

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.

§ 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.

(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.

(c) *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. However, nothing in 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.

(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.

(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 (c)(1)(i), (c)(1)(ii) or (c)(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.

§ 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.