for a hearing. In setting a time and place, the hearing officer shall normally give preference to a Federal facility in the district where the Office's principal office is located or Washington, D.C., ~~for all respondents recognized or registered to practice before the Office, and otherwise shall~~ give due regard to the convenience and necessity of the parties or their representatives. In cases involving an incarcerated respondent, any necessary oral hearing may be held at the location of incarceration. Oral hearings will be stenographically recorded and transcribed, and the testimony of witnesses will be received under oath or affirmation. The hearing officer shall conduct hearings in accordance with 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. A copy of the transcript ~~shall be provided to the OED Director and the respondent at the expense of the Office.~~

Revised Proposed Section

§ 11.43 Motions.

Motions may be filed with the hearing officer. The hearing officer will determine whether replies to responses will be authorized and the time period for filing such a response. No motion shall be filed with the hearing officer unless such motion is supported by a written statement by the moving party that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement. If the parties prior to a decision on the motion resolve issues raised by a motion presented to the hearing officer, the parties shall promptly notify the hearing officer.

§ 11.44 Hearings.

(a) The hearing officer shall preside at hearings in disciplinary proceedings. If the hearing officer determines that an oral hearing is appropriate, the hearing officer shall set the time and place for a hearing. In setting a time and place, the hearing officer shall normally give preference to a Federal facility in the district where the Office's principal office is located or Washington, D.C., giving due regard to the convenience and needs of the parties, witnesses, or their representatives. In cases involving an incarcerated respondent, any necessary oral hearing may be held at the location of incarceration. Oral hearings will be stenographically recorded and transcribed, and the testimony of witnesses will be received under oath or affirmation. The hearing officer shall conduct the hearing as if the proceeding were subject to 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. The OED Director and respondent shall make their own arrangements to obtain a copy of the transcript

Originally Proposed Rule

(b) If the respondent to a disciplinary proceeding fails to appear at the hearing after a notice of hearing has been given by the hearing officer, the hearing officer may deem the respondent to have waived the right to a hearing and may proceed with the hearing in the absence of the respondent.

(c) A hearing under this section will not be open to the public except that the hearing officer may grant a request by a respondent to open his or her hearing to the public and make the record of the disciplinary proceeding available for public inspection, *provided*, Agreement is reached in advance to exclude from public disclosure information which is privileged or confidential under applicable laws or regulations. If a disciplinary proceeding results in disciplinary ~~action~~ against a practitioner, and subject to § 11.59(e), the record of the entire disciplinary proceeding, including any settlement agreement, will be available for public inspection.

Revised Proposed Section

(b) If the respondent to a disciplinary proceeding fails to appear at the hearing after a notice of hearing has been given by the hearing officer, the hearing officer may deem the respondent to have waived the right to a hearing and may proceed with the hearing in the absence of the respondent.

(c) A hearing under this section will not be open to the public except that the hearing officer may grant a request by a respondent to open his or her hearing to the public and make the record of the disciplinary proceeding available for public inspection, *provided*, Agreement is reached in advance to exclude from public disclosure information which is privileged or confidential under applicable laws or regulations. If a disciplinary proceeding results in disciplinary sanction against a practitioner, subject to § 11.59(b) the record of the entire disciplinary proceeding, including any settlement agreement, will be available for public inspection.

Originally Proposed Rule

§ 11.45 Proof; variance; amendment of pleadings.

~~Whenever in the course of a hearing evidence is presented upon which another charge or charges against the respondent might be made, it shall not be necessary for the Committee on Discipline to find probable cause based on an additional charge or charges on the respondent, but with the consent of the hearing officer, the OED Director shall provide respondent with reasonable notice and an opportunity to be heard, and the hearing officer shall proceed to consider such additional charge or charges as if the same had been made and served at the time of the service of the original charge or charges. Any party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegations in the complaint, answer, or reply, as amended, and the hearing officer shall make findings on any issue presented by the complaint, answer, or reply as amended.~~

§§ 11.46-11.48 [Reserved]

§ 11.49 Burden of proof.

In a disciplinary proceeding, the OED Director shall have the burden of proving his or her case by clear and convincing evidence and a respondent shall have the burden of proving any affirmative defense by clear and convincing evidence

Revised Proposed Section

§ 11.45 Amendment of pleadings.

The OED Director may, without Committee on Discipline authorization, but with the authorization of the hearing officer, amend the complaint to include additional charges based upon conduct committed before or after the complaint was filed. If amendment of the complaint is authorized, the hearing officer shall authorize amendment of the answer. Any party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegations in the complaint or answer as amended, and the hearing officer shall make findings on any issue presented by the complaint or answer as amended.

§§ 11.46-11.48 [Reserved]

§ 11.49 Burden of proof.

In a disciplinary proceeding, the OED Director shall have the burden of proving his or her case by clear and convincing evidence and a respondent shall have the burden of proving any affirmative defense by clear and convincing evidence.

Originally Proposed Rule

§ 11.50 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings in disciplinary proceedings. However, the hearing officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to Section 11.51 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Office, including all papers ~~collected during the disciplinary investigation~~, are admissible without extrinsic evidence of authenticity. These documents, records, and papers may be evidenced by a copy certified as correct by an employee of the Office.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the hearing officer may authorize the withdrawal of the exhibit subject to any conditions the hearing officer deems appropriate.

(e) *Objections.* Objections to evidence will be in short form, stating the grounds of objection. Objections and rulings on objections will be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

Revised Proposed Section

§ 11.50 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings in disciplinary proceedings. However, the hearing officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to § 11.51 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Office, including, but not limited to, all papers in the file of a disciplinary investigation, are admissible without extrinsic evidence of authenticity. These documents, records, and papers may be evidenced by a copy certified as correct by an employee of the Office.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the hearing officer may authorize the withdrawal of the exhibit subject to any conditions the hearing officer deems appropriate.

(e) *Objections.* Objections to evidence will be in short form, stating the grounds of objection. Objections and rulings on objections will be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

Originally Proposed Rule

§ 11.51 Depositions.

(a) Depositions for use at the hearing in lieu of personal appearance of a witness before the hearing officer may be taken by respondent or the OED Director upon a showing of good cause and with the approval of, and under such conditions as may be deemed appropriate by, the hearing officer. Depositions may be taken upon oral or written questions, upon not less than ten days' written notice to the other party, before any officer authorized to administer an oath or affirmation in the place where the deposition is to be taken. The parties may waive the requirement of ten days' notice and depositions may then be taken of a witness at a time and place mutually agreed to by the parties. When a deposition is taken upon written questions, copies of the written questions will be served upon the other party with the notice and copies of any written cross-questions will be served by hand or "Express Mail" not less than five days before the date of the taking of the deposition unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken shall file a copy of a transcript of the deposition signed by a court reporter with the hearing officer and shall serve one copy upon the opposing party. Expenses for a court reporter and preparing, serving, and filing depositions shall be borne by the party at whose instance the deposition is taken. Depositions may not be taken to obtain discovery.

(b) When the OED Director and the respondent agree in writing, a deposition of any witness who will appear voluntarily may be taken under such terms and conditions as may be

Revised Proposed Section

§ 11.51 Depositions.

(a) Depositions for use at the hearing in lieu of personal appearance of a witness before the hearing officer may be taken by respondent or the OED Director upon a showing of good cause and with the approval of, and under such conditions as may be deemed appropriate by, the hearing officer. Depositions may be taken upon oral or written questions, upon not less than ten days written notice to the other party, before any officer authorized to administer an oath or affirmation in the place where the deposition is to be taken. The parties may waive the requirement of ten days² notice and depositions may then be taken of a witness at a time and place mutually agreed to by the parties. When a deposition is taken upon written questions, copies of the written questions will be served upon the other party with the notice and copies of any written cross-questions will be served by hand or "Express Mail" not less than five days before the date of the taking of the deposition unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken shall file a copy of a transcript of the deposition signed by a court reporter with the hearing officer and shall serve one copy upon the opposing party. Expenses for a court reporter and preparing, serving, and filing depositions shall be borne by the party at whose instance the deposition is taken. Depositions may not be taken to obtain discovery, except as provided for in paragraph (b) of this section.

(b) When the OED Director and the respondent agree in writing, a deposition of any witness who will appear voluntarily may be taken under such terms and conditions as may be

Originally Proposed Rule

mutually agreeable to the OED Director and the respondent. The deposition shall not be filed with the hearing officer and may not be admitted in evidence before the hearing officer unless he or she orders the deposition admitted in evidence. The admissibility of the deposition shall lie within the discretion of the hearing officer who may reject the deposition on any reasonable basis including the fact that demeanor is involved and that the witness should have been called to appear personally before the hearing officer.

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mutually agreeable to the OED Director and the respondent. The deposition shall not be filed with the hearing officer and may not be admitted in evidence before the hearing officer unless he or she orders the deposition admitted in evidence. The admissibility of the deposition shall lie within the discretion of the hearing officer who may reject the deposition on any reasonable basis including the fact that demeanor is involved and that the witness should have been called to appear personally before the hearing officer.

Originally Proposed Rule

§ 11.52 Discovery.

Discovery shall not be authorized except as follows.

(a) After an answer is filed under § 11.36 and when a party establishes ~~in a clear and convincing manner~~ that discovery is ~~necessary~~ and relevant, the hearing officer, under such conditions as he or she deems appropriate, may order an opposing party to:

(1) Answer a reasonable number of written requests for admission or interrogatories;

(2) Produce for inspection and copying a reasonable number of documents; and

(3) Produce for inspection a reasonable number of things other than documents.

(b) Discovery shall not be authorized under paragraph (a) of this section of any matter which:

(1) Will be used by another party solely for impeachment ~~or cross-examination~~;

(2) Is not available to the party under 35 U.S.C. 122;

(3) Relates to any disciplinary proceeding commenced in the Office prior to March 8, 1985;

(4) Relates to experts except as the hearing officer may require under paragraph (e) of this section.

(5) Is privileged; or

(6) Relates to mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of a party.

(c) The hearing officer may deny discovery requested under paragraph (a) of this section if the discovery sought:

(1) Will unduly delay the disciplinary proceeding;

(2) Will place an undue burden on the party required to produce the discovery sought; or

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§ 11.52 Discovery.

Discovery shall not be authorized except as follows:

(a) After an answer is filed under § 11.36 and when a party establishes that discovery is reasonable and relevant, the hearing officer, under such conditions as he or she deems appropriate, may order an opposing party to:

(1) Answer a reasonable number of written requests for admission or interrogatories;

(2) Produce for inspection and copying a reasonable number of documents; and

(3) Produce for inspection a reasonable number of things other than documents.

(b) Discovery shall not be authorized under paragraph (a) of this section of any matter which:

(1) Will be used by another party solely for impeachment;

(2) Is not available to the party under 35 U.S.C. 122;

(3) Relates to any other disciplinary proceeding;

(4) Relates to experts except as the hearing officer may require under paragraph (e) of this section.

(5) Is privileged; or

(6) Relates to mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of a party.

(c) The hearing officer may deny discovery requested under paragraph (a) of this section if the discovery sought:

(1) Will unduly delay the disciplinary proceeding;

(2) Will place an undue burden on the party required to produce the discovery sought; or

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- (3) Is available:
- (i) Generally to the public;
 - (ii) Equally to the parties; or
 - (iii) To the party seeking the discovery through another source.
- (d) Prior to authorizing discovery under paragraph (a) of this section, the hearing officer shall require the party seeking discovery to file a motion (§ 11.43) and explain in detail for each request made how the discovery sought is ~~necessary~~ and relevant to an issue actually raised in the complaint or the answer
- (e) The hearing officer may require parties to file and serve, prior to any hearing, a pre-hearing statement that contains:
- (1) A list (together with a copy) of all proposed exhibits to be used in connection with a party's case-in-chief;
 - (2) A list of proposed witnesses;
 - (3) As to each proposed expert witness:
 - (i) An identification of the field in which the individual will be qualified as an expert;
 - (ii) A statement as to the subject matter on which the expert is expected to testify; and
 - (iii) A statement of the substance of the facts and opinions to which the expert is expected to testify;
 - (4) ~~The identity of Government employees who have investigated the case; and~~
 - (5) Copies of memoranda reflecting respondent's own statements to administrative representatives.
- (f) After a witness testifies for a party, if the opposing party requests, the party may be required to produce, prior to cross-examination, any written statement made by the witness.

Revised Proposed Section

- (3) Consists of information that is available:
- (i) Generally to the public;
 - (ii) Equally to the parties; or
 - (iii) To the party seeking the discovery through another source.
- (d) Prior to authorizing discovery under paragraph (a) of this section, the hearing officer shall require the party seeking discovery to file a motion (§ 11.43) and explain in detail, for each request made, how the discovery sought is reasonable and relevant to an issue actually raised in the complaint or the answer.
- (e) The hearing officer may require parties to file and serve, prior to any hearing, a pre-hearing statement that contains:
- (1) A list (together with a copy) of all proposed exhibits to be used in connection with a party's case-in-chief;
 - (2) A list of proposed witnesses;
 - (3) As to each proposed expert witness:
 - (i) An identification of the field in which the individual will be qualified as an expert;
 - (ii) A statement as to the subject matter on which the expert is expected to testify; and
 - (iii) A statement of the substance of the facts and opinions to which the expert is expected to testify;
 - (4) Copies of memoranda reflecting respondent's own statements to administrative representatives.
- (f) After a witness testifies for a party, if the opposing party requests, the party may be required to produce, prior to cross-examination, any documents relied upon by the witness in giving his or her testimony.

Originally Proposed Rule

§ 11.53 Proposed findings and conclusions; post-hearing memorandum.

Except in cases in which the respondent has failed to answer the complaint or amended complaint, the hearing officer, prior to making an initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and a post-hearing memorandum in support of the proposed findings and conclusions.

§ 11.54 Initial decision of hearing officer.

(a) The hearing officer shall make an initial decision in the case. The decision will include:

(1) A statement of findings and conclusions, as well as the reasons or basis ~~therefor~~ with appropriate references to the record, upon all the material issues of fact, law, or discretion presented on the record, and

(2) An order of suspension or exclusion from practice, ~~an order~~ of reprimand, or ~~an order~~ dismissing the complaint. The hearing officer shall transmit a copy of the decision to the OED Director and to the respondent. After issuing the decision, the hearing officer shall transmit the entire record to the OED Director. In the absence of an appeal to the USPTO Director, the decision of the hearing officer will, without further proceedings, become the decision of the USPTO Director thirty (30) days from the date of the decision of the hearing officer.

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§ 11.53 Proposed findings and conclusions; post-hearing memorandum.

Except in cases in which the respondent has failed to answer the complaint or amended complaint, the hearing officer, prior to making an initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and a post-hearing memorandum in support of the proposed findings and conclusions.

§ 11.54 Initial decision of hearing officer.

(a) The hearing officer shall make an initial decision in the case. The decision will include:

(1) A statement of findings of fact and conclusions of law, as well as the reasons or bases for those findings and conclusions with appropriate references to the record, upon all the material issues of fact, law, or discretion presented on the record, and

(2) An order of default judgment, of suspension or exclusion from practice, of reprimand, or dismissing the complaint. The hearing officer shall transmit a copy of the decision to the OED Director and to the respondent. After issuing the decision, the hearing officer shall transmit the entire record to the OED Director. In the absence of an appeal to the USPTO Director, the decision of the hearing officer, including a default judgment, will, without further proceedings, become the decision of the USPTO Director thirty days from the date of the decision of the hearing officer.

Originally Proposed Rule

(b) The initial decision of the hearing officer shall explain the reason for any reprimand, suspension or exclusion. In determining any sanction, the following should normally be considered:

- (1) The public interest;
- (2) The seriousness of the violation of ~~the imperative USPTO Rules of Professional Conduct;~~
- (3) The deterrent effects deemed necessary;
- (4) The integrity of the legal and patent professions; and
- (5) Any extenuating circumstances.

§ 11.55 Appeal to the USPTO Director.

(a) Within thirty (30) days ~~from~~ the date of the initial decision of the hearing officer under §§ 11.28, or 11.54, either party may appeal to the USPTO Director. The appeal shall include the appellant's brief. ~~If an appeal is taken, the time for filing a cross-appeal shall expire 14 days after the date of service of the appeal pursuant to § 11.42, or 30 days after the date of the initial decision of the hearing officer, whichever is later. The cross-appeal shall include the cross appellant's brief. An appeal or cross-appeal by the respondent will be filed with the USPTO Director and served on the OED Director, and will include exceptions to the decisions of the hearing officer and supporting reasons for those exceptions. All briefs must include a separate section containing a concise statement of the disputed facts and disputed points of law. Any issue not raised in the concise statement of disputed facts and disputed points of law will be deemed to have been abandoned by the appellant and may be disregarded by the USPTO Director in reviewing the~~

Revised Proposed Section

(b) The initial decision of the hearing officer shall explain the reason for any default judgment, reprimand, suspension, or exclusion. In determining any sanction, the following should normally be considered:

- (1) The public interest;
- (2) The seriousness of the grounds for discipline;
- (3) The deterrent effects deemed necessary;
- (4) The integrity of the legal and patent professions; and
- (5) Any extenuating circumstances.

§ 11.55 Appeal to the USPTO Director.

(a) Within thirty days after the date of the initial decision of the hearing officer under §§ 11.25, or 11.54, either party may appeal to the USPTO Director. The appeal shall include the appellant's brief. If more than one appeal is filed, the party who files the appeal first is the appellant for purpose of this rule. If appeals are filed on the same day, the respondent is the appellant. If an appeal is filed, then the OED Director shall transmit the entire record to the USPTO Director. Any cross-appeal shall be filed within fourteen days after the date of service of the appeal pursuant to § 11.42, or thirty days after the date of the initial decision of the hearing officer, whichever is later. The cross-appeal shall include the cross-appellant's brief. Any appellee or cross-appellee brief must be filed within thirty days from the date of service pursuant to § 11.42 of an appeal or cross-appeal. Any reply brief must be filed within fourteen days after the date of service of any appellee or cross-appellee brief.

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initial determination, ~~unless the USPTO Director chooses to review the issue on his or her own initiative under § 11.56.~~ If the OED Director, ~~through his or her representative,~~ files the appeal or cross-appeal, the OED Director shall serve on the other party a copy of the appeal or cross-appeal. The other party to an appeal or cross-appeal may file a reply brief. ~~A copy of respondent's reply brief shall be served on the OED Director. The time for filing any reply brief expires thirty (30) days after the date of service pursuant to § 11.42 of an appeal, cross-appeal or copy thereof. If the OED Director files the reply brief,~~ the OED Director shall serve on the other party a copy of the reply brief. Upon the filing of an appeal, cross-appeal, if any, and reply briefs, if any, the OED Director shall transmit the entire record to the USPTO Director. Unless the USPTO Director permits, no further briefs or motions shall be filed.

(b) An appellant's or cross-appellant's brief shall be no more than 30 pages in length on 8½ by 11-inch paper, and shall comply with Rule 28(A)(2), (3), and (5) through (10), and Rule 32(a)(4), (5), (6), and (7) of the Federal Rules of Appellate Procedure. ~~An appellee's or cross-appellee's~~ reply brief shall be no more than 15 pages in length on 8½ by 11-inch paper, and shall comply with Rule 28(A)(2), (3), (8), and (9), and Rule 32(a)(4), (5), (6), ~~and (7)~~ of the Federal Rules of Appellate Procedure. If a cross-appeal is filed, the party who files an appeal first is the appellant for purposes of this rule. If appeals are filed on the same day, the respondent is the appellant. The USPTO Director may refuse entry of a nonconforming brief.

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(b) An appeal or cross-appeal must include exceptions to the decisions of the hearing officer and supporting reasons for those exceptions. Any exception not raised will be deemed to have been waived and will be disregarded by the USPTO Director in reviewing the initial decision.

(c) All briefs shall:

(1) Be filed with the USPTO Director at the address set forth in § 1.1(a)(3)(ii) of this subchapter and served on the opposing party;

(2) Include separate sections containing a concise statement of the disputed facts and disputed points of law; and

(3) Be typed on 8 1/2 by 11-inch paper, and shall comply with Rule 32(a)(4)-(6) of the Federal Rules of Appellate Procedure.

(d) An appellant's, cross-appellant's, appellee's, and cross-appellee's brief shall be no more than thirty pages in length, and comply with Rule 28(a)(2), (3), and (5) through (10) of the Federal Rules of Appellate Procedure. Any reply brief shall be no more than fifteen pages in length, and shall comply with Rule 28(a)(2), (3), (8), and (9) of the Federal Rules of Appellate Procedure.

(e) The USPTO Director may refuse entry of a nonconforming brief.

Originally Proposed Rule

(c) The USPTO Director will decide the appeal on the record made before the hearing officer.

(d) The USPTO Director may order reopening of a disciplinary proceeding in accordance with the principles that govern the granting of new trials. Any 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.

(e) In the absence of an appeal by the OED Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both acceptance by the respondent of the initial decision and waiver by the respondent of the right to further administrative or judicial review.

Revised Proposed Section

(f) The USPTO Director will decide the appeal on the record made before the hearing officer.

(g) Unless the USPTO Director permits, no further briefs or motions shall be filed.

(h) The USPTO Director may order reopening of a disciplinary proceeding in accordance with the principles that govern the granting of new trials. Any 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.

(i) In the absence of an appeal by the OED Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both acceptance by the respondent of the initial decision and waiver by the respondent of the right to further administrative or judicial review.

Originally Proposed Rule

§ 11.56 Decision of the USPTO Director.

(a) The USPTO Director shall decide an appeal from an initial decision of the hearing officer. The USPTO Director 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. In making a final decision, the USPTO Director shall review the record or the portions of the record designated by the parties. The USPTO Director shall transmit a copy of the final decision to the OED Director and to the respondent.

(b) A final decision of the USPTO Director may dismiss a disciplinary proceeding, reprimand a practitioner, or may suspend or exclude the practitioner from practice before the Office.

Revised Proposed Section

§ 11.56 Decision of the USPTO Director.

(a) The USPTO Director shall decide an appeal from an initial decision of the hearing officer. The USPTO Director 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. In making a final decision, the USPTO Director shall review the record or the portions of the record designated by the parties. The USPTO Director shall transmit a copy of the final decision to the OED Director and to the respondent.

(b) A final decision of the USPTO Director may dismiss a disciplinary proceeding, reverse or modify the initial decision, reprimand a practitioner, or may suspend or exclude the practitioner from practice before the Office. A final decision suspending or excluding a practitioner shall require compliance with the provisions of § 11.58. The final decision may also condition the reinstatement of the practitioner upon a showing that the practitioner has taken steps to correct or mitigate the matter forming the basis of the action, or to prevent recurrence of the same or similar conduct.

Originally Proposed Rule

(c) The respondent or the OED Director may make a single request for reconsideration or modification of the decision by the USPTO Director if filed within 20 days from the date of entry of the decision. No request for reconsideration or modification shall be granted unless the request is based on newly discovered evidence, and the requestor must demonstrate that the newly discovered evidence could not have been discovered by due diligence. Such a request shall have the effect of staying the effective date of the order of discipline in the final decision. The decision by the USPTO Director is effective on its date of entry.

Revised Proposed Section

(c) The respondent or the OED Director may make a single request for reconsideration or modification of the decision by the USPTO Director if filed within twenty days from the date of entry of the decision. No request for reconsideration or modification shall be granted unless the request is based on newly-discovered evidence or 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. Such a request shall have the effect of staying the effective date of the order of discipline in the final decision. The decision by the USPTO Director is effective on its date of entry.

Originally Proposed Rule

§ 11.57 Review of final decision of the USPTO Director.

(a) Review of the final decision by USPTO Director in a disciplinary case may be had, subject to § 11.55(d), by a petition filed in the United States District Court for the District of Columbia in accordance with the local rule of said court. 35 U.S.C. 32. The Respondent must serve the USPTO Director with the petition. ~~Service upon the USPTO Director is effected (1) by delivering a copy of the petition by registered or certified mail or as otherwise authorized by law on the USPTO to: Director of the USPTO, Office of the General Counsel, United States Patent and Trademark Office, P.O. Box 15667, Arlington, VA 22215; or (2) by hand delivering a copy of the petition during business hours to: Director of the USPTO, Office of the General Counsel, Crystal Park Two, Suite 905, 2121 Crystal Dr., Arlington, VA 22215.~~

~~(b) The USPTO Director may stay an order of discipline in the final decision pending review of the final decision of the USPTO Director.~~

Revised Proposed Section

§ 11.57 Review of final decision of the USPTO Director.

(a) Review of the final decision by USPTO Director in a disciplinary case may be had, subject to § 11.55(d), by a petition filed in the United States District Court for the District of Columbia in accordance with the local rule of said court. 35 U.S.C. 32. The Respondent must serve the USPTO Director with the petition. Respondent must serve the petition in accordance with Rule 4 of the Federal Rules of Civil Procedure and § 104.2 of this Title.

(b) Except as provided for in § 11.56(c), an order for discipline in a final decision will not be stayed except on proof of exceptional circumstances.

Originally Proposed Rule

§ 11.58 Suspended or excluded practitioner.

(a) A practitioner who is suspended or excluded under §§ 11.24, 11.25, 11.27, 11.55, or 11.56, or has resigned from practice before the Office under §§ 11.11(d) shall not engage in practice of patent, trademark and other non-patent law before the Office. No practitioner suspended or excluded under §§ 11.24, 11.25, 11.27, 11.55, or 11.56 will be automatically reinstated at the end of his or her period of suspension. A practitioner who is suspended or excluded, or who resigned under § 11.11(d) must comply with the provisions of this section and §§ 11.12 and 11.60 to be reinstated. Willful failure to comply with the provisions of this section constitutes grounds for denying a suspended or excluded practitioner's application for reinstatement or readmission. Willful failure to comply with the provisions of this section constitutes cause not only for denial of reinstatement, but also cause for further action, including seeking further exclusion, suspension, and for revocation of any pending probation.

(b) Unless otherwise ordered by the USPTO Director, any practitioner who is suspended or excluded from practice before the Office under §§ 11.24, 11.25, 11.55, or 11.56, who has been excluded on consent under provisions of § 11.27, or whose notice of resignation has been accepted under § 11.11(d) shall:

(1) Within 20 days after the date of entry of the order of suspension, exclusion, or exclusion by consent, or of acceptance of resignation:

Revised Proposed Section

§ 11.58 Duties of disciplined or resigned practitioner.

(a) An excluded, suspended, or resigned practitioner shall not engage in any practice of patent, trademark and other non-patent law before the Office. An excluded, suspended or resigned practitioner will not be automatically reinstated at the end of his or her period of exclusion or suspension. An excluded, suspended or resigned practitioner must comply with the provisions of this section and §§ 11.12 and 11.60 to be reinstated. Failure to comply with the provisions of this section may constitute both grounds for denying reinstatement or readmission; and cause for further action, including seeking further exclusion, suspension, and for revocation of any pending probation.

(b) Unless otherwise ordered by the USPTO Director, any excluded, suspended or resigned practitioner shall:

(1) Within thirty days after the date of entry of the order of exclusion, suspension, or acceptance of resignation:

Originally Proposed Rule

(i) File a notice of withdrawal as of the effective date of the suspension, exclusion, or ~~exclusion by consent~~, or acceptance of resignation in each pending patent and trademark application, each pending reexamination and interference proceeding, and every other matter pending in the Office, together with a copy of the notices sent pursuant to paragraphs (b) and (c) of this section;

(ii) Provide notice to all bars of which the practitioner is a member and all clients ~~on retainer~~ having immediate or prospective business before the Office in patent, trademark and other non-patent matters, ~~all clients the practitioner represents before the Office, and all clients having immediate or prospective business before the Office in patent, trademark and other non-patent matters~~ of the order of suspension, exclusion, ~~exclusion by consent~~, or resignation and of the practitioner's consequent inability to act as a practitioner after the effective date of the order; and that, if not represented by another practitioner, the client should act promptly to substitute another practitioner, or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

(iii) Provide notice to the practitioner(s) for all opposing parties (or, to the parties in the absence of a practitioner representing the parties) in matters pending before the Office ~~that the practitioner has been excluded or suspended~~ and, as a consequence, is disqualified from acting as a practitioner regarding matters before the Office after the effective date of the suspension, exclusion, exclusion by consent, or resignation, and state in the notice the

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(i) File a notice of withdrawal as of the effective date of the exclusion, suspension, or acceptance of resignation in each pending patent and trademark application, each pending reexamination and interference proceeding, and every other matter pending in the Office, together with a copy of the notices sent pursuant to paragraphs (b) and (c) of this section;

(ii) Provide notice to all bars of which the practitioner is a member and all clients the practitioner represents having immediate or prospective business before the Office in patent, trademark and other non-patent matters of the order of exclusion, suspension or resignation and of the practitioner's consequent inability to act as a practitioner after the effective date of the order; and that, if not represented by another practitioner, the client should act promptly to substitute another practitioner, or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

(iii) Provide notice to the practitioner(s) for all opposing parties (or, to the parties in the absence of a practitioner representing the parties) in matters pending before the Office of the practitioner's exclusion, suspension or resignation and, that as a consequence, the practitioner is disqualified from acting as a practitioner regarding matters before the Office after the effective date of the suspension, exclusion or resignation, and state in the notice the

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mailing address of each client of the excluded or suspended attorney who is a party in the pending ~~reexamination or interference~~ matter;

(iv) Deliver to all clients having immediate or prospective business before the Office in patent, trademark or other non-patent matters any papers or other property to which the clients are entitled, or shall notify the clients and any co-practitioner of a suitable time when and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;

(v) ~~Refund any part of any fees paid in advance that has not been earned,~~

~~(vi) Close every client account, trust account, deposit account in the Office, or other fiduciary account to the extent the accounts have fees for practice before the Office, and properly disburse or otherwise transfer all client and fiduciary funds for practice before the Office in his or her possession, custody or control; and~~

~~(vii) Take any necessary and appropriate steps to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice patent, trademark, or other non-patent law before the Office.~~

~~(viii) Serve all notices required by paragraphs (b)(1)(ii) and (b)(1)(iii) of this section by certified mail, return receipt requested, unless mailed abroad. If mailed abroad, all notices shall be served with a receipt to be signed and returned to the practitioner.~~

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mailing address of each client of the excluded, suspended or resigned practitioner who is a party in the pending matter;

(iv) Deliver to all clients having immediate or prospective business before the Office in patent, trademark or other non-patent matters any papers or other property to which the clients are entitled, or shall notify the clients and any co-practitioner of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;

(v) Relinquish to the client, or other practitioner designated by the client, all funds for practice before the Office, including any legal fees paid in advance that have not been earned and any advanced costs not expended;

(vi) Take any necessary and appropriate steps to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice patent, trademark, or other non-patent law before the Office; and

(viii) All notices required by paragraphs (b)(1)(ii) through (b)(1)(iii) of this section shall be served by certified mail, return receipt requested, unless mailed abroad. If mailed abroad, all notices shall be served with a receipt to be signed and returned to the practitioner.

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(2) Within 30-days after entry of the order of suspension, exclusion, or ~~exclusion by consent~~, or of acceptance of resignation the practitioner shall file with the OED Director an affidavit certifying that the practitioner has fully complied with the provisions of the order, and with the imperative USPTO Rules of Professional Conduct. Appended to the affidavit of compliance shall be:

(i) A copy of each form of notice, the names and addressees of the clients, practitioners, courts, and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise ordered by the USPTO Director;

(ii) A schedule showing the location, title and account number of every bank account designated as a client, trust, deposit account in the Office, or other fiduciary account, and of every account in which the practitioner holds or held as of the entry date of the order any client, trust, or fiduciary funds regarding practice before the Office;

(iii) A schedule describing the practitioner's disposition of all client and fiduciary funds in the practitioner's possession, custody or control as of the date of the order or thereafter;

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(2) Within forty-five days after entry of the order of suspension, exclusion, or of acceptance of resignation, the practitioner shall file with the OED Director an affidavit of compliance certifying that the practitioner has fully complied with the provisions of the order, this section, and with the imperative USPTO Rules of Professional Conduct for withdrawal from representation. Appended to the affidavit of compliance shall be:

(i) A copy of each form of notice, the names and addressees of the clients, practitioners, courts, and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise ordered by the USPTO Director;

(ii) A schedule showing the location, title and account number of every bank account designated as a client or trust account, deposit account in the Office, or other fiduciary account, and of every account in which the practitioner holds or held as of the entry date of the order any client, trust, or fiduciary funds for practice before the Office;

(iii) A schedule describing the practitioner's disposition of all client and fiduciary funds for practice before the Office in the practitioner's possession, custody or control as of the date of the order or thereafter;

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(iv) Such proof of the proper distribution of said funds and the closing of such accounts as has been requested by the OED Director, including copies of checks and other instruments;

(v) A list of all other State, Federal, and administrative jurisdictions to which the practitioner is admitted to practice; and

(vi) An affidavit describing the precise nature of the steps taken to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice patent, trademark, or other non-patent law before the Office. The affidavit shall also state the residence or other address of the practitioner to which communications may thereafter be directed, and list all State and Federal jurisdictions, and administrative agencies to which the practitioner is admitted to practice. The OED Director may require such additional proof as is deemed necessary. In addition, for ~~five years following the effective date of the suspension, exclusion, exclusion by consent,~~ a suspended, excluded, or excluded-on-consent practitioner shall continue to file a statement in accordance with § 11.11(a), regarding any change of residence or other address to which communications may thereafter be directed, so that the suspended, excluded, ~~or excluded-on-consent~~ practitioner may be located if a ~~complaint~~ is made about any conduct occurring before or after the exclusion or suspension. The practitioner shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements.

Revised Proposed Section

(iv) Such proof of the proper distribution of said funds and the closing of such accounts as has been requested by the OED Director, including copies of checks and other instruments;

(v) A list of all other State, Federal, and administrative jurisdictions to which the practitioner is admitted to practice; and

(vi) An affidavit describing the precise nature of the steps taken to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice patent, trademark, or other non-patent law before the Office. The affidavit shall also state the residence or other address of the practitioner to which communications may thereafter be directed, and list all State and Federal jurisdictions, and administrative agencies to which the practitioner is admitted to practice. The OED Director may require such additional proof as is deemed necessary. In addition, for the period of discipline, an excluded or suspended practitioner shall continue to file a statement in accordance with § 11.11(a), regarding any change of residence or other address to which communications may thereafter be directed, so that the excluded or suspended practitioner may be located if a grievance is received regarding any conduct occurring before or after the exclusion or suspension. The practitioner shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements.

Originally Proposed Rule

(3) Not hold himself or herself out as authorized to practice law before the Office.

(4) Not advertise the practitioner's availability or ability to perform or render legal services for any person having immediate or prospective business before the Office.

(5) Not render legal advice or services to any person having immediate or prospective business before the Office as to that business.

(6) Promptly take steps to change any sign identifying a practitioner's or the practitioner's firm's office and practitioner's or the practitioner's firm's stationery to delete therefrom any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice law before the Office.

(c) *Effective date of discipline.* Except as provided in §§ 11.24, 11.25, and 11.28, an order of suspension, exclusion, or exclusion by consent shall be effective immediately upon entry unless the USPTO Director directs otherwise. The practitioner who is suspended, excluded, excluded-on-consent, or who has resigned, after entry of the order, shall not accept any new retainer regarding immediate, pending, or prospective business before the Office, or engage as a practitioner for another in any new case or legal matter regarding practice before the Office. The order shall grant limited recognition for a period of 30 days. During the 30-day period of limited recognition, the practitioner shall conclude other work on behalf of a client on any matters that were pending before the Office on the date of entry. If such work cannot be concluded, the practitioner shall so advise the client so that the client may make other arrangements.

Revised Proposed Section

(3) Not hold himself or herself out as authorized to practice law before the Office.

(4) Not advertise the practitioner's availability or ability to perform or render legal services for any person having immediate or prospective business before the Office.

(5) Not render legal advice or services to any person having immediate or prospective business before the Office as to that business.

(6) Promptly take steps to change any sign identifying a practitioner's or the practitioner's firm's office and practitioner's or the practitioner's firm's stationery to delete therefrom any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice law before the Office.

(c) An excluded, suspended or resigned practitioner, after entry of the order of exclusion or suspension, or acceptance of resignation, shall not accept any new retainer regarding immediate or prospective business before the Office, or engage as a practitioner for another in any new case or legal matter regarding practice before the Office. The excluded, suspended or resigned practitioner shall be granted limited recognition for a period of thirty days. During the thirty-day period of limited recognition, the excluded, suspended or resigned practitioner shall conclude work on behalf of a client on any matters that were pending before the Office on the date of entry of the order of exclusion or suspension, or acceptance of resignation. If such work cannot be concluded, the excluded, suspended or resigned practitioner shall so advise the client so that the client may make other arrangements.

Originally Proposed Rule

(d) *Required records.* A practitioner who is suspended, excluded ~~or excluded-on-consent~~, or who has resigned, ~~other than a practitioner suspended under §§ 11.28 (e) or (d)~~, shall keep and maintain records of the various steps taken under this section, so that in any subsequent proceeding proof of compliance with this section and with the exclusion or suspension order will be available. The OED Director will require the practitioner to submit such proof as a condition precedent to the granting of any petition for reinstatement. ~~In the case of a practitioner suspended under §§ 11.28 (e) or (d), the USPTO Director shall enter such order as may be required to compile and maintain all necessary records.~~

(e) A practitioner who is suspended, excluded, ~~or excluded-on-consent~~, or who has resigned, and who aids another practitioner in any way in the other practitioner's practice of law before the Office, may, under the direct supervision of the other practitioner, act as a paralegal for the other practitioner or perform other services for the other practitioner which are normally performed by laypersons, provided:

(1) The practitioner who is suspended, excluded ~~or excluded-on-consent~~, or who has resigned is:

(i) A salaried employee of:

(A) The other practitioner;

(B) The other practitioner's law firm;

or

Revised Proposed Section

(d) *Required records.* An excluded, suspended or resigned practitioner shall keep and maintain records of the various steps taken under this section, so that in any subsequent proceeding proof of compliance with this section and with the exclusion or suspension order will be available. The OED Director will require the practitioner to submit such proof as a condition precedent to the granting of any petition for reinstatement.

(e) An excluded, suspended or resigned practitioner who aids another practitioner in any way in the other practitioner's practice of law before the Office, may, under the direct supervision of the other practitioner, act as a paralegal for the other practitioner or perform other services for the other practitioner which are normally performed by laypersons, provided:

(1) The excluded, suspended or resigned practitioner is:

(i) A salaried employee of:

(A) The other practitioner;

(B) The other practitioner's law firm;

or

Originally Proposed Rule

(C) A client-employer who employs the other practitioner as a salaried employee;

(2) The other practitioner assumes full professional responsibility to any client and the Office for any work performed by the practitioner who is suspended, excluded, or ~~excluded on consent~~, or who has resigned for the other practitioner;

(3) The practitioner who is suspended, excluded, or ~~excluded on consent~~, or who has resigned does not:

(i) Communicate directly in writing, orally, or otherwise with a client of the other practitioner in regard to any immediate, prospective, or pending business before the Office;

(ii) Render any legal advice or any legal services to a client of the other practitioner in regard to any immediate, prospective, or ~~pending~~ business before the Office; or

(iii) Meet in person or in the presence of the other practitioner in regard to any immediate, prospective, or pending business before the Office, with:

(A) Any Office official in connection with the prosecution of any patent, trademark, or other case;

(B) Any client of the other practitioner, the other practitioner's law firm, or the client-employer of the other practitioner; or

Revised Proposed Section

(C) A client-employer who employs the other practitioner as a salaried employee;

(2) The other practitioner assumes full professional responsibility to any client and the Office for any work performed by the excluded, suspended or resigned practitioner for the other practitioner;

(3) The excluded, suspended or resigned practitioner does not:

(i) Communicate directly in writing, orally, or otherwise with a client of the other practitioner in regard to any immediate or prospective business before the Office;

(ii) Render any legal advice or any legal services to a client of the other practitioner in regard to any immediate or prospective business before the Office; or

(iii) Meet in person or in the presence of the other practitioner in regard to any immediate or prospective business before the Office, with:

(A) Any Office employee in connection with the prosecution of any patent, trademark, or other case;

(B) Any client of the other practitioner, the other practitioner's law firm, or the client-employer of the other practitioner; or

Originally Proposed Rule

(C) Any witness or potential witness ~~which~~ the other practitioner, the other practitioner's law firm, or the other practitioner's client-employer may or intends to call as a witness in any proceeding before the Office. The term "witness" includes individuals who will testify orally in a proceeding before, or sign an affidavit or any other document to be filed in, the Office.

(f) When a practitioner who is suspended, excluded, ~~or excluded on consent~~, or who has resigned, acts as a paralegal or performs services under paragraph (c) of this section, the practitioner shall not thereafter be reinstated to practice before the Office unless:

(1) The practitioner shall have filed with the OED Director an affidavit which:

(i) Explains in detail the precise nature of all paralegal or other services performed by the practitioner, and

(ii) Shows by clear and convincing evidence that the practitioner has complied with the provisions of this section and all imperative USPTO Rules of Professional Conduct; and

(2) The other practitioner shall have filed with the OED Director a written statement which

(i) Shows that the other practitioner has read the affidavit required by paragraph (d)(1) of this section and that the other practitioner believes every statement in the affidavit to be true, and

(ii) States why the other practitioner believes that the practitioner who is suspended, excluded, ~~or excluded on consent~~, or who has resigned has complied with paragraph (c) of this section.

Revised Proposed Section

(C) Any witness or potential witness whom the other practitioner, the other practitioner's law firm, or the other practitioner's client-employer may or intends to call as a witness in any proceeding before the Office. The term "witness" includes individuals who will testify orally in a proceeding before, or sign an affidavit or any other document to be filed in, the Office.

(f) When an excluded, suspended or resigned practitioner acts as a paralegal or performs services under paragraph (c) of this section, the practitioner shall not thereafter be reinstated to practice before the Office unless:

(1) The practitioner shall have filed with the OED Director an affidavit which:

(i) Explains in detail the precise nature of all paralegal or other services performed by the excluded, suspended or resigned practitioner, and

(ii) Shows by clear and convincing evidence that the excluded, suspended or resigned practitioner has complied with the provisions of this section and all imperative USPTO Rules of Professional Conduct; and

(2) The other practitioner shall have filed with the OED Director a written statement which:

(i) Shows that the other practitioner has read the affidavit required by paragraph (d)(1) of this section and that the other practitioner believes every statement in the affidavit to be true, and

(ii) States why the other practitioner believes that the excluded, suspended or resigned practitioner has complied with paragraph (c) of this section.

Originally Proposed Rule

§ 11.59 Notice of suspension or exclusion.

(a) Upon issuance of an order reprimanding a practitioner or suspending, excluding, or excluding on consent a practitioner from practice before the Office, the OED Director shall give notice of the final decision to appropriate employees of the Office, to interested departments, agencies, and courts of the United States, and to the National Discipline Data Bank maintained by the American Bar Association Standing Committee on Professional Discipline. The OED Director shall also give notice to appropriate authorities of any State in which a practitioner is known to be a member of the bar and any appropriate bar association.

(b) *Publication of notices, orders, and decisions.* The OED Director shall cause to be published in the Official Gazette the name of every practitioner who is suspended, excluded, or excluded on consent, who resigns from practice, and who is transferred to disability inactive status. The order suspending, excluding, or excluding by consent a practitioner, or accepting resignation, and the decision by the USPTO Director, including an initial decision of a hearing officer under § 11.54(a) that becomes the decision of the USPTO Director, suspending or excluding a practitioner shall be published. Unless otherwise ordered by the USPTO Director, the OED Director shall publish in the Official Gazette the name of any practitioner reprimanded by the USPTO Director, as well as the order and any decision by the USPTO Director, including an initial decision of a hearing officer under § 11.54(a) that becomes the decision of the USPTO Director, reprimanding the practitioner.

Revised Proposed Section

§ 11.59 Dissemination of disciplinary and other information.

(a) The OED Director shall inform the public of the disposition of each matter in which public discipline has been imposed, and of any other changes in a practitioner's registration status. Public discipline includes exclusion, including exclusion on consent, suspension, and public reprimand. Unless otherwise ordered by the USPTO Director, the OED Director shall give notice of public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state where the practitioner is admitted practice, to courts where the practitioner is known to be admitted, and the public. If public discipline is imposed, the OED Director shall cause a final decision of the USPTO Director to be published. Final decisions of the USPTO Director include default judgments. See § 11.54(a)(2). If a private reprimand is imposed, the OED Director shall cause a redacted version of the final decision to be published.

(b) *Records available to the public.* Unless the USPTO Director orders that the proceeding or a portion of the record be kept confidential the OED Director's records of every disciplinary proceeding where a practitioner is reprimanded, suspended, or excluded, including when said sanction is imposed, shall be made available to the public upon written request, except that information may be withheld as necessary to protect the privacy of third parties. The record of a proceeding that results in a practitioner's transfer to disability inactive status shall not be available to the public.

Originally Proposed Rule

(e) *Records available to the public.*
~~Consistent with a retention schedule set for disciplinary records, the OED Director shall maintain records that shall be available for public inspection of every disciplinary proceeding where practitioner is reprimanded, suspended, or excluded, excluded on consent, or who resigns while under investigation, unless the USPTO Director orders that the proceeding or a portion of the record be kept confidential. The record of a proceeding that results in a practitioner being transferred to disability inactive status will not be available to the public.~~

(d) *Access to records of exclusion by consent.* The order excluding a practitioner on consent under § 11.27 shall be a ~~matter of public record~~. However, the affidavit required under paragraph (a) of § 11.27 shall not be ~~publicly disclosed~~ or made available for use in any other proceeding except by order of the USPTO Director or upon written consent of the practitioner.

Revised Proposed Section

(c) *Access to records of exclusion by consent.* The order excluding a practitioner on consent under § 11.27 shall be available to the public. However, the affidavit required under paragraph (a) of § 11.27 shall not be available to the public or made available for use in any other proceeding except by order of the USPTO Director or upon written consent of the practitioner.

Originally Proposed Rule

§ 11.60 Petition for reinstatement.

(a) Restrictions on reinstatement. A practitioner who is suspended, excluded, or excluded on consent is required to furnish proof of rehabilitation under paragraph (d) of this section, and shall not resume practice of patent, trademark, or other non-patent law before the Office until reinstated by order of the OED Director or the USPTO Director.

~~(b) Reinstatement of practitioners transferred to disability inactive status. A practitioner who has been transferred to disability inactive status under § 11.28 may move for reinstatement in accordance with that section, but reinstatement shall not be ordered except on a showing by clear and convincing evidence that the disability has ended, that the practitioner has complied with § 11.12, and that the practitioner is fit to resume the practice of law.~~

~~(e) *Petition for reinstatement of practitioners excluded or suspended on other grounds.* A suspended or excluded practitioner shall be eligible to apply for reinstatement only upon expiration of the period of suspension or exclusion and the practitioner's full compliance with § 11.58. A practitioner who is excluded or excluded on consent shall be eligible to apply for reinstatement no earlier than at least five years from the effective date of the exclusion.~~

Revised Proposed Section

§ 11.60 Petition for reinstatement.

(a) *Restrictions on reinstatement.* An excluded, suspended or resigned practitioner shall not resume practice of patent, trademark, or other non-patent law before the Office until reinstated by order of the OED Director or the USPTO Director.

~~(b) *Petition for reinstatement.* An excluded or suspended practitioner shall be eligible to apply for reinstatement only upon expiration of the period of suspension or exclusion and the practitioner's full compliance with § 11.58. An excluded practitioner shall be eligible to apply for reinstatement no earlier than at least five years from the effective date of the exclusion. A resigned practitioner shall be eligible to petition for reinstatement and must show compliance with § 11.58 no earlier than at least five years from the date the practitioner's resignation is accepted and an order is entered excluding the practitioner on consent.~~

Originally Proposed Rule

(d) *Review of reinstatement petition.*

A practitioner suspended, excluded, or ~~excluded-on-consent~~ shall file a petition for reinstatement accompanied by the fee required by § 1.21(a)(10) of this subchapter. The petition for reinstatement ~~by a practitioner suspended, excluded, or excluded-on-consent for misconduct, must provide proof of rehabilitation and compliance with the provisions of § 11.11(d)(2),~~ and it shall be filed with the OED Director. A suspended or excluded practitioner who has violated any provision of § 11.58 shall not be eligible for reinstatement until a continuous period of the time in compliance with § 11.58 that is equal to the period of suspension or exclusion has elapsed. If the suspended, excluded, or excluded-on-consent practitioner is not eligible for reinstatement, or if the OED Director determines that the petition is insufficient or defective on its face, the OED Director may dismiss the petition. Otherwise the OED Director shall consider the petition for reinstatement. The suspended, excluded, ~~or excluded-on-consent~~ practitioner seeking reinstatement shall have the burden of proof by clear and convincing evidence. Such proof shall be included in or accompany the petition, and shall establish:

(1) That the practitioner has the moral character qualifications, competency, and learning in law required under § 11.7 for admission;

(2) That the resumption of practice before the Office will not be detrimental to the administration of justice; or subversive to the public interest; and

Revised Proposed Section

(c) *Review of reinstatement petition.*

An excluded, suspended or resigned practitioner shall file a petition for reinstatement accompanied by the fee required by § 1.21(a)(10) of this subchapter. The petition for reinstatement shall be filed with the OED Director. An excluded or suspended practitioner who has violated any provision of § 11.58 shall not be eligible for reinstatement until a continuous period of the time in compliance with § 11.58 that is equal to the period of suspension or exclusion has elapsed. A resigned practitioner shall not be eligible for reinstatement until compliance with § 11.58 is shown. If the excluded, suspended or resigned practitioner is not eligible for reinstatement, or if the OED Director determines that the petition is insufficient or defective on its face, the OED Director may dismiss the petition. Otherwise the OED Director shall consider the petition for reinstatement. The excluded, suspended or resigned practitioner seeking reinstatement shall have the burden of proof by clear and convincing evidence. Such proof shall be included in or accompany the petition, and shall establish:

(1) That the excluded, suspended or resigned practitioner has the good moral character and reputation, competency, and learning in law required under § 11.7 for admission;

(2) That the resumption of practice before the Office will not be detrimental to the administration of justice or subversive to the public interest; and

Originally Proposed Rule

(3) That the suspended practitioner has complied with the provisions of § 11.58 for the full period of suspension, or that the excluded ~~excluded-on-consent~~ practitioner has complied with the provisions of § 11.58 for at least five continuous years.

(e) Petitions for reinstatement Action by the OED Director granting reinstatement. (1) If the petitioner is found fit to resume the practice before the Office, the OED Director shall enter an order of reinstatement, which may be conditioned upon the making of partial or complete restitution to persons harmed by the misconduct which led to the suspension or exclusion, or upon the payment of all or part of the costs of the disciplinary proceedings, the reinstatement proceedings, or any combination thereof.

(2) Payment of costs of disciplinary or reinstatement proceedings. Upon petitioning for reinstatement, the practitioner shall pay the costs of the disciplinary proceeding, and costs for the reinstatement proceeding. The costs imposed pursuant to this section include all of the following:

(i) The actual expense incurred by the OED Director or the Office for the original and copies of any reporter's transcripts of the disciplinary proceedings or reinstatement proceedings, and any fee paid for the services of the reporter;

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(3) That the suspended practitioner has complied with the provisions of § 11.58 for the full period of suspension, that the excluded practitioner has complied with the provisions of § 11.58 for at least five continuous years, or that the resigned practitioner has complied with § 11.58 upon acceptance of the resignation.

(d) Petitions for reinstatement - Action by the OED Director granting reinstatement. (1) If the excluded, suspended or resigned practitioner is found to have complied with paragraphs (c)(1) through (c)(3) of this section, the OED Director shall enter an order of reinstatement, which shall be conditioned on payment of the costs of the disciplinary proceeding to the extent set forth in paragraphs (2) and (3) below.

(2) Payment of costs of disciplinary proceedings. Prior to reinstatement to practice, the excluded or suspended practitioner shall pay the costs of the disciplinary proceeding. The costs imposed pursuant to this section include all of the following:

(i) The actual expense incurred by the OED Director or the Office for the original and copies of any reporter's transcripts of the disciplinary proceeding, and any fee paid for the services of the reporter;

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(ii) All expenses paid by the OED Director or the Office which would qualify as taxable costs recoverable in civil proceedings; and

(iii) The charges determined by the OED Director to be “reasonable costs” of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for services of attorneys and experts, of the Office of Enrollment and Discipline in the preparation or hearing of disciplinary proceeding ~~or reinstatement~~ proceeding, and costs incurred in the administrative processing of the disciplinary proceeding ~~or reinstatement~~ proceeding.

(3) A suspended, excluded, or ~~excluded-on-consent~~ practitioner may be granted relief, in whole or in part, only from an order assessing costs under this section; or may be granted an extension of time to pay these costs, in the discretion of the OED Director, upon grounds of hardship, special circumstances, or other good cause.

(f) *Petitions for reinstatement - Action by the OED Director denying reinstatement.* If the petitioner is found unfit to resume the practice of patent law before the Office, the OED Director shall first provide the suspended, excluded, ~~or excluded-on-consent~~ practitioner with an opportunity to show cause in writing why the petition should not be denied. Failure to comply with § 11.12(d)(2) shall constitute unfitness. If unpersuaded by the showing, the OED Director shall deny the petition. The OED Director may require the suspended, excluded, or ~~excluded-on-consent~~ practitioner, in meeting the requirements of § 11.7, to take and pass an examination under § 11.7(b), ethics

Revised Proposed Section

(ii) All expenses paid by the OED Director or the Office which would qualify as taxable costs recoverable in civil proceedings; and

(iii) The charges determined by the OED Director to be “reasonable costs” of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for services of attorneys and experts, of the Office of Enrollment and Discipline in the preparation or hearing of the disciplinary proceeding, and costs incurred in the administrative processing of the disciplinary proceeding.

(3) An excluded or suspended practitioner may be granted relief, in whole or in part, only from an order assessing costs under this section or may be granted an extension of time to pay these costs, in the discretion of the OED Director, upon grounds of hardship, special circumstances, or other good cause.

(e) *Petitions for reinstatement - Action by the OED Director denying reinstatement.* If the excluded, suspended or resigned practitioner is found unfit to resume the practice of patent law before the Office, the OED Director shall first provide the excluded, suspended or resigned practitioner with an opportunity to show cause in writing why the petition should not be denied. Failure to comply with § 11.12(c) shall constitute unfitness. If unpersuaded by the showing, the OED Director shall deny the petition. The OED Director may require the excluded, suspended or resigned practitioner, in meeting the requirements of § 11.7, to take and pass an examination under § 11.7(b), ethics courses, and/or the Multistate

Originally Proposed Rule

courses, and/or the Multistate Professional Responsibility Examination. The OED Director shall provide findings, together with the record. The findings shall include on the first page, immediately beneath the caption of the case, a separate section entitled “Prior Proceedings” which shall state the docket number of the original disciplinary proceeding in which the suspension, exclusion, or exclusion by consent was ordered.

(g) *Resubmission of petitions for reinstatement.* If a petition for reinstatement is denied, no further petition for reinstatement may be filed until the expiration of at least one year following the denial unless the order of denial provides otherwise.

(h) *Reinstatement proceedings open to public.* Proceedings on any petition for reinstatement shall be open to the public. Before reinstating any suspended, excluded, or excluded-on-consent practitioner, the OED Director shall publish in the Official Gazette a notice of the suspended, excluded, or excluded-on-consent practitioner’s petition for reinstatement and shall permit the public a reasonable opportunity to comment or submit evidence with respect to the petition for reinstatement.

Revised Proposed Section

Professional Responsibility Examination. The OED Director shall provide findings, together with the record. The findings shall include on the first page, immediately beneath the caption of the case, a separate section entitled “Prior Proceedings” which shall state the docket number of the original disciplinary proceeding in which the exclusion or suspension was ordered.

(f) *Resubmission of petitions for reinstatement.* If a petition for reinstatement is denied, no further petition for reinstatement may be filed until the expiration of at least one year following the denial unless the order of denial provides otherwise.

(g) *Reinstatement proceedings open to public.* Proceedings on any petition for reinstatement shall be open to the public. Before reinstating any excluded or suspended practitioner, the OED Director shall publish in the Official Gazette a notice of the excluded or suspended practitioner’s petition for reinstatement and shall permit the public a reasonable opportunity to comment or submit evidence with respect to the petition for reinstatement.

Originally Proposed Rule

§ 11.61 Savings clause.

(a) A disciplinary proceeding based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, if such conduct would continue to justify suspension or exclusion under the provisions of this Part.

(b) No practitioner shall be subject to a disciplinary proceeding under this Part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before such effective date.

~~§ 11.62 Protection of clients interests when practitioner becomes unavailable.~~

~~If a practitioner dies, disappears, or is suspended or transferred to inactive status for incapacity or disability, and there is no partner, associate, or other responsible practitioner capable of conducting the practitioner's affairs, a court of competent jurisdiction may appoint a registered practitioner to make appropriate disposition of any patent application files. All other matters should be handled in accordance with the laws of the local jurisdiction.~~

Revised Proposed Section

§ 11.61 Savings clause.

(a) A disciplinary proceeding based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, if such conduct would continue to justify suspension or exclusion under the provisions of this part.

(b) No practitioner shall be subject to a disciplinary proceeding under this part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before such effective date.

(c) Sections 11.24, 11.25, 11.28 and 11.34 through 11.57 shall apply to all proceedings in which the complaint is filed on or after the effective date of these regulations. Sections 11.26 and 11.27 shall apply to matters pending on or after the effective date of these regulations.

(d) Sections 11.58 through 11.60 shall apply to all cases in which an order of suspension or exclusion is entered or resignation is accepted on or after the effective date of these regulations.

§ 11.62 – 11.99[Reserved]