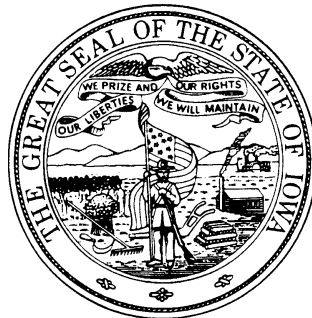


# IOWA COURT RULES

FIFTH EDITION

August 2016 Supplement



Published under the authority of Iowa Code section 2B.5(2).

STEPHANIE A. HOFF  
ADMINISTRATIVE CODE EDITOR

## PREFACE

The Fifth Edition of the Iowa Court Rules was published in July 2009 pursuant to Iowa Code section 2B.5(2). Subsequent updates to the Iowa Court Rules, as ordered by the Supreme Court, are published in electronic format only and include chapters that have been amended or adopted.

The Iowa Court Rules and related court documents are available on the Internet at <https://www.legis.iowa.gov/IowaLaw/courtRulesListing.aspx>.

To receive e-mail notification of the publication of a Supplement to the Iowa Court Rules, subscribe at <https://www.legis.iowa.gov/Subscribe/subscriptions.aspx>.

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**Citation:** The rules shall be cited as follows:

Chapter 1	Iowa R. Civ. P.
Chapter 2	Iowa R. Crim. P.
Chapter 5	Iowa R. Evid.
Chapter 6	Iowa R. App. P.
Chapter 32	Iowa R. of Prof'l Conduct
Chapter 51	Iowa Code of Judicial Conduct

All other rules shall be cited as "Iowa Ct. R."

**Supplements:** Supplements to the Fifth Edition of the Iowa Court Rules have been issued as follows:

August 2009	December 2010	September 2013	December 2015
September 2009	February 2011	November 2013	February 2016
October 2009	January 2012	December 2013	July 2016
November 2009	May 2012	January 2014	
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**August 2016 Supplement**

**Changes in this supplement**

Rules 39.5 to 39.8 .....	Amended	Rule 41.13.....	Adopted
Rule 39.18.....	Amended	Rule 42.6.....	Amended
Rule 41.7.....	Amended		

**INSTRUCTIONS FOR UPDATING THE IOWA COURT RULES**

Replace Chapter 39

Replace Chapters 41 and 42



## **CHAPTER 39**

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## CHAPTER 39 CLIENT SECURITY COMMISSION

### **Rule 39.1 Client Security Commission.**

**39.1(1) *Commission.*** There is hereby created a Client Security Commission, hereinafter referred to as “commission,” which shall have the duties and powers provided in this chapter.

**39.1(2) *Duties of commission.*** The commission shall have the following duties and powers as limited and defined in this chapter:

*a.* To examine lawyer defalcations and breaches of Iowa Rules of Professional Conduct, the rules relating to the discipline of members of the Iowa bar, and to make recommendations to the supreme court concerning rule changes deemed necessary or desirable in this area.

*b.* To assist the court in administering both preventive and remedial attorney disciplinary procedures contained in these rules or other court rules.

*c.* To administer and operate the Clients’ Security Trust Fund of the Bar of Iowa, as hereinafter created, designated as the “fund.”

**39.1(3) *Appointment of commissioners.*** The supreme court shall appoint five members of the Iowa bar and two laypersons who are residents of this state to the commission. The original appointment shall be two commissioners for a one-year term, two for a two-year term, one for a three-year term, one for a four-year term and one for a five-year term. At the expiration of such terms, all subsequent appointments shall be for a term of four years, and any commissioner who has served two full terms shall not be eligible for reappointment. A vacancy occurring during a term shall be filled by the supreme court for the unexpired portion thereof.

**39.1(4) *Organization and meetings.*** The commissioners shall organize annually and shall then elect from among their number a chair and a treasurer to serve for a one-year term and such other officers for such terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the chair or of the majority of the commissioners. Five commissioners shall constitute a quorum and may transact all business except as may be otherwise provided by this chapter and chapter 40 of the Iowa Court Rules.

**39.1(5) *Regulations.*** The commission shall adopt regulations, consistent with this chapter and subject to the approval of the supreme court, concerning all of the powers and duties granted to and imposed upon the commission by this chapter.

**39.1(6) *Reimbursement.*** The commissioners shall serve without compensation but shall be entitled to reimbursement from the fund for their expenses reasonably incurred in the performance of their duties.

[Court Order December 5, 1973; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; May 25, 2004; April 20, 2005, and July 1, 2005, effective July 1, 2005]

### **Rule 39.2 Principal executive officer.**

**39.2(1) *Appointment.*** The director of the office of professional regulation serves as the principal executive officer of the client security commission. Wherever in this chapter a reference to the “director” appears, it refers to the director of the office of professional regulation. The director may designate an assistant director for boards and commissions to assist with the duties described in this chapter.

**39.2(2) *Duties of director.*** Subject to the supervision of the supreme court and the commission, the director shall do the following:

*a.* Collect attorney fees and assessments for the fund and report to the commission the names and addresses of all attorneys who fail to pay the fee and assessment.

*b.* Serve as executive secretary to the commission and assist in the operation and administration of the fund.

*c.* Conduct investigations and audits of attorneys’ accounts and office procedures to determine compliance with this chapter, Iowa Rule of Professional Conduct 32:1.15, and chapter 45 of the Iowa Court Rules and report violations to the commission.

*d.* Maintain an office in such place as the supreme court shall designate, act as a liaison between the court, the commission, and other commissions, committees, boards, and personnel serving a function in the disciplinary system, and maintain for the court records of disciplinary proceedings and such other information and data as the court shall require.

e. Upon request of the commission, institute disciplinary proceedings before the grievance commission pursuant to chapter 35 of the Iowa Court Rules.

f. Perform such other functions and duties as may be directed by the supreme court.  
[Court Order December 5, 1973; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; November 20, 2015, effective January 1, 2016]

### **Rule 39.3 Clients' security trust fund of the bar of Iowa.**

**39.3(1) *Creation, operation and purpose.*** A trust fund, to be known as the "Clients' Security Trust Fund of the Bar of Iowa" (hereinafter, the "fund") is hereby authorized and created.

**39.3(2) *Administration.*** The fund shall be operated and administered by the commission in accordance with this chapter.

**39.3(3) *Purpose.*** The purpose of the fund shall be to prevent defalcations by members of the Iowa bar, and insofar as practicable, to provide for the indemnification by the profession for losses caused to the public by the dishonest conduct of members of the bar of this state, and to provide funding for the administration of the lawyer disciplinary system and other programs which impact the disciplinary system including, but not limited to, the Iowa Lawyer's Assistance Program.

**39.3(4) *Powers and duties of commission relating to the fund.*** The commission, in addition to the powers granted elsewhere in this chapter, shall have the following powers and duties:

a. To receive, hold, manage, and distribute, pursuant to the direction of the supreme court and this chapter, the moneys raised hereunder, and any other amounts that may be received by the fund through voluntary contributions or otherwise.

b. To adopt, subject to the approval of the supreme court, regulations for the administration of the fund and the procedures for presentation, consideration, recognition, rejection and payment of claims, and for conducting business. A copy of such regulations shall be filed with the clerk of the supreme court.

c. To enforce claims for restitution, arising by subrogation or assignment or otherwise.

d. To invest the fund, or any portion thereof, in those investments and in the percentages authorized by Iowa Code section 97B.7, (investments for Iowa public employees' retirement system); provided, however, the commission shall not be required to invest such portions of the fund as it may deem necessary to be currently available for payment of claims and other expenses required by this chapter. All interest or other income received in the operation of the fund shall become a part of the fund.

e. To employ and compensate consultants, agents, legal counsel and employees.

f. To delegate the power to perform routine acts which may be necessary or desirable for the operation of the fund, including the power to authorize disbursements for routine operating expenses of the fund, and all necessary expenses of the assistant administrator and staff in the performance of their duties; but authorization for payment of claims shall be made only by the commission under the provisions of this chapter.

g. To sue in the name of the commission without joining any or all individual commissioners.

h. To purchase complementary fidelity coverage for the fund in such amount and with such limitations or deductible limits as in its discretion it determines proper.

i. To pay reasonable and necessary attorney fees incurred by the commissioners of the supreme court in implementing chapter 35 of the Iowa Court Rules in disciplinary proceedings based on attorney defalcations or which are initiated pursuant to rule 39.2(3)(e).

j. To fund programs which the commission believes will assist in preventing defalcations by attorneys. The annual allocation for any such program shall not exceed two and one-half percent of the fund value as of the beginning of the fiscal year in which the funding is to occur. No such funding may be provided unless there is at least twice the minimum balance required by rule 39.6(3) in the fund at the beginning of the fiscal year in which the funding is to occur.

**39.3(5) *Applications to the supreme court.*** The commission may apply to the supreme court for interpretations of this chapter and of the extent of the commission's powers thereunder and for advice regarding the proper administration of the fund. Interpretations of the supreme court shall be obligatory when rendered.

[Court Order November 9, 2001, effective February 15, 2002; November 26, 2013, effective December 1, 2013]



**Rule 39.4 Audit — banking — budget.**

**39.4(1) *Audit and report.*** On March 1 of each year, and at such additional times as the supreme court may order, the commission shall file with the supreme court a written report reviewing in detail the administration of the fund during the preceding calendar year together with an audit of the fund certified by a certified public accountant licensed to practice in Iowa.

**39.4(2) *Banking and disbursements.*** The director of the office of professional regulation must maintain the assets of the fund in a separate account and may disburse moneys from the fund only at the direction of the supreme court or upon the action of the commission pursuant to this chapter. A separate bookkeeping account designated as the disciplinary fund account must be maintained within the fund for moneys derived from the annual disciplinary fee set out in rule 39.5. Fees, penalties, or investment income derived from the investment of the income from annual disciplinary fees and penalties must be placed in the disciplinary fund account.

**39.4(3) *Budget.*** At least 60 days prior to the commencement of each fiscal year, the director of the office of professional regulation must submit to the supreme court its budget of operations of such year, which may be amended thereafter as necessity dictates.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; November 20, 2015, effective January 1, 2016]

**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 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. A member of the bar of the supreme court who certifies in writing to the commission that the member is a justice, judge, associate judge, or full-time magistrate of any court, spends full time in the military service of the United States following admission to the Iowa bar, is admitted on examination to the bar of Iowa during the current calendar year, or 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.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; December 2, 2011; April 25, 2014; August 19, 2016, effective September 1, 2016]

**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 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.

**39.6(2) *Initial and regular assessment schedule.***

For the calendar year of the member’s admission on examination to the bar of Iowa, and for the calendar year thereafter. . . . . None.

For the calendar year of the member’s admission on motion to the bar of Iowa, a payment toward the \$200 initial assessment in the amount of . . . . . \$50.

For the years after those described above, until an initial total of \$200 in assessment has been paid, a payment of . . . . . \$50 annually.

For the years after an initial total of \$200 in assessments has been paid, unless a special assessment is payable under rule 39.6(4), a regular annual assessment of . . . . . \$50 annually.

[Court Order June 13, 1979; November 13, 1984; November 15, 1985; November 11, 1986; November 19, 1987; October 20, 1988; November 16, 1989; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; December 5, 2007; November 26, 2013, effective December 26, 2013]

**39.6(3) *Certificate of sufficiency.*** The commission shall determine the net value of the cash and securities in the fund as of December 1 of each year. The commission shall file with the supreme court prior to December 31 of each year a certificate regarding sufficiency of the fund. Whenever the value of such assets shall equal less than \$900,000, after deducting all claims and requests for reimbursement against the fund, not disposed of at the date of valuation, and all expenses properly chargeable against the fund, a special assessment as set forth in rule 39.6(4) shall be payable for the

next calendar year after the date of the certificate of sufficiency. This special assessment shall be paid in lieu of the regular assessment set in rule 39.6(2), by each member of the bar who has already paid the \$200 initial assessment.

**Comment:** The November 26, 2013, amendment to new rule 39.6(3), raising the threshold used to calculate the sufficiency of the fund, is effective for the sufficiency calculation to be performed beginning December 1, 2013.

**39.6(4) *Special assessment.*** For any calendar year in which a special assessment is payable in lieu of the regular assessment set in rule 39.6(2), the special assessment is established as follows:

*a. Lawyers in full-time private practice.* Members of the bar of Iowa in full-time private practice shall pay to the commission a special assessment of \$140.

*b. Lawyers in part-time private practice.* Members of the bar of Iowa who derive net income of less than \$10,000 from the practice of law in Iowa during the preceding calendar year shall pay to the commission a special assessment of \$70. Net income from the practice of law shall be for the purposes of this rule that amount shown on the federal income tax return of such members for the appropriate year as “profit or loss from a business or profession.” The commission may require members so electing to submit to the commission a copy of their federal income tax return for the appropriate year to substantiate the amount due hereunder.

*c. Judges, government attorneys, corporate counsel.* Any member of the bar of Iowa who certifies in writing to the commission that the member is a justice, judge, associate judge, or full-time magistrate of any court, or one who performs legal services only for a governmental unit, or one who performs legal services only for a particular person, firm, or corporation (other than a professional legal corporation or a law firm) and stands in the legal capacity with such person, firm, or corporation as an employee, shall pay to the commission a special assessment of \$70. However, a retired judge or justice recalled for temporary service shall not be required to pay an assessment or surrender their certificate of exemption.

**39.6(5) *Multijurisdictional practitioners.*** Lawyers practicing in Iowa under the provisions of rule of professional conduct 32:5.5(d)(2) and rule 39.16 shall pay the same initial, regular, and special assessments as members of the bar of Iowa in private practice.

**39.6(6) *Members in full-time military service.*** Any member of the bar of Iowa who certifies in writing that the member is serving full-time in the military service of the United States shall be exempt from any assessment under this rule.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; November 26, 2013, effective December 26, 2013; April 25, 2014; August 19, 2016, effective September 1, 2016]

### **Rule 39.7 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 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 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).

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; August 19, 2016, effective September 1, 2016, rules 39.7(1) and 39.7(2), effective January 1, 2018]

**Rule 39.8 Enforcement.**

**39.8(1)** To facilitate the collection of the annual fees and assessments provided for in rules 39.5, 39.6, 39.7(1), and 39.17, all members of the Iowa bar required to pay the fees and 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 fees or assessments 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 fees and assessments 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 fees and assessments required under rules 39.5, 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.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; April 25, 2008; June 5, 2008, effective July 1, 2008; January 19, 2010; April 25, 2014; November 20, 2015, effective January 1, 2016; August 19, 2016, effective September 1, 2016]

### **Rule 39.9 Claims.**

**39.9(1)** The commission shall consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state acting either as an attorney or fiduciary, provided that all of the following are established:

*a.* Said conduct was engaged in while the attorney was a practicing member of the bar of this state and the claim arises out of the practice of law in this state. The commission shall not consider any claim resulting from conduct engaged in after an attorney's license to practice in Iowa has been revoked. For purposes of this rule, a practicing member of the bar of this state is:

(1) A member of the bar of Iowa whose license is active and in good standing at the time of the dishonest conduct giving rise to the claim, or

(2) A member of the bar of Iowa whose license has been suspended and whom the client reasonably believes to be licensed, active, and in good standing at the time of the dishonest conduct giving rise to the claim. If the attorney has been suspended more than six months prior to the time of the dishonest conduct giving rise to the claim, it shall be presumed that the client was unreasonable in believing that the attorney was licensed, active, and in good standing at the time of the dishonest conduct.

(3) An attorney who establishes an office or other systematic and continuous presence in Iowa for the practice of law under the provisions of rule of professional conduct 32:5.5(d)(2) and pays the annual fee and assessment due under rules 39.5 and 39.6.

*b.* Such defalcation or dishonest conduct occurred after January 1, 1974.

*c.* The claim is made within one year after the client's discovery of the loss; provided, however, such time limitation in unusual circumstances may be extended by the commission in its discretion for good cause shown.

*d.* The claim is made directly by or on behalf of the injured client or the client's personal representative or, if a corporation, by or on behalf of itself or its successors in interest.

*e.* The commission is satisfied that there is no other source or collateral source for the reimbursement of the loss.

*f.* Claims shall not be paid which arise out of an employer-employee relationship as distinguished from a lawyer-client relationship or a fiduciary relationship.

**39.9(2)** The commission is invested with the power, which it shall exercise in its sole discretion, to determine whether a claim merits reimbursement from the fund, and if so, the amount of such reimbursement, the time, place and manner of its payment, the conditions upon which payment shall be made, and the order in which payment shall be made. The commission's powers in this respect may be exercised only by the affirmative vote of at least four commissioners. In making such determinations, the commission shall consider among other appropriate factors, the following:

*a.* The amounts available and likely to become available to the fund for the payment of claims and the size and number of claims which are likely to be presented.

*b.* The total amount of reimbursable losses in previous years for which total reimbursement has not been made, if any, and the total assets of the fund.

*c.* The amount of the claimant's loss as compared to the amount of losses sustained by other eligible claimants.

*d.* The degree of hardship suffered by the claimant as a result of the loss.

*e.* The degree of negligence, if any, of the claimant which may have contributed to the loss.

*f.* The total amount of losses caused by defalcations of any one attorney or associated group of attorneys.

**39.9(3)** The commission shall, by regulation approved by the supreme court, fix the maximum amount which any one claimant may recover from the fund and the aggregate maximum amount which may be recovered because of the dishonest conduct of any one attorney.

**39.9(4)** No claimant or any other person or organization shall have any right in the fund as third-party beneficiary or otherwise. Reimbursement by claim on the fund shall be a matter of grace and not of right.

**39.9(5)** The commission may require as a condition to payment that the claimant execute an assignment of claimant's right against the defaulting lawyer.

**39.9(6)** No claimant need be represented by counsel before the commission. No attorney representing a claimant shall receive a fee for services from the fund. Any agreement for compensation between a claimant and any attorney retained for prosecution of the claim shall be subject to the approval of the commission.

**39.9(7)** The commission may request individual lawyers, bar associations, and other organizations of lawyers to assist the commission in the investigation of claims.

**39.9(8)** The payment or denial of any claim filed under the provisions of this rule shall be inadmissible as evidence in any disciplinary or contempt proceeding.

[Court Order December 5, 1973; April 22, 1974; October 16, 1974; April 9, 1975; April 10, 1975; August 29, 1975; October 28, 1976; November 21, 1977; January 15, 1979; June 20, 1980; April 21, 1982; November 13, 1984; April 25, 1985; February 16, 1990, effective March 15, 1990; December 15, 1994, effective January 3, 1995; March 6, 1995; January 24, 2000; November 9, 2001, effective February 15, 2002; February 20, 2012; December 10, 2012]

#### **Rule 39.10 Investigations and audits.**

**39.10(1)** Each member of the bar of Iowa, in filing the statement required by rule 39.8(1), shall authorize the director to investigate, audit, and verify all funds, securities, and other property held in trust by the member, and all related accounts, safe deposit boxes, and any other forms of maintaining trust property as required by Iowa Rule of Professional Conduct 32:1.15 and chapter 45 of the Iowa Court Rules, together with deposit slips, canceled checks, and all other records pertaining to transactions concerning such property.

**39.10(2)** Each member of the bar of Iowa shall comply promptly with any request by the director to execute and deliver to the director a written authorization, directed to any bank or depository, for the director to audit and inspect such accounts, safe deposit boxes, securities, and other forms of maintaining trust property by the member in such bank or other depository.

**39.10(3)** Each member of the bar of Iowa must do all of the following:

- a. Cooperate fully with the director in any investigation, audit, or verification of any funds, securities, or property held in trust by that lawyer.
- b. Answer all questions posed by the director which relate to any investigation, audit, or verification, unless claiming the privilege against self-incrimination.
- c. Retain complete records of all trust fund transactions for a period of not less than six years following completion of the matter to which they relate, in accordance with Iowa Rule of Professional Conduct 32:1.15 and Iowa Ct. R. 45.2(3).

**39.10(4)** The commission with the approval of the supreme court may retain, compensate from the fund, and furnish as staff for the director, such public or certified accountants, investigators, or attorneys as may be deemed necessary to carry out the duties and functions imposed upon the director. When acting under the director's supervision and direction, such staff personnel shall have all the powers granted to the director by this chapter.

**39.10(5)** When the investigation, audit, or verification provisions of this chapter disclose, in the opinion of the director, a violation of the Iowa Rules of Professional Conduct, or when the member of the bar of Iowa affected by the investigation, audit, or verification has refused to comply with the provisions of this chapter, the director shall promptly report such circumstances to the commission. A copy of such report shall be furnished to the member affected.

**39.10(6)** However, client trust funds and property held by an Iowa licensed attorney whose law office is situated in another state shall not be subject to investigation, audit, or verification except to the extent such funds and property are related to matters affecting Iowa clients. State or federal funds or property subject to state or federal auditing procedures and in control of an Iowa licensed attorney employed full- or part-time by a state or the United States shall not be subject to investigation, audit, or verification under the provisions of this chapter.

**39.10(7)** The costs of performing a trust account audit must be assessed to the attorney or attorneys who are signatories on the account if the audit reveals the account was not in substantial compliance with Iowa Rule of Professional Conduct 32:1.15 or chapter 45 of the Iowa Court Rules, and one or more of the following circumstances caused performance of the audit:

- a. A claim for reimbursement was filed under the provisions of rule 39.9 based on the alleged conduct of the attorney or attorneys who are signatories on the account.
- b. A notice of insufficient funds to honor an instrument drawn on the account was reported to the commission under the provisions of rule 45.4(4)(c).
- c. A complaint alleging an attorney signatory on the account committed a disciplinary infraction was filed with the attorney disciplinary board under the provisions of rule 34.1.
- d. An attorney signatory on the account was suspended from practice under the provisions of chapter 35.
- e. An attorney signatory on the account failed to timely file the statement and questionnaire required by rule 39.8.
- f. An attorney signatory on the account was served a 15-day notice under rule 39.8(2) based on failure to cooperate with investigation and audit of the account as required by rule 39.10.
- g. A trustee was appointed under the provisions of rule 35.17 or 35.18 for an attorney signatory on the account.

**39.10(8)** Costs assessed under rule 39.10(7) are due upon assessment by the commission. Costs assessed under this rule must be paid as a condition of reinstatement, and may be collected by the commission as part of the annual statement and assessment required by rule 39.8 if not previously paid.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; November 20, 2015, effective January 1, 2016]

### **Rule 39.11 Annual questionnaire.**

**39.11(1)** The director under the supervision of the supreme court and the commission shall prepare a questionnaire to be annually submitted to and completed by each member of the bar of Iowa except those who have been issued a certificate of exemption pursuant to rule 39.7. Said questionnaire may be (but is not required to be) incorporated as a part of the annual statement provided in rule 39.8(1). This questionnaire shall elicit information to determine whether the member is complying with the Iowa Court Rules, including but not restricted to, Iowa Rule of Professional Conduct 32:1.15 and chapter 45 of the rules. The commission may prescribe an electronic format for the questionnaire and annual statement and require submission of the questionnaire and annual statement in that form.

**39.11(2)** A failure to complete and return a questionnaire shall be addressed as provided in rule 39.12.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; June 5, 2008, effective July 1, 2008]

**Rule 39.12 Investigations, audits, and annual questionnaire — enforcement.**

**39.12(1)** *Failure of bar members to cooperate.*

a. The continued right of a member of the Iowa bar to practice law in this state is conditioned upon the member executing and delivering the authorization provided in rule 39.10(2), furnishing the cooperation required in rule 39.10(3), and completing and returning the annual questionnaire described in rule 39.11. Upon failure of a member of the Iowa bar to comply with any of the rules specified in this paragraph, the member's right to practice law before Iowa courts may be suspended, following the procedure specified in rule 39.8(2).

b. A member of the bar of Iowa who willfully fails to comply with those rules enumerated in rule 39.12(1)(a) may be held in contempt of the supreme court or may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules.

**39.12(2)** *Violation of the Iowa Rules of Professional Conduct.*

a. When the audit, investigation, or verification of funds, securities, or other property held in trust by any member of the bar of Iowa, or a return of any member on the annual questionnaire, discloses an apparent violation of the Iowa Rules of Professional Conduct, the director upon request of the commission, or the commission, may institute disciplinary proceedings under chapter 35 of the Iowa Court Rules for the suspension or revocation of the member's license to practice law in this state.

b. All information obtained by the director and staff by virtue of the audits, investigations and verifications, and annual questionnaire, shall be held in strict confidence by them and by the supreme court and the commission unless otherwise directed by the supreme court or unless proceedings are initiated pursuant to chapter 35 of the Iowa Court Rules or Iowa Code section 602.10123. If proceedings are initiated pursuant to chapter 35 of the Iowa Court Rules, such information relating to the named respondent may be released only to the respondent, the disciplinary board, and the grievance commission. If proceedings are initiated pursuant to Iowa Code section 602.10123, such information relating to the named accused may be released only to the accused and the attorney general or the special assistant attorney general designated pursuant to Iowa Code section 602.10127, to prosecute the charges.

**39.12(3)** *Commission subpoena authority.*

a. The commission shall have subpoena power during any investigation conducted on its behalf to compel the appearance of witnesses or the production of documents before the person designated to conduct the investigation on behalf of the commission.

b. The commission chair, or other commission member in the absence of the chair, shall have authority to issue a subpoena.

c. The district court for the county in which the investigation is being conducted shall have jurisdiction over any objection or motion relating to a subpoena and authority to punish disobedience of a subpoena in a contempt proceeding.

d. Counsel for the commission, the director, or any other person authorized to administer oaths shall have authority to administer an oath or affirmation to a witness.

[Court Order December 5, 1973; September 19, 1974; October 16, 1974; April 9, 1975; April 30, 1982; August 14, 1986, and August 18, 1986, effective September 2, 1986; May 10, 1990, effective July 2, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 9, 2003; April 20, 2005, effective July 1, 2005; December 5, 2007]

**Rule 39.13 Attorneys acting as fiduciaries.**

**39.13(1)** After January 1, 1974, unless a lawyer is the spouse of or is the son-in-law or daughter-in-law of or is related by consanguinity or affinity, within the third degree, to the decedent in an estate, the ward in a conservatorship, the settlor or beneficiary of a trust, or unless such attorney is coexecutor, cotrustee, or coconservator with another party or parties and such other party or parties will receive and pay out any of the funds, securities or other property of the estate, trust, or conservatorship, such lawyer shall not be appointed by a court in any fiduciary capacity for an estate, trust, or conservatorship until the lawyer has posted a bond in an amount to be determined by the court with sureties approved by the court, and no waiver of such bond shall be recognized by any court of this state. In the event the surety on the bond posted by the lawyer is not a corporate surety,

the surety thereon shall not be the ward, any beneficiary or distributee or be related to the lawyer, the ward, or any beneficiary or distributee within the third degree of consanguinity or affinity.

**39.13(2)** A lawyer who willfully fails to comply with the provisions of this rule may be held in contempt of the supreme court, or may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules.

[Court Order November 9, 2001, effective February 15, 2002]

See Iowa Code §§633.173, 633.175.

**Rule 39.14 Reinstatement from exemption or suspension.**

**39.14(1)** An attorney who has been suspended for failure to pay the annual fee or assessment or for failure to file the statement, supplement, or questionnaire required by these rules may be reinstated upon a showing that such failure was not willful and by filing the statement required by rule 39.8(1) and the questionnaire required by rule 39.11. An attorney seeking reinstatement after suspension for failure to comply with the provisions of this rule shall pay all delinquent fees, assessments and late filing penalties due under rules 39.5, 39.6 and 39.8, and a reinstatement fee of \$100.

**39.14(2)** An attorney who seeks or applies for reinstatement from suspension under chapter 35 must first file the statement required by rule 39.8(1) and the questionnaire required by rule 39.11, pay all fees, assessments, and late filing penalties due and unpaid under rules 39.5, 39.6, and 39.8 at the time of the suspension, pay the current fee and assessment required by rules 39.5 and 39.6, and pay a reinstatement fee of \$100.

**39.14(3)** An attorney who has been granted a certificate of exemption under the provisions of rule 39.7 may be reinstated after filing the statement required by rule 39.8(1) and the questionnaire required by rule 39.11, paying all late filing penalties due at the time the exemption was granted, and paying the current fee and assessment required by rules 39.5 and 39.6.

[Court Order April 25, 2008; August 10, 2009; November 20, 2015, effective January 1, 2016]

**Rule 39.15 Denial of reinstatement for failure to comply with certain obligations.**

**39.15(1)** *Denial of reinstatement for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue.* The supreme court may deny an attorney's application for reinstatement under rule 39.14 for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue. The procedure shall be governed by rule 35.22.

**39.15(2)** *Denial of reinstatement for failure to comply with an obligation owed to or collected by the College Student Aid Commission.* The supreme court may deny an attorney's application for reinstatement under rule 39.14 for failure to comply with an obligation owed to or collected by the College Student Aid Commission. The procedure shall be governed by rule 35.21.

**39.15(3)** *Denial of reinstatement for failure to comply with a support order.* The supreme court may deny an attorney's application for reinstatement under rule 39.14 for failure to comply with a support order. The procedure shall be governed by rule 35.20.

[Court Order June 5, 2008, effective July 1, 2008; February 20, 2012]

**Rule 39.16 Attorneys Practicing in Iowa Under the Multijurisdictional Practice Rule.** An attorney who establishes an office or other systematic and continuous presence in Iowa for the practice of law under the provisions of rule of professional conduct 32:5.5(d)(2) shall file the annual statement required by rule 39.8(1) and annual questionnaire required by rule 39.11, pay the annual fee and assessment due under rules 39.5 and 39.6, comply with all provisions of chapter 45, cooperate with investigations and audits under rule 39.10, and be subject to the provisions of rule 39.12.

[Court Order December 10, 2012]

**Rule 39.17 Collection of court costs and other fees.**

**39.17(1)** As a part of the annual statement provided by rule 39.8(1), the office of professional regulation must assess against each active attorney all fees, penalties, or court costs due any district court clerk or the clerk of the supreme court, or the office of professional regulation, and any client security trust fund claim reimbursement due the client security commission, that are a personal obligation of such attorney, as of the preparation date of the annual statement.

**39.17(2)** As a condition to continuing membership in the bar of the supreme court, including the right to practice before Iowa courts, every bar member must pay to the supreme court through the



office of professional regulation, all fees, penalties, court costs, and client security trust fund claim reimbursements assessed on the annual statement.

**39.17(3)** Assessments are due on or before March 10 of each year.

**39.17(4)** The director of the office of professional regulation must pay to the state general fund all fees, penalties, and court costs due the state general fund and collected under this provision.

[Court Order November 20, 2015, effective January 1, 2016]

**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.1633B.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; August 29, 2016, effective January 1, 2018]



**CHAPTER 41**  
**CONTINUING LEGAL EDUCATION FOR LAWYERS**

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## CHAPTER 41

### CONTINUING LEGAL EDUCATION FOR LAWYERS

**Rule 41.1 Purpose.** Only by continuing their legal education throughout their period of the practice of law can attorneys fulfill their obligation competently to serve their clients. Failure to do so shall be grounds for disciplinary action by the supreme court. This chapter establishes minimum requirements for such continuing legal education and the means by which the requirements shall be enforced. [Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

**Rule 41.2 Continuing legal education commission.**

**41.2(1)** There is hereby established a commission on continuing legal education consisting of 12 members. The supreme court shall appoint to the commission ten resident members of this state who are currently licensed to practice law in the state of Iowa, and two residents of this state who are not lawyers. The court shall designate from among the members of the commission a chair who shall serve as such at the pleasure of the court. Of the members first appointed to the commission four shall serve a term of three years, four shall serve a term of four years, and four shall serve a term of five years. Members thereafter appointed, except for those appointed to fill unexpired terms, shall be appointed for a term of three years. No member shall serve more than two consecutive complete terms as a member of the commission. The supreme court shall adopt rules and regulations governing the operations and activities of the commission.

**41.2(2)** The commission shall have the following duties:

- a.* To exercise general supervisory authority over the administration of this chapter.
- b.* To accredit courses, programs, and other educational activities which will satisfy the educational requirements of this chapter; all being subject to continuous review by the commission.
- c.* To foster and encourage the offering of such courses, programs and educational activities.
- d.* To submit to the supreme court proposed rules and regulations<sup>1</sup> not inconsistent with this chapter to govern the operations and activities of the commission.
- e.* Subject to the approval of the supreme court, to employ such persons as it deems necessary for the proper administration of this chapter.
- f.* To make recommendations to the supreme court concerning this chapter and the enforcement thereof; to present an annual budget and a recommended annual fee for costs of administering this chapter.
- g.* To report promptly to the supreme court concerning any violation of this chapter by any member of the bar of this state.
- h.* On March 1 of each year, and at such additional times as the supreme court may order, the commission shall file with the supreme court a written report reviewing in detail the activities of the commission during the preceding calendar year together with an audit of commission funds certified by a certified public accountant licensed to practice in Iowa.

**41.2(3)** Members of the commission shall not be compensated but shall be reimbursed for expenses incurred by them in the performance of their duties upon vouchers approved by the supreme court.

[Court Order April 9, 1975; July 5, 1978; November 13, 1984; November 14, 1985; November 11, 1986; November 19, 1987; November 21, 1988; November 16, 1989; November 9, 2001, effective February 15, 2002; February 22, 2002; December 5, 2007]

**Rule 41.3 Continuing legal education requirement.**

**41.3(1)** Each attorney admitted to practice in this state shall complete a minimum of 15 hours of legal education accredited by the commission, during each calendar year. The commission is authorized, pursuant to guidelines established by the supreme court, to determine the number of hours for which credit will be given for particular courses, programs or other legal education activities. Under rules to be promulgated by the supreme court, an attorney may be given credit in one or more succeeding calendar years, not exceeding two such years, for completing more than 15 hours of accredited education during any one calendar year.

**41.3(2)** The 15 hours required by rule 41.3(1) shall include a minimum of 3 hours, every two calendar years, devoted exclusively to the area of legal ethics. Excess hours of education devoted to

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1. See Chapter 42 of the Iowa Court Rules

legal ethics can be carried over for purposes of the annual 15-hour requirement under rule 41.3(1) but cannot be carried over beyond the two-year period for the special legal ethics requirement under this rule.

**41.3(3)** Up to 6 hours of the 15 hours required by rule 41.3(1) each calendar year may be obtained through completion of unmoderated legal education accredited by the commission.

[Court Order April 9, 1975; December 6, 1978; January 8, 1988; November 9, 2001, effective February 15, 2002; February 22, 2002; February 21, 2012; March 21, 2014]

**Rule 41.4 Annual fee and report by attorneys to commission.**

**41.4(1)** On or before March 10 of each year, each attorney admitted to practice in this state shall pay to the commission a prescribed fee for costs of administering this chapter.

**41.4(2)** On or before March 10 of each year, each attorney admitted to practice in this state shall make a written report to the commission, in such form as the commission shall prescribe, concerning completion of accredited legal education during the preceding calendar year; provided, however, that an attorney shall not be required to comply with this rule or comply with the continuing legal education requirements set forth in rule 41.3 for the year during which the attorney was admitted to practice. Each annual report shall be accompanied by proof satisfactory to the commission that the attorney has met the requirements for continuing legal education for the calendar year for which such report is made.

**41.4(3)** Each attorney admitted to practice in this state shall make a written report to the commission, in such form as the commission shall prescribe, concerning completion of accredited legal ethics education. The report is to be filed on or before March 10 following completion of each two-year period under the requirement. An attorney shall not be required to comply with this requirement for the year of admission to practice.

**41.4(4)** All attorneys who fail by March 10 of each year to file the annual report or to pay the prescribed fee shall, in addition, pay a penalty as set forth in the following schedule if either the annual report is filed or the prescribed fee is paid after March 10. The penalty fees collected shall be used to pay the costs of administering this chapter, 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

**41.4(5)** The commission may prescribe an electronic format for the annual report and require submission of the report in that form.

[Court Order April 9, 1975; August 28, 1975; August 12, 1980; January 8, 1988; January 24, 2000; November 9, 2001, effective February 15, 2002; April 25, 2008; June 5, 2008, effective July 1, 2008; January 19, 2010; April 25, 2014]

**Rule 41.5 Penalty for failure to satisfy continuing legal education requirements.**

**41.5(1)** Attorneys who fail to comply with the provisions of rule 41.4 or who file a report showing on its face that they have failed to complete the required number of hours of continuing legal education may have their right to practice law suspended by the supreme court, provided that at least 15 days prior to such suspension, notice of such 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 shall be given the opportunity during said 15 days to file in the office of professional regulation an affidavit disclosing facts demonstrating their 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 clerk of the supreme court a request for hearing to show cause why their license to practice law should not be suspended. A hearing shall be granted if requested. If, after hearing, or failure to cure the delinquency by satisfactory affidavit and compliance, an attorney is suspended, the attorney shall be notified thereof by either of the two methods above provided for notice of delinquency.

**41.5(2)** 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.

**41.5(3)** 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.

**41.5(4)** In addition, any attorney who willfully fails to comply with this chapter may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules, upon report filed by the commission with the disciplinary board.

**41.5(5)** For good cause shown, the commission may, in individual cases involving hardship or extenuating circumstances, grant waivers of the minimum educational requirements or extensions of time within which to fulfill the same or make the required reports.

[Court Order April 9, 1975; November 21, 1977; December 6, 1978; January 15, 1979; August 12, 1980; April 25, 1985; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; April 25, 2008; June 5, 2008, effective July 1, 2008]

**Rule 41.6 Confidentiality.** Unless otherwise directed by the supreme court, the files, records and proceedings of the commission, as they relate to or arise out of any failure of any attorney to satisfy the requirements of this chapter, shall be deemed confidential and shall not be disclosed, except in furtherance of its duties or upon the request of the attorney affected, or as they may be introduced in evidence or otherwise produced in proceedings taken in accordance with this chapter.

[Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

**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.

[Court Order April 9, 1975; November 9, 2001, effective February 15, 2002; August 19, 2016, effective January 1, 2018]

**Rule 41.8 Application of this chapter.** This chapter shall apply to every person licensed to practice law in the state of Iowa.

[Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

**Rule 41.9 Attendance exemption for out-of-state attendance of equivalent hours.**

**41.9(1)** An active member of the bar who resides in another state or the District of Columbia, did not practice law in Iowa during the reporting period, and who attends at least 15 clock-hours of continuing legal education accredited by the continuing legal education regulatory body in his or her state of residence, including three clock-hours in the area of legal ethics every two-year biennium ending in the odd-numbered year, is exempt from the attendance requirements of rule 41.3. However, any member exempt from attendance under this rule must file the annual report and pay the annual fee required under rule 41.4, and must certify qualification for the exemption on the annual report.

**41.9(2)** The commission may require any member who claims exemption under this rule to provide proof of attending the accredited continuing legal education in the other jurisdiction.

**41.9(3)** The practice of law as that term is employed in this rule includes: the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; representation of others in any Iowa courts; regular preparation of legal instruments, securing of legal rights, advising others as to their legal rights or the effect of contemplated actions upon their legal rights, or holding oneself out to so do; instructing others in legal rights; being 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.

[Court Order November 20, 2015, effective January 1, 2016]

**Rule 41.10 Reinstatement from suspension.**

**41.10(1)** An attorney who has been suspended for failure to pay the annual fee, complete required continuing legal education, or file the annual report required by rule 41.4 may be reinstated upon a showing that such failure was not willful and by filing such report showing completion of all continuing legal education required by Iowa Ct. Rs. 41.3 and 42.2 through the end of the last complete reporting year. An attorney seeking reinstatement after suspension for failure to comply with the provisions of this rule shall pay all delinquent fees and late filing penalties due under rule 41.4 and a reinstatement fee of \$100.00.

**41.10(2)** An attorney who seeks or applies for reinstatement from suspension under the provisions of chapter 35 of the Iowa Court Rules must first file the annual report required by rule 41.4 showing completion of all continuing legal education required by Iowa Ct. Rs. 41.3 and 42.2 through the end of the last complete reporting year, pay all fees and late filing penalties due under rule 41.4 and unpaid at the time of the suspension, and pay a reinstatement fee of \$100.00. The commission may grant an attorney additional time after the effective reinstatement date, on such terms and conditions as it may prescribe, to complete and furnish evidence of compliance with these continuing legal education requirements.

[Court Order April 25, 2008; November 20, 2015, effective January 1, 2016]

**Rule 41.11 Denial of reinstatement for failure to comply with certain obligations.**

**41.11(1)** *Denial of reinstatement for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue.* The supreme court may deny a lawyer's application for reinstatement under rule 41.7 or 41.10 for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue. The procedure shall be governed by rule 35.22.

**41.11(2)** *Denial of reinstatement for failure to comply with an obligation owed to or collected by the College Student Aid Commission.* The supreme court may deny a lawyer's application for reinstatement under rule 41.7 or 41.10 for failure to comply with an obligation owed to or collected by the College Student Aid Commission. The procedure shall be governed by rule 35.21.

**41.11(3)** *Denial of reinstatement for failure to comply with a support order.* The supreme court may deny a lawyer's application for reinstatement under rule 41.7 or 41.10 for failure to comply with a support order. The procedure shall be governed by rule 35.20.

[Court Order June 5, 2008, effective July 1, 2008; February 20, 2012]

**Rule 41.12 Basic skills course requirement.**

**41.12(1)** Every Iowa lawyer admitted to practice by examination after December 31, 2008, but before January 1, 2015, must complete a Basic Skills Course. The course must be completed within one year of the newly admitted lawyer's date of admission to practice in Iowa. The course may be completed after the last day of the bar examination that resulted in admission. If the course is completed after the last day of the bar examination, but the applicant fails the examination, the



applicant will remain in compliance with this rule so long as the applicant passes the next examination offered.

**41.12(2)** The Basic Skills Course must total at least eight actual hours of instruction and include at least one actual hour qualifying for credit in the area of legal ethics. The course shall include instruction on Iowa law selected from at least eight of the following topic areas:

- Civil Procedure
- Criminal Law
- Criminal Procedure
- Family Law
- Guardianships, Conservatorships, Trusts, and Powers of Appointment
- Business Entities
- Probate
- Torts
- Contracts
- Real Estate Transactions
- Ethics and Professionalism

**41.12(3)** Newly admitted lawyers shall be entitled to claim credit for attendance at an accredited Basic Skills Course against the continuing legal education requirements of rules 41.3 and 42.2, but are not exempt from reporting and fee payment duties of rule 41.4.

**41.12(4)** A lawyer who fails to complete the Basic Skills Course within one year of the date of admission may have the right to practice law suspended under the provisions of rule 41.5.

**41.12(5)** The commission may, in individual cases involving hardship or extenuating circumstances, grant waivers of the Basic Skills Course requirement or extensions of time in which to complete the Basic Skills Course.

**41.12(6)** The Basic Skills Course may be offered by any provider of continuing legal education, but must be reviewed and accredited by the Commission on Continuing Legal Education as provided in rule 42.4. The Basic Skills Course may be conducted in installments over time, and may be offered by computer-based transmission as provided in rule 42.3. Any provider of the Basic Skills Course is required to report attendance in the manner specified by the commission.

[Court Order October 9, 2009; November 24, 2010; January 21, 2015]

### **Rule 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 rules 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.

[Court Order August 19, 2016, effective September 1, 2016, rule 41.13(1), effective January 1, 2018]



**CHAPTER 42**  
**REGULATIONS OF THE COMMISSION ON CONTINUING**  
**LEGAL EDUCATION**

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## CHAPTER 42

### REGULATIONS OF THE COMMISSION ON CONTINUING LEGAL EDUCATION

**Rule 42.1 Definitions.** For the purpose of these regulations, the following definitions apply:

(1) An “*accredited program or activity*” means a continuing legal education activity meeting the standards set forth in rule 42.3, which has received accreditation by the commission pursuant to rule 42.4.

(2) An “*attorney*” means any person licensed to practice law in the state of Iowa.

(3) The “*commission*” means the Commission on Continuing Legal Education or any division thereof.

(4) “*Guidelines*” means a commission document that prescribes requirements for accreditation of continuing legal education programs and is made available to sponsors and lawyers on the commission web page.

(5) An “*hour*” of continuing legal education means a clock-hour spent by an attorney in actual attendance at or completion of an accredited legal education activity.

(6) “*Legal ethics*” means a separate, designated, and dedicated session of instruction:

a. Referring to and based on the disciplinary rules or ethical considerations of the ethics or professional responsibility code for attorneys in the jurisdiction where the instruction is presented;

b. Designed to help attorneys detect, prevent, or respond to substance-related disorders or mental illness that impairs professional competence. The instruction must focus on issues in the legal profession and in the practice of law, and not issues of substance-related disorders or mental health in general; or

c. Regarding the impact of race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation on court system interaction or case or controversy outcome, and professional relationships between attorneys, judges, and clients where race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation is a potential factor.

(7) “*Unmoderated activity*” means a CLE activity presented by delayed or on-demand transmission or broadcast, or pre-recorded media, that has an interactive component and is approved by the commission based on its guidelines. “Pre-recorded media,” for purposes of this rule, includes but is not limited to audiotape, videotape, CD, podcast, CD-ROM, DVD, and self-paced computer-based instruction.

(8) A “*quorum*” of the entire commission means six or more members of the commission.

(9) “*Moderated activity*” means:

a. “*Standard (live)*”—A live CLE activity presented in a suitable classroom setting devoted to the program.

b. “*Satellite*”—A live CLE activity broadcast by satellite link to a classroom setting or a central viewing or listening location. The attorney must be able to contact the moderator or presenters during the activity to comment and ask questions.

c. “*Video conference*”—A live CLE activity broadcast by cable, wire, or fiber optic link to a classroom setting or a central viewing or listening location. The attorney must be able to contact the moderator or presenters during the activity to comment and ask questions.

d. “*Live webcast*”—A live CLE activity broadcast over the Internet in audio or audio plus video form to viewers at remote locations or at a central viewing or listening location. The attorney must be able to contact the moderator or presenters during the activity to comment and ask questions.

e. “*Live teleconference*”—A live CLE activity broadcast over the telephone in audio or audio plus video form to listeners at remote locations or at a central viewing or listening location. The attorney must be able to contact the moderator or presenters during the activity to comment and ask questions.

f. “*Video replay*”—A recorded CLE activity presented in audio plus video form in a suitable classroom setting or central viewing location to a broad attorney population. The attorney must be able to contact a live moderator during the activity to comment or ask questions.

g. “*Audio replay*”—A recorded CLE activity presented in audio form in a suitable classroom setting, central listening location, or by telephone to a broad attorney population. The attorney must be able to contact a live moderator during the activity to comment or ask questions.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; February 22, 2002; February 20, 2012; August 24, 2012; March 21, 2014; November 20, 2015, effective January 1, 2016]

**Rule 42.2 Continuing legal education requirement.**

**42.2(1)** A minimum of 15 hours of continuing legal education must be completed by each attorney for each calendar year in the manner stated in Iowa Ct. R. 41.3(1). Each attorney shall, every two years, complete a minimum of three hours of legal education devoted specifically to the area of legal ethics.

**42.2(2)** Hours of continuing legal education credit may be obtained by attending or participating in a continuing legal education activity, either previously accredited by the commission or which otherwise meets the requirements herein and is retroactively accredited by the commission pursuant to rule 42.4(3).

**42.2(3)** Hours of continuing legal education credit may be awarded for preparation of an accredited continuing legal education presentation. A lawyer is entitled to one hour of preparation credit for each hour of accredited continuing legal education for which they prepare written materials and present, up to a maximum of three hours per calendar year. Hours of preparation credit are credited against the regular attendance requirement of 15 hours per calendar year, but not against the attendance requirement for legal ethics. Hours of preparation credit in excess of three do not carry over to a subsequent year. Preparation credit may not be awarded to:

*a.* A lawyer who prepares written materials without making the presentation or serving on a panel of speakers.

*b.* A lawyer who makes a presentation or serves on a panel of speakers without preparing written materials.

*c.* A lawyer who prepares a course directed primarily to persons preparing for admission to practice law.

*d.* A lawyer who receives compensation, other than reasonable expenses, for preparing or presenting the continuing legal education.

**42.2(4)** An attorney desiring to obtain credit for one or more succeeding calendar years, not exceeding two such years, for completing more than 15 hours of accredited legal education during any one calendar year, under Iowa Ct. R. 41.3(1), must report such “carry-over” credit at the time of filing the annual report to the commission on or before March 10 of the year following the calendar year during which the claimed additional legal education hours were completed.

[Court Order November 25, 1975; December 6, 1978; January 8, 1988; November 9, 2001, effective February 15, 2002; March 21, 2014; April 25, 2014; November 20, 2015, effective January 1, 2016]

**Rule 42.3 Standards for accreditation.**

**42.3(1)** A continuing legal education activity qualifies for accreditation if the commission determines that the activity complies with all of the following:

*a.* It constitutes an organized program of learning (including a workshop or symposium) that contributes directly to the professional competency of an attorney.

*b.* It pertains to common legal subjects or other subject matters that integrally relate to the practice of law.

*c.* It is conducted by attorneys or individuals who have a special education, training, and experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and preferably is accompanied by a paper, manual, or written outline that substantively pertains to the subject matter of the program.

*d.* It is presented in the form of moderated programming, or in the form of unmoderated programming approved by the commission in its guidelines.

**42.3(2)** No activity will be accredited that involves solely self-study, including television viewing, video or sound recorded programs, or correspondence work, except as may be allowed pursuant to rule 42.5.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; February 22, 2002; March 21, 2014]

**Rule 42.4 Accreditation of programs and activities.**

**42.4(1)** *Accreditation of activities.* A program sponsor that desires accreditation of a program, course, program or other legal education activity or an attorney who desires to establish accreditation of a program, course, or other legal education activity shall apply for accreditation to the commission in advance of the commencement of the activity or after completion of the activity in the manner the commission prescribes. The commission shall approve or deny such application in writing or by electronic mail within 30 days of receipt of such application. The application shall state the dates,

subjects offered, total hours of instruction, names and qualifications of speakers, and other pertinent information.

**42.4(2) *Fee for organization applications for accreditation.*** To support administration of this chapter, any organization or other activity sponsor applying for accreditation of an activity shall pay to the commission a prescribed nonrefundable application fee for each activity. No application fee shall be required of an attorney who applies for accreditation solely as an attendee. The commission may waive the application fee for any of the following reasons:

*a.* For any activity offered at no charge to attendees for the educational portion of the activity.

*b.* For any presentation of the identical program at additional places or dates during a calendar year, provided the original presentation of the program was approved.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; February 22, 2002; November 23, 2004, effective July 1, 2005; March 21, 2014]

**Rule 42.5 Hardships or extenuating circumstances.**

**42.5(1)** The commission may, in individual cases involving hardship or extenuating circumstances, grant waivers of the minimum educational requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms prescribed by the commission. A \$25 fee will be assessed on all waiver or extension of time applications received after January 15 of the year following the year in which the alleged hardship occurred.

**42.5(2)** Waivers of the minimum educational requirements may be granted by the commission for any period of time not to exceed one year. In the event that the hardship or extenuating circumstances upon which a waiver has been granted continue beyond the period of the waiver, the attorney must reapply for an extension of the waiver. The commission may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the commission.

**42.5(3)** Extensions of time within which to fulfill the minimum educational requirements may, in individual cases involving hardship or extenuating circumstances, be granted by the commission for a period not to exceed six months immediately following expiration of the year in which the requirements were not met. Hours of minimum educational requirement completed within such an extension period shall be applied first to the minimum educational requirement for the preceding year and shall be applied to the current or following year only to the extent that such hours are not required to fulfill the minimum educational requirement for the preceding year.

[Court Order November 25, 1975; August 12, 1980; November 9, 2001, effective February 15, 2002]

**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.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; August 19, 2016, effective January 1, 2018]

**Rule 42.7 Reinstatement of inactive practitioners.**

**42.7(1)** Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of law in the state of Iowa as defined in Iowa Ct. R. 39.7, satisfy the following requirements for reinstatement:

*a.* Submit written application for reinstatement to the commission upon forms prescribed by the commission together with a reinstatement fee of \$25 and all late filing penalties due at the time the exemption was granted.

*b.* Furnish in the application evidence of one of the following:

(1) Having engaged in the full-time practice of law, as defined in Iowa Ct. R. 39.7, in another state of the United States or the District of Columbia and completion of continuing legal education for each year of inactive status substantially equivalent in the opinion of the commission to that required under chapter 41 of the Iowa Court Rules.

(2) Successful completion of an Iowa state bar examination conducted within one year immediately prior to the submission of such application for reinstatement.

(3) Completion of a total number of hours of accredited continuing legal education computed by multiplying 15 by the number of years a certificate of exemption shall have been in effect for such applicant, but limited to a maximum requirement of 100 hours. The continuing legal education required for reinstatement shall include hours devoted specifically to the area of legal ethics, computed as follows: three hours for every two calendar years in which a certificate of exemption shall have been in effect, but limited to a maximum requirement of 10 hours. Alternatively, the legal ethics requirement may be satisfied by obtaining a scaled score of 80 or higher on the Multistate Professional Responsibility Examination within one year immediately prior to the submission of the application for reinstatement.

**42.7(2)** Notwithstanding that an applicant for reinstatement has not fully complied with the requirements for reinstatement set forth in rule 42.7(1)(b), the commission may conditionally reinstate such applicant on such terms and conditions as it may prescribe regarding the period of time in which the applicant shall furnish evidence of compliance with the requirements of rule 42.7(1)(b). [Court Order November 25, 1975; July 28, 1977; January 8, 1988; December 15, 1994, effective January 3, 1995; April 10, 1997; November 9, 2001, effective February 15, 2002; August 10, 2009; December 10, 2012]

**Rule 42.8 Staff.** The director of the office of professional regulation may designate an assistant director for boards and commissions of the office of professional regulation to serve as the principal executive officer of the commission. The commission may, subject to the approval of the court, employ such other employees as the commission deems necessary to carry out its duties under chapter 41 of the Iowa Court Rules, who must perform such duties as the commission may from time to time direct.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; December 5, 2007; November 20, 2015, effective January 1, 2016]

**Rule 42.9 Divisions.** The commission may organize itself into divisions of not fewer than three members for the purpose of considering and deciding matters assigned to them.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

**Rule 42.10 Hearings.** In the event of denial, in whole or in part, of any application, the applicant shall have the right, within 20 days after the sending of the notification of the denial by ordinary mail, to request in writing a hearing before the commission which shall be held within 90 days after receipt of the request for hearing. The decision of the commission after such hearing shall be final. Any hearing on a revocation of the accreditation of an accredited sponsor, the denial of a hardship application, or a recommendation for disciplinary action under Iowa Ct. R. 41.5(4) shall be before a quorum of the entire commission.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

**Rule 42.11 Notice of failure to comply.** In the event an attorney fails to comply with the provisions of Iowa Ct. R. 41.4 or files a report showing on its face failure to complete the required number of accredited hours of continuing legal education, the commission shall notify said attorney in writing of such apparent noncompliance and said attorney shall have 15 days from the mailing of said notice to cure said failure to comply or make an appropriate application under rule 42.5. If the failure to comply is not cured or such application not approved, the commission shall report promptly to the supreme court the failure of the attorney to comply with chapter 41 of the Iowa Court Rules.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]