

In the Iowa Supreme Court

In the Matter of Amendments to )  
Chapters 39, 41, and 42 of the Iowa )  
Court Rules Regarding Exempt and )  
Retired Attorney License Status )

CLERK SUPREME COURT  
Order

The Iowa Supreme Court approves amendments to chapters 39, 41, and 42 of the Iowa Court Rules that divide the existing exempt license classification for Iowa attorneys into two separate classifications. The amendments create a new retired license classification for fully retired attorneys. The exempt license classification remains for attorneys who are inactive in Iowa but want to retain the ability to reinstate to active status. The court adopts an annual fee and report for exempt attorneys to facilitate tracking exempt lawyers and to support the Client Security Trust Fund. The new statuses are available prospectively and include a five-year period of conversion privileges for attorneys currently in exempt status.

Provided with this order is a memorandum from the Director of the Office of Professional Regulation that explains the rule changes, how the exempt and retired statuses are separated, aspects of transitioning to the new rules (see rule 39.7(4) transition provisions for exempt status and rule 41.13(2) transition provisions for retired status), and the general plan for implementation of the new rules.

The court adopts the amendments to chapters 39, 41, and 42 in Division III of the Iowa Court Rules as provided with this order.

These amendments will be effective September 1, 2016, except that the amendments to Iowa Court Rules 39.7(1), 39.7(2), 41.7, 41.13(1), and 42.6 will be effective January 1, 2018.

Dated this 19th day of August, 2016.

The Iowa Supreme Court

By Mark S. Cady  
Mark S. Cady, Chief Justice

**OFFICE OF PROFESSIONAL REGULATION  
OF THE SUPREME COURT OF IOWA**



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Memorandum For: Iowa Attorneys

From: Paul H. Wieck II, Director

Subject: New Rules Separating Retired and Inactive Statuses

Date: August 19, 2016

**Summary**

Iowa currently handles inactive and retired attorneys in a single license status entitled “exempt,” which frees the attorney from annual fees, reports, and continuing legal education requirements, but precludes practicing law in Iowa. The new rules separate the inactive and retired classifications in Iowa. The change will facilitate tracking inactive attorneys through annual reports, and produce additional fee revenue for the Client Security Trust Fund. Transition to the new concept will be eased by making the new inactive and retired statuses available prospectively, and providing conversion privileges for a period of five years for those attorneys currently in exempt status.

**Current Practice Regarding Exempt, Inactive, and Retired Status**

An Iowa attorney who does not actually practice law in Iowa may apply for a certificate of exemption from continuing legal education (CLE) attendance, reporting, and fee payment requirements pursuant to Iowa Court Rules 41.7 and 42.6, and a certificate of exemption from client security reporting and fee payment requirements pursuant to Iowa Court Rule 39.7. It is permissible to apply for exemption for purposes of one commission, but not the other.

An attorney issued a certificate of exemption from either or both commissions may not practice law in Iowa until reinstated.<sup>1</sup> Reinstatement from exemption generally requires payment of current fees, filing current report forms, and in the case of CLE, showing satisfaction of the CLE attendance requirements the attorney would have completed had the attorney remained active during the period of exemption.<sup>2</sup>

In practice, no distinction has been made between attorneys who fully retire from practice, attorneys who move out of state, or attorneys who simply cease practicing law. All of these situations currently are addressed through the certificate of exemption process under rules 39.7, 41.7, and 42.6. The labels exempt, inactive, and retired are used interchangeably.

Because attorneys in exempt status have no reporting duties, the contact information maintained by the Office of Professional Regulation (OPR) for exempt attorneys often is inaccurate. Especially with respect to exempt attorneys residing outside Iowa, OPR frequently is not aware when an exempt attorney is deceased.

### **Separating Exempt and Retired Statuses**

The new rules retain the current terms and rules for “exempt” and “exemption,” which will be synonymous with “inactive.” The new rules also create a new, separate retired status.

The current client security exemption rule is amended to require an annual exempt status fee and an annual report from those attorneys who choose exempt status. Attorneys in exempt status will continue to be precluded from practicing law in Iowa. Reinstatement requirements will continue to be set in rule 39.14(3), which involve filing a current annual report and questionnaire,

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<sup>1</sup> The practice of law as used in this context includes the examination of abstracts, consummation of real estate transactions, preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns as well as the representation of others in any Iowa courts, the right to represent others in any Iowa courts, or to regularly prepare legal instruments, secure legal rights, advise others as to their legal rights or the effect of contemplated actions upon their legal rights, or to hold oneself out to so do; or to be a judge or one who rules upon the legal rights of others unless the state nor federal law requires the person so judging or ruling to hold a license to practice law. Iowa Ct. R. 39.7. Attorneys in exempt status have been permitted to request ICIS AT pin numbers and register as users in the EDMS system, however.

<sup>2</sup> In 2012, the CLE required for reinstatement was capped at a maximum of 100 hours, including up to 10 hours of legal ethics.

paying fees and assessments for the current year, and paying all late filing fees that were delinquent at the time the attorney sought exempt status.<sup>3</sup>

The current CLE exemption rule is left intact, with no reporting or fee payment duties during the period of exemption. Attorneys in exempt status will continue to be precluded from practicing law in Iowa. Reinstatement requirements will continue to be set in rule 42.7, which involve filing an application for reinstatement with a \$25 reinstatement fee, showing completion of CLE the attorney would have completed had he or she remained active,<sup>4</sup> and paying all late filing fees that were delinquent at the time the attorney sought exempt status.

New rules 39.7(2) and 41.13 create the separate retired status, which has no reporting or fee payment duties and precludes the practice of law. No provision for reinstatement will exist for retired practitioners. Retired practitioners who want to practice again will have to seek readmission by passing the bar examination or satisfying admission on motion requirements. The only exception will be emeritus status under rule 31.19, which will remain available to retired attorneys to encourage pro bono service to approved legal aid organizations.

Applications for retired status will be linked, meaning that an applicant must submit concurrent applications for retired status in both CLE and client security. Unlike the current practice, applications for exempt status also will be linked. It no longer will be possible to apply for exempt status for purposes of client security, but not for purposes of CLE, or vice versa. Attorneys in exempt status will be allowed to use their CLE transcript utility to track their CLE attendance while they are in exempt status.

### **Transitioning to New Concept**

The order adopting the new rules provides that OPR may select the actual implementation date, which may not be later than January 1, 2018. OPR plans to announce the actual implementation date by a separate notice late in 2016.

The table at Appendix A assumes an implementation date of January 1, 2018, and shows the available status options before and after that date. The table

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<sup>3</sup> The provisions for collection of unpaid late filing fees will need to be retained because some attorneys currently in exempt status owed late fees at the time they sought exempt status, likely will not respond to notice of the separation of exempt and retired statuses, and could be grandfathered for reinstatement even though administratively retired.

<sup>4</sup> Subject to the cap specified in rule 42.7(1)(b).

also shows options for attorneys in exempt status at the implementation date, who will have a five year grace period to seek reinstatement or transfer to the new exempt status.

For purposes of CLE:

The separate fully retired status becomes available upon the implementation date. Until the implementation date, attorneys in active status will be able to apply for exempt status or emeritus status. On or after the implementation date, attorneys in active status will be able to apply for exempt status, emeritus status, or the new retired status. Reinstatement from exempt status will be available on the same terms before and after the implementation date. No annual fee or report is associated with exempt status for purposes of CLE, before or after the date of implementation.

Attorneys who are in exempt status for purposes of CLE before the implementation date will have no fee payment or annual reporting responsibilities. On and after the implementation date, attorneys in exempt status will be able to request conversion to the new exempt status with the annual fee, emeritus status, the new retired status, or reinstatement, so long as their status for purposes of client security reporting permits a concurrent application for purposes of client security.

Attorneys who are in active status for purposes of CLE before the implementation date, but are in exempt status for purposes of client security reporting, will be administratively transferred to exempt status for purposes of CLE on the date of implementation. The administrative transfer will conform their statuses with both commissions to exempt status. Attorneys administratively transferred to exempt status for purposes of CLE will be permitted to record and track their CLE attendance on their lawyer account pages, as a matter of convenience, should they choose to do so.

For purposes of client security:

The separate fully retired status also becomes available for purposes of client security on the implementation date. At that same time, a new exempt status with a requirement for an annual report and annual \$50 fee will become effective. Until the date of implementation, attorneys in active status will be able to apply for exempt status without payment of an annual fee, or emeritus status. On or after the implementation date, attorneys in active status will be able to apply for the new exempt status with payment of an annual fee, emeritus status, or the new retired status.

Attorneys who are in exempt status with client security before the implementation date will be accorded legacy status, and will not have fee payment or annual reporting responsibilities. For a period of five years

commencing on the implementation date, attorneys in legacy status will be able to request conversion to the new exempt status with the annual fee, emeritus status, the new retired status, or reinstatement. Once the five year grace period ends, attorneys in legacy status no longer will be able to apply for conversion to exempt status with the annual fee, or reinstatement to active status. They still will be able to apply for emeritus status or the new retired status.

### **General Plan for Implementation**

Implementing the new rules separating exempt and retired statuses will involve several tasks. Prior to the implementation date, the OPR web site and associated Oracle database will be adapted to accommodate separate exempt and retired classifications and the existing exempt attorney population will be notified regarding the pending separation in categories and their status change options before and after expiration of their five year grace period. Upon implementation, a separate application process and certificate (of exemption or retirement) will become available for each status. Also upon implementation, attorneys in exempt status for purposes of client security but active status for purposes of CLE will be administratively transferred to exempt status for purposes of CLE.

## Appendix A

<b>Transition to New Concept for Separate Inactive and Retired Statuses</b>			
	<b>Status Change Options Through December 31, 2017</b>	<b>Status Change Options On and After January 1, 2018</b>	<b>Status Change Options On and After January 1, 2023</b>
<b>Existing Status for Purposes of CLE</b>	<b>May apply for:</b>	<b>May apply for:</b>	<b>May apply for:</b>
<b>Active with Commission on CLE, Active with Client Security Commission</b>	1. Exempt Status (No Annual Fee) 2. Emeritus Status	1. Exempt Status (No Annual Fee) 2. Emeritus Status 3. Retired Status	
<b>Exempt with Commission on CLE on or before December 31, 2017 [Legacy Status]</b>	1. Emeritus Status 2. Reinstatement	1. [New] Exempt Status with Annual Fee 2. Emeritus Status 3. Retired Status 4. Reinstatement	1. Emeritus Status 2. Retired Status
<b>Active with Commission on CLE, Exempt with Client Security Commission</b>	1. Exempt Status (No Annual Fee) 2. Emeritus Status	Will be administratively converted to exempt status as of January 1, 2018; will have same options noted above	
<b>Existing Status for Purposes of Client Security</b>	<b>May apply for:</b>	<b>May apply for:</b>	<b>May apply for:</b>
<b>Active with Client Security Commission</b>	1. [Legacy] Exempt Status (No Annual Fee) 2. Emeritus Status	1. [New] Exempt Status with Annual Fee 2. Emeritus Status 3. Retired Status	
<b>Exempt with Client Security Commission on or Before December 31, 2017 [Legacy Status]</b>	1. Emeritus Status 2. Reinstatement	1. [New] Exempt Status with Annual Fee 2. Emeritus Status 3. Retired Status 4. Reinstatement	1. Emeritus Status 2. Retired Status
<b>[New] Exempt Status with Annual Fee (After December 31, 2017)</b>		1. Emeritus Status 2. Retired Status 3. Reinstatement	
<b>[New] Retired Status with No Annual Fees or Reports (After December 31, 2017)</b>		1. Emeritus Status 2. Application for Admission Under Chapter 31	

**Note 1: Applications for emeritus status or retired status are linked; must be submitted to both commissions concurrently.**

**Note 2: Applications for exempt status also would be linked, unlike current practice in which it is possible to request exempt status with client security but not CLE.**

**Note 3: Because applications for exempt status would be linked, applications for reinstatement also would be linked.**

## Chapter 39

### CLIENT SECURITY COMMISSION

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**Rule 39.5 Annual disciplinary fee.** As a condition to continuing membership in the bar of the supreme court, including the right to practice law before Iowa courts, every bar member, unless ~~exempted, exempt or retired,~~ shall pay to the commission through the office of professional regulation an annual fee as determined by the supreme court to finance the disciplinary system. The annual fee shall be due on or before March 10 of each year, for that calendar year. A calendar year is defined as the period of time from January 1 through December 31. ~~Members~~ A member of the bar of the supreme court who ~~certify~~ certifies in writing to the commission that ~~they are a~~ the member is a justice, judge, associate judge, or full-time magistrate of any court, ~~spend~~ spends full time in the military service of the United States following admission to the Iowa bar, ~~are~~ is admitted on examination to the bar of Iowa during the current calendar year, or ~~are~~ is issued a certificate of exemption or a certificate of retirement pursuant to the provisions of rule 39.7 shall be exempt from payment of this fee.

**Rule 39.6 Fund assessments.**

**39.6(1) Assessments.** As a condition to continuing membership in the bar of Iowa, including the right to practice law before Iowa courts, every bar member, unless ~~exempted, exempt or retired~~ under the provisions of rule 39.6(6) or rule 39.7, shall pay to the commission through the office of professional regulation the assessment specified in rule 39.6(2), 39.6(3), or 39.6(4), or as provided by court order. The assessment shall be paid annually and deposited in the fund created pursuant to the provisions of rule 39.3. Assessments shall be due on or before March 10 of each year, for that calendar year. A calendar year is defined as the period of time from January 1 through December 31.

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**Rule 39.7 Certificate of exemption — required statement. Exemption and retirement.**

**39.7(1) Certificate of exemption.** A member of the bar of the supreme court who is not engaged in the practice of law in the state of Iowa may be granted a certificate of exemption by the commission, and thereafter no fee or assessment except for an annual exemption fee of \$50 and late filing penalties shall be required from such member unless the member thereafter engages in the practice of law in the state of Iowa, in which case the certificate of exemption shall without further order of court stand revoked and the member shall file at once the statement required by rule 39.8(1), and the questionnaire required by rule 39.11 and pay the fee and assessment due under rules 39.5 and 39.6. A

member of the bar requesting a certificate of exemption shall file with the director ~~the statement required by rule 39.8(1), and~~ such part of the rule 39.11 questionnaire as the director may deem necessary to determine the member's status. Applications for a certificate of exemption must be submitted concurrently under rules 41.7, 42.6, and rule 39.7(1).

**39.7(2) *Certificate of retirement.*** A member of the bar of the supreme court who is fully retired from the practice of law in the state of Iowa and does not intend ever again to practice law in Iowa may be granted a certificate of retirement. Thereafter, no fee, assessment, annual statement, or questionnaire is required from such member. A member granted a certificate of retirement is not entitled to practice law in the state of Iowa and may not apply for reinstatement, but the member may be certified as an emeritus attorney under rule 31.19. A member granted a certificate of retirement who desires to again practice law other than as an emeritus attorney must seek admission under the provisions of chapter 31 of the Iowa Court Rules. A member of the bar requesting a certificate of retirement shall file with the director such part of the rule 39.11 questionnaire as the director may deem necessary to determine the member's status. Applications for a certificate of retirement must be submitted concurrently under rule 41.13 and rule 39.7(2).

**39.7(3) *Practice of law.*** The practice of law as that term is employed in this chapter includes the examination of abstracts, consummation of real estate transactions, preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns as well as the representation of others in any Iowa courts, the right to represent others in any Iowa courts, or to regularly prepare legal instruments, secure legal rights, advise others as to their legal rights or the effect of contemplated actions upon their legal rights, or to hold oneself out to so do; or to be one who instructs others in legal rights; or to be a judge or one who rules upon the legal rights of others unless neither the state nor federal law requires the person so judging or ruling to hold a license to practice law.

**39.7(4) *Transition provisions.***

a. The provisions of rule 39.7(1) regarding an annual \$50 fee for exempt practitioners and concurrent application for exempt status and of rule 39.7(2) regarding a separate fully retired status are effective January 1, 2018.

b. On or before December 31, 2017, attorneys in active status may apply for and be granted exempt status without payment of an annual fee, or emeritus status under rule 31.19.

c. On or after January 1, 2018, attorneys in active status may apply for and be granted exempt status with payment of an annual fee, emeritus status under rule 31.19, or retired status under rule 39.7(2).

d. Attorneys who are in exempt status as of December 31, 2017, will be accorded legacy status. Attorneys in legacy status will have no fee payment or reporting responsibilities. For a period of five years commencing January 1, 2018, and ending December 31, 2022, attorneys in legacy status may apply for conversion to exempt status, emeritus status under rule 31.19, retired status

under rule 39.7(2), or reinstatement to active status under rule 39.14(3). On or after January 1, 2023, attorneys in legacy status are not entitled to apply for conversion to exempt status or apply for reinstatement to active status under rule 39.14(3), but they may apply for emeritus status under rule 31.19 or retired status under rule 39.7(2).

**Rule 39.8 Enforcement.**

**39.8(1)** To facilitate the collection of the annual ~~feefees~~ and ~~assessmentassessments~~ provided for in rules 39.5, ~~and~~ 39.6, 39.7(1), and 39.17, all members of the Iowa bar required to pay the ~~feefees~~ and ~~assessment~~, and those exempted other than by rule ~~39.7~~, assessments shall, on or before March 10 of each year, file a statement, on a form prescribed by the director, setting forth their date of admission to practice before the supreme court, their current residence and office addresses, and such other information as the director may from time to time direct. In addition to such statement, every bar member shall file a supplemental statement of any change in the information previously submitted within 30 days of such change. All persons admitted to practice before the supreme court shall file the statement required by this rule at the time of admission but no annual ~~feefees~~ or ~~assessmentassessments~~ shall be payable until the time above provided. All attorneys failing to file the required statement by March 10 of each year shall, in addition to the annual ~~feefees~~ and ~~assessmentassessments~~ provided for above, pay a penalty as set forth in the following schedule if the statement is filed after March 10. The penalty fees collected shall be used to pay the costs of administering the fund, or for such other purposes within the office of professional regulation as the supreme court may direct.

Penalty Schedule:

If Filed:	Penalty:
After March 10 but before April 12	\$100
After April 11 but before May 12	\$150
After May 11	\$200

**39.8(2)** Attorneys who fail to timely pay the ~~feefees~~ and assessments required under rules 39.5, ~~and~~ 39.6, 39.7(1), and 39.17, or fail to file the statement or supplement thereto provided in rule 39.8(1), may have their right to practice law suspended by the supreme court, provided that at least 15 days prior to such suspension, a notice of delinquency has been served upon them in the manner provided for the service of original notices in Iowa R. Civ. P. 1.305, or has been forwarded to them by restricted certified mail, return receipt requested, addressed to them at their last-known address. Such attorneys must be given the opportunity during said 15 days to file in duplicate in the office of professional regulation an affidavit disclosing facts demonstrating the noncompliance was not willful and tendering such documents and sums and penalties which, if accepted, would cure the delinquency, or to file in duplicate

in the office of the clerk of the supreme court a request for hearing to show cause why their license to practice law should not be suspended. A hearing must be granted if requested. If, after hearing, or failure to cure the delinquency by satisfactory affidavit and compliance, an attorney is suspended, the attorney must be notified thereof by either of the two methods above provided for notice of delinquency.

**39.8(3)** Any attorney suspended pursuant to this chapter shall do all of the following:

*a.* Within 15 days in the absence of co-counsel, notify clients in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another lawyer.

*b.* Within 15 days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

*c.* Within 30 days refund any part of any fees paid in advance that have not been earned.

*d.* Within 15 days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, of the suspension and consequent disqualification to act as a lawyer after the effective date of such discipline.

*e.* Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

*f.* Keep and maintain records of the steps taken to accomplish the foregoing.

*g.* Within 30 days file proof with the supreme court and with the Iowa Supreme Court Attorney Disciplinary Board of complete performance of the foregoing, and this shall be a condition for application for readmission to practice.

**39.8(4)** Any attorney suspended pursuant to this chapter shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**39.8(5)** Attorneys who have been suspended pursuant to this chapter or who currently hold a certificate of exemption or retirement and who practice law or who hold themselves out as being authorized to practice law in this state are engaged in the unauthorized practice of law and may also be held in contempt of the court or may be subject to disciplinary action as provided by chapter 35 of the Iowa Court Rules.

## Chapter 41

### CONTINUING LEGAL EDUCATION FOR LAWYERS

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**Rule 41.7 Inactive practitioners.** A member of the bar who is not engaged in the practice of law in the state of Iowa as defined in Iowa Ct. R. 39.7, upon application to the commission, may be granted a waiver of compliance with this chapter and obtain a certificate of exemption. No person holding such certificate of exemption shall practice law in this state until reinstated. The supreme court will make rules and regulations governing the continuing legal education requirements for reinstatement of attorneys who, for any reason, have not theretofore been entitled to practice law in this state for any period of time subsequent to their admission to the bar. Applications for a certificate of exemption must be submitted concurrently under rules 39.7, 42.6, and this rule.

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#### **41.13 Retired practitioners**

**41.13(1) Certificate of retirement.** A member of the bar of the supreme court who is fully retired from the practice of law in the state of Iowa and does not intend ever again to practice law in Iowa may be granted a certificate of retirement. Thereafter, no continuing legal education, annual report, or annual fee is required from such member. A member granted a certificate of retirement is not entitled to practice law in the state of Iowa and may not apply for reinstatement, but the member may be certified as an emeritus attorney under rule 31.19. A member granted a certificate of retirement who desires to again practice law other than as an emeritus attorney must seek admission under the provisions of chapter 31 of the Iowa Court Rules. A member of the bar requesting a certificate of retirement shall file with the director an application in such form as the director may deem necessary to determine the member's status. Applications for a certificate of retirement must be submitted concurrently under rule 39.7(2) and rule 41.13(1).

#### **41.13(2) Transition provisions.**

a. The provisions of rule 41.13(1) regarding a separate fully retired status and the provisions of rule 41.7 and 42.6 regarding concurrent applications for exempt status are effective January 1, 2018.

b. On or before December 31, 2017, attorneys in active status may apply for and be granted exempt status under rules 41.7 and 42.6 or emeritus status under rule 31.19.

c. On or after January 1, 2018, attorneys in active status may apply for and be granted exempt status under rules 41.7 and 42.6, emeritus status under rule 31.19, or retired status under rule 41.13(1).

d. Attorneys in active status under rules 41.7 and 42.6 but exempt status under rule 39.7 as of December 31, 2017, will be administratively transferred to exempt status under rules 41.7 and 42.6 as of January 1, 2018. Attorneys administratively transferred to exempt status under this provision nonetheless will be allowed to record their continuing legal education attendance on their attorney account pages while in exempt status.

## Chapter 42

### REGULATIONS OF THE COMMISSION ON CONTINUING LEGAL EDUCATION

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**Rule 42.6 Exemptions for inactive practitioners.** A member of the bar who is not engaged in the practice of law in the state of Iowa as defined in Iowa Ct. R. 39.7 residing within or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the commission. The application shall contain a statement that the applicant will not engage in the practice of law in Iowa, as defined in Iowa Ct. R. 39.7, without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form prescribed by the commission. Applications for a certificate of exemption must be submitted concurrently under rules 39.7, 41.7, and this rule.