

or other expert or hospital identified in paragraph (i)(3)(v) of this section, to divulge such information and records as may be required by any medical experts who are appointed by the hearing officer or who examine the practitioner pursuant to his or her consent at the OED Director's request; and

(vii) The practitioner's written consent (without further order from a hearing officer, the USPTO Director, or the OED Director) to submit to an examination of qualified medical experts (at the practitioner's expense) if so requested by the OED Director.

(4) *Resumption of disciplinary proceeding held in abeyance.* The OED Director may file a motion requesting the hearing officer to terminate a prior order holding in abeyance any pending proceeding because of the practitioner's disability or addiction. The hearing officer shall decide the matter presented by the OED Director motion hereunder based on the affidavits and other admissible evidence attached to the OED Director's motion or the practitioner's response. If there is any genuine issue as to one or more material facts, the hearing officer will hold an evidentiary hearing in which the following procedures shall apply:

(i) If the prior order of abeyance was based solely on the practitioner's self-alleged contention of disability or addiction, the OED Director's motion under paragraph (e)(1) of this section shall operate as a show cause order placing the burden on the practitioner to establish by a preponderance of the evidence that the prior self-alleged disability or addiction continues to make it impossible for the practitioner to defend himself/herself in the underlying proceeding being held in abeyance; and

(ii) If such prior order of abeyance was based on a finding supported by affirmative evidence of the practitioner's disability or addiction, the burden shall be on the OED Director to establish by a preponderance of the evidence that the prior evidence of disability or addiction was erroneous or that the practitioner's disability or addiction has been removed and full recovery therefrom has been achieved.

(j) *Action by the hearing officer when practitioner is not incapacitated.* If, in the course of a proceeding under this section or a disciplinary proceeding, the hearing officer determines that the practitioner is not incapacitated from defending himself/herself, or is not incapacitated from practicing before the Office, the hearing officer shall take such action as is deemed appropriate, including the entry of an order directing

the resumption of the disciplinary proceeding against the practitioner.

#### **§§ 11.29–11.31 [Reserved]**

#### **§ 11.32 Initiating a disciplinary proceeding; reference to a hearing officer.**

If after conducting an investigation under § 11.22(a) the OED Director is of the opinion that a practitioner has violated an imperative USPTO Rule of Professional Conduct, or that an other individual (*see* § 11.19(a)(2)) has violated any of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804, the OED Director, except for complying with the provisions of §§ 27 or 28 for a practitioner, shall, after complying where necessary with the provisions of 5 U.S.C. 558(c), call a meeting of a panel of the Committee on Discipline. The panel of the Committee on Discipline shall then determine as specified in § 11.23(b) whether a disciplinary proceeding shall be instituted under paragraph (b) of this section. If the panel of the Committee on Discipline determines that probable cause exists to believe that a Rule of Professional Conduct has been violated, the OED Director shall institute a disciplinary proceeding by filing a complaint under § 11.34. The complaint shall be filed in the Office of the USPTO Director. A disciplinary proceeding may result in a reprimand, or suspension or exclusion of a practitioner from practice before the Office. Upon the filing of a complaint under § 11.34, the USPTO Director will refer the disciplinary proceeding to a hearing officer.

#### **§ 11.33 [Reserved]**

#### **§ 11.34 Complaint.**

(a) A complaint instituting a disciplinary proceeding shall:

(1) Name the practitioner or other individual (*see* § 11.19(a)(2)) who may then be referred to as the "respondent";

(2) Give a plain and concise description of the respondent's alleged violations of the imperative USPTO Rules of Professional Conduct;

(3) State the place and time, not less than thirty days from the date the complaint is filed, for filing an answer by the respondent;

(4) State that a decision by default may be entered if an answer is not timely filed by the respondent; and

(5) Be signed by the OED Director.

(b) A complaint will be deemed sufficient if it fairly informs the respondent of any violation of the imperative USPTO Rules of Professional Conduct that form the basis for the disciplinary proceeding so that the respondent is able to adequately prepare a defense. If supported by the facts

presented to the Committee on Discipline, the complaint may include alleged violations even if the specific violations were not in the finding of the probable cause decision.

#### **§ 11.35 Service of complaint.**

(a) A complaint may be served on a respondent in any of the following methods:

(1) By delivering a copy of the complaint personally to the respondent, in which case the individual who gives the complaint to the respondent shall file an affidavit with the OED Director indicating the time and place the complaint was handed to the respondent.

(i) A respondent who is a registered practitioner at the address for which separate notice was last received by the OED Director, or

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

(3) By any method mutually agreeable to the OED Director and the respondent.

(4) In the case of a respondent who resides outside the United States, by sending a copy of the complaint by any delivery service that provides ability to electronically follow the progress of delivery or attempted delivery, to:

(i) A respondent who is a registered practitioner at the last address for which separate notice was last received by the OED Director; or

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

(5) In the case of a respondent being an other individual (*see* § 11.19(a)(2)) by sending a copy of the complaint by any delivery service providing tracking and delivery or attempted delivery records, including the U.S. Postal Service to:

(i) The last address for the other individual (*see* § 11.19(a)(2)) for which notice was last received by the Office in an application; or

(ii) At the last address for the other individual (*see* § 11.19(a)(2)) known to OED; or

(b) If a copy of the complaint cannot be delivered to the respondent through any one of the procedures in paragraph (a) of this section, the OED Director shall serve the respondent by causing an appropriate notice to be published in the Official Gazette for two consecutive weeks, in which case the time for filing an answer shall be thirty days from the second publication of the notice. Failure to timely file an answer will constitute an admission of the allegations in the complaint in accordance with paragraph