

(d) *Review of reinstatement petition.* A practitioner suspended, excluded, or excluded-on-consent shall file a petition for reinstatement accompanied by the fee required by § 1.21(a)(10) of this subchapter. The petition for reinstatement by a practitioner suspended, excluded, or excluded-on-consent for misconduct, must provide proof of rehabilitation and compliance with the provisions of § 11.11(d)(2), and it shall be filed with the OED Director. A suspended or excluded practitioner who has violated any provision of § 11.58 shall not be eligible for reinstatement until a continuous period of the time in compliance with § 11.58 that is equal to the period of suspension or exclusion has elapsed. If the suspended, excluded, or excluded-on-consent practitioner is not eligible for reinstatement, or if the OED Director determines that the petition is insufficient or defective on its face, the OED Director may dismiss the petition. Otherwise the OED Director shall consider the petition for reinstatement. The suspended, excluded, or excluded-on-consent practitioner seeking reinstatement shall have the burden of proof by clear and convincing evidence. Such proof shall be included in or accompany the petition, and shall establish:

(1) That the practitioner has the moral character qualifications, competency, and learning in law required under § 11.7 for admission;

(2) That the resumption of practice before the Office will not be detrimental to the administration of justice, or subversive to the public interest; and

(3) That the suspended practitioner has complied with the provisions of § 11.58 for the full period of suspension, or that the excluded or excluded-on-consent practitioner has complied with the provisions of § 11.58 for at least five continuous years.

(e) *Petitions for reinstatement—Action by the OED Director granting reinstatement.* (1) If the petitioner is found fit to resume the practice before the Office, the OED Director shall enter an order of reinstatement, which may be conditioned upon the making of partial or complete restitution to persons harmed by the misconduct which led to the suspension or exclusion, or upon the payment of all or part of the costs of the disciplinary proceedings, the reinstatement proceedings, or any combination thereof.

(2) *Payment of costs of disciplinary or reinstatement proceedings.* Upon petitioning for reinstatement, the practitioner shall pay the costs of the disciplinary proceeding, and costs for the reinstatement proceeding. The costs

imposed pursuant to this section include all of the following:

(i) The actual expense incurred by the OED Director or the Office for the original and copies of any reporter's transcripts of the disciplinary proceedings or reinstatement proceedings, and any fee paid for the services of the reporter;

(ii) All expenses paid by the OED Director or the Office which would qualify as taxable costs recoverable in civil proceedings; and

(iii) The charges determined by the OED Director to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for services of attorneys and experts, of the Office of Enrollment and Discipline in the preparation or hearing of disciplinary proceeding or reinstatement proceeding, and costs incurred in the administrative processing of the disciplinary proceeding or reinstatement proceeding.

(3) A suspended, excluded, or excluded-on-consent practitioner may be granted relief, in whole or in part, only from an order assessing costs under this section, or may be granted an extension of time to pay these costs, in the discretion of the OED Director, upon grounds of hardship, special circumstances, or other good cause.

(f) *Petitions for reinstatement—Action by the OED Director denying reinstatement.* If the petitioner is found unfit to resume the practice of patent law before the Office, the OED Director shall first provide the suspended, excluded, or excluded-on-consent practitioner with an opportunity to show cause in writing why the petition should not be denied. Failure to comply with § 11.12(d)(2) shall constitute unfitness. If unpersuaded by the showing, the OED Director shall deny the petition. The OED Director may require the suspended, excluded, or excluded-on-consent practitioner, in meeting the requirements of § 11.7, to take and pass an examination under § 11.7(b), ethics courses, and/or the Multistate Professional Responsibility Examination. The OED Director shall provide findings, together with the record. The findings shall include on the first page, immediately beneath the caption of the case, a separate section entitled "Prior Proceedings" which shall state the docket number of the original disciplinary proceeding in which the suspension, exclusion, or exclusion by consent was ordered.

(g) *Resubmission of petitions for reinstatement.* If a petition for reinstatement is denied, no further petition for reinstatement may be filed until the expiration of at least one year

following the denial unless the order of denial provides otherwise.

(h) *Reinstatement proceedings open to public.* Proceedings on any petition for reinstatement shall be open to the public. Before reinstating any suspended, excluded, or excluded-on-consent practitioner, the OED Director shall publish in the Official Gazette a notice of the suspended, excluded, or excluded-on-consent practitioner's petition for reinstatement and shall permit the public a reasonable opportunity to comment or submit evidence with respect to the petition for reinstatement.

§ 11.61 Savings clause.

(a) A disciplinary proceeding based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, if such conduct would continue to justify suspension or exclusion under the provisions of this Part.

(b) No practitioner shall be subject to a disciplinary proceeding under this Part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before such effective date.

§ 11.62 Protection of clients interests when practitioner becomes unavailable.

If a practitioner dies, disappears, or is suspended or transferred to inactive status 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 should be handled in accordance with the laws of the local jurisdiction.

Subpart D—USPTO Rules of Professional Conduct

§ 11.100 Interpretation of the USPTO Rules of Professional Conduct.

(a) Rules in §§ 11.101 through 11.806 that are imperatives are cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline.

(b) Rules in §§ 11.101 through 11.806 that are permissive are cast in the term "may." These define areas under the Rules in which the practitioner has professional discretion. No disciplinary action should be taken when the practitioner chooses not to act or acts within the bounds of such discretion.

(c) Other rules in §§ 11.101 through 11.806 defining the nature of relationships between the practitioner