

cost of any proceeding before the Office;

(ii) The other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions or actions as deemed appropriate by the USPTO Director, which may include, but are not limited to, any combination of—

(1) Striking the offending paper;

(2) Referring a practitioner's conduct to the Director of the Office of Enrollment and Discipline for appropriate action;

(3) Precluding a party or practitioner from submitting a paper, or presenting or contesting an issue;

(4) Affecting the weight given to the offending paper; or

(5) Terminating the proceedings in the Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action.

[73 FR 47689, Aug. 14, 2008, as amended at 74 FR 54912, Oct. 26, 2009; 78 FR 62409, Oct. 21, 2013; 86 FR 28457, May 26, 2021]

Subpart C—Investigations and Disciplinary Proceedings; Jurisdiction, Sanctions, Investigations, and Proceedings

SOURCE: 73 FR 47689, Aug. 14, 2008, unless otherwise noted.

§ 11.19 Disciplinary jurisdiction; grounds for discipline and for transfer to disability inactive status.

(a) *Disciplinary jurisdiction.* All practitioners engaged in practice before the Office; all practitioners administratively suspended under § 11.11; all practitioners registered or recognized to practice before the Office in patent matters; all practitioners resigned, inactivated, or in emeritus status under § 11.11; all practitioners authorized under § 41.5(a) or 42.10(c) of this chapter; and all practitioners transferred to disability inactive status or publicly disciplined by a duly constituted authority are subject to the disciplinary jurisdiction of the Office and subject to being transferred to disability inactive status. A non-practitioner is also subject to the disciplinary authority of the Office if the person engages in or offers to engage in practice before the Office without proper authority.

(b) *Grounds for discipline; Grounds for transfer to disability inactive status.* The following, whether done individually by a practitioner or in concert with any other person or persons and whether or not done in the course of providing legal services to a client, or in a matter pending before the Office, constitute grounds for discipline or grounds for transfer to disability inactive status.

(1) Grounds for discipline include:

(i) Conviction of a serious crime;

(ii) Discipline on ethical or professional misconduct grounds imposed in another jurisdiction or disciplinary disqualification from participating in or appearing before any Federal program or agency;

(iii) Failure to comply with any order of a Court disciplining a practitioner, or any final decision of the USPTO Director in a disciplinary matter;

(iv) Violation of any USPTO Rule of Professional Conduct; or

(v) Violation of the oath or declaration taken by the practitioner. See § 11.8.

(2) Grounds for transfer to disability inactive status include:

(i) Being transferred to disability inactive status in another jurisdiction;

(ii) Being judicially declared incompetent, being judicially ordered to be

§ 11.20

37 CFR Ch. I (7–1–23 Edition)

involuntarily committed after a hearing on the grounds of insanity, incompetency or disability, or being placed by court order under guardianship or conservatorship; or

(iii) Filing a motion requesting a disciplinary proceeding be held in abeyance because the practitioner is suffering from a disability or addiction that makes it impossible for the practitioner to adequately defend the charges in the disciplinary proceeding.

(c) Petitions to disqualify a practitioner in *ex parte* or *inter partes* matters in the Office are not governed by this subpart and will be handled on a case-by-case basis under such conditions as the USPTO Director deems appropriate.

(d) The OED Director may refer the existence of circumstances suggesting unauthorized practice of law to the authorities in the appropriate jurisdiction(s).

(e) The OED Director has the discretion to choose any of the independent grounds of discipline under paragraph (b) of this section and to pursue any of the procedures set forth in this subpart in every disciplinary proceeding.

[73 FR 47689, Aug. 14, 2008, as amended at 78 FR 20200, Apr. 3, 2013; 86 FR 28457, May 26, 2021]

§ 11.20 Disciplinary sanctions; Transfer to disability inactive status.

(a) *Types of discipline.* The USPTO Director, after notice and opportunity for a hearing, and where grounds for discipline exist, may impose on a practitioner the following types of discipline:

(1) Exclusion from practice before the Office;

(2) Suspension from practice before the Office for an appropriate period of time;

(3) Reprimand or censure; or

(4) *Probation.* Probation may be imposed in lieu of or in addition to any other disciplinary sanction. The conditions of probation shall be stated in the order imposing probation. Violation of any condition of probation shall be cause for imposition of the disciplinary sanction. Imposition of the disciplinary sanction predicated upon violation of probation shall occur only after a notice to show cause why the disciplinary

sanction should not be imposed is resolved adversely to the practitioner.

(b) *Conditions imposed with discipline.* When imposing discipline, the USPTO Director may condition reinstatement upon the practitioner making restitution, successfully completing a professional responsibility course or examination, or any other condition deemed appropriate under the circumstances.

(c) *Transfer to disability inactive status.* As set forth in § 11.29, the USPTO Director, after notice and opportunity for a hearing, may transfer a practitioner to disability inactive status where grounds exist to believe the practitioner has been transferred to disability inactive status in another jurisdiction, has been judicially declared incompetent, has been judicially ordered to be involuntarily committed after a hearing on the grounds of incompetency or disability, or has been placed by court order under guardianship or conservatorship.

[73 FR 47689, Aug. 14, 2008, as amended at 78 FR 20200, Apr. 3, 2013; 86 FR 28457, May 26, 2021]

§ 11.21 Warnings.

A warning is neither public nor a disciplinary sanction. The OED Director may conclude an investigation with the issuance of a warning. The warning shall contain a statement of facts and identify the USPTO Rules of Professional Conduct relevant to the facts.

[86 FR 28458, May 26, 2021]

§ 11.22 Disciplinary investigations.

(a) The OED Director is authorized to investigate possible grounds for discipline. An investigation may be initiated when the OED Director receives a grievance, information or evidence from any source suggesting possible grounds for discipline. Neither unwillingness nor neglect by a grievant to prosecute a charge, nor settlement, compromise, or restitution with the grievant, shall in itself justify abatement of an investigation.

(b) Any person possessing information or evidence concerning possible grounds for discipline of a practitioner may report the information or evidence to the OED Director. The OED Director