

Paragraph (g) of § 11.115 would require a minimum accounting procedure that would be applicable to all escrow accounts subject to §§ 11.115(a) and (d).

The records §§ 11.115(f) and (g) would require a practitioner to keep are the same records the practitioner must currently maintain to comply with 37 CFR 10.112(c)(3). Section 10.112(c)(3) requires a practitioner to "maintain complete records of all funds, securities and other properties of a client coming into the possession of the practitioner." Section 10.112(c)(3) is substantially the same as DR 9-102(b)(3) of the Code of Professional Responsibility of the American Bar Association, which was adopted by numerous states. It has been long recognized that compliance with the Code's rule requires maintenance of, *inter alia*, a cash receipts journal, a cash disbursements journal, and a subsidiary ledger, as well as period trial balances, and insufficient fund check reporting. See *Wright v. Virginia State Bar*, 357 S.E.2d 518, 519 (Va. 1987); *In re Librizzi*, 569 A.2d 257, 258-259 (N.J. 1990); *In re Heffernan*, 351 N.W.2d 13, 14 (Minn. 1984); *In re Austin*, 333 N.W.2d 633, 634 (Minn. 1983); and *In re Kennedy*, 442 A.2d 79, 84-85 (Del. 1982). Thus, §§ 11.115(f) and (g) articulate recordkeeping requirements that currently obtain for all practitioners.

With respect to property that constitutes evidence, such as the instruments or proceeds of crime, see § 11.304(a).

Paragraph (h) of § 11.115 would provide for accepting, as complying with §§ 11.115(f) and (g), financial records maintained by an attorney that comply with his or her state bar's financial recordkeeping requirements if the attorney is a member in good standing of the bar of the highest court of that state, and the attorney's principal place of business is in that state. For patent agents employed by a law firm, substantial compliance with the USPTO recordkeeping requirements will be met if the law firm in a state employing the agent complies with the financial recordkeeping requirements of that state. Attorneys and patent agents outside United States, all attorneys not maintaining a financial account records in compliance with his or her state bar's recordkeeping requirements, and all other patent agents must comply with USPTO recordkeeping requirements detailed in § 11.115. The USPTO presumes that patent agents employed by law firms do not have control over how records are to be maintained and may not have a choice of what guidelines with which they must

comply. Patent agents who are hired as contractors, on the other hand, and self-employed patent agents are presumed to have control and, thus, must comply with the provisions of §§ 11.115(f) and (g).

Section 11.116 would continue the current practice regarding withdrawal. A practitioner should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion.

Paragraph (a) of § 11.116 would address mandatory withdrawal. A practitioner ordinarily must decline or withdraw from representation if the client demands that the practitioner engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The practitioner is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a practitioner will not be constrained by a professional obligation.

Difficulty may be encountered if withdrawal is based on the client's demand that the practitioner engage in unprofessional conduct, or failure to pay agreed-upon fees. The Office or court may wish an explanation for the withdrawal, while the practitioner may be bound to keep confidential the facts that would constitute such an explanation. The practitioner's statement that irreconcilable differences between the practitioner and client require termination of the representation ordinarily should be accepted as sufficient.

Paragraph (a) of § 11.116 would also address discharge of a practitioner. A client has a right to discharge a practitioner at any time, with or without cause, subject to liability for payment for the practitioner's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances. Whether an inventor, who is employed by a company and has signed a power of attorney to a practitioner retained by the company, can discharge the practitioner may depend on the facts and applicable law. In the absence of evidence that the company is the assignee of record of the entire interest, and that as assignee, the company has given a power of attorney to the practitioner, the inventor at least technically may revoke the power of attorney. Upon recording an assignment of the entire interest, the company may elect to revoke all previous powers of attorney and appoint the practitioner. 37 CFR 1.36. If an employee-inventor refuses to execute an assignment, and

there is an agreement between the employee and employer for assignment of patent rights, the employer may be entitled under state law to specific performance of the agreement. See *In re RCA Corporation*, 209 USPQ 1114 (Comm'r Pat. 1981).

If a client is mentally incompetent, the client may lack the legal capacity to discharge the practitioner. The practitioner should make a special effort to help the client consider the consequences and, in an extreme case, may initiate proceedings for a conservatorship or similar protection of the client. See § 11.114.

Paragraph (b) of § 11.116 would address optional withdrawal. A practitioner may withdraw from representation in some circumstances. The practitioner has the option to withdraw if the withdrawal can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the practitioner reasonably believes is criminal or fraudulent, for a practitioner is not required to be associated with such conduct even if the practitioner does not further it. See § 11.102(d) and (e). Withdrawal is also permitted if the practitioner's services were misused in the past even if that would materially prejudice the client.

A practitioner may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning the timely payment of the practitioner's fees, court costs or other out-of-pocket expenses of the representation, or an agreement limiting the objectives of the representation.

If the matter is not pending in court or before the Office, a practitioner will not have "other good cause for withdrawal" unless the practitioner is acting in good faith and the circumstances are exceptional enough to outweigh the material adverse effect on the interests of the client that withdrawal will cause.

Paragraph (b) of § 11.116 would address assisting the client upon withdrawal. Even if the client has unfairly discharged the practitioner, a practitioner would be required to take all reasonable steps to mitigate the consequences to the client. The practitioner may retain papers as security for a fee only to the extent permitted by § 11.108(i).

Paragraph (c) of § 11.116 would address compliance with requirements of a tribunal, e.g., the Office. This paragraph would reflect that a practitioner may, by appearing before a tribunal, become subject to the