

CHAPTER 38
RULES OF PROCEDURE OF THE COMMISSION ON THE
UNAUTHORIZED PRACTICE OF LAW

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CHAPTER 38

RULES OF PROCEDURE OF THE COMMISSION ON THE UNAUTHORIZED PRACTICE OF LAW

Rule 38.1 Jurisdiction; authorization; scope. The Commission on the Unauthorized Practice of Law, as an official arm of the court, is charged under Iowa Court Rule 37.2 with considering, investigating, and seeking the prohibition of matters pertaining to the unauthorized practice of law and the prosecution of alleged offenders. The rules contained in this chapter apply to all proceedings, functions, and responsibilities of the commission.

[Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002; December 10, 2012; December 13, 2017, effective January 1, 2018]

Rule 38.2 Definitions. In this chapter unless the content or subject matter otherwise requires:

38.2(1) “Director” means the director of boards and commissions designated by the executive director of the office of professional regulation.

38.2(2) “Chair” means the presiding officer of the commission and includes the chair of the commission, the vice chair, or any acting chair designated by the commission to preside in the absence of the chair.

38.2(3) “Commission” means the Commission on the Unauthorized Practice of Law.

38.2(4) “Respondent” is the person or entity whose conduct is the subject of a complaint to the commission or a proceeding in district court pursuant to Iowa Court Rule 37.2.

38.2(5) “Must” is mandatory and “may” is permissive.

[Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002; December 5, 2007; December 10, 2012; November 20, 2015; effective January 1, 2016; December 13, 2017, effective January 1, 2018; September 14, 2021, effective October 1, 2021]

Rule 38.3 Officers. At its first meeting in each year, the commission will elect a vice chairperson to serve for the year and until a successor is elected.

[Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002; December 13, 2017, effective January 1, 2018]

Rule 38.4 Meetings and quorum.

38.4(1) Meetings of the commission will be called by the chair of the commission and may be attended in person or by telephone. The commission must meet at least once in each calendar quarter. Special meetings may be called by the chairperson or at the request of three or more members of the commission.

38.4(2) The commission may act only upon the concurrence of a majority of the members present, except in the case of a vote to initiate an action pursuant to Iowa Court Rule 37.2, in which case the commission may act only upon the concurrence of a minimum of four members.

[Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002; December 10, 2012, effective July 1, 2013; December 13, 2017, effective January 1, 2018]

Rule 38.5 Complaints to the commission. Complaints may be accepted from any person or other entity believing that an individual or entity has been engaged in the unauthorized practice of law.

38.5(1) In this context, “complaint” means any written communication to the commission that alleges or indicates that the unauthorized practice of law has been or is taking place.

38.5(2) Complaints must be in writing but may be simple and informal. Complaints must include whatever information or exhibits the complainant desires to submit.

38.5(3) Complaints must be filed by submitting them to the director at the office of professional regulation.

38.5(4) The commission may, upon its own motion and regardless of whether any complaint has been filed, initiate any investigation or action it deems appropriate.

38.5(5) Upon receiving a complaint or initiating any investigation or action on its own motion, the commission must make a record indicating the date of filing or initiation, the name and address of complainant, the name and address of respondent, and a brief statement of the allegations made. This record must also show the final disposition of the matter when it is completed.

38.5(6) All commission files must be kept in permanent form at the office of professional regulation.

[Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002; December 5, 2007; December 13, 2017, effective January 1, 2018; September 14, 2021, effective October 1, 2021]

Rule 38.6 Investigation procedure.

38.6(1) Upon receipt of a complaint, the commission may notify the complainant in writing that the complaint has been received and will be considered by the commission.

38.6(2) Upon receipt of a complaint, the commission must cause the complaint to be set for consideration by the commission at its next meeting.

38.6(3) When considering a complaint, the commission must act in accordance with the following guidelines:

a. If it reasonably appears from the complaint that the respondent is not engaged in the unauthorized practice of law, the chair or the chair's designee must notify the complainant in writing of the commission's position and that the commission will take no further action.

b. Other complaints may be further investigated and acted upon by the commission consistent with this chapter and, if appropriate, referral may be made to the Iowa Supreme Court Attorney Disciplinary Board, the Iowa Department of Justice, or some other agency or entity.

c. If the commission determines that a complaint should be investigated further, it may direct that the investigation be conducted by a commission member or members or by the director.

d. If the commission in its discretion determines that it would be helpful for the respondent to provide a written response to the matters alleged in the complaint, it may direct that the respondent be so notified. In such circumstances the respondent must be notified of the substance of the complaint and that it is requested, but not required, that within 20 days the respondent provide a written response to the commission concerning the matters referred to in the notice.

e. The commission may request the complainant to clarify the complainant's original statement, to furnish additional information, to disclose sources of information, or to verify by affidavit statements of fact within the complainant's knowledge.

f. The commission may also initiate inquiries of other sources.

38.6(4) Nothing in this rule prohibits the chair of the commission from referring any complaint for investigation in advance of the next commission meeting when, in the chair's discretion, such referral is warranted.

[Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; November 20, 2015, effective January 1, 2016; December 13, 2017, effective January 1, 2018; September 14, 2021, effective October 1, 2021]

Rule 38.7 Determination following investigation. After the results of an investigation are returned to the commission, the commission may do any of the following:

38.7(1) Close the file and so notify the complainant.

38.7(2) Contact the respondent to obtain an agreement by the respondent to cease and desist from the unauthorized practice of law.

38.7(3) Initiate an action pursuant to Iowa Court Rule 37.2.

[Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002; December 10, 2012; December 13, 2017, effective January 1, 2018]

Rule 38.8 Confidentiality.

38.8(1) All unauthorized practice of law investigation matters, including but not limited to files, correspondence, investigation reports, memoranda, and records of investigations, are confidential unless otherwise provided in this chapter or ordered by the Iowa Supreme Court. All statements, communications, or materials that may be received or obtained by any person investigating any complaint on behalf of the commission must also be confidential unless otherwise provided in this chapter or ordered by the Supreme Court of Iowa.

38.8(2) Notwithstanding rule 38.8(1):

a. If the commission initiates an action pursuant to Iowa Court Rule 37.2, the petition and all documents filed in that proceeding are public documents.

b. The chairperson or other designee of the commission may issue one or more clarifying announcements when the subject matter of a complaint or petition is of broad public interest. No

other member of the commission may make any public statement concerning any matter before the commission without prior approval of the commission.

c. Pursuant to the commission's order, records may be inspected by and their contents disclosed to a person conducting bona fide research for research purposes, provided that no personal identifying data or work product of commission counsel is disclosed to such a person.

d. Nothing in this chapter prohibits the commission from releasing information to its counsel.

e. Nothing in this chapter prohibits the commission from releasing information as appropriate to the Iowa Supreme Court, the Iowa Department of Justice, the Iowa Supreme Court Attorney Disciplinary Board, appropriate law enforcement authorities, or some other agency or entity.

[Court Order February 17, 1992, effective July 1, 1992; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 10, 2012; December 13, 2017, effective January 1, 2018]

Rule 38.9 Immunity. Members of the commission and their respective staffs are immune from suit for any conduct in the course of their official duties. Complaints submitted to the commission, and testimony with respect thereto, are privileged and no lawsuit predicated thereon may be instituted.

[Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002; December 13, 2017, effective January 1, 2018]