
From: Alan Heimlich <alanheimlich@heimlichlaw.com>
Sent: Tuesday, November 06, 2012 6:15 PM
To: Ethics Rules Comments
Subject: OED-Ethics Rules

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Due By: Monday, November 05, 2012 7:00 PM
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Regarding:

DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
37 CFR Parts 1, 2, 7, 10, 11 and 41
[Docket No.: PTO-C-2012-0034]
RIN 0651-AC81

Changes to Representation of Others Before The United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

Submitted comments:

- 1) A definition for "material fraud" is required to determine under the AIA the USPTO obligations.
- 2) Section 11.1 "Practitioner" should be amended to include quasi-judicial officials.
- 3) Section 11.1 "Writing" definition should drop "with the intent to sign the writing" because mental intent cannot be inferred and unsigned documents should not be considered "signed".
- 4) Section 11.104 should be amended to include "excepting in accordance with a client's express directions." because some clients do NOT want to be bothered with notifications of Office communications but rather rely on the practitioner's judgment as to what should be communicated to them.
- 5) Section 11.108(e) should be amended to exclude non-paying clients where the practitioner has already paid a fee or cost because this could be interpreted by the USPTO as financial assistance.
- 6) Section 11.108(i)(3) should be amended to include "or patent application", i.e. change "interest in the patent" into "interest in the patent or patent application" because not all proceedings are based on issued patents.
- 7) Section 11.111 – I disagree, the USPTO should adopt the ABA Model Rule of Professional Conduct 1.11 because a special exception rule is not needed for Federal Government employees.
- 8) Section 11.201 – I disagree, there is no reason not to enact the last sentence of the ABA Model Rule of Professional Conduct 2.1 because other factors are important to a client's situation.
- 9) Section 11.307 – should be amended to include "except where the practitioner is the inventor" because some practitioners are also inventors (e.g. present company).
- 10) Section 11.803(b) – please list the "appropriate authority" because I have no idea who it is.

Regards,

/Alan Heimlich/
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