

(b) *Other crime coupled with confinement or commitment to imprisonment.* Every practitioner convicted of a crime in a court of the United States, or of any state, district, territory of the United States, or of a foreign country shall be disqualified from practicing before the Office in patent, trademark or other non-patent law matters as attorney or patent agent during the actual time of confinement or commitment to imprisonment and during release from actual confinement on condition of probation or parole.

(c) *Notification.* A practitioner who has been convicted of a serious crime in a court of the United States, or of any state, district, territory of the United States, or of a foreign country, except as to misdemeanor traffic offenses or traffic ordinance violations, not including the use of alcohol or drugs, or a practitioner who is convicted of any other crime and is confined or committed to imprisonment shall inform the OED Director within ten days from the date of such conviction. Upon learning that a practitioner has been convicted of a serious crime or another crime coupled with confinement or commitment to imprisonment, the OED Director shall obtain a certified copy of the conviction or docket entry, and file the same with the USPTO Director.

(d) *Notice to show cause and interim suspension.* (1) Following receipt of a certified copy of the court record or docket entry of the conviction, the USPTO Director shall enter an order suspending the practitioner in the interim from practice before the Office until the time for appeal has elapsed, if no appeal has been taken, or until the judgment or conviction has been affirmed on appeal, or has otherwise become final, and until further order of the USPTO Director. The USPTO Director may, *sua sponte*, decline to impose or may set aside, the suspension when it appears to be in the interest of justice to do so, with due regard being given to maintaining the integrity of, and confidence in, the profession of law. Upon a conviction becoming final, or imposition of a sentence or probation, the USPTO Director shall afford the practitioner an opportunity to show cause, within 40 days, why an order disciplining the practitioner should not be entered. Upon response, or if no response is timely filed, the USPTO Director shall enter an appropriate order.

(2) After said opportunity to show cause why disciplinary action should not be taken, and if one or more material facts are in dispute, the USPTO Director may enter an order disciplining any practitioner recognized 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 to discipline a practitioner convicted of a serious crime or a practitioner who is convicted of a crime and is confined or committed to imprisonment.

(e) *Proof of guilt.* A certified copy of the court record or docket entry of the conviction shall be conclusive evidence of the guilt of the crime of which the practitioner has been convicted, and of any imposed confinement or commitment to imprisonment. However, nothing this paragraph (e) shall preclude the practitioner from demonstrating in said hearing afforded by the USPTO Director, by clear and convincing evidence, material facts to be considered when determining if a serious crime was committed and whether a disciplinary sanction should be entered.

(f) If the USPTO Director finds that the offense involves moral turpitude *per se*, or that the conduct underlying the offense involves moral turpitude, the practitioner shall be excluded. If the USPTO Director finds that the practitioner was convicted of a crime and has been incarcerated, regardless of whether the offense involved moral turpitude, the practitioner shall be suspended or excluded and shall not be eligible for reinstatement during the time of confinement or commitment to imprisonment or release from actual confinement on conditions of probation or parole. If the USPTO Director finds that the practitioner has been convicted of a serious crime without being incarcerated, the USPTO Director may either continue the suspension or exclude the practitioner from practice before the Office. A copy of the USPTO Director's decision shall be served on the practitioner by certified mail, or any other available means, and upon the OED Director.

(g) *Crime determined not to be serious crime.* If the USPTO Director determines under paragraph (d) of this section not only that the crime is not a serious crime, but also that the practitioner has not been confined or committed to imprisonment, an order shall be entered reinstating the practitioner immediately. The proceeding shall continue (without referral of the matter to the Committee on Discipline under § 11.23) on a complaint pursuant to § 11.34 that the OED Director files within the time set by the order, and an answer pursuant to § 11.35 that the practitioner files within the time set by the order. A disciplinary

proceeding may continue before the hearing officer, and the hearing officer may hold such hearings and receive such briefs and other documents under §§ 11.35 through 11.53, as the hearing officer deems appropriate. However, the proceeding before the hearing officer shall not be concluded until all direct appeals from conviction of the crime have been completed.

(h) *Reinstatement.*—(1) *Upon reversal, vacation or setting aside of conviction.* A practitioner suspended or excluded under this section may file with the USPTO Director, at any time, a certificate demonstrating that the conviction, for which interim suspension was imposed, has been reversed, vacated or set aside by a court having jurisdiction of the criminal matter. Upon the filing of the certificate, the USPTO Director shall promptly enter an order reinstating the practitioner, but the reinstatement shall not terminate any other disciplinary proceeding then pending against the practitioner, the disposition of which shall be determined by the USPTO Director or hearing officer before whom the matter is pending, on the basis of all available evidence.

(2) *Following conviction of a crime coupled with confinement or commitment to imprisonment.* Any practitioner convicted of a crime and confined or committed to imprisonment, and who is disciplined in whole or in part in regard thereto, may petition for reinstatement under conditions set forth in § 11.60 no sooner than five years following discharge after completion of service of his or her sentence, or after completion of service under probation or parole, whichever is later.

(i) *Other crimes not coupled with confinement or commitment to imprisonment.* Upon being notified by a practitioner or upon receipt of a certified copy of a court record demonstrating that a practitioner has been found convicted of a crime other than a serious crime, and that the practitioner has not been confined or committed to imprisonment, the OED Director shall investigate the matter under § 11.22 and proceed as appropriate under §§ 11.26, 11.27, 11.28, and/or 11.32.

§ 11.26 Diversion.

(a) *Availability of diversion.* Subject to the limitations in paragraph (b) of this section, the OED Director may offer diversion to a practitioner under investigation for a disciplinary violation.

(b) *Limitations on diversion.* Diversion shall be available in matters