

disputed facts and disputed points of law will be deemed to have been abandoned by the appellant and may be disregarded by the USPTO Director in reviewing the initial determination, unless the USPTO Director chooses to review the issue on his or her own initiative under § 11.56. If the OED Director, through his or her representative, files the appeal or cross-appeal, the OED Director shall serve on the other party a copy of the appeal or cross-appeal. The other party to an appeal or cross-appeal may file a reply brief. A copy of respondent's reply brief shall be served on the OED Director. The time for filing any reply brief expires thirty (30) days after the date of service pursuant to § 11.42 of an appeal, cross-appeal or copy thereof. If the OED Director files the reply brief, the OED Director shall serve on the other party a copy of the reply brief. Upon the filing of an appeal, cross-appeal, if any, and reply briefs, if any, the OED Director shall transmit the entire record to the USPTO Director. Unless the USPTO Director permits, no further briefs or motions shall be filed.

(b) An appellant's or cross-appellant's brief shall be no more than 30 pages in length on 8½ by 11-inch paper, and shall comply with Rule 28(A)(2), (3), and (5) through (10), and Rule 32(a)(4), (5), (6), and (7) of the Federal Rules of Appellate Procedure. An appellee's or cross appellee's reply brief shall be no more than 15 pages in length on 8½ by 11-inch paper, and shall comply with Rule 28(A)(2), (3), (8), and (9), and Rule 32(a)(4), (5), (6), and (7) of the Federal Rules of Appellate Procedure. If a cross-appeal is filed, the party who files an appeal first is the appellant for purposes of this rule. If appeals are filed on the same day, the respondent is the appellant. The USPTO Director may refuse entry of a nonconforming brief.

(c) The USPTO Director will decide the appeal on the record made before the hearing officer.

(d) The USPTO Director may order reopening of a disciplinary proceeding in accordance with the principles that govern the granting of new trials. Any request to reopen a disciplinary proceeding on the basis of newly discovered evidence must demonstrate that the newly discovered evidence could not have been discovered by due diligence.

(e) In the absence of an appeal by the OED Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both acceptance by the respondent of the initial decision and waiver by the respondent of the right to further administrative or judicial review.

§ 11.56 Decision of the USPTO Director.

(a) The USPTO Director shall decide an appeal from an initial decision of the hearing officer. The USPTO Director may affirm, reverse, or modify the initial decision or remand the matter to the hearing officer for such further proceedings as the USPTO Director may deem appropriate. In making a final decision, the USPTO Director shall review the record or the portions of the record designated by the parties. The USPTO Director shall transmit a copy of the final decision to the OED Director and to the respondent.

(b) A final decision of the USPTO Director may dismiss a disciplinary proceeding, reprimand a practitioner, or may suspend or exclude the practitioner from practice before the Office.

(c) The respondent or the OED Director may make a single request for reconsideration or modification of the decision by the USPTO Director if filed within 20 days from the date of entry of the decision. No request for reconsideration or modification shall be granted unless the request is based on newly discovered evidence, and the requestor must demonstrate that the newly discovered evidence could not have been discovered by due diligence. Such a request shall have the effect of staying the effective date of the order of discipline in the final decision. The decision by the USPTO Director is effective on its date of entry.

§ 11.57 Review of final decision of the USPTO Director.

(a) Review of the final decision by USPTO Director in a disciplinary case may be had, subject to § 11.55(d), by a petition filed in the United States District Court for the District of Columbia in accordance with the local rule of said court. 35 U.S.C. 32. The Respondent must serve the USPTO Director with the petition. Service upon the USPTO Director is effected (1) by delivering a copy of the petition by registered or certified mail or as otherwise authorized by law on the USPTO to: Director of the USPTO, Office of the General Counsel, United States Patent and Trademark Office, P.O. Box 15667, Arlington, VA 22215; or (2) by hand-delivering a copy of the petition during business hours to: Director of the USPTO, Office of the General Counsel, Crystal Park Two, Suite 905, 2121 Crystal Dr., Arlington, VA 22215.

(b) The USPTO Director may stay an order of discipline in the final decision pending review of the final decision of the USPTO Director.

§ 11.58 Suspended or excluded practitioner.

(a) A practitioner who is suspended or excluded under §§ 11.24, 11.25, 11.27, 11.55, or 11.56, or has resigned from practice before the Office under §§ 11.11(d) shall not engage in practice of patent, trademark and other non-patent law before the Office. No practitioner suspended or excluded under §§ 11.24, 11.25, 11.27, 11.55, or 11.56 will be automatically reinstated at the end of his or her period of suspension. A practitioner who is suspended or excluded, or who resigned under § 11.11(d) must comply with the provisions of this section and §§ 11.12 and 11.60 to be reinstated. Willful failure to comply with the provisions of this section constitutes grounds for denying a suspended or excluded practitioner's application for reinstatement or readmission. Willful failure to comply with the provisions of this section constitutes cause not only for denial of reinstatement, but also cause for further action, including seeking further exclusion, suspension, and for revocation of any pending probation.

(b) Unless otherwise ordered by the USPTO Director, any practitioner who is suspended or excluded from practice before the Office under §§ 11.24, 11.25, 11.55, or 11.56, who has been excluded on consent under provisions of § 11.27, or whose notice of resignation has been accepted under § 11.11(d) shall:

(1) Within 20 days after the date of entry of the order of suspension, exclusion, or exclusion by consent, or of acceptance of resignation:

(i) File a notice of withdrawal as of the effective date of the suspension, exclusion, or exclusion by consent, or acceptance of resignation in each pending patent and trademark application, each pending reexamination and interference proceeding, and every other matter pending in the Office, together with a copy of the notices sent pursuant to paragraphs (b) and (c) of this section;

(ii) Provide notice to all bars of which the practitioner is a member and all clients on retainer having immediate or prospective business before the Office in patent, trademark and other non-patent matters, all clients the practitioner represents before the Office, and all clients having immediate or prospective business before the Office in patent, trademark and other non-patent matters of the order of suspension, exclusion, exclusion by consent, or resignation and of the practitioner's consequent inability to act as a practitioner after the effective date of the order; and that, if not represented by another practitioner, the