

designated in writing by the respondent; or

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

(c) A respondent shall serve on the representative for the OED Director one copy of each paper filed with the hearing officer or the OED Director. A paper may be served on the representative for the OED Director by:

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

(2) Mailing a copy of the paper by first-class mail, "Express Mail," or other delivery service to an address designated in writing by the representative; or

(3) Any other method mutually agreeable to the respondent and the representative.

(d) Each paper filed in a disciplinary proceeding shall contain therein a certificate of service indicating:

(1) The date of which service was made; and

(2) The method by which service was made.

(e) The hearing officer or the USPTO Director may require that a paper be served by hand or by "Express Mail."

(f) Service by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service.

§ 11.43 Motions.

Motions may be filed with the hearing officer. The hearing officer will determine on a case-by-case basis the time period for response to a motion and whether replies to responses will be authorized. No motion shall be filed with the hearing officer unless such motion is supported by a written statement by the moving party that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement. If the parties prior to a decision on the motion resolve issues raised by a motion by the hearing officer, the parties shall promptly notify the hearing officer.

§ 11.44 Hearings.

(a) The hearing officer shall preside at hearings in disciplinary proceedings. The hearing officer shall set time and place for a hearing. In setting a time and place, the hearing officer shall normally give preference to a Federal facility in the district where the Office's principal office is located or Washington, DC, for all respondents recognized or registered to practice before the Office, and

otherwise shall give due regard to the convenience and necessity of the parties or their representatives. In cases involving an incarcerated respondent, any necessary oral hearing may be held at the location of incarceration. Oral hearings will be stenographically recorded and transcribed, and the testimony of witnesses will be received under oath or affirmation. The hearing officer shall conduct hearings in accordance with 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. A copy of the transcript shall be provided to the OED Director and the respondent at the expense of the Office.

(b) If the respondent to a disciplinary proceeding fails to appear at the hearing after a notice of hearing has been given by the hearing officer, the hearing officer may deem the respondent to have waived the right to a hearing and may proceed with the hearing in the absence of the respondent.

(c) A hearing under this section will not be open to the public except that the hearing officer may grant a request by a respondent to open his or her hearing to the public and make the record of the disciplinary proceeding available for public inspection, provided, Agreement is reached in advance to exclude from public disclosure information which is privileged or confidential under applicable laws or regulations. If a disciplinary proceeding results in disciplinary action against a practitioner, and subject to § 11.59(c), the record of the entire disciplinary proceeding, including any settlement agreement, will be available for public inspection.

§ 11.45 Proof; variance; amendment of pleadings.

Whenever in the course of a hearing evidence is presented upon which another charge or charges against the respondent might be made, it shall not be necessary for the Committee on Discipline to find probable cause based on an additional charge or charges on the respondent, but with the consent of the hearing officer, the OED Director shall provide respondent with reasonable notice and an opportunity to be heard, and the hearing officer shall proceed to consider such additional charge or charges as if the same had been made and served at the time of the service of the original charge or charges. Any party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegations in the complaint, answer, or reply, as amended, and the hearing officer shall make findings on any issue

presented by the complaint, answer, or reply as amended.

§§ 11.46–11.48 [Reserved]

§ 11.49 Burden of proof.

In a disciplinary proceeding, the OED Director shall have the burden of proving his or her case by clear and convincing evidence and a respondent shall have the burden of proving any affirmative defense by clear and convincing evidence.

§ 11.50 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings in disciplinary proceedings. However, the hearing officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to Section 11.51 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Office, including all papers collected during the disciplinary investigation, are admissible without extrinsic evidence of authenticity. These documents, records, and papers may be evidenced by a copy certified as correct by an employee of the Office.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the hearing officer may authorize the withdrawal of the exhibit subject to any conditions the hearing officer deems appropriate.

(e) *Objections.* Objections to evidence will be in short form, stating the grounds of objection. Objections and rulings on objections will be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 11.51 Depositions.

(a) Depositions for use at the hearing in lieu of personal appearance of a witness before the hearing officer may be taken by respondent or the OED Director upon a showing of good cause and with the approval of, and under such conditions as may be deemed appropriate by, the hearing officer. Depositions may be taken upon oral or written questions, upon not less than ten days' written notice to the other party, before any officer authorized to administer an oath or affirmation in the place where the deposition is to be taken. The parties may waive the requirement of ten days' notice and depositions may then be taken of a witness at a time and place mutually agreed to by the parties. When a deposition is taken upon written questions, copies of the written