

U.S. Patent and Trademark Office, Commerce

§ 11.1

- 11.21 Warnings.
- 11.22 Investigations.
- 11.23 Committee on Discipline.
- 11.24 Reciprocal discipline.
- 11.25 Interim suspension and discipline based upon conviction of committing a serious crime.
- 11.26 Settlement.
- 11.27 Exclusion on consent.
- 11.28 Incapacitated practitioners in a disciplinary proceeding.
- 11.29 Reciprocal transfer or initial transfer to disability inactive status.
- 11.30-11.31 [Reserved]
- 11.32 Initiating a disciplinary proceeding.
- 11.33 [Reserved]
- 11.34 Complaint.
- 11.35 Service of complaint.
- 11.36 Answer to complaint.
- 11.37 [Reserved]
- 11.38 Contested case.
- 11.39 Hearing officer; appointment; responsibilities; review of interlocutory orders; stays.
- 11.40 Representative for OED Director or respondent.
- 11.41 Filing of papers.
- 11.42 Service of papers.
- 11.43 Motions.
- 11.44 Hearings.
- 11.45 Amendment of pleadings.
- 11.46-11.48 [Reserved]
- 11.49 Burden of proof.
- 11.50 Evidence.
- 11.51 Depositions.
- 11.52 Discovery.
- 11.53 Proposed findings and conclusions; post-hearing memorandum.
- 11.54 Initial decision of hearing officer.
- 11.55 Appeal to the USPTO Director.
- 11.56 Decision of the USPTO Director.
- 11.57 Review of final decision of the USPTO Director.
- 11.58 Duties of disciplined or resigned practitioner.
- 11.59 Dissemination of disciplinary and other information.
- 11.60 Petition for reinstatement.
- 11.61 Savings clause.
- 11.62-11.99 [Reserved]

AUTHORITY: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32, 41.

SOURCE: 69 FR 35452, June 24, 2004, unless otherwise noted.

Subpart A—General Provisions

GENERAL INFORMATION

§ 11.1 Definitions.

This part governs solely the practice of patent, trademark, and other law before the United States Patent and Trademark Office. Nothing in this part

shall be construed to preempt the authority of each State to regulate the practice of law, except to the extent necessary for the United States Patent and Trademark Office to accomplish its Federal objectives. Unless otherwise clear from the context, the following definitions apply to this part:

Attorney or lawyer means an individual who is a member in good standing of the highest court of any State, including an individual who is in good standing of the highest court of one State and not under an order of any court or Federal agency suspending, enjoining, restraining, disbaring or otherwise restricting the attorney from practice before the bar of another State or Federal agency. A *non-lawyer* means a person who is not an attorney or lawyer.

Belief or believes means that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

Conviction or convicted means any confession to a crime; a verdict or judgment finding a person guilty of a crime; any entered plea, including *nolo contendere* or Alford plea, to a crime; or receipt of deferred adjudication (whether judgment or sentence has been entered or not) for an accused or pled crime.

Crime means any offense declared to be a felony or misdemeanor by Federal or State law in the jurisdiction where the act occurs.

Data sheet means a form used to collect the name, address, and telephone information from individuals recognized to practice before the Office in patent matters.

Disqualified means any action that prohibits a practitioner from participating in or appearing before the program or agency, regardless of how long the prohibition lasts or the specific terminology used.

Federal agency means any authority of the executive branch of the Government of the United States.

Federal program means any program established by an Act of Congress or administered by a Federal agency.

Fiscal year means the time period from October 1st through the ensuing September 30th.

Fraud or *fraudulent* means conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

Good moral character and reputation means the possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the legal process and the administration of justice, as well as the condition of being regarded as possessing such qualities.

Knowingly, known, or knows means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

Mandatory Disciplinary Rule is a rule identified in §10.20(b) of this chapter as a Disciplinary Rule.

Matter means any litigation, administrative proceeding, lobbying activity, application, claim, investigation, controversy, arrest, charge, accusation, contract, negotiation, estate or family relations practice issue, request for a ruling or other determination, or any other matter covered by the conflict of interest rules of the appropriate Government entity.

OED means the Office of Enrollment and Discipline.

OED Director means the Director of the Office of Enrollment and Discipline.

OED Director's representatives means attorneys within the USPTO Office of General Counsel who act as representatives of the OED Director.

Office means the United States Patent and Trademark Office.

Practitioner means:

(1) An attorney or agent registered to practice before the Office in patent matters,

(2) An individual authorized under 5 U.S.C. 500(b) or otherwise as provided by §10.14(b), (c), and (e) of this subchapter, to practice before the Office in trademark matters or other non-patent matters, or

(3) An individual authorized to practice before the Office in a patent case or matters under §11.9(a) or (b).

Proceeding before the Office means an application for patent, an application for reissue, a reexamination, a protest, a public use matter, an *inter partes* patent matter, correction of a patent, cor-

rection of inventorship, an application to register a trademark, an *inter partes* trademark matter, an appeal, a petition, and any other matter that is pending before the Office.

Reasonable or reasonably when used in relation to conduct by a practitioner means the conduct of a reasonably prudent and competent practitioner.

Registration means registration to practice before the Office in patent proceedings.

Roster means a list of individuals who have been registered as either a patent attorney or patent agent.

Serious crime means:

(1) Any criminal offense classified as a felony under the laws of the United States, any state or any foreign country where the crime occurred; or

(2) Any crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the crime occurred, includes interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

Significant evidence of rehabilitation means satisfactory evidence that is significantly more probable than not that there will be no recurrence in the foreseeable future of the practitioner's prior disability or addiction.

State means any of the 50 states of the United States of America, the District of Columbia, and any Commonwealth or territory of the United States of America.

Substantial when used in reference to degree or extent means a material matter of clear and weighty importance.

Suspend or *suspension* means a temporary debarring from practice before the Office or other jurisdiction.

United States means the United States of America, and the territories and possessions the United States of America.

USPTO Director means the Director of the United States Patent and Trademark Office, or an employee of the Office delegated authority to act for the Director of the United States Patent

and Trademark Office in matters arising under this part.

[69 FR 35452, June 24, 2004, as amended at 73 FR 47687, Aug. 14, 2008]

§ 11.2 Director of the Office of Enrollment and Discipline.

(a) *Appointment.* The USPTO Director shall appoint a Director of the Office of Enrollment and Discipline (OED Director). In the event of a vacancy in the office of the OED Director, the USPTO Director may designate an employee of the Office to serve as acting OED Director. The OED Director shall be an active member in good standing of the bar of the highest court of a State.

(b) *Duties.* The OED Director shall:

(1) Supervise staff as may be necessary for the performance of the OED Director's duties.

(2) Receive and act upon applications for registration, prepare and grade the examination provided for in § 11.7(b), maintain the register provided for in § 11.5, and perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary.

(3) Conduct investigations into the moral character and reputation of any individual seeking to be registered as an attorney or agent, or of any individual seeking limited recognition, deny registration or recognition of individuals failing to demonstrate possession of good moral character and reputation, and perform such other duties in connection with enrollment matters and investigations as may be necessary.

(4) Conduct investigations of matters involving possible grounds for discipline of practitioners coming to the attention of the OED Director. Except in matters meriting summary dismissal, no disposition under § 11.22(h) shall be recommended or undertaken by the OED Director until the accused practitioner shall have been afforded an opportunity to respond to a reasonable inquiry by the OED Director.

(5) With the consent of a panel of three members of the Committee on Discipline, initiate disciplinary proceedings under § 11.32 and perform such other duties in connection with investigations and disciplinary proceedings as may be necessary.

(6) Oversee the preliminary screening of information and close investigations as provided for in § 11.22.

(7) [Reserved]

(c) *Petition to OED Director regarding enrollment or recognition.* Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director accompanied by payment of the fee set forth in § 1.21(a)(5)(i) of this chapter. Any such petition not filed within sixty days from the mailing date of the action or notice from which relief is requested will be dismissed as untimely. The filing of a petition will neither stay the period for taking other action which may be running, nor stay other proceedings. The petitioner may file a single request for reconsideration of a decision within thirty days of the date of the decision. Filing a request for reconsideration stays the period for seeking review of the OED Director's decision until a final decision on the request for reconsideration is issued. A final decision by the OED Director may be reviewed in accordance with the provisions of paragraph (d) of this section.

(d) *Review of OED Director's decision regarding enrollment or recognition.* A party dissatisfied with a final decision of the OED Director regarding enrollment or recognition may seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee set forth in § 1.21(a)(5)(ii) of this chapter. Any such petition to the USPTO Director waives a right to seek reconsideration from the OED Director. Any petition not filed within thirty days after the final decision of the OED Director may be dismissed as untimely. Briefs or memoranda, if any, in support of the petition shall accompany the petition. The petition will be decided on the basis of the record made before the OED Director. The USPTO Director in deciding the petition will consider no new evidence. Copies of documents already of record before the OED Director shall not be submitted with the petition. An oral hearing will not be granted except when considered necessary by the USPTO Director. Any request for reconsideration of the decision of the USPTO Director may be dismissed as