

charge, or in view of settlement, compromise, or restitution.

*Paragraph (d) of § 11.22* would require a complaint alleging misconduct by a practitioner to be in writing and contain a brief statement of the facts upon which the complaint is based.

*Paragraph (e) of § 11.22* would provide for screening complaints. Complaints would be docketed only if they are not unfounded on their face, if they contain allegations of conduct, that, if true, would constitute a violation of the practitioner's oath or the Rules of Professional Conduct that would merit discipline, and are within the jurisdiction of the Office.

*Paragraph (f) of § 11.22* would provide for notifying the complainant when a complaint is not docketed, and giving the reasons therefor. This rule would provide that the OED Director's decision is not subject to review.

*Paragraph (g) of § 11.22* would permit complainants to be advised of the docketing of the complaint.

*Paragraph (h) of § 11.22* would provide for notifying a practitioner in writing when a formal investigation in the practitioner's conduct has been initiated.

*Paragraph (i) of § 11.22* would provide for a practitioner to have 30 days to respond to an inquiry, and to allow only one 30-day extension of time. The response must set forth practitioner's position with respect to allegations contained in the complaint.

*Paragraph (j) of § 11.22* would provide that the OED Director could request information from the complainant, practitioner, or any other person who may reasonably be expected to have information needed concerning the practitioner. A number of state bars were surveyed to identify whether a common practice existed on handling the issue of contacting a non-complaining client. Many states have no specific procedural rules but can and do contact the non-complaining client without the safeguards contained in proposed paragraph (j) of this section. For example, one state bar has no rule but contacts the attorney first, and then attempts to call the non-complaining client before the attorney communicates with the client. Another has no rule and does in fact contact the non-complaining client without first informing the attorney.

In the absence of a consistent practice among the various state bars, the USPTO is placing formal safeguards through Section 11.22(j). We recognize that such contact can create the possibility of conflicts with the attorney. At the same time, there are cases in which disciplinary action is most

necessary and the non-complaining client is unknowingly being victimized. The USPTO needs the discretion to undertake the appropriate investigation without necessarily going through the attorney. The USPTO wants to be careful to balance the competing interests with the creation of a formal procedure that provides appropriate safeguards to the attorney-client relationship.

*Paragraph (j) of § 11.22* would provide that the OED Director could request information from the complainant, practitioner, or any other person who may reasonably be expected to have information needed concerning the practitioner. The attorney will be contacted first unless there is good cause to believe that such contact would interfere with the gathering of relevant material from the client. If the OED Director believes that there is good cause for such interference or the attorney declines to consent, the OED Director will provide a showing including reasons to the USPTO Director for review and clearance.

*Paragraph (k) of § 11.22* would permit the OED Director to examine financial books and records maintained by a practitioner reflecting his or her practice before the Office.

*Paragraph (l) of § 11.22* would provide that a practitioner's failure to respond or evasive response to the OED Director's written inquiries during an investigation would permit the Committee on Discipline to enter an appropriate finding of probable cause.

*Paragraph (m) of § 11.22* would allow the OED Director to dispose of investigations by closure without issuance of a warning, institution of formal charges, diversion, or exclusion on consent.

*Paragraph (n) of § 11.22* would permit the OED Director to terminate an investigation and decline to refer a matter to the Committee on Discipline in a variety of circumstances, including where the complaint is unfounded, the matter is not within the jurisdiction of the Office, the questioned or alleged conduct does not constitute misconduct, the available evidence shows that the practitioner did not engage or willfully engage in the questioned or alleged misconduct, that there is no credible evidence to support any allegation of misconduct by the practitioner, or that the available evidence could not reasonably be expected to support any allegation of misconduct under a "clear and convincing" evidentiary standard.

*Section 11.23* would continue the practice of current § 10.4 of providing for a Committee on Discipline.

*Paragraph (a) of § 11.23* would describe the organization of the Committee on Discipline. The Committee would have two or more subcommittees having three members each to facilitate processing of the matters the OED Director refers to the Committee. The Committee would designate a Contact Member to review and approve or suggest modifications of recommendations by OED Director for dismissals, and warnings.

*Paragraph (b) of § 11.23* would set forth the powers and duties of the Committee on Discipline. The Committee would designate a Contact Member to review, and approve or suggest modifications of, recommendations by OED Director of dismissals and warnings. The Committee would prepare and forward its own probable cause recommendations to the OED Director.

*Paragraph (c) of § 11.23* would provide that no discovery could be had of deliberations of the Committee on Discipline. *See Morgan v. United States*, 313 U.S. 409, 422 (1941). Accordingly, under the proposed rules, a disciplinary proceeding would resolve whether a practitioner has or has not committed violations alleged in the complaint that the Committee authorized to be filed under § 11.26.

*Section 11.24* would provide for interim suspension and discipline based on reciprocal discipline of a practitioner suspended or disbarred, or who resigns in lieu of discipline. The USPTO Director, upon being provided with a certified copy of a disciplinary court's record disciplining a practitioner, would suspend the practitioner in the interim. The practitioner would be provided with a forty-day period to show cause why reciprocal discipline should not be imposed. A certified copy of the record of suspension, disbarment, or resignation shall be conclusive evidence of the commission of professional misconduct. The practitioner may challenge imposition of reciprocal discipline on four specific grounds, *i.e.*, lack of notice or opportunity to be heard, infirmity of proof of establishing misconduct, grave injustice resulting from imposing the same discipline, or the misconduct warrants imposition of a different discipline.

*Section 11.25* would provide for interim suspension and discipline of a practitioner convicted of committing a serious crime or other crime coupled with confinement or commitment to imprisonment. The USPTO Director, upon being provided with a certified copy of a court's record or docket entry, would suspend the practitioner from