

*Harper*, 1062 Off. Gaz. 433 (Jan. 28, 1986) (attorney excluded by USPTO after disbarment in Maryland for misconduct in patent and non-patent matters addressed in *Attorney Grievance Commission (Maryland) v. Harper*, 477 A.2d 756 (Md. 1984)); and *In re Kraft*, 954 Off. Gaz. 550 (Jan. 11, 1977), *aff'd. sub nom.*, *Kraft v. Commissioner*, No. 77-0087 (D.D.C. Nov. 3, 1977) (attorney excluded by USPTO following suspension in Idaho).

Paragraph (f) of § 11.803 would define some, but not all, acts that would constitute violations of paragraphs (a) through (e) of this section. The USPTO believes that it would be helpful to practitioners if some specific prohibitions were set out in the rules. The prohibitions set out in paragraphs (1) through (4) of § 11.803 represent violations that have occurred in the past or that the USPTO specifically seeks to prevent. The specific acts set out in paragraph (f) would not constitute a complete description of all acts in violation of paragraphs (a) through (e).

Section 11.804 would continue the practice of providing for discipline involving a variety of acts constituting misconduct.

Paragraph (b) of § 11.804 would address many kinds of illegal conduct reflecting adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. See *In re Milmore*, 196 USPQ 628 (Comm'r Pat. 1977) (fraud on the Office); *In re Donal E. McCarthy*, 922 Off. Gaz. 2 (May 17, 1974) (income tax evasion); *In re Edwin Crabtree*, 1023 Trademark Off. Gaz. 44 (Oct. 27 1987) (income tax evasion). However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." A current regulation, 37 CFR 10.23(b)(3), proscribes "illegal conduct involving moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a practitioner is personally answerable to the entire criminal law, a practitioner should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. See, e.g., *In re Bernard Miller*, 688 Off. Gaz. 1 (Nov. 2, 1954) (excluding attorney from USPTO following conviction and incarceration, *Miller v. State (Oklahoma)*, 281 P.2d

441 (Crim. App. Okla. 1955)). A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

Paragraph (d) of § 11.804, like § 10.23(b)(5), would prohibit conduct that "is prejudicial to the administration of justice." There is extensive case law on this standard, as set forth below. Examples of these cases involve a practitioner's failure to cooperate with the OED Director or Bar Counsel during an investigation. A practitioner's failure to respond to investigative inquiries or Bar Counsel's subpoenas may constitute misconduct. See *Bovard v. Gould*, D96-02 <http://www.uspto.gov/web/offices/com/sol/foia/oed/disc/D02.pdf> (Comm'r Pat 1997); *In re Cope*, 455 A.2d 1357 (D.C. 1983); *In re Haupt*, 444 A.2d 317 (D.C. 1982); *In re Lieber*, 442 A.2d 153 (D.C. 1982); *In re Whitlock*, 441 A.2d 989 (D.C. 1982); *In re Russell*, 424 A.2d 1087 (D.C. 1980); *In re Willcher*, 404 A.2d 185 (D.C. 1979). Misconduct also may arise from the failure to abide by agreements made with Bar Counsel. See *In re Harmon*, M-79-81 (D.C. Dec. 14, 1981) (breaking promise to Bar Counsel to offer complainant refund of fee or vigorous representation constitutes conduct prejudicial to the administration of justice).

In the Office, a variety of conduct by practitioners has been found to constitute conduct prejudicial to the administration of justice. For example, such conduct includes a practitioner's destruction of a maintenance fee reminder, payment of Office fees with checks drawn on an overdrawn account, and settling a dispute with a former client by precluding disclosure of a grievance to the Office. See *Bovard v. Cole*, D95-01 (Comm'r Pat. 1995); *Weiffenbach v. Maxon*, D89-11 (Comm'r Pat. 1990); and *In re Johnson*, D2001-09, <http://www.uspto.gov/web/offices/com/sol/foia/oed/discD25.pdf> (Comm'r Pat. 2001). In other jurisdictions, a practitioner's failure to appear in court for a scheduled hearing is another common form of conduct deemed prejudicial to the administration of justice. See *In re Evans*, No. M-126-82 (D.C. Dec. 18, 1982); *In re Doud*, Bar Docket No. 442-80 (Sept. 23, 1982); *In re Bush* (Bush III), No. S-58-79/D/39/80 (D.C. Apr. 30, 1980); *In re Molovinsky*, No. M-31-79 (D.C. Aug. 23, 1979). Similarly, failure to obey court orders has been found to constitute misconduct under § 11.804(d). See *In re Whitlock*, 441 A.2d 989-91 (D.C. 1982); *In re Brown*, Bar Docket No. 222-78 (Aug. 4, 1978); and *In re Bush* (Bush I), No. DP-22-75 (D.C. July 26, 1977).

While the above categories—failure to cooperate with Bar Counsel and failure to obey court orders—encompass the major forms of misconduct proscribed by § 11.804(d), that provision would be interpreted flexibly and includes any improper behavior of an analogous nature. For example, the failure to turn over the assets of a conservatorship to the court or to the successor conservator has been held to be conduct "prejudicial to the administration of justice." *In re Burka*, 423 A.2d 181 (D.C. 1980). In *Russell*, 424 A.2d 1087 (D.C. 1980), the court found that failure to keep the Bar advised of respondent's changes of address, after being warned to do so, was also misconduct under that standard. And in *In re Schattman*, No. M-63-81 (D.C. June 2, 1981), it was held that a practitioner's giving a worthless check in settlement of a claim against the practitioner by a client was improper.

Paragraph (g) of § 11.804 is based on 35 U.S.C. 32, and would prohibit disreputable or gross misconduct. An example of a practitioner being excluded for gross misconduct is found in *In re Wedderburn*, 1897 Dec. Comm'r. Pat. 77 (Comm'r Pat. 1897), mandamus denied sub nom., *United States ex rel. Wedderburn v. Bliss*, 1897 Dec. Comm'r. Pat. 750 (Sup.Ct. D.C. 1897), *aff'd.* 12 App. D.C. 485, 1898 Dec. Comm'r Pat. 413 (D.C. Cir. 1898).

Paragraph (h) of § 11.804 would define some, but not all, acts that would constitute violations of paragraphs (a) through (g) of this section. The USPTO believes that it would be helpful to practitioners if some specific prohibitions were set out in the rules. The prohibitions set out in paragraphs (1) through (10) of § 11.804 represent conduct that has occurred in the past or which the USPTO specifically seeks to prevent. The specific acts set out in paragraph (h) would not constitute a complete description of all acts in violation of paragraphs (a) through (g).

Paragraph (h)(1) of § 11.804, for example, would proscribe knowingly giving false or misleading information or knowingly participating in a material way in giving false or misleading information, to a client in connection with any immediate, prospective, or pending business before the Office.

Paragraph (h)(2) of § 11.804 would include as misconduct representing before the Office in a patent case either a joint venture comprising an inventor and an invention promoter or an inventor referred to the registered practitioner by an invention promoter. One requirement for the misconduct to obtain is that the registered practitioner know, or be advised by the Office, that