

and others, are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a practitioner's professional role.

Client-Practitioner Relationship

§ 11.101 Competence.

(a) A practitioner shall provide competent representation to a client having immediate or prospective business before the Office. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A practitioner shall serve a client having immediate or prospective business before the Office with skill and care commensurate with that generally afforded to clients by other practitioners in similar matters.

(c) Conduct that constitutes a violation of paragraphs (a) or (b) of this section includes, but is not limited to:

(1) A practitioner handling a legal matter which the practitioner knows or should know that the practitioner, due to legal or scientific training, is not competent to handle, without associating with the practitioner, another practitioner, who is competent to handle the matter;

(2) A practitioner withholding from the Office information identifying a patent or patent application of another from which one or more claims have been copied. *See* §§ 1.604(b) and 1.607(c) of this subchapter;

(3) A practitioner employs one or more procedures that the Office no longer authorizes practitioners to use to present or prosecute a patent application; and

(4) A practitioner filing and/or prosecuting, or assisting in the filing and/or prosecuting an application claiming a frivolous invention; or submitting or assisting in the submission to the Office of a frivolous filing. An application claims a frivolous invention or a filing is frivolous where the claim of patentability or argument is known or should have been known by a reasonably prudent registered practitioner to be unwarranted under existing law, and said claim or argument cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

§ 11.102 Scope of representation.

(a) A practitioner shall abide by a client's decisions concerning the objectives of representation in practice before the Office, subject to paragraphs (c), (d), (e), and (g) of this section, and shall consult with the client as to the means by which they are to be pursued. A practitioner shall abide by a client's

decision whether to accept an offer of settlement of a matter.

(b) A practitioner's representation of a client having immediate or prospective business before the Office does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A practitioner may limit the objectives of the representation if the client having immediate or prospective business before the Office consents in writing after full disclosure by the practitioner.

(d) When a practitioner knows that a client having immediate or prospective business before the Office expects assistance not permitted by the Rules of Professional Conduct or other law, including perpetrating a fraud, disregarding any provision of this Part, or disregarding a decision of the Office made in the course of a proceeding before the Office, the practitioner shall both consult with the client regarding the relevant limitations on the practitioner's conduct, and advise the client of the legal consequences of any proposed course of action.

(e) A practitioner shall not counsel a client having immediate or prospective business before the Office to engage, or assist said client, in conduct that the practitioner knows is criminal or fraudulent, but a practitioner may discuss the legal consequences of any proposed course of conduct with the client and may counsel or assist the client to make a good-faith effort to determine the validity, scope, meaning, or application of the law.

(f) The authority and control of a practitioner, employed by the Federal Government, over decisions concerning the representation may, by statute or regulation, be expanded beyond the limits imposed by paragraphs (a) and (c) of this section.

(g) A practitioner receiving information clearly establishing that the client has, in the course of the representation, perpetrated a fraud upon a person or tribunal in connection with practice before the Office shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so the practitioner shall reveal the fraud to the affected person or tribunal, except where the information is protected as a privileged communication.

§ 11.103 Diligence and zeal.

(a) A practitioner shall represent a client having immediate or prospective business before the Office zealously and diligently within the bounds of the law.

(b) A practitioner shall act with reasonable promptness in representing a

client having immediate or prospective business before the Office.

(c) Conduct that constitutes a violation of paragraphs (a) or (b) of this section includes, but is not limited to, a practitioner:

(1) Neglecting an entrusted legal matter;

(2) Intentionally failing to seek the lawful objectives of a client through reasonably available means permitted by law and the imperative USPTO Rules of Professional Conduct; or

(3) Intentionally prejudicing or damaging a client during the course of the professional relationship.

§ 11.104 Communication.

(a) A practitioner shall keep a client having immediate or prospective business before the Office reasonably informed about the status of a matter, and promptly comply with reasonable requests for information. In particular:

(1) A practitioner who has been engaged to represent or counsel an inventor as a result of a referral from an invention promoter shall communicate directly with the inventor, and promptly report each Office action and communicate directly with the inventor; and

(2) A practitioner who has been engaged to represent or counsel an inventor or other client having immediate, prospective, or pending business before the Office as a result of a referral by a foreign attorney or foreign patent agent located in a foreign country may, with the written and informed consent of said inventor or other client, conduct said communications with the inventor or other client through said foreign attorney or foreign patent agent.

(b) A practitioner shall explain a matter to the extent reasonably necessary to permit the client having immediate or prospective business before the Office to enable the client to make informed decisions regarding the representation.

(c) A practitioner who receives an offer of settlement in an *inter partes* matter before the Office shall inform the client promptly of the substance of the communication.

(d) Conduct that constitutes a violation of paragraph (a) of this section includes, but is not limited to:

(1) Failing to inform a client or former client or failing to timely notify the Office of an inability to notify a client or former client of correspondence received from the Office or the client's or former client's opponent in an *inter partes* proceeding before the Office when the correspondence:

(i) Could have a significant effect on a matter pending before the Office;