

Paragraph (c) of § 11.704 would continue the procedure of current § 10.34(c) permitting a registered patent agent who is not an attorney to use the designation "Patents," "Patent Agent," "Registered Patent Agent," or a substantially similar designation.

Section 11.705 would provide for firm names and letterheads. A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as the ABC Legal Clinic. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. For example, if a private firm uses a trade name that includes a geographical name such as Springfield Legal Clinic, an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a practitioner not associated with the firm or a predecessor of the firm.

Paragraph (d) of § 11.705 would provide that practitioners sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, Smith and Jones, for that title suggests partnership in the practice of law.

Section 11.801 would impose the same duty to persons seeking admission to a bar as well as to practitioners. Hence, if a person makes a material false statement in connection with an application for registration, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by § 11.801 applies to a practitioner's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a practitioner knowingly to make a misrepresentation or omission in connection with a disciplinary investigation of the practitioner's own conduct. Section 11.801 also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

Section 11.801 is subject to the provisions of the Fifth Amendment of the United States Constitution and

corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this rule.

A practitioner representing an applicant for registration, or representing another practitioner who is the subject of a disciplinary inquiry or proceeding, is governed by the Rules applicable to the client-practitioner relationship. For example, § 11.106 may prohibit disclosures, which would otherwise be required by a practitioner serving in such representative capacity. Practitioners representing an applicant or another practitioner must take steps to reasonably assure compliance with §§ 11.303(a)(1) and (2), and 11.804(c). See *Lipman v. Dickinson*, 174 F.3d 1363, 50 USPQ 2d 1490 (Fed. Cir. 1999).

Section 11.803 would require reporting a violation of the Rules of Professional Conduct. Self-regulation of the legal profession requires that members of the profession seek a disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Practitioners have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

Consistent with the current rule, § 10.24(a), a report about misconduct is not required where it would involve violation of § 11.106. However, a practitioner should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a practitioner were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. Section 11.803 would limit the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this section. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the practitioner is aware. A written communication describing the substantial misconduct should be made to the OED Director where the conduct is in connection with practice before the Office. Criminal convictions in state or

Federal courts, and disciplinary actions other jurisdictions also should be communicated to the OED Director. A practitioner who believes that another practitioner has a significant problem of alcohol or other substance abuse affecting the latter practitioner's practice before the Office, in addition to reporting the matter to the OED Director, should also report the perceived situation to a counseling committee, operated by the state bar, which assists practitioners having such problems.

The duty to report professional misconduct does not apply to a practitioner retained to represent a practitioner whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-practitioner relationship.

Paragraph (b) of § 11.803 would provide for reporting knowledge that an employee of the Office has committed a violation of applicable Federal statute and rules adopted by the Office of Government Ethics (OGE). However, not all such violations are reportable to the Office of Enrollment and Discipline. For example, an Office employee who is not a practitioner could not be subject to the imperative USPTO Rules of Professional Conduct. Accordingly, violations of a Federal statute or OGE-adopted rules should be reported to the appropriate authorities, which do not include OED.

Paragraph (e) of § 11.803 would provide for disciplining a practitioner suspended or disbarred from practice as an attorney or agent on ethical grounds by any duly constituted authority of the United States (e.g., a Federal court or another agency), a State (e.g., a state supreme court), or a foreign authority in the case of a practitioner residing in a foreign country (e.g., a foreign patent office). Practitioners have been suspended or excluded from practice before the Office following disbarment or suspension in a state. See *In re Davis*, 982 Off. Gaz. 2 (May 1, 1979), *aff'd sub nom.*, *Davis v. Commissioner*, No. 80-1036 (D.C. Cir. Mar. 31, 1981), *cert. denied*, 454 U.S. 1090 (1981) (attorney excluded by USPTO following disbarment in Minnesota for misconduct involving both patent and non-patent matters); *In re Hodgson*, 1023 Off. Gaz. 13 (Oct. 12, 1982) (attorney excluded by USPTO after disbarment in Virginia following criminal conviction); *In re Pattison*, 1023 Off. Gaz. 13 (Oct. 12, 1982) (attorney excluded by USPTO after disbarment in Maryland for misconduct involving patent and non-patent matters); *Attorney Grievance Commission (Maryland) v. Pattison*, 441 A.2d 328 (Md. 1982); *Nakamura v.*