FILED
AUG 29 2016
CLERK SUPREME COURT

In the Iowa Supreme Court

Request for Public Comment on Proposed Changes Regarding Death and Disability Planning by Iowa Attorneys	))))	**Order**

The Iowa Supreme Court seeks public comment on proposed amendments to Iowa Court Rule 39.18 and associated rules regarding death and disability planning by Iowa attorneys.

After a previous 60-day public comment period, during which time the court did not receive any comment relating to then-proposed rule 39.18, the court on November 20, 2015, adopted Iowa Court Rule 39.18 requiring sole practitioners to have a written succession plan for their law practices.

The proposed amendments to rule 39.18 now before the court originated from The Iowa State Bar Association Rule 39.18 Study Committee (ISBA committee). The key provisions of the ISBA request include the following:

- The proposed amendments would create two "tiers" of succession planning. The first tier would be a mandatory short form designation of an assisting attorney or entity as part of the annual questionnaire filed with the Client Security Commission. The designation would identify the assisting attorney, law firm (which could be the planning attorney's own firm, if the planning attorney is a member of a firm), or qualified lawyer servicing association. The designation also would identify where records are located, including the current client list, and authorize the assisting attorney or entity to perform tasks necessary to protect the interests of clients. The listed tasks include reviewing client files, notifying clients of the planning attorney's death or disability, determining if other actions are necessary to protect the clients' interests, and administering the planning attorney's trust account.

- The second tier would be a written plan created by the planning attorney that would be optional but encouraged. In the optional written plan, the planning attorney would be able to provide further guidance and authority to perform law firm management and administrative tasks. Those tasks include collecting fees, paying law firm expenses and client costs, compensating staff, terminating leases, and selling the practice.

- All attorneys in private practice would be required to complete the first

tier, mandatory short form designation, as part of the annual client security questionnaire. If a planning attorney is a member of a law firm that includes other Iowa attorneys in good standing, the planning attorney may designate his or her own firm as the assisting law firm.

- Attorneys not in private practice in Iowa would be permitted to provide that response to a direct question on the annual questionnaire, and would not be required to complete the remainder of that portion of the questionnaire pertaining to succession planning.

- Maintenance of a current client list would be required on the part of all attorneys in private practice.

- The assisting attorney or entity would be authorized to apply to the district chief judge for an order confirming the death or disability of the planning attorney.

- A qualified lawyer servicing association would be defined as a bar association all or part whose members are admitted to practice in Iowa, a company authorized to sell professional liability insurance to Iowa attorneys, or an Iowa bank with trust powers issued by the Iowa Department of Banking.

- The assisting attorney or entity would be authorized to petition for appointment of a trustee under the provisions of Iowa Court Rules 34.17 or 34.18, as applicable, if the assisting attorney or entity believes it beneficial to be court appointed as a trustee, or believes it appropriate that an independent trustee be appointed. In any situation in which a trustee appointment under rules 34.17 or 34.18 is applied for, the new rules would require the chief judge to give due regard to any designation or stand-by nomination made by a planning attorney under the provisions of Iowa Court Rule 39.18.

- The Office of Professional Regulation would not implement the new mandatory portion of the annual client security report until the 2018 reporting season.

- The proposed amendments to rule 39.18 would include appropriate amendments to rule 34.17 (disability suspension) and rule 34.18 (death, suspension, or disbarment of practicing attorney).

The ISBA committee studying rule 39.18 believes that adding a mandatory short form designation as part of the annual client security questionnaire would make it easier for Iowa attorneys to fulfill the basic planning requirement, place information regarding every private practitioner's plan in the possession of the Client Security Commission for quick retrieval,

prompt annual updating by the attorney as part of the annual reporting process, and obviate the need for auditors of the Client Security Commission to check on succession planning during trust account audits. Iowa attorneys nonetheless would have the option of authoring their own, more expansive written plans to address matters not covered in the mandatory short form designation.

Prior to further consideration of the proposed amendments to rule 39.18, the court seeks public comment on the amendments. The proposed amendments, the report of the ISBA Rule 39.18 Study Committee, and a letter against the ISBA committee report are provided with this order and may be found on the Iowa Judicial Branch website at: http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Orders. In addition, copies are available at the office of the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

Any interested organization, agency, or person may submit comments regarding the proposed amendments. All comments must refer to the specific rule number (for example, rule 39.18(3)) and the specific numbered line or lines to which the comments refer. Comments sent by email must be emailed to **rules.comments@iowacourts.gov**, must state **"Proposed Amendments to Rule 39.18"** in the subject line of the email, and must be sent **as an attachment to the email in Microsoft Word format**. Instead of submission by email, comments may be delivered in person or mailed to the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, 50319.

The deadline for submitting comments is 4:30 p.m. on October 31, 2016.

To accommodate further consideration of rule 39.18 and the 60-day

public comment period on proposed amendments to the rule, the court amends by this order the effective date for the current Iowa Court Rule 39.18—Requirement for Death or Disability Plan, which currently is January 1, 2017. **The effective date for current rule 39.18, is now delayed until January 1, 2018.**

Dated this 29th day of August, 2016.

The Iowa Supreme Court

By _____
Mark S. Cady, Chief Justice

Chapter 34

Administrative and General Provisions

. . . .

General Disciplinary Rules of Grievance Commission and Disciplinary Board

. . . .

34.17 Disability suspension.

34.17(1) In the event an attorney is at any time in any jurisdiction duly adjudicated a mentally incapacitated person, or a person with a substance-related disorder, or is committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which the adjudication or commitment is entered must, within 10 days, certify the adjudication or commitment to the supreme court clerk.

34.17(2) Upon the filing of an adjudication or commitment certificate or a like certificate from another jurisdiction, upon a supreme court determination pursuant to a sworn application on behalf of a local bar association, or upon a disciplinary board determination that an attorney is not discharging professional responsibilities due to disability, incapacity, abandonment of practice, or disappearance, the supreme court may enter an order suspending the attorney's license to practice law in this state until further order of the court. Not less than 20 days prior to the effective date of the suspension, the attorney or the attorney's guardian, and the director of the institution or hospital to which the attorney has been committed, if any, must be notified in writing, directed by restricted certified mail to the last address as shown in the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and place and show cause why such suspension should not take place. Upon a showing

of exigent circumstances, emergency, or other compelling cause, the supreme court may reduce or waive the 20-day period and the effective date of action set forth above. Any hearing will be informal and the strict rules of evidence will not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time. A copy of such suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

34.17(3) Upon the voluntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.9112, or upon the involuntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.2106(3)(a), the supreme court may enter an order suspending the retired judicial officer's license to practice law in this state in the event the underlying disability prevents the discharge of an attorney's professional responsibilities. The suspension is effective until further order of the supreme court. A copy of the suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney is committed, if any, by restricted mail or personal service as the supreme court may direct.

34.17(4) Any attorney suspended pursuant to rule 34.17 must refrain, during the suspension, from all facets of 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; acting as a fiduciary; and when possible, remove all advertising of the attorney's services or holding out to the public

that he or she is a licensed attorney. The suspended attorney may, however, act as a fiduciary for an estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

34.17(5) No attorney suspended due to disability under rule 34.17 may engage in the practice of law in this state until reinstated by supreme court order.

34.17(6)

a. Upon being notified of the suspension of an attorney, the chief judge in the judicial district in which the attorney practiced may appoint an attorney or attorneys to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. <u>In appointing a trustee, the chief judge will give due regard to any designation or stand-by nomination made under the provisions of Iowa Court Rule 39.18.</u> Any trustee appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the board and as a commissioner of the supreme court for the purposes of the appointment.

b. While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

c. The trustee may seek reasonable fees and reimbursement of costs of the trust from the suspended attorney. If reasonable efforts to collect such fees and

costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

d. When the suspended attorney is reinstated to practice law in this state, all pending representation of clients is completed, or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

e. Trustee fees and expenses paid by the Client Security Commission must be assessed to the disabled attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

. . . .

Rule 34.18 Death, suspension, or disbarment of practicing attorney.

34.18(1) Upon a sworn application on behalf of a local bar association, an attorney or entity designated or nominated on a stand-by basis as described in Iowa Court Rule 39.18, or the disciplinary board showing that a practicing attorney has died or has been suspended or disbarred from the practice of law and that a reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced may appoint an attorney to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. In appointing a trustee, the chief judge will give due regard to any designation or stand-by nomination made under the provisions of Iowa

Court Rule 39.18. The appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the disciplinary board and as a commissioner of the supreme court for the purposes of the appointment.

34.18(2) While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. If the trustee acquires such information inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

34.18(3) The trustee may seek reasonable fees and reimbursement of costs of the trust from the deceased attorney's estate or the attorney whose license to practice law has been suspended or revoked. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

34.18(4) When all pending representation of clients is completed or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

34.18(5) Trustee fees and expenses paid by the Client Security Commission must be assessed to the deceased, suspended, or disbarred attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

. . . .

Chapter 39

Client Security Commission

. . . .

[New proposed] Rule 39.18 Requirement for death or disability designation and authorization.

39.18(1) *Required designation and authorization in annual questionnaire.*

a. Each attorney in private practice must identify and authorize each year, as part of the annual questionnaire required by Iowa Court Rule 39.11, a qualified lawyer servicing association, an Iowa law firm that includes Iowa attorneys in good standing, or an active Iowa attorney in good standing, to serve as the attorney's designated representative or representatives under this rule. An attorney may identify and authorize an Iowa law firm of which the attorney is a member to serve under this rule.

b. The attorney or entity designated under this rule is authorized to review client files, notify each client of the attorney's death or disability, and determine whether there is a need for other immediate action to protect the interests of clients.

c. The attorney or entity designated under this rule also is authorized to serve as a successor signatory for any client trust account maintained by the private practitioner under Iowa Court Rule 45.11, prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records.

d. The authority of the attorney or entity designated under this rule takes effect upon the death or disability of the designated attorney. The designated attorney or entity may apply to the chief judge of the judicial district in which

the designating attorney practiced for an order confirming the death or disability of the designating attorney.

39.18(2) *Client list and location of key information.* Each attorney in private practice must maintain a current list of active clients, in a location accessible by the attorney or entity designated under this rule. As part of the annual questionnaire required by Iowa Court Rule 39.11, each attorney in private practice must identify the custodian and the location of the client list, the custodian and location of electronic and paper files and records, and the custodian and location of passwords and other security protocols required to access the electronic files and records. The attorney or entity designated under this rule is authorized to access electronic and paper files and records as necessary to perform duties as a designated attorney, and is authorized to access passwords and other security protocols required to access those electronic files and records.

39.18(3) *Supplemental plan.* An attorney in private practice may prepare a written plan that is supplemental to the designation and authority in the annual client security questionnaire. The supplemental written plan may designate an attorney or entity to collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administration tasks. The supplemental written plan also may nominate an attorney or entity to serve as trustee if proceedings are commenced under the provisions of Iowa Court Rules 34.17 or 34.18.

39.18(4) *Durability.* A designation or plan under this rule must include language sufficient to make the designated attorneys' or entity's powers durable in the event of the private practitioner's disability. *See* Iowa Code § 633B.104; Iowa R. Prof'l Conduct 32:1.3 cmt. [5].

39.18(5) *Conflicts of interest.* A designated attorney or entity must not examine any documents or acquire any information containing real or potential conflicts with the designated attorney's clients. Should any such information be acquired inadvertently, the designated attorney or entity must, as to such matters, protect the privacy interests of the planning attorney's clients by prompt recusal or refusal of employment.

39.18(6) *Availability of Trustee Provisions.* A designated attorney or entity may petition the court, at any time, for appointment as the trustee or appointment of an independent trustee under the provisions of Iowa Court Rules 34.17 or 34.18, as applicable.

39.18(7) *Definitions.* For purposes of this rule, the following definitions apply:

a. A "*qualified lawyer servicing association*" is a bar association all or part of whose members are admitted to practice law in the state of Iowa; a company authorized to sell lawyers professional liability insurance in Iowa; or an Iowa bank with trust powers issued by the Iowa Department of Banking.

b. A "*law firm*" is a minimum of two attorneys in a law partnership, professional corporation, or other association authorized to practice law.

c. An "*attorney in private practice*" includes an active Iowa attorney who resides outside Iowa but engages in the private practice of law in Iowa.

Report of the Rule 39.18 Study Committee

July 2016

On November 20, 2015 the Iowa Supreme Court adopted Court Rule 39.18 requiring sole practitioners to have a written plan of succession for their practice effective January 1, 2016. The rule was adopted after receiving just one comment during the 30 day public comment period. After adoption, it quickly became apparent to the Iowa State Bar Association and the Court that more time was needed to study the impact of the rule on Iowa lawyers and the rule effective date was eventually delayed to January 1, 2017. In response to questions raised by the bar concerning the rule, then President Bruce Walker formed and the Board of Governors approved the appointment of the Rule 39.18 Study Committee to be chaired by Past President Joe Feller from Sibley.

The additional members of the committee were Past Presidents David Beckman, Burlington, Nick Critelli Jr., Des Moines and Joe Holland, Iowa City, along with John (Rick) Bierman III, Grinnell, Phil Brooks, Cedar Rapids, Frank Hoyt Jr., West Des Moines, Kate Kohorst, Harlan, Michel Nelson, Carroll, Deb Petersen, Council Bluffs, Office of Professional Regulation Director Paul Wieck II and ISBA Executive Director Dwight Dinkla (ex-officio).

President Walker charged the committee to research the implementation of the rule and how it was to be interpreted. As initially adopted Rule 39.18 applied to many more lawyers than just the traditional sole practitioners and bar leadership was concerned that application of the rule would create liabilities for the assisting attorneys as well as financial costs to the estate of the deceased or disabled attorney.

The Committee met in person on four occasions, March 16, 2016, April 27, 2016, May 18, 2016 and June 13, 2016. On July 22, 2016, the Committee met by phone conference, approved this report and concluded its work.

The Committee concluded that the present Rule 39.18 requiring sole practitioners to prepare mandatory succession plans should be vacated and replaced with a rule described below that would not require a written succession plan, make compliance easier and apply to all private practice attorneys, while at the same time protecting the interests of our clients and the public.

All the members of the Committee agree that succession planning is very important both for our clients and our families and that the Court and the bar should encourage all lawyers to complete written succession plans and also take steps to improve their office practice management procedures so that their offices are ready for succession in the event of death or disability. At each meeting of the Committee the members engaged in very dynamic discussions regarding many different issues related to the implementation of Rule 39.18 as currently adopted.

The Committee reviewed the background for the current rule, numbers of attorneys affected by the rule, immunity/liability for the designated attorneys, role of professional liability insurance, compensation for designated attorneys, definitions for "disability", fiduciary duties of designated attorneys and conflicts of interest, and dealing with electronic and traditional client files, along with other issues. Many of the Committee members had personal experience helping to close the law office for a deceased attorney and their perspectives were very helpful. Succession planning necessarily encompasses many more issues than this Committee was formed to review and while a discussion of those issues was necessary to properly evaluate Rule 39.18, a full examination and proposed resolutions to deal with those issues is beyond the work of this Committee.

Eventually the Committee narrowed its focus to a review of Rule 39.18 and while recognizing the need for succession planning, struggled with the requirement that only sole practitioners were required to have written succession plans rather than all private practitioners. However, the Committee did not believe that the requirements of the current Rule 39.18 should be extended to all private practitioners either. In the end the Committee resolved the matter with its current recommendations that would require all attorneys answer a few more questions in connection with the annual license renewal and promote written succession plans on a voluntary basis. The Committee concluded that we would recommend the Court revise the current Rule 39.18 to make compliance easier for attorneys and also provide a method for the Office of Professional Regulation to gather the information the office needs in advance of an event where a law office is left unattended due to death or disability of the practitioner.

The revision of Iowa Court Rule 39.18 and associated rules proposed by the Committee would create two tiers of succession planning. The first tier would be a mandatory short form designation of an assisting attorney or entity as part of the annual questionnaire filed with the Client Security Commission. The authority of the assisting attorney or entity designated in the mandatory short form would be focused on tasks necessary to protect the interests of clients and complete trust account matters. The second tier would be a written plan created by the planning attorney that would be optional but encouraged. In the optional written plan, the planning attorney would be able to authorize additional tasks, mostly in law firm management and administration.

The Committee believes that adding a mandatory short form designation as part of the annual client security questionnaire would make it easier for Iowa attorneys to fulfill the basic planning requirement, place information regarding every private practitioner's plan in the possession of the Client Security Commission for quick retrieval, prompt annual updating by the attorney as part of the annual reporting process, and obviate the need for auditors of the Client Security Commission to check on succession planning during trust account audits. Iowa attorneys nonetheless would have the option of authoring their own, more expansive written plans to address matters not covered in the mandatory short form designation.

The concept recommended by the Committee would require all attorneys in private practice to complete a new portion of the annual client security questionnaire that identifies their assisting attorney, law firm (which can be their firm, if they are in a firm), or qualified lawyer servicing association, identifies where their records are located including their current client list, and authorizes the assisting attorney or entity to perform certain tasks in the event of the planning attorney's death or disability. Maintenance of a current client list would be required. The assisting attorney or entity would be authorized to apply to the district chief judge for an order confirming the death or disability. The listed tasks include reviewing client files, notifying clients of the planning attorney's death or disability, determining if other actions are necessary to protect the clients' interests, and administering the planning attorney's trust account. A qualified lawyer servicing association would be defined as a bar association all or part of whose members are admitted to practice in Iowa, a company authorized to sell professional liability insurance to Iowa attorneys, or an Iowa bank with trust powers issued by the Iowa Department of Banking.

Attorneys not in private practice in Iowa would be permitted to provide that response to a direct question on the annual questionnaire, and would not be required to complete the remainder of that portion of the questionnaire pertaining to succession planning.

Attorneys would still be permitted (and encouraged) to have their own written plan that provides further guidance and authority to perform law firm management and administrative tasks. Those tasks include collecting fees, paying law firm expenses and client costs, compensating staff, terminating leases, and selling the practice.

The assisting attorney or entity would be authorized to petition for appointment of a trustee under the provisions of Iowa Court Rules 34.17 or 34.18, as applicable, if the assisting attorney or entity believes it beneficial to be court appointed as a trustee, or believes it appropriate that an independent trustee be appointed. In any situation in which a trustee appointment under rules 34.17 or 34.18 is applied for, the new rules would require the chief judge to give due regard to any designation or stand by nomination made by a planning attorney under the provisions of Iowa Court Rule 39.18.

The Committee also recommends that the Office of Professional Regulation would not implement the new mandatory portion of the annual client security report until the 2018 reporting season.

The Committee further recommends that the ISBA continue to work with the Iowa Academy of Trust and Estate Counsel to provide updated law practice succession planning documents to our members. And finally the Committee recommends that the ISBA continue to provide continuing legal education to our members to assist them with their succession planning.

Copies of the original Rule 39.18 as well as the Committee's new proposed language for Rules 34.17, 34.18 and 39.18 are attached to this report.

ATTACHMENT A – (CURRENT RULE)

Rule 39.18 Requirement for death or disability plan.

39.18(1) Each sole practitioner must have a written plan that designates a primary and an alternate active Iowa attorney in good standing to review client files, notify each client of the attorney's death or disability, and determine whether there is a need for other immediate action to protect the interests of clients. The primary and alternate attorneys must consent in writing to their designation in the plan.

39.18(2) The plan must authorize the designated attorneys to prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records. The plan must identify the location of electronic files and records, authorize the designated attorneys to access electronic files and records as necessary to perform duties as a designated attorney, and provide the designated attorneys access to passwords and other security protocols required to access those electronic files and records.

39.18(3) The plan may authorize the designated attorneys to collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administration tasks.

39.18(4) The plan must include language sufficient to make the designated attorneys' powers durable in the event of the sole practitioner's disability. *See* Iowa Code § 633B.1; Iowa R. Prof'l Conduct 32:1.3 cmt. [5].

39.18(5) The plan must be made available for review upon request by the director of the office of professional regulation or by any representative of the client security commission
.

39.18(6) The plan must be reviewed and updated annually.

39.18(7) A designated attorney must not examine any documents or acquire any information containing real or potential conflicts with the designated attorney's clients. Should any such information be acquired inadvertently, the designated attorney must, as to such matters, protect the privacy interests of the planning attorney's clients by prompt recusal or refusal of employment.

39.18(8) For purposes of this rule, a sole practitioner includes an attorney practicing alone, an attorney practicing only with other attorneys who do not own equity in the practice, an attorney practicing in an association of sole practitioners, or any other structure in which no other attorney owns equity in the practice.

[Court Order November 20, 2015, effective January 1, 2016; November 24, 2015, effective March 1, 2016; January 15, 2016, effective January 1, 2017]

ATTACHMENT B - (CURRENT RULE WITH PROPOSED REVISIONS)

34.17 Disability suspension.

34.17(1) In the event an attorney is at any time in any jurisdiction duly adjudicated a mentally incapacitated person, or a person with a substance-related disorder, or is committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which the adjudication or commitment is entered must, within 10 days, certify the adjudication or commitment to the supreme court clerk.

34.17(2) Upon the filing of an adjudication or commitment certificate or a like certificate from another jurisdiction, upon a supreme court determination pursuant to a sworn application on behalf of a local bar association, or upon a disciplinary board determination that an attorney is not discharging professional responsibilities due to disability, incapacity, abandonment of practice, or disappearance, the supreme court may enter an order suspending the attorney's license to practice law in this state until further order of the court. Not less than 20 days prior to the effective date of the suspension, the attorney or the attorney's guardian, and the director of the institution or hospital to which the attorney has been committed, if any, must be notified in writing, directed by restricted certified mail to the last address as shown in the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and place and show cause why such suspension should not take place. Upon a showing of exigent circumstances, emergency, or other compelling cause, the supreme court may reduce or waive the 20-day period and the effective date of action set forth above. Any hearing will be informal and the strict rules of evidence will not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time. A copy of such suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

34.17(3) Upon the voluntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.9112, or upon the involuntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.2106(3)(a), the supreme court may enter an order suspending the retired judicial officer's license to practice law in this state in the event the underlying disability prevents the discharge of an attorney's professional responsibilities. The suspension is effective until further order of the supreme court. A copy of the suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney is committed, if any, by restricted mail or personal service as the supreme court may direct.

34.17(4) Any attorney suspended pursuant to rule 34.17 must refrain, during the suspension, from all facets of 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; acting as a fiduciary; and when possible, remove all advertising of the attorney's services or holding out to the public that he or she is a licensed attorney. The suspended attorney may, however, act as a fiduciary for an estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

34.17(5) No attorney suspended due to disability under rule 34.17 may engage in the practice of law in this state until reinstated by supreme court order.

34.17(6)

a. Upon being notified of the suspension of an attorney, the chief judge in the judicial district in which the attorney practiced may appoint an attorney or attorneys to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. In appointing a trustee, the chief judge will give due regard to any designation or stand-by nomination made under the provisions of Iowa Court Rule 39.18. Any trustee appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the board and as a commissioner of the supreme court for the purposes of the appointment.

b. While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

c. The trustee may seek reasonable fees and reimbursement of costs of the trust from the suspended attorney. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

d. When the suspended attorney is reinstated to practice law in this state, all pending representation of clients is completed, or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

e. Trustee fees and expenses paid by the Client Security Commission must be assessed to the disabled attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

Rule 34.18 Death, suspension, or disbarment of practicing attorney.

34.18(1) Upon a sworn application on behalf of a local bar association, an attorney or entity designated or nominated on a stand-by basis as described in Iowa Court Rule 39.18, or the disciplinary board showing that a practicing attorney has died or has been suspended or disbarred from the practice of law and that a reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced may appoint an attorney to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. In appointing a trustee, the chief judge will give due regard to any designation or stand-by nomination made under the provisions of Iowa Court Rule 39.18. The appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the disciplinary board and as a commissioner of the supreme court for the purposes of the appointment.

34.18(2) While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. If the trustee acquires such information inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

34.18(3) The trustee may seek reasonable fees and reimbursement of costs of the trust from the deceased attorney's estate or the attorney whose license to practice law has been suspended or revoked. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

34.18(4) When all pending representation of clients is completed or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

34.18(5) Trustee fees and expenses paid by the Client Security Commission must be assessed to the deceased, suspended, or disbarred attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

ATTACHMENT C - (PROPOSED REVISED RULE)

Rule 39.18 Requirement for death or disability designation and authorization.

39.18(1) *Required designation and authorization in annual questionnaire.*

a. Each attorney in private practice must identify and authorize each year, as part of the annual questionnaire required by Iowa Court Rule 39.11, a qualified lawyer servicing association, an Iowa law firm that includes Iowa attorneys in good standing, or an active Iowa attorney in good standing, to serve as the attorney's designated representative or representatives under this rule. An attorney may identify and authorize an Iowa law firm of which the attorney is a member to serve under this rule.

b. The attorney or entity designated under this rule is authorized to review client files, notify each client of the attorney's death or disability, and determine whether there is a need for other immediate action to protect the interests of clients.

c. The attorney or entity designated under this rule also is authorized to serve as a successor signatory for any client trust account maintained by the private practitioner under Iowa Court Rule 45.11, prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records.

d. The authority of the attorney or entity designated under this rule takes effect upon the death or disability of the designated attorney. The designated attorney or entity may apply to the chief judge of the judicial district in which the designating attorney practiced for an order confirming the death or disability of the designating attorney.

39.18(2) *Client list and location of key information.* Each attorney in private practice must maintain a current list of active clients, in a location accessible by the attorney or entity designated under this rule. As part of the annual questionnaire required by Iowa Court Rule 39.11, each attorney in private practice must identify the custodian and the location of the client list, the custodian and location of electronic and paper files and records, and the custodian and location of passwords and other security protocols required to access the electronic files and records. The attorney or entity designated under this rule is authorized to access electronic and paper files and records as necessary to perform duties as a designated attorney, and is authorized to access passwords and other security protocols required to access those electronic files and records.

39.18(3) *Supplemental plan.* An attorney in private practice may prepare a written plan that is supplemental to the designation and authority in the annual client security questionnaire. The supplemental written plan may designate an attorney or entity to collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administration tasks. The supplemental written plan also may nominate an attorney or entity to serve as trustee if proceedings are commenced under the provisions of Iowa Court Rules 34.17 or 34.18.

39.18(4) *Durability.* A designation or plan under this rule must include language sufficient to make the designated attorneys' or entity's powers durable in the event of the private practitioner's disability. *See* Iowa Code § 633B.104; Iowa R. Prof'l Conduct 32:1.3 cmt. [5].

39.18(5) *Conflicts of interest.* A designated attorney or entity must not examine any documents or acquire any information containing real or potential conflicts with the designated attorney's clients. Should any such information be acquired inadvertently, the designated attorney or entity must, as to such matters, protect the privacy interests of the planning attorney's clients by prompt recusal or refusal of employment.

39.18(6) *Availability of Trustee Provisions.* A designated attorney or entity may petition the court, at any time, for appointment as the trustee or appointment of an independent trustee under the provisions of Iowa Court Rules 34.17 or 34.18, as applicable.

39.18(7) *Definitions.* For purposes of this rule, the following definitions apply:

A "*qualified lawyer servicing association*" is a bar association all or part of whose members are admitted to practice law in the state of Iowa; a company authorized to sell lawyers professional liability insurance in Iowa; or an Iowa bank with trust powers issued by the Iowa Department of Banking.

A "*law firm*" is a minimum of two attorneys in a law partnership, professional corporation, or other association authorized to practice law.

An "*attorney in private practice*" includes an active Iowa attorney who resides outside Iowa but engages in the private practice of law in Iowa.

ATTACHMENT D – (PROPOSED CHANGES TO QUESTIONNAIRE)

Death or Disability Planning Addendum to Annual Client Security Questionnaire

Questions 25 through 30 implement the requirement in Iowa Court Rule 39.18 that each attorney in private practice designate annually an attorney or entity to perform certain duties in the event of the designating attorney's death or disability. If you are not engaged in private practice in Iowa, you may answer No to question 25 and skip questions 26 through 30. If you are engaged in private practice in Iowa, you must answer questions 25 through 30. An attorney in private practice in Iowa includes any active Iowa attorney who resides outside Iowa or maintains a virtual law practice but serves Iowa clients.

You may designate an active Iowa lawyer in good standing, a law firm that includes Iowa attorneys in good standing, or a qualified lawyer servicing association. A qualified lawyer servicing association includes a bar association all of part of whose members are admitted to practice law in Iowa, a company authorized to sell lawyers professional liability insurance in Iowa, or an Iowa bank with trust powers issued by the Iowa Department of Banking. If you are a member of a law firm that includes other Iowa attorneys in good standing, you may designate your own firm to perform these duties.

25. I am engaged in the private practice of law in Iowa Yes / No

26. I designate the following named active Iowa attorney in good standing, qualified lawyer servicing association, or Iowa law firm that includes Iowa attorneys in good standing, as my representative or representatives under Iowa Court Rule 39.18:

Name of Designated Attorney or Entity:

Address Line 1:

Address Line 2:

Address Line 3:

City:

State:

Zip Code:

Zip Plus 4:

Telephone Number:

27. My list of active clients can be found in the custody of the following named person at the location indicated:

Name of Custodian:

Address Line 1:

Address Line 2:

Address Line 3:

City:

State:

Zip Code:

Zip Plus 4:

Telephone Number:

28. My electronic files and records can be found in the custody of the following named person at the location indicated:

If the same person listed in response to question 27 has custody of your electronic files and records, click the toggle here and proceed to question 29: O

Name of Custodian:

Address Line 1:

Address Line 2:

Address Line 3:

City:

State:

Zip Code:

Zip Plus 4:

Telephone Number:

29. My paper files and records can be found in the custody of the following named person at the location indicated:

If the same person listed in response to question 27 has custody of your paper files and records, click the toggle here and proceed to question 30:

Name of Custodian:

Address Line 1:

Address Line 2:

Address Line 3:

City:

State:

Zip Code:

Zip Plus 4:

Telephone Number:

30. The passwords and other security protocols required to access my electronic files and records can be found in the custody of the following named person at the location indicated:

If the same person listed in response to question 27 has custody of your passwords and other security protocols, click the toggle here and proceed to the questionnaire certification: O

Name of Custodian:

Address Line 1:

Address Line 2:

Address Line 3:

City:

State:

Zip Code:

Zip Plus 4:

Telephone Number:

The authority of the attorney or entity I have designated above takes effect upon my death or disability. The designated attorney or entity may apply to the chief judge of the judicial district

in which the designating attorney practiced for an order confirming my death or disability. The authority contained in this designation is durable in the event of my disability.

I authorize the attorney or entity I have designated above to review client files, notify each client of my death or disability, and determine whether there is a need for other immediate action to protect the interests of my clients. I also authorize the attorney or entity designated above to serve as a successor signatory under Iowa Court Rule 45.11 for any client trust account I may have, prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records. I further authorize the attorney or entity designated under this rule to access my paper and electronic files and records as necessary to perform duties as a designated attorney, and to access passwords and other security protocols required to access those electronic files and records.

I certify that I have read and answered completely and truthfully this statement/questionnaire.

_____ _____

Date Signature

Make check payable to: Client Security Trust Fund

Mail report and check to: Office of Professional Regulation

Client Security Commission

Judicial Branch Building

1111 East Court Ave.

Des Moines, Iowa 50319

Telephone: (515) 725-8029