

(h) *Notification.* The OED Director or staff attorney shall promptly notify the practitioner or other individual (see § 11.19(a)(2)) in writing when a formal investigation into a practitioner's or other individual's conduct has been initiated. This notice shall include a copy of the complaint, information, or other relevant documents upon which the investigation is based, a request for a written response from the practitioner or other individual, and any questions reasonably likely to elicit answers, records, and information helpful in the conduct of the investigation.

(i) *Duty to reply; response.* A practitioner, or other individual (see § 11.19(a)(2)) under investigation has an obligation to reply to the OED Director's written inquiries in the conduct of an investigation. The reply shall set forth the position of the practitioner or other individual under investigation with respect to allegations contained in the complaint, facts contained in the information, and all inquiries by the OED Director. The reply shall be filed with the OED Director within thirty calendar days after the mailing date of the notice in paragraph (h) of this section. A single extension of time shall be granted to reply to an inquiry upon written request of the practitioner or other individual (see § 11.19(a)(2)), and in no case shall the extension of time exceed thirty days.

(j) *Request for information by OED Director.* (1) In the course of the investigation, the OED Director may request information concerning the practitioner's actions from:

- (i) The complainant,
- (ii) The practitioner,
- (iii) Another individual as defined by § 11.19(a)(2), or
- (iv) Any party who may reasonably be expected to have information.

(2) The OED Director, or staff attorney or other representative may also request information from a noncomplaining client after obtaining either the consent of the practitioner or, upon a written showing of good cause, the authorization of the Director (see § 11.23(a)). Neither a request for, nor disclosure of, information shall constitute a violation of any of the Rules of Professional Conduct contained in §§ 11.100 *et seq.*

(k) *Request for financial records by OED Director.* In the course of an investigation, the OED Director, alone or through a staff attorney, may examine financial books and records maintained by a practitioner for the practice before the Office, including, without limitation, any and all trust accounts, fiduciary accounts, and operating accounts maintained by the practitioner

or his or her law firm. The OED Director, alone or through a staff attorney, may also examine any trust account maintained by a practitioner whenever the OED Director reasonably believes that the trust account may not be in compliance with the Rules of Professional Conduct. In the exercise of this authority, the OED Director or staff attorney may seek the assistance of State bar counsel to obtain such summons and subpoenas as he or she may reasonably deem necessary for the effective conduct of an investigation or an examination of a trust account. In every case in which the OED Director or staff attorney initiates examination of a trust account, or seeks any summons or subpoena in the conduct of an examination of or an investigation concerning said trust account, other than on the basis of a complaint against the practitioner, the OED Director or staff attorney shall file a written statement as part of the record in the case setting forth the reasons supporting the belief that the subject trust account may not be in compliance with the Rules of Professional Conduct. After State bar counsel agrees to seek such summons and subpoenas, a copy of the written statement shall be delivered to the practitioner whose trust account is the subject of the investigation.

(l) *Failure to reply to OED Director.* If a practitioner, or other individual (see § 11.19(a)(2)) fails to reply to the request for information sought under paragraph (j) of this section, fails to provide requested financial records sought under paragraph (k) of this section, or replies evasively in the conduct of an investigation, the OED Director may request the Committee on Discipline to enter an appropriate finding of probable cause of violating § 11.804(d).

(m) *Disposition of investigation.* Upon the consideration of an investigation, the OED Director may:

- (1) Close the investigation with neither a warning, nor disciplinary action; or
- (2) Issue a warning to the practitioner or other individual (see § 11.19(a)); or
- (3) Institute formal charges with the prior approval of the Committee on Discipline; or
- (4) Enter into a diversion agreement with the approval of the USPTO Director (see § 11.26).

(n) *Closing investigation with no warning.* The OED Director shall terminate an investigation and decline to refer a matter to the Committee on Discipline if the OED Director determines that:

- (1) The complaint is unfounded; or
- (2) The complaint is not within the jurisdiction of the Office; or

(3) As a matter of law, the conduct questioned or alleged does not constitute misconduct, even if the conduct may involve a legal dispute; or

(4) The available evidence shows that the practitioner, or other individual (see § 11.19(a)(2)) did not engage or did not willfully engage in the misconduct questioned or alleged; or

(5) There is no credible evidence to support any allegation of misconduct on the part of the practitioner, or other individual (see § 11.19(a)(2)), or

(6) The available evidence could not reasonably be expected to support any allegation of misconduct under a "clear and convincing" evidentiary standard.

§ 11.23 Committee on Discipline.

(a) The USPTO Director shall appoint a Committee on Discipline. The Committee on Discipline shall consist of at least three employees of the Office, plus at least three alternate members who also are employees of the Office. None of the Committee members or alternates shall report directly or indirectly to the OED Director or the General Counsel. Each Committee member and the alternates shall be a member in good standing of the bar of the highest court of a State. The Committee members and alternates shall select a Chairperson from among themselves. The Committee or its panels shall meet at regular intervals with the OED Director. Three Committee members or alternates so selected will constitute a panel of the Committee.

(b) *Powers and duties of the Committee on Discipline.* The Committee shall have the power and duty:

(1) To appoint two or more panels of its members and alternates, each consisting of at least three Committee members or alternates, who shall review information and evidence presented by the OED Director;

(2) To meet as a panel at the request of the OED Director and, after reviewing evidence presented by the OED Director, shall by majority vote, to determine whether there is probable cause to bring charges under § 11.32 against a practitioner or other individual (see § 11.19(a)(2)). When probable cause is found regarding a practitioner or other individual (see § 11.19(a)(2)), no Committee member or alternate on the panel, employee under the direction of the OED Director, or employee under the direction of the Deputy General Counsel for Intellectual Property shall participate in rendering a decision on any complaint filed against the practitioner or other individual;

(3) To assign a Contact Member to review and approve or suggest