

proceeding, proof of compliance with this section and with the exclusion or suspension order will be available. Proof of compliance will be required as a condition precedent to reinstatement. These provisions were derived from District of Columbia Appellate Rule XI, section 14.

*Paragraph (e) of § 11.58*, like § 10.158(c), would provide conditions under which a suspended or excluded practitioner could aid another practitioner in the practice of law before the Office. These provisions were derived from the same cases considered when current § 10.158(c) was proposed, including *In re Christianson*, 215 N.W.2d 920 (N.D. 1974); *In re Hawkins*, 503 P.2d 95 (Wash. 1972); *Florida Bar v. Thomson*, 354 So.2d 3000 (Fla. 1975); *In re Kraus*, 670 P.2d 1012 (Ore. 1983); *In re Easler*, 272 S.E.2d 32 (S.C. 1980); *Crawford v. State Bar of California*, 7 Cal. Rptr. 746 (Cal. 1960); and *Ohio State Bar Ass'n. v. Hart*, 375 N.E.2d 1246 (Ohio 1978). Like a suspended or disbarred attorney, who "is not the same as a layman," *In re Christianson*, 215 N.W.2d at 925, the same would obtain for a practitioner suspended or excluded from practice before the Office. Thus, while a suspended or excluded practitioner would be permitted to be employed by a practitioner, the suspended or excluded practitioner would have to be a salaried employee of the practitioner for whom he or she works and could not share profits from practice before the Office. A suspended or excluded practitioner could not communicate directly with clients, render legal advice, or meet with witnesses regarding prospective or immediate business before the Office. A suspended or excluded practitioner could research the law, write patent or trademark applications (provided he or she did not interview clients or witnesses, the practitioner reviewed the application, and the practitioner signed the papers filed in the Office), or conduct patent or trademark searches. The provisions of § 11.58 are considered necessary if suspension or exclusion is to have any significance.

*Paragraph (f) of § 11.58*, like current § 10.158(d), would proscribe reinstatement of a suspended or excluded practitioner who has acted as paralegal or performed other services assisting another practitioner before the Office, unless an affidavit is filed explaining the nature of all paralegal and other services performed, and showing that the suspended or excluded practitioner complied with the provisions of this section and the imperative USPTO Rules of Professional Conduct.

Comment is invited whether the USPTO should delete the provisions of § 10.58(c) and (d), and not adopt proposed paragraphs (e) and (f) of § 11.58. Permitting the suspended or excluded practitioner to aid another practitioner places at least some suspended or excluded practitioners in conflict with state laws or court orders. For example, a number of states' disciplinary jurisdictions prohibit suspended or excluded attorneys from acting as paralegals. Also, permitting a suspended or excluded practitioner to aid another practitioner provides the former with an opportunity to continue serving the same clients from whose cases the practitioner was required to withdraw. This can be not only confusing for the clients, but also provides the suspended or excluded practitioner with an opportunity to maintain some appearance of a continued practice. Further, the USPTO is and will continue to reciprocally discipline attorneys suspended or disbarred by state disciplinary authorities. Permitting the practitioner reciprocally disciplined by the USPTO to engage in conduct proscribed by state laws or court orders, such as aiding a practitioner by preparing patent or trademark applications, leads to conflicting circumstances. The same conflicts can arise if a state disciplines an attorney following discipline imposed by the USPTO. Accordingly, the USPTO wishes to consider comments favoring or disagreeing with such a change to the current practice.

*Section 11.59*, like current § 10.159, would provide for notice of suspension or exclusion. Under paragraph (a) of § 11.59, upon issuance of an unfavorable final decision, the OED Director would give appropriate notice to employees of the Office, United States courts, the National Discipline Data Bank maintained by the American Bar Association Standing Committee on Professional Discipline and the appropriate authorities of any State in which a suspended or excluded practitioner is known to be a member of the bar. If a practitioner is registered under § 11.6(c), the OED Director would also notify the patent office of the country where the practitioner resides. Under paragraph (b) of § 11.59, the OED Director would publish an appropriate notice in the Official Gazette and the Office Web site. Under paragraph (c) of § 11.59, the OED Director would maintain records that would be available to the public concerning disciplinary proceedings. The files of most disciplinary proceedings resulting in imposition of a public reprimand,

suspension, or exclusion are presently available to the public for inspection in the Office of Enrollment and Discipline. Public availability would continue under the proposed rules being considered subject to the removal of any information required by law to be maintained in confidence or secrecy. Under paragraph (e) of § 11.59, the order of exclusion when a practitioner is excluded on consent would be accessible, but the affidavit under paragraph (a) of § 11.27 would not be accessible except upon order of the USPTO Director or on consent of the practitioner.

*Section 11.60*, like current § 10.160, would provide for a petition for reinstatement. Under paragraph (a) of § 11.60 an excluded or suspended practitioner would not be permitted to 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. An excluded practitioner not otherwise ineligible for reinstatement may not apply for reinstatement until the expiration of at least five years from the effective date of the exclusion. Under paragraph (b) of § 11.60, a practitioner suspended indefinitely because of disability may seek reinstatement, but reinstatement would 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.

*Paragraph (c) of § 11.60*, like current §§ 10.160(a) and (d), would proscribe a suspended practitioner from being eligible for reinstatement until a period of the time equal to the period of suspension elapses following compliance with § 11.58, and an excluded practitioner would not be eligible for reinstatement until five years elapses following compliance with § 11.58.

*Paragraph (d) of § 11.60* would require a petition for reinstatement to include proof of rehabilitation. If the practitioner is not eligible for reinstatement apart from rehabilitation, or the petition is insufficient or defective on its face, the OED Director may dismiss the petition. Otherwise the OED Director would consider a petitioner's attempted showing of rehabilitation. The practitioner would have the burden of proof by clear and convincing evidence. The proof would establish that the practitioner has the moral character qualifications, competency, and learning in law required under § 11.7 for readmission, and that resumption of practice before