

the Office would not be detrimental to the administration of justice, or subversive to the public interest.

Paragraph (e) of § 11.60 would provide that if the petitioner is found fit to resume practice before the Office, the OED Director will order reinstatement, which may be conditioned upon the making of partial or complete restitution to persons harmed by the misconduct that led to the suspension or exclusion, upon the payment of all or part of the costs of the disciplinary and reinstatement proceedings, or any combination thereof.

Paragraph (f) of § 11.60 would provide that if the petitioner is unfit to resume practice before the Office, the petitioner is provided an opportunity to show cause in writing why the petition should not be denied. If unpersuaded by the showing, the petition would be denied. The suspended or excluded practitioner may be required to take and pass an examination under § 11.7(b), ethics courses, and/or the Multistate Professional Responsibility Examination.

Paragraph (g) of § 11.60 would proscribe filing a further petition for reinstatement if the petition is denied until the expiration of at least one year following the denial unless the order of denial provides otherwise.

Paragraph (h) of § 11.60, like § 10.160(e), would open to the public proceedings on any petition for reinstatement.

Section 11.61 would have savings clauses.

Section 11.62 would express a policy that if a practitioner dies, disappears, or is suspended 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 would be handled in accordance with the laws of the local jurisdiction.

Rules of Professional Conduct

The following comments contain several references to invention promotion companies (invention promoters). At the outset, the Office wishes to make clear that neither the current Disciplinary Rules nor the proposed Rules of Professional Conduct prohibit a practitioner from associating with an invention promoter. Moreover, neither the current Disciplinary Rules nor the proposed Rules of Professional Conduct prevent a practitioner from having an arrangement with an invention promoter, or from providing

professional services in compliance with the rules. However, practitioners having arrangements with invention promoters face the same scrutiny that attorneys having arrangements with non-lawyer parties that market legal service (marketers) have faced. The arrangements with promoters have faced intense scrutiny throughout the country by ethics committees, courts, and disciplinary authorities. Decisions and opinions in other jurisdictions hold the arrangements unethical on a variety of bases. Practitioners should carefully examine their participation in any arrangement of this sort with a promoter.

There is reasonable cause to scrutinize the arrangements with invention promoters. For more than two decades, the Federal Trade Commission (FTC) has investigated, and absent a settlement, has sought injunctive and other equitable relief against invention promoters for violations of § 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The FTC has investigated whether or alleged that in one manner or another a promoter has engaged in unfair or deceptive acts or practices, in or affecting commerce, with customers who contracted with the promoter for invention development services. See *Raymond Lee Organization, Inc.*, 92 F.T.C. 489 (1978), *aff'd sub nom. Raymond Lee v. FTC*, 679 F.2d 905 (D.C. Cir. 1980); *FTC v. Invention Submission Corp.*, 1991-1 Trade Cases § 69,338, 1991 WL 47104 (D.D.C. 1991); *FTC v. American Institute for Research and Development*, 219 B.R. 639 (D Mass. 1998), *modified sub nom. FTC v. American Inventors Corporation*, 1996 WL 641642 (D. Mass. 1996); and *FTC v. National Invention Services, Inc.*, 1997 WL 718492 (D.N.J. 1997). Each promoter offered the services of a registered patent attorney. A patent attorney associated with one promoter was indicted on five counts of conspiracy to commit mail fraud and mail fraud, and a warrant for his arrest was issued in 1999 by the U.S. Postal Inspection Service. Inasmuch as equitable relief was obtained in each instance, it would be appropriate for the Rules of Professional Conduct to address the conduct that practitioners must address upon agreeing to accept referrals from promoters.

Section 11.100 would provide guidance for interpreting the Office Rules of Professional Conduct. In interpreting these Rules, the specific would control the general in the sense that any rule that specifically addresses conduct would control the disposition of matters and the outcome of such matters would not turn upon the

application of a more general rule that arguably also applies to the conduct in question. In a number of instances, there are specific rules that address specific types of conduct. The rule of interpretation expressed here is meant to make it clear that the general rule does not supplant, amend, enlarge, or extend the specific rule. So, for instance, the general terms of proposed rule 11.103 are not intended to govern conflicts of interest, which are particularly discussed in proposed rules 11.107, 11.108, and 11.109. Thus, conduct that is proper under the specific conflict rules is not improper under the more general rule of proposed rule 11.103. Except where the principle of priority is applicable, however, compliance with one rule does not generally excuse compliance with other rules. Accordingly, once a practitioner has analyzed the ethical considerations under a given rule, the practitioner must generally extend the analysis to ensure compliance with all other applicable rules.

Sections 11.100 through 11.901 are proposed to establish Office Rules of Professional Conduct. Presently, practitioners representing parties in patent, trademark and other non-patent matters are required to conform to the Code of Professional Responsibility set forth in 37 CFR 10.20 through 10.112. The Office believes that it would be more desirable to bring the Office disciplinary rules into greater conformity with the Rules of Professional Conduct followed by a majority of the states. Such conformity would provide not only consistency in practicing law before the Office as well as in the states, but also a body of precedent already developed in the states having ethics opinions and disciplinary results based on the Model Rules of Professional Conduct.

The proposed Office Rules of Professional Conduct, in large part, follow the Model Rules of Professional Conduct of the American Bar Association. The concordance between the rules is based on two factors. First, many registered patent attorneys are members of bars that have adopted the Model Rules or a modified version thereof. Accordingly, they already would be subject to substantially the same Model Rules for conduct in connection with their practice. Rule 8.5. Second, adopting USPTO Rules of Professional Conduct that follow, in many respects, the Model Rules of Professional Conduct adopted in more than 40 jurisdictions, facilitates both compliance with the rules, and the ability of practitioners to move between the employment by the Office, other