

- (ii) Is received by the practitioner on behalf of a client or former client, and
- (iii) Is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified.

(2) [Reserved]

#### **§ 11.105 Fees.**

(a) A practitioner's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the practitioner;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The amount involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the practitioner or practitioners performing the service; and

(8) Whether the fee is fixed or contingent.

(b) When the practitioner has not regularly represented the client having immediate or prospective business before the Office, the basis or rate of the fee shall be communicated directly to the client, in writing, before or within a reasonable time after commencing the representation. The communication shall distinguish between and specify the basis or rate for preparation and filing an application in the Office, and for prosecution of the application (including replies to Office actions, petitions, affidavits, appeal briefs, and the like).

(c) A fee in regard to practice before the Office may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) of this section or other law. In accordance with paragraph (a) of this section, a contingent fee shall be reasonable. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the practitioner in the event of grant of a patent, registration of a mark, settlement, hearing or appeal, litigation, and other expenses to be deducted from the recovery, and whether such

expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the practitioner shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A division of a fee between practitioners who are not in the same firm may be made in regard to practice before the Office only if:

- (1) The division is in proportion to the services performed by each practitioner or by written agreement with the client, each practitioner assumes joint responsibility for the representation;
  - (2) The client is advised, in writing, of the identity of the practitioners who will participate in the representation, of the contemplated division of responsibility, and of the effect of the association of practitioners outside the firm on the fee to be charged;
  - (3) The client gives informed consent in writing to the arrangement; and
  - (4) The total fee is reasonable.
- (e) Any fee that is prohibited by law is per se unreasonable.

#### **§ 11.106 Confidentiality of information.**

(a) A practitioner, in regard to practice before the Office, shall not:

- (1) Reveal information relating to representation of a client unless the client gives informed consent in writing after full disclosure by the practitioner, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), or (d) of this section;
- (2) Knowingly use information relating to representation of a client to the disadvantage of the client; or
- (3) Use a confidence or secret of the practitioner's client for the advantage of the practitioner or of a third person.

(b) A practitioner, in regard to practice before the Office, may reveal such information to the extent the practitioner reasonably believes necessary:

- (1) To prevent the client from committing a criminal act that the practitioner believes is likely to result in imminent death or substantial bodily harm; or
- (2) To establish a claim or defense on behalf of the practitioner in a controversy between the practitioner and the client, to establish a defense to a criminal charge or civil claim against the practitioner based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the practitioner's representation of a client.

(c) A practitioner, in regard to practice before the Office, shall use or reveal information relating to representation of a client to comply with the provisions of § 1.56 of this subchapter in practice before the Office in patent matters (see 11.303(d));

(d) A practitioner, in regard to practice before the Office may use or reveal information relating to representation of a client to comply:

(1) With the informed consent in writing of the client affected, but only after full disclosure by the practitioner to the client;

(2) With rules, law or court order when permitted by these rules or required by law or court order; or

(3) With the law or regulations of the Office, when permitted or authorized by the law or regulations, in connection with representation before the Office, whether or not the practitioner is employed by the Federal Government.

(e) The client of practitioner employed by the Federal Government is the Department, agency, or commission that employs the practitioner unless appropriate law, regulation, or order expressly provides to the contrary.

(f) A practitioner shall exercise reasonable care to prevent the practitioner's employees, associates, and others whose services are utilized by the practitioner from disclosing or using such information of a client, except that such persons may reveal information permitted to be disclosed by paragraphs (c), (d), or (e) of this section.

(g) The practitioner's obligation to preserve in confidence such information continues after termination of the practitioner's employment, except as provided for in § 1.56.

(h) The obligation of a practitioner under paragraph (a) of this section also applies to such information learned prior to becoming a practitioner in the course of providing assistance to another practitioner.

#### **§ 11.107 Conflict of interest: General rule.**

(a) A practitioner shall not represent a client having immediate or prospective business before the Office if the representation of that client will be directly adverse to another client having immediate or prospective business before the Office, unless:

(1) The practitioner reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client gives informed consent in writing after full disclosure by the practitioner. When a practitioner has both an inventor and an invention promoter, who referred the inventor to