

to these activities and would not be diverted to support other proposals. The annual fee would not be imposed on persons during the calendar year in which they are first registered to practice before the Office. Failure to comply with this rule would subject a registered practitioner to penalties set forth in § 11.11(b).

Section 11.9 would continue the same practice under current § 10.9 of providing limited recognition of individuals under the appropriate circumstances.

Paragraph (a) of § 11.9 would continue to provide for limited recognition of individuals to practice before the Office in a particular patent application or applications. The practice would be limited to individuals who are not attorneys representing the individual's close relative, such as a child, elderly parent.

Paragraph (b) of § 11.9 would provide for aliens, residing in the United States, to obtain limited recognition to practice before the Office in a particular patent application or applications if the Immigration and Naturalization Service or the Department of State has authorized the alien to be employed in the capacity of representing a patent applicant by preparing and prosecuting the applicant's U.S. patent application. Recognition may be granted if the applicant satisfies the provisions of § 11.7(a), (b), and (c) or (d). Consistent with current practice, limited recognition would be granted in maximum increments of one year, but would not be granted or extended to an alien residing abroad. Limited recognition also would not be granted to aliens admitted to the United States to be trained. Recognition to practice before the Office, like admission to practice law in any other jurisdiction, is not a training opportunity.

Paragraph (c) of § 11.9 would continue to provide for limited recognition of an individual not registered under § 11.6 to prosecute an international application only before the U.S. International Searching Authority and the U.S. International Preliminary Examining Authority.

Paragraph (d) of § 11.9 would provide for a limited recognition fee paid by an individual granted limited recognition under paragraphs (b) or (c) of § 11.9. The same individuals would also be required to pay an annual fee upon renewal or extension of the limited recognition previously granted. Failure to comply with the rule would subject the individual to loss of recognition.

Section 11.10 would set forth provisions regarding post-employment restrictions on practice before the

Office. Paragraph (a) would permit only practitioners who are registered under § 11.6 or individuals given limited recognition under § 11.9 to prosecute patent applications of others before the Office.

Paragraph (b) of § 11.10 would parallel the provisions of 18 U.S.C. 207(a) and (b). The proposal would parallel the basic restrictions of § 207(a) on any registered former Office employee acting as representative, or intending to bring influence, in a particular matter in which he or she personally and substantially participated as an employee of the Office. The proposal also would parallel the basic two-year restriction of § 207(b) on any registered former Office employee acting as representative or with intent to influence as to a particular matter for which the employee had official responsibility. In addition, the proposal would proscribe the same conduct occurring behind the scenes by prohibiting conduct that "aids in any manner" the representation or communication with intent to influence. It is appropriate that the conduct proscribed by §§ 207(a) and (b) be extended to conduct occurring behind the scene. The conduct is proscribed by current § 10.10(b). A patent can be held unenforceable where a former patent examiner engaged in behind the scene efforts to obtain a reissue patent on a patent in which he or she personally and substantially participated as an examiner. See *Kearny & Trecker Corp. v. Giddings & Lewis, Inc.*, 452 F.2d 579 (7th Cir. 1971), cert. denied, 92 S.Ct. 1500 (1972).

Paragraph (c) of § 11.10 would introduce citation of the statutory and regulation provisions governing the post employment conduct of unregistered former employees. The provisions cover any unregistered former employees, who represent another person in an appearance or, by other communication, attempts to influence the Government, including the Office, concerning a particular matter in which he or she was involved. For example, a former patent examiner, whether or not he or she becomes a registered practitioner, may not appear as an expert witness against the Government in connection with a patent granted on an application he or she examined as a patent examiner.

Paragraph (d) of § 11.10, like current § 10.10(c), would continue to proscribe an employee of the Office from prosecuting or aiding in any manner in the prosecution of a patent application for another.

Paragraph (e) of § 11.10 would continue the prohibition against conflicts of interest contained in current

§ 10.10(d). A number of statutory and regulatory provisions affect U.S. Government employees who are registered to practice before the Office. These provisions include 18 U.S.C. 203 and 205.

Section 205 is a criminal statute which "precludes an officer or employee of the Government from acting as an agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest." *Memorandum of Attorney General Robert F. Kennedy Regarding Conflict of Interest Provisions of Public Law 87-848*, Feb 1, 1963, 28 F.R. 985. In interpreting a predecessor statute to § 205, Acting Attorney General Peyton Ford determined that "the United States is a party or directly or indirectly interested" in proceedings involving the filing and prosecution before the Patent Office of an application for patent, and that the predecessor statute therefore "proscribe[d] the participation in such proceedings of Government employees for compensation on behalf of private parties." *Opinion of the Attorney General of the United States*, Vol. 41, Op. No. 4, 82 USPQ 165 (Atty. Gen. 1949). Under the current statute, "[s]ection 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation; section 205 bars both kinds of services." *Memorandum of Attorney General Robert F. Kennedy Regarding Conflict of Interest Provisions of Public Law 87-848*, Feb 1, 1963, 28 F.R. 985. Accord, *OGE Informal Advisory Letter 91 X 11*, 1991 WL 521202 (O.G.E.). Sections 203 and 205 apply to full-time and part-time employees.

*OGE Informal Advisory Letter 91 X 11*, 1991 WL 521202 (O.G.E.) recognizes one exception. The prohibition does not apply if an executive branch employee is "a special employee" as defined in 18 U.S.C. 202(a). The OGE Informal Advisory Letter also recognizes that the exception does not apply to a special Government employee for those particular matters involving specific parties in which the employee participated as a Government employee and, if the employee served in the department more than sixty days, to those matters pending before the department where he or she is employed. A special Government employee is one who is "employed to perform \* \* \* for a period not to exceed one hundred and thirty days during any period of three hundred and sixty five consecutive days, temporary duties either on a full-time or