

representing a firm, corporation, or association who violate the provisions of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804 shall constitute misconduct and shall be grounds for discipline.

(d) Petitions to disqualify a practitioner in *ex parte* or *inter partes* matters in the Office are not governed by §§ 11.19 through 11.806 and will be handled on a case-by-case basis under such conditions as the USPTO Director deems appropriate.

(e) Unauthorized practice of law matters may be referred to the appropriate authority in the jurisdiction(s) where the act(s) occurred.

#### **§ 11.20 Disciplinary sanctions.**

(a) *Types of discipline.* (1) *For practitioners.* The USPTO Director, after notice and opportunity for a hearing, may impose on a practitioner shown to be incompetent or disreputable, who is guilty of gross misconduct, or who violates a Rule of Professional Conduct currently in effect in the Office, any of the following types of discipline:

(i) Exclusion from practice before the Office in patent, trademark or other non-patent law;

(ii) Suspension from practice before the Office in patent, trademark or other non-patent law for an indefinite period, or appropriate fixed period of time not to exceed five years. Any order of suspension may include a requirement stated in the order that the practitioner satisfy certain conditions prior to reinstatement, including furnishing proof of rehabilitation;

(iii) Reprimand, or

(iv) Probation for not more than three years. Probation may be imposed in lieu of or in addition to any other disciplinary sanction. Any conditions of probation shall be stated in writing in the order imposing probation. The order shall also state whether, and to what extent, the practitioner or other person shall be required to notify clients of the probation. The order shall establish procedures for the supervision of probation. Violation of any condition of probation shall make the practitioner subject to revocation of probation, and the disciplinary sanction stated in the order imposing probation.

(2) *For Other Individuals.* In regard to a patent applicant representing himself or herself, or representing himself or herself and other individual who are applicants under §§ 1.31 or 1.33(b)(4) of this subchapter; an individual who is an assignee as provided for under § 3.71(b) of this subchapter; an individual appearing in a trademark or other non-patent matter pursuant to § 11.14(e), whether representing a firm, corporation, or association, the USPTO

Director, after notice and opportunity for a hearing, may impose on said applicant, assignee, person, or individual appearing in a trademark or other non-patent matter shown to have violated a provision of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804, may be appropriately sanctioned by, but not limited to, requiring the individual to be represented by counsel, striking the filing of any document, or dismissing the filing of an application with prejudice.

(b) *Conditions imposed with discipline.* When imposing discipline, the practitioner, or other individual may be required to make restitution either to persons financially injured by the practitioner's, or other individual's conduct or to an appropriate client's security trust fund, or both, as a condition of probation or of reinstatement. Any other reasonable condition may also be imposed, including a requirement that the practitioner or other individual take and pass a professional responsibility examination.

#### **§ 11.21 Warnings.**

*Warning.* A warning is not a disciplinary sanction. The OED Director, in consultation with and consent from a panel of the Committee on Discipline, may conclude an investigation with the issuance of a warning. The warning shall contain a brief statement of facts and relevant imperative USPTO Rules of Professional Conduct upon which the warning is based. The warning shall be final and not reviewable.

#### **§ 11.22 Investigations.**

(a) The OED Director is authorized to investigate possible violations of an imperative Rule of Professional Conduct by practitioners; or possible violations of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804 by other individuals identified in § 11.19(a)(2). *See* § 11.2(b)(2). The investigation may be based on information from any source whatsoever, or on a complaint where alleged or presented facts, if true, may warrant discipline. The information need not be in the form of a complaint.

(b) Any practitioner, other individual (*see* § 11.19(a)(2)), or nonpractitioner possessing knowledge or information concerning a possible violation of an imperative Rule of Professional Conduct currently in effect before the Office by a practitioner may report the violation to the OED Director. The OED Director may require that the report be presented in the form of an affidavit or declaration.

(c) *Initiation of investigations.* An investigation may be initiated upon complaint or information. A staff attorney under the supervision of the OED Director shall conduct all investigations. Neither unwillingness nor neglect by a complainant to prosecute a charge, nor settlement, compromise, or restitution, shall in itself justify abatement of an investigation.

(d)(1) *Complaints.* A complaint is a communication by a person outside the Office alleging or presenting facts of possible misconduct by a practitioner or other individual (*see* § 11.19(a)(2)). A complaint shall be in writing and shall contain a brief statement of the facts upon which the complaint is based. The complaint need not be a sworn statement.

(2) *Information.* Information is one or more written communications from any source alleging or containing facts that, if true, may warrant discipline for misconduct by a practitioner or other individual (*see* § 11.19(a)(2)). The information need not be a sworn statement.

(e) *Preliminary screening of complaints and information.* Under the supervision of the OED Director, a staff attorney shall examine all complaints and information. The staff attorney, after such preliminary inquiry as appears appropriate, shall determine whether the complaint or information is to be docketed. A complaint or information shall be docketed if it:

(1) Is not unfounded on its face;

(2) Contains allegations or information which, if true, would constitute a violation of the practitioner's oath or an imperative Rule of Professional Conduct currently in effect before the Office that would merit discipline; and

(3) Is within the jurisdiction of the Office.

(f) *Decision not to docket and notice to complainant.* If OED Director determines that a matter is not to be docketed, the OED Director shall so notify the complainant and the practitioner or other individual (*see* § 11.19(a)(2)), giving a brief statement of the reasons therefor. The OED Director's decision is final and not subject to review.

(g) *Docketing of complaint or information; notification to complainant.* A docketed complaint or information shall be assigned a docket number with the first two digits showing the fiscal year in which the complaint is docketed. Complainants shall be promptly advised in writing by the OED Director or a staff attorney of the docketing of the complaint.