

alleged charges against the practitioner in a disciplinary investigation or disciplinary proceeding that has been held in abeyance pending such recovery.

(b) *Appointment of counsel.* In a disability matter wherein the OED Director contends that the practitioner should be excluded or suspended from practice before the Office, subjected to probationary conditions, or required to submit to a medical examination, the hearing officer shall authorize the OED Director to apply to a court of competent jurisdiction for an order appointing counsel to represent the practitioner whose disability or addiction is under consideration if it appears to the hearing officer's satisfaction, based on the practitioner's motion or notice of the OED Director, that otherwise the practitioner will appear pro se and may therefore be without adequate representation.

(c) *Proceedings before the hearing officer.* (1) *Motions.* All proceedings addressing disability matters before a hearing officer shall be initiated by motion filed by the OED Director or practitioner. In addition to any other requirement of § 11.43, each such motion shall include or have attached thereto:

(i) A brief statement of all material facts;

(ii) A proposed petition and/or recommendation to be filed with the USPTO Director if the movant's motion is granted by the hearing officer; and

(iii) Affidavits, medical reports, official records, or other documents setting forth or establishing any of the material facts on which the movant is relying.

(2) *Response.* The non-moving party shall file a response to any motion hereunder setting forth the following:

(i) All objections, if any, to the actions requested in the motion;

(ii) An admission, denial or allegation of lack of knowledge with respect to each of the material facts in the movant's papers; and

(iii) Affidavits, medical reports, official records, or other documents setting forth facts on which the non-moving party intends to rely for purposes of disputing or denying any material fact set forth in the movant's papers.

(iv) Except as the hearing officer may otherwise order, the response shall be served and filed within fourteen (14) days after service of the motion unless such time is shortened or enlarged by the hearing officer for good cause shown.

(d) *Mentally disabled practitioners.* (1) *Action by OED Director.* The OED

Director, upon obtaining proof that a practitioner has been judicially declared to be mentally incompetent or has been involuntarily committed to a mental hospital as an inpatient, shall either

(i) Promptly request authority from a panel of the Committee on Discipline to submit evidence (appropriate affidavits and/or other documentary proof) to a hearing officer seeking, pursuant to this section, an order from the USPTO Director directing that the practitioner's name be transferred to disability inactive status, and that the practitioner cease practicing before the Office effective immediately and for an indefinite period of time until further ordered by the USPTO Director; or

(ii) Notify a panel of the Committee on Discipline of the OED Director's intention not to file a petition under paragraph (d)(1)(i) of this section and the reasons therefor. All further proceedings shall be pursuant to paragraph (f) of this section.

(e) *Incapacitation due to disability or addiction.*—(1) *OED Director's request.* If the OED Director receives information providing reason to believe that a practitioner is incapacitated from continuing to practice before the Office because of disability or addiction and the practitioner is nonetheless likely to offer or attempt to perform legal services while so incapacitated, the OED Director may request a panel of the Committee on Discipline to find probable cause authorizing the OED Director to petition the USPTO Director for an order transferring the practitioner to disability inactive status effective immediately for an indefinite period until further ordered by the USPTO Director, or possibly imposing probationary conditions with or without a period of suspension. All further proceedings shall be pursuant to paragraph (f) of this section, unless the practitioner agrees to have his or her name transferred to disability inactive status, and to cease practicing before the Office effective immediately and for an indefinite period of time until further ordered by the USPTO Director.

(2) *Required evidence.* In the absence of unusual circumstances, probable cause sufficient to support the OED Director's request under paragraph (e)(1) of this section shall include, either a written acknowledgment of the practitioner or a report of an examination by one or more qualified medical experts confirming the existence of the alleged disability or addiction and otherwise indicating the practitioner to be incapacitated as alleged.

(f) *Further proceedings for matters in paragraphs (d) and (e) of this section.*—

(1) *Action by Committee on Discipline panel.* A panel of the Committee on Discipline may issue a probable cause determination granting or denying the OED Director's request based on written acknowledgments, affidavits, and other documentary proof.

(2) *Action by OED Director.* Upon issuance of a finding of probable cause, the OED Director shall file a motion provided for in paragraph (c) of this section with the hearing officer. A copy of the motion shall be served on the practitioner in accordance with § 11.35, and upon the practitioner's guardian, if any and known.

(3) *Response by Practitioner.* The practitioner may respond with a motion in accordance with paragraph (c) of this section. The hearing officer will otherwise follow the procedures set forth in §§ 11.37 through 11.54.

(4) *Initial decision by the hearing officer.* The hearing officer shall urge a practitioner who is not represented by counsel to obtain counsel of his or her own choice to represent the practitioner if it is determined that the practitioner is without adequate representation. The hearing officer shall enter a recommendation to grant or deny the OED Director's motion based on the affidavits and other documentary proof of the parties, unless the hearing officer determines that there is a genuine issue concerning one or more of the material facts, and issues an order for an evidentiary hearing. A copy of the hearing officer's recommendation shall be served on the practitioner, the practitioner's guardian, if any, and the OED Director.

(5) *Appeal.* The OED Director or practitioner may, as a matter of right, appeal the hearing officer's recommendation in accordance with the provisions of § 11.55.

(6) *Action by USPTO Director.* When a practitioner has been judicially declared to be mentally incompetent or has been involuntarily committed to a mental hospital as an inpatient, the USPTO Director, upon proper proof of that fact, shall enter an order directing that the practitioner's name be transferred to disability inactive status, and that the practitioner cease practicing before the Office in patent, trademark, and other non-patent law effective immediately and for an indefinite period of time until further ordered by the USPTO Director. A copy of the order shall be served upon the practitioner's guardian or counsel, or in the absence thereof, upon the practitioner and the director of the mental hospital, if any, in such manner as the USPTO Director may direct. If at any time thereafter the practitioner is