

(1) The proposed sale;
(2) The terms of any proposed change in the fee arrangement authorized by paragraph (d) of this section;

(3) The client's right to retain other counsel or to take possession of the file; and

(4) The fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety (90) days after receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients having immediate or prospective business before the Office shall not be increased by reason of the sale. The purchaser may, however, refuse to undertake the representation unless the client gives informed consent, confirmed in writing, to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

§§ 11.118–11.200 [Reserved]

Counselor

§ 11.201 Advisor.

(a) In representing a client having immediate or prospective business before the Office, a practitioner shall exercise independent professional judgment and render candid advice. In rendering advice, a practitioner may refer not only to law but also to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.

(b) In rendering patentability advice to a client referred by an invention promoter, a practitioner shall identify the element(s) of the references and invention considered, and specify the element or combination of elements of the invention that are believed to support a conclusion that the invention may be patentable.

§ 11.202 Intermediary.

(a) A practitioner may act as intermediary between clients, any one of which has immediate or prospective business before the Office, if:

(1) The practitioner consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-

client or agent-client privileges, and the practitioner obtains from each client informed consent, confirmed in writing, to the common representation;

(2) The practitioner reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) The practitioner reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the practitioner has to any of the clients.

(b) While acting as intermediary between clients, any one of which has immediate or prospective business before the Office, the practitioner shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A practitioner shall withdraw as intermediary between clients, any one of which has immediate or prospective business before the Office, if any of the clients so request, or if any of the conditions stated in paragraph (a) of this section are no longer satisfied. In connection with a proceeding pending before the Office, the practitioner shall submit a written request to withdraw to the USPTO Director. Upon withdrawal, the practitioner shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

(d) Except in unusual circumstances that may make it infeasible, prior to undertaking intermediation in a matter between clients who are an inventor and an invention promoter, a practitioner shall provide both clients with full disclosure of all potential and actual conflicts of interest, and obtain from each client informed consent, confirmed in writing.

§ 11.203 Evaluation for use by third persons.

(a) A practitioner may undertake an evaluation of a matter affecting a client for the use of someone other than the client, where either the client or other person has immediate or prospective business before the Office, if:

(1) The practitioner reasonably believes that making the evaluation is compatible with other aspects of the practitioner's relationship with the client; and

(2) The client gives informed consent, confirmed in writing, after full disclosure by the practitioner.

(b) Except as disclosure is required in connection with a report of an evaluation regarding a patent, trademark or other non-patent law matter before the Office, information relating to the evaluation is otherwise protected by § 11.106.

(c) If a practitioner provides an evaluation regarding a patent, trademark or other non-patent matter before the Office to an invention promoter, which the invention promoter forwards in whole or in part to an inventor, and the evaluation includes any evaluation of patentability, the inventor shall constitute a client of the practitioner and provisions of §§ 11.104(a)(1), 11.107(a)(2), 11.107(b)(2), 11.108(f)(1), 11.201(b), 11.202(d), and 11.701(b), and the practitioner must satisfy the provisions of §§ 11.804(h)(2) or (h)(3) before the practitioner provides any evaluation. The evaluation may not disclose or be based upon knowledge or information that the inventor regards as confidential, and may not otherwise provide publication of the invention prior to the filing of an application for the inventor.

§§ 11.204–11.300 [Reserved]

Advocate

§ 11.301 Meritorious claims and contentions.

A practitioner shall not bring or defend a proceeding before the Office, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law.

§ 11.302 Expediting litigation and Office proceedings.

(a) A practitioner shall make reasonable efforts to expedite proceedings before the Office consistent with the interests of the client.

(b) In representing a client having immediate or prospective business before the Office, a practitioner shall not delay a proceeding when the practitioner knows or when it is obvious that such action would serve solely to harass or maliciously injure another.

§ 11.303 Candor toward the tribunal.

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

(1) Make a false statement of material fact or law to a tribunal;

(2) Fail to disclose a material fact to the Office when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client;