

§ 11.39 Hearing officer; appointment; responsibilities; review of interlocutory orders; stays.

(a) *Appointment.* A hearing officer, appointed by the USPTO Director under 5 U.S.C. 3105 or 35 U.S.C. 32, shall conduct disability or disciplinary proceedings as provided by this part.

(b) *Independence of the Hearing Officer.* (1) A hearing officer appointed in accordance with paragraph (a) of this section shall not be subject to first level and second level supervision, review or direction of the USPTO Director.

(2) A hearing officer appointed in accordance with paragraph (a)(1) of this section shall not be subject to supervision, review or direction of the person(s) investigating or prosecuting the case.

(3) A hearing officer appointed in accordance with paragraph (a)(1) of this section shall be impartial, shall not be an individual who has participated in any manner in the decision to initiate the proceedings, and shall not have been employed under the immediate supervision of the practitioner.

(4) A hearing officer appointed in accordance with paragraph (a) of this section shall be admitted to practice law and have suitable experience and training to conduct the hearing, reach a determination and render an initial decision in an equitable manner.

(c) *Responsibilities.* The hearing officer shall have authority, consistent with specific provisions of these regulations, to:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and other requests;

(3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(4) Authorize the taking of a deposition of a witness in lieu of personal appearance of the witness before the hearing officer;

(5) Determine the time and place of any hearing and regulate its course and conduct;

(6) Hold or provide for the holding of conferences to settle or simplify the issues;

(7) Receive and consider oral or written arguments on facts or law;

(8) Adopt procedures and modify procedures from time-to-time as occasion requires for the orderly disposition of proceedings;

(9) Make initial decisions under §§ 11.24, 11.25, and 11.154;

(10) Engage in no ex parte discussions with any party on the merits of the complaint, beginning with appointment and until the final agency decision is issued; and

(11) Perform acts and take measures as necessary to promote the efficient,

timely and impartial conduct of any disciplinary proceeding.

(d) *Time for making initial decision.* The hearing officer shall set times and exercise control over a disciplinary proceeding such that an initial decision under § 11.54 is normally issued within nine months of the date a complaint is filed. The hearing officer may, however, issue an initial decision more than nine months after a complaint is filed if in his or her opinion there exist unusual circumstances which preclude issuance of an initial decision within nine months of the filing of the complaint.

(e) *Review of interlocutory orders.* The USPTO Director will not review an interlocutory order of a hearing officer except:

(1) When the hearing officer shall be of the opinion:

(i) That the interlocutory order involves a controlling question of procedure or law as to which there is a substantial ground for a difference of opinion, and

(ii) That an immediate decision by the USPTO Director may materially advance the ultimate termination of the disciplinary proceeding, or

(2) In an extraordinary situation where the USPTO Director deems that justice requires review.

(f) *Stays pending review of interlocutory order.* If the OED Director or a respondent seeks review of an interlocutory order of a hearing officer under paragraph (b)(2) of this section, any time period set for taking action by the hearing officer shall not be stayed unless ordered by the USPTO Director or the hearing officer.

§ 11.40 Representative for OED Director or respondent.

(a) A respondent may represent himself or herself, or be represented by an attorney before the Office in connection with an investigation or disciplinary proceeding. The attorney shall file a written declaration that he or she is an attorney within the meaning of § 11.1(e) and shall state:

(1) The address to which the attorney wants correspondence related to the investigation or disciplinary proceeding sent, and

(2) A telephone number where the attorney may be reached during normal business hours.

(b) The USPTO Director shall designate at least two disciplinary attorneys under the aegis of the General Counsel to act as representatives for the OED Director. The disciplinary attorneys prosecuting disciplinary proceedings shall not consult with the General Counsel and the Deputy General Counsel for General Law

regarding the proceeding. The General Counsel and the Deputy General Counsel for General Law shall remain insulated from the investigation and prosecution of all disciplinary proceedings in order that they shall be available as counsel to the USPTO Director in deciding disciplinary proceedings. However, the Deputy General Counsel for Intellectual Property Law and Solicitor shall not remain insulated from the investigation and prosecution of disciplinary proceedings, and thus shall not be available to counsel the USPTO Director in deciding such proceedings.

(c) Upon serving a complaint pursuant to § 11.34, the members of the Committee on Discipline, and the disciplinary attorneys prosecuting a disciplinary proceeding shall not participate in rendering a decision on the charges contained in the complaint.

§ 11.41 Filing of papers.

(a) The provisions of § 1.8 of this subchapter do not apply to disciplinary proceedings. All papers filed after the complaint and prior to entry of an initial decision by the hearing officer shall be filed with the hearing officer at an address or place designated by the hearing officer.

(b) All papers filed after entry of an initial decision by the hearing officer shall be filed with the USPTO Director. A copy of the paper shall be served on the OED Director. The hearing officer or the OED Director may provide for filing papers and other matters by hand, by "Express Mail," or by facsimile followed in a specified time by the original hard copy.

§ 11.42 Service of papers.

(a) All papers other than a complaint shall be served on a respondent who is represented by an attorney by:

(1) Delivering a copy of the paper to the office of the attorney; or

(2) Mailing a copy of the paper by first-class mail, "Express Mail," or other delivery service to the attorney at the address provided by the attorney under § 11.40(a)(1); or

(3) Any other method mutually agreeable to the attorney and a representative for the OED Director.

(b) All papers other than a complaint shall be served on a respondent who is not represented by an attorney by:

(1) Delivering a copy of the paper to the respondent; or

(2) Mailing a copy of the paper by first-class mail, "Express Mail," or other delivery service to the respondent at the address to which a complaint may be served or such other address as may be