

(d) of § 11.34, and the hearing officer may enter an initial decision on default.

(c) If the respondent is known to the OED Director to be represented by an attorney under § 11.40(a), a copy of the complaint shall also be served on the attorney in the manner provided for in paragraph (a) or (b) of this section, in addition to the complaint being served on respondent.

§ 11.36 Answer to complaint.

(a) *Time for answer.* An answer to a complaint shall be filed within the time set in the complaint that shall be not less than thirty days.

(b) *With whom filed.* The answer shall be filed in writing with the hearing officer. The hearing officer may extend the time for filing an answer once for a period of no more than thirty days upon a showing of good cause, provided a motion requesting an extension of time is filed within thirty days after the date the complaint is served on respondent. A copy of the answer shall be served on the OED Director.

(c) *Content.* The respondent shall include in the answer a statement of the facts that constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the complaint. The respondent shall not deny a material allegation in the complaint that the respondent knows to be true or state that respondent is without sufficient information to form a belief as to the truth of an allegation when in fact the respondent possesses that information. The respondent shall also state affirmatively special matters of defense.

(d) *Failure to deny allegations in complaint.* Every allegation in the complaint that is not denied by a respondent in the answer shall be deemed to be admitted and may be considered proven. The hearing officer at any hearing need receive no further evidence in respect of that allegation. Failure to timely file an answer will constitute an admission of the allegations in the complaint, and may result in entry of default judgment.

(e) *Reply by the OED Director.* No reply to an answer is required by the OED Director unless ordered by the hearing officer, and any affirmative defense in the answer shall be deemed to be denied. The OED Director may, however, file a reply if he or she chooses.

(f) *Notice of intent to raise disability in mitigation.*—(1) *Respondent's notice.* If respondent intends to raise an alleged disability in mitigation pursuant to § 11.28, respondent shall file by delivery to the OED Director and hearing officer notice of said allegation no later than

the date that the answer to the complaint is due. The notice shall specify the disability, its nexus to the misconduct, and the reason it provides mitigation. Failure to deliver the notice of intent to raise an alleged disability in mitigation shall operate as a waiver of the right to raise an alleged disability in mitigation, subject to the provisions of paragraph (f)(3) of this section.

(2) *Conditions of practice.* If a respondent files a notice pursuant to paragraph (f)(1) of this section, the hearing officer, after providing the OED Director with an opportunity to reply to said notice, shall forthwith issue an order providing for appropriate conditions under which the respondent shall practice before the Office. Said order may include the appointment of monitor(s) depending upon the particular circumstances of the case.

(i) *Monitors.* Should the hearing officer appoint monitors, the monitor(s) shall report to the hearing officer and OED Director on a periodic basis to be determined by the hearing officer. The monitoring shall remain in effect during the pendency of the disciplinary proceeding or until order of the USPTO Director. The monitor(s) shall respond to the OED Director's inquiries concerning such monitoring and may be called by the OED Director or respondent to testify regarding sanctions.

(ii) *Waiver.* The filing of the notice pursuant to paragraph (f)(1) of this section is deemed to constitute a waiver by respondent of any claim of the right to withhold from the OED Director information coming to the attention of a monitor.

(3) *Late-filed notice.*—(i) *Notice filed 30 or more days before scheduled hearing.* If respondent wishes to raise an alleged disability in mitigation after the date prescribed in paragraph (f)(1) of this section, but no later than 30 days before the date scheduled by the hearing officer for the hearing, respondent shall file a motion with the hearing officer, on notice to the OED Director, setting forth good cause why respondent should be allowed to raise a plea in mitigation out of time. The OED Director may consent in writing to the grant of the motion. The hearing officer may grant or deny the motion, with or without an evidentiary hearing. Leave to assert the plea in mitigation shall be freely granted when justice so requires, and in the absence of a showing of prejudice by the OED Director. An order by the hearing officer granting such a motion may include the provisions in paragraphs (f)(2), (f)(2)(i), and (f)(2)(ii) of this section, or, in circumstances where the hearing officer determines it to be just

and appropriate, may be conditioned upon respondent's consent to an interim suspension pending disposition of the disciplinary proceeding.

(ii) *Notice filed within 30 days after scheduled hearing.* If a respondent wishes to raise an alleged disability in mitigation after the date prescribed in paragraph (f)(3)(i) of this section, respondent shall file a motion with the hearing officer, containing the showing prescribed in paragraph (f)(3)(i) of this section; however, such a motion will be granted only on the condition that respondent consent to an interim suspension pending disposition of the disciplinary proceeding.

(4) *Violations of conditions of practice.* If a monitor reports that respondent has violated a term or condition under which respondent is continuing to practice, the OED Director may request the hearing officer to schedule the matter for a hearing on the issue of whether the monitoring shall be lifted, and respondent suspended, pending final disposition of the disciplinary proceeding.

(5) *Motion to vacate or modify suspension.* A respondent suspended pursuant to paragraphs (f)(3)(i) or (f)(4) of this section may file a motion at any time with the hearing officer to vacate or modify the suspension. If respondent's motion presents a prima facie case that respondent is significantly rehabilitated from the alleged disability, the matter will be considered by the hearing officer at an evidentiary hearing on the issue of rehabilitation. Reinstatement pursuant to this paragraph shall be subject to monitoring and waiver provisions of paragraphs (f)(2), (f)(2)(i), and (f)(2)(ii) of this section. Respondent shall have the burden of proving, by clear and convincing evidence, significant rehabilitation from the alleged disability.

§ 11.37 Supplemental complaint.

False statements in an answer, motion, notice, or other filed communication may be made the basis of a supplemental complaint.

§ 11.38 Contested case.

Upon the filing of an answer by the respondent, a disciplinary proceeding shall be regarded as a contested case within the meaning of 35 U.S.C. 24. Evidence obtained by a subpoena issued under 35 U.S.C. 24 shall not be admitted into the record or considered unless leave to proceed under 35 U.S.C. 24 was previously authorized by the hearing officer.