

1.21(a)(5) would be revised and redesignated (a)(5)(ii).

Paragraph (a)(6) of § 1.21 would be eventually revised by deleting the fee for regrade and reserve the omitted paragraph.

Paragraph (a)(7) of § 1.21 is proposed to be added to provide for a new annual fee paid by active and voluntary inactive registered patent attorneys and agents.

Paragraph (a)(8) of § 1.21(a)(8) is proposed to be added to provide for a new annual fee paid by individuals granted limited recognition to practice before the Office.

Paragraph (a)(9) of § 1.21 is proposed to be added to provide for new fees associated with delinquency resulting in administrative suspension of a registered practitioner, and reinstatement of the practitioner.

Paragraph (a)(12) of § 1.21 is proposed to be added to provide for a fee to be paid by a sponsor upon submitting to the OED Director all information called for by the "Application by Sponsor for Pre-approval of a Continuing Education Program."

Section 1.31 would be amended to revise the references from §§ 10.6 and 10.9 to §§ 11.6 and 11.9, respectively.

Section 1.33(c) would be amended to revise the references from §§ 10.5 and 10.11 to §§ 11.5 and 11.11, respectively.

Section 1.455 would be amended to revise the reference from § 10.10 to § 11.10.

Section 2.11 would be amended to revise the reference from § 10.14 to § 11.14.

Section 2.17(a) would be amended to revise the reference from §§ 10.1 and 10.14 to §§ 11.1 and 11.14, respectively.

Section 2.17(c) would be amended to revise the reference from § 10.1 to § 11.1.

Section 2.24 would be amended to revise the reference from § 10.14 to § 11.14.

Section 2.161(b)(3) would be amended to revise the reference from § 10.1 to § 11.1.

Section 11.1 would set out definitions of terms used in Part 11. The defined terms include: affidavit, application, attorney, belief, consent, consult, differing interests, employee of a tribunal, firm, fraud, full disclosure, giving information, hearing officer, knowingly, law clerk, legal counsel, legal profession, legal service, legal system, matter, OED Director, Office, partner, person, practitioner, proceeding before the Office, professional legal corporation, reasonable, reasonably should know, registration, respondent,

secret, solicit, state, substantial, tribunal, and United States.

In the proposed rules, the word "individual" is used to mean a natural person, as opposed to a juristic entity. The definition of "person" is similar to the definition of "person" in 1 U.S.C. 1. "Attorney" is defined in the same manner as the term is used in 5 U.S.C. 500(b). The proposed definition includes an attorney who is a member of one bar in good standing, and "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. The broad definition is believed necessary inasmuch as 5 U.S.C. 500(b) provides that "an individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency \* \* \*." Though an attorney suspended in one state and a member in good standing in another state could represent a person before the Office, nevertheless the grounds for suspension in one state may give rise to grounds for suspending the attorney from practice before the Office, 5 U.S.C. 500(d)(2), after notice and opportunity for a hearing. See *Selling v. Radford*, 243 U.S. 46 (1917).

The phrase "full disclosure" is used to define the explanation a practitioner must give a client regarding potential and actual conflicts of interest. The explanation is based on discussions of full disclosure found in Opinion No. 1997-148, Standing Committee on Professional Responsibility and Conduct (California), and in *In re James*, 452 A.2d 163 (D.C. App. 1982).

Section 11.2, like current § 10.2, would continue to provide for the OED Director. The proposed rule sets out the duties of the OED Director, including receiving and acting upon applications, conducting investigations concerning the moral character and reputation of individuals seeking registration, conducting investigations of possible violations by practitioners of the Office Rules of Professional Conduct, initiating disciplinary proceedings, dismissing complaints or closing investigations, and filing with the Director of the United States Patent and Trademark Office ("USPTO Director") certificates of convictions of practitioners. Except as otherwise noted, any final decision of the OED Director refusing to register an individual, refund a fee, recognize an individual, or reinstate a suspended or excluded practitioner would be reviewable by the USPTO Director. A fee, set forth in 37 CFR 1.21(a)(5), would be charged.

Section 11.3 would provide for waiver of the rules and qualified immunity.

Paragraph (a) of § 11.3, like current § 10.170, would provide for suspension, except as provided in section (b), in an extraordinary situation, when justice requires, of any requirement of the regulations of this part which is not a requirement of the statutes.

Paragraph (b) of § 11.3 would prohibit waiver of any provision of the Office Rules of Professional Conduct, §§ 11.100 through 11.806; the disciplinary jurisdiction of the rules, § 11.19; or the procedures for interim suspension and disciplinary proceeding based on reciprocal discipline or conviction of a serious crime, § 11.24.

Paragraph (c) of § 11.3, like current § 10.170(b), would provide that a petition to waive a rule will not stay a disciplinary proceeding unless ordered by the USPTO Director or a hearing officer.

Paragraph (d) of § 11.3 would provide a qualified privilege for complaints submitted to the OED Director. This privilege should arise from the necessity to reduce to the extent possible any probability that an ethics complainant having honest cause to complain may be intimidated by a practitioner into not filing a complaint. Some states recognize that a complainant has absolute immunity for filing a complaint regardless of the outcome of the proceeding. See *Drummond v. Stahl*, 127 Ariz. 122, 618 P.2d 616 (Ct. App. Div 1 1980), cert. denied, 450 U.S. 967, 101 S.Ct. 1484, 67 L. Ed. 2d 616 (1981); *Katz v. Rosen*, 48 Cal. App. 3d 1032, 121 Cal. Rptr. 853 (1st. Dist. 1975); *Field v. Kearns*, 43 Conn. App. 265, 682 A.2d 148 (1996), cert. denied, 239 Conn. 942, 684 A.2d 711 (1996); *Jarvis v. Drake*, 250 Kan. 645, 830 P.2d 23 (1992); *Kerpelman v. Bricker*, 23 Md. App. 628, 329 A.2d 423 (1974); *Netterville v. Lear Siegler, Inc.*, 397 So.2d 1109 (Miss. 1981); *Sinnett v. Albert*, 188 Neb. 176, 195 N.W.2d 506 (1972); *Weiner v. Weintraub*, 22 N.Y.2d 330, 292 N.Y.S.2d 667, 239 N.E.2d 540 (1968); *Elsass v. Tabler*, 131 Ohio App.3d 66, 721 N.E.2d 503 (1999); *McAfee v. Feller*, 452 S.W.2d 56 (Tex. Civ. App. Houston 14th Dist. 1970). Complaints filed with a state bar committee are absolutely privileged as communications made in a quasi-judicial proceeding. E.g., *Goldstein v. Serio*, 496 So.2d 412 (La. Ct. App. 4th Cir. 1986), writ denied, 501 So.2d 208, 209 (La. 1987).

Under English common law, the "absolute privilege" from defamation actions that attaches to all statements and testimony by witnesses, judges, and parties in the course of any judicial proceeding has been held to apply to