

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

(8) Adopt procedures and modify procedures for the orderly disposition of proceedings;

(9) Make initial decisions under §§ 11.25 and 11.54; and

(10) 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 there exist circumstances, in his or her opinion, that 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 by the hearing officer for taking action shall not be stayed unless ordered by the USPTO Director or the hearing officer.

(g) The hearing officer shall engage in no *ex parte* discussions with any party on the merits of the complaint, beginning with appointment and ending when the final agency decision is issued.

§ 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 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 Deputy General Counsel for Intellectual Property and Solicitor, and attorneys in the Office of the Solicitor shall represent the OED Director. The attorneys representing the OED Director in disciplinary proceedings shall not consult with the USPTO Director, the General Counsel, the Deputy General Counsel for General Law, or an individual designated by the USPTO Director to decide disciplinary matters regarding the proceeding. The General Counsel and the Deputy General Counsel for General Law shall remain screened 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 unless access is appropriate to perform their duties. After a final decision is entered in a disciplinary proceeding, the OED Director and attorneys representing the OED Director shall be available to counsel the USPTO Director, the General Counsel, and the Deputy General Counsel for General Law in any further proceedings.

§ 11.41 Filing of papers.

(a) The provisions of §§ 1.8 and 2.197 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.

§ 11.42

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 other means.

§ 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 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 on which service was made; and
- (2) The method by which service was made.

37 CFR Ch. I (7-1-10 Edition)

(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, including all prehearing motions commonly filed under the Federal Rules of Civil Procedure, shall be filed with the hearing officer. The hearing officer will determine whether replies to responses will be authorized and the time period for filing such a response. 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, prior to a decision on the motion, the parties resolve issues raised by a motion presented to the hearing officer, the parties shall promptly notify the hearing officer.

§ 11.44 Hearings.

(a) The hearing officer shall preside over hearings in disciplinary proceedings. The hearing officer shall set the time and place for the hearing. 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 the hearing as if the proceeding were subject to 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