

U.S. Patent and Trademark Office, Commerce

§ 10.89

(6) Participate in the creation or preservation of evidence when the practitioner knows or it is obvious that the evidence is false.

(7) Counsel or assist a client in conduct that the practitioner knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(b) A practitioner who receives information clearly establishing that:

(1) A client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so the practitioner shall reveal the fraud to the affected person or tribunal.

(2) A person other than a client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

§ 10.86 [Reserved]

§ 10.87 Communicating with one of adverse interest.

During the course of representation of a client, a practitioner shall not:

(a) Communicate or cause another to communicate on the subject of the representation with a party the practitioner knows to be represented by another practitioner in that matter unless the practitioner has the prior consent of the other practitioner representing such other party or is authorized by law to do so. It is not improper, however, for a practitioner to encourage a client to meet with an opposing party for settlement discussions.

(b) Give advice to a person who is not represented by a practitioner other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the practitioner's client.

§ 10.88 Threatening criminal prosecution.

A practitioner shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in any prospective

or pending proceeding before the Office.

§ 10.89 Conduct in proceedings.

(a) A practitioner shall not disregard or advise a client to disregard any provision of this Subchapter or a decision of the Office made in the course of a proceeding before the Office, but the practitioner may take appropriate steps in good faith to test the validity of such provision or decision.

(b) In presenting a matter to the Office, a practitioner shall disclose:

(1) Controlling legal authority known to the practitioner to be directly adverse to the position of the client and which is not disclosed by opposing counsel or an employee of the Office.

(2) Unless privileged or irrelevant, the identities of the client the practitioner represents and of the persons who employed the practitioner.

(c) In appearing in a professional capacity before a tribunal, a practitioner shall not:

(1) State or allude to any matter that the practitioner has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that the practitioner has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert the practitioner's personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert the practitioner's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the practitioner may argue, on the practitioner's analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Engage in undignified or discourteous conduct before the Office (see § 1.3 of the subchapter).

(6) Intentionally or habitually violate any provision of this subchapter or established rule of evidence.