

In the Supreme Court of Iowa

Amendments to Iowa )
Court Rules on ) Order
Professional Regulation )

CLERK SUPREME COURT

The Iowa Supreme Court adopts amendments to several provisions in Division III (Professional Regulation) of the Iowa Court Rules. The proposal includes amendments relating to:

- internal organization and financial operations of the office of professional regulation (OPR);
• identification of law students practicing under the student practice rule in court pleadings and motions;
• investigation procedure by the commission on the unauthorized practice of law;
• collection of unpaid fees, costs, and penalties owed OPR or any Iowa court by an attorney as part of the annual client security reporting process;
• collection of the costs of special trust account audits when conducted based on specified causes, if the audit shows the account was not in substantial compliance with trust account rules;
• a requirement that sole practitioners have a written plan of succession for their practice;
• limited reciprocity regarding continuing legal education (CLE) attended by attorneys residing outside Iowa and not actually practicing in Iowa;
• credit against the legal ethics CLE attendance requirement for instruction regarding bias in the court system and attorney professional relationships;
• limited CLE credit for attorneys who prepare written materials and speak or serve as a member of a speakers panel at accredited CLE events;
• collection of fees by OPR for preparation of certificates, examination scores, and copies of official records.

After full consideration of the proposed amendments and consideration of public comments received on the proposed amendments, the court finds that the amendments should be adopted.

The court adopts the amendments to the rules of professional regulation contained in Division III of the Iowa Court Rules, as provided with this order.

These amendments will be effective January 1, 2016.

By setting a January 1, 2016, effective date, the amendments to rules 41.9, 42.1, and 42.3 apply to CLE requirements for calendar year 2016. The collection process provided in new rule 39.17 applies to annual client security reports due no later than March 10, 2017.

Dated this 20th day of November, 2015.

The Supreme Court of Iowa

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

## Chapter 31 Admission to the Bar

### Rule 31.1 Board of law examiners

#### 31.1(1) *Composition.*

....

*f.* The director of the office of professional regulation will designate an assistant director for admissions of the office of professional regulation to ~~shall~~ serve as the principal administrator for the board of law examiners. Wherever in this chapter a reference to the “assistant director” appears, it shall refer to the assistant director for admissions of the office of professional regulation.

*g.* ~~The board shall have an administrative committee consisting of the chair, the director of the office of professional regulation and a nonattorney member of the board appointed by the court. The administrative committee shall~~ director of the office of professional regulation must, at least 60 days prior to the start of each fiscal year, submit to the court for consideration and approval a budget covering the board’s operations for the upcoming fiscal year. Approval of the budget by the court ~~shall authorize~~ authorizes payment as provided in the budget. A separate bank account designated as the admissions operating account ~~shall~~ must be maintained for payment of authorized expenditures as provided in the approved budget. Fees or other funds received or collected as directed in this chapter or in accordance with an approved interagency agreement ~~shall~~ must be deposited in the admissions operating account for payment of the board’s authorized expenditures.

....

### Rule 31.15 Permitted practice by law students and recent graduates

....

**31.15(8)** A law student practicing under this rule must be identified by the title “Law Student” in any filing made in the courts of this state.

## Chapter 37 Commission on the Unauthorized Practice of Law

### Rule 37.1 Commission on the Unauthorized Practice of Law

....

**37.1(2)** The director of the office of professional regulation will designate an assistant director for boards and commissions of the office of professional regulation ~~shall~~ to serve as the principal administrator for the commission on the unauthorized practice of law. Wherever in this chapter a reference to the “assistant director” appears, it ~~shall refer~~ refers to the assistant director for boards and commissions of the office of professional regulation.

**37.1(3)** Commission expenses ~~shall~~must be paid from the disciplinary fee account of the client security fund. ~~The chair, a nonlawyer member of the commission selected by the court, and the director of the office of professional regulation shall constitute the administrative committee of the commission.~~ director of the office of professional regulation must. ~~The administrative committee shall,~~ annually on or before May 1, submit a budget to the supreme court for the next fiscal year.

**Chapter 38 Rules of Procedure of the Commission on the Unauthorized Practice of Law**

....

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

*“Assistant director”* means the assistant director for board and commissions designated by the director of the office of professional regulation.

....

**Rule 38.6 Investigation procedure**

....

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

....

c. If the commission determines that a complaint should be investigated further, it may direct that the investigation be conducted by a commission member or members or by the ~~Iowa Attorney General’s office~~ assistant director.

**Chapter 39 Client Security Commission**

....

**Rule 39.2 Principal executive officer.**

**39.2(1) Appointment.** The director of the office of professional regulation ~~shall serve~~ serves as the principal executive officer of the client security commission. Wherever in this chapter a reference to the “director” appears, it ~~shall refer~~ refers to the director of the office of professional regulation. ~~The director shall file a bond annually with the commission with such surety as may be approved by it and in such amount as it may fix. Premiums on said bond shall be paid by the fund.~~ The director may designate an assistant director for boards and commissions to assist with the duties described in this chapter.

**Rule 39.4 Audit—~~treasurer’s duties~~ banking—~~budget~~.**

....

**39.4(2)** ~~*Treasurer’s duties*~~ Banking and disbursements. The ~~treasurer elected by the commission shall~~ director of the office of professional regulation must maintain the assets of the fund in a separate account and ~~shall~~ 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. ~~The treasurer shall file a bond annually with the commission with such surety as may be approved by it and in such amount as it may fix. Premiums on said bond shall be paid by the fund.~~ A separate bookkeeping account designated as the disciplinary fund account ~~shall~~ 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 ~~shall~~ 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 ~~commission shall~~ 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.

....

**Rule 39.8 Enforcement**

....

**39.8(2)** Attorneys who fail to timely pay the fee and ~~assessment~~ assessments required under rules 39.5, ~~and 39.6,~~ 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 ~~shall~~ 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 ~~shall~~ 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 ~~shall~~ must be notified thereof by either of the two methods above provided for notice of delinquency.

....

**Rule 39.10 Investigations and audits**

....

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

....

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(2)~~ 45.2(3).

....

**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 rules 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.

....

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

• • • •

**39.14(2)** An attorney who seeks or applies for reinstatement from suspension under chapter 35 ~~shall~~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 pay a reinstatement fee of \$100.

• • • •

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

a. 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.

b. 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.

c. Assessments are due on or before March 10 of each year.

d. 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.

### **Rule 39.18 Requirement for death or disability plan**

a. 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.

b. 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.

c. 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.

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

e. 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.

f. The plan must be reviewed and updated annually.

g. 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.

h. 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.

## **Chapter 41 Continuing Legal Education for Lawyers**

• • • •

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

a. 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.

b. 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.

c. 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.

#### **Rule 41.10 Reinstatement from suspension**

....

**41.10(2)** An attorney who seeks or applies for reinstatement from suspension under the provisions of chapter 35 of the Iowa Court Rules ~~shall~~ 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.

### **Chapter 42 Regulations of the Commission on Continuing Legal Education**

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

....

(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; ~~or~~

*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.

## **Rule 42.2 Continuing Legal Education Requirement**

• • • •

**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(3)**~~ **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), ~~shall~~ 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.

**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 ~~shall 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 ~~shall must~~ perform such duties as the commission may from time to time direct.

### **Chapter 43 Lawyer Trust Account Commission**

....

#### **Rule 43.4 Director**

**43.4(1)** The director of the office of professional regulation ~~shall serves~~ serves as the principal executive officer of the commission. All references to the “director” in this chapter ~~shall refer~~ 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.

### **Chapter 49 Office of Professional Regulation**

#### **Rule 49.1 Office of Professional Regulation of the Supreme Court of Iowa**

There is hereby created the Office of Professional Regulation of the Supreme Court of Iowa. The office of professional regulation ~~shall consist~~ consists of the following persons:

**49.1(1)** A director, ~~who shall be~~ appointed by the supreme court. The director ~~shall be~~ is responsible to the supreme court for the administration and program functions of the continuing legal education commission, the client security commission, the lawyer trust account commission, the grievance commission, the attorney disciplinary board, the unauthorized practice of law commission, the board of examiners of shorthand reporters, and the board of law examiners. The director also ~~shall be~~ is responsible for administration of the court interpreter examination and licensing program.

**49.1(2)** An assistant director for attorney discipline, ~~who shall be~~ appointed by the director with the approval of the supreme court. The assistant director for attorney discipline ~~shall be~~ is responsible to the director of the office of professional regulation for the administration of the attorney disciplinary board. ~~An assistant director for admissions, who shall be appointed by the director with the approval of the supreme court. The assistant director for admissions shall be responsible to the director of the office of professional~~

regulation for the administration of bar admissions, the board of law examiners, and the court interpreter examination and licensing program.

~~49.1(3) An assistant director for boards and commissions, who shall be appointed by the director with the approval of the supreme court. The assistant director for boards and commissions shall be responsible to the director of the office of professional regulation for the administration of the continuing legal education commission, the client security commission, the grievance commission, and the unauthorized practice of law commission. The assistant director for boards and commissions shall assist with administration of other commissions and matters as directed. Such other assistant directors, appointed by the director of the office of professional regulation with the approval of the supreme court, to be responsible to the director of the office of professional regulation for administration of boards and commissions as the director may designate.~~

~~49.1(4) An assistant director for attorney discipline, who shall be appointed by the director with the approval of the supreme court. The assistant director for attorney discipline shall be responsible to the director of the office of professional regulation for the administration of the attorney disciplinary board. Such other staff members as the supreme court may from time to time direct, appointed by the director with the approval of the court.~~

~~49.1(5) Such other staff members as the supreme court may from time to time direct, who shall be appointed by the director with the approval of the court.~~

....

#### **Rule 49.4 Fees for certificates, score transfers, and copies.**

49.4(1) The boards and commissions of the office of professional regulation must collect fees as the supreme court prescribes for providing:

a. Certificates of disciplinary history, certificates of continuing education history, certificates of client security history, certificates of license status, or similar certificates.

b. Certifications or transfers of examination scores.

c. Copies of official records in electronic form.

d. Copies of official records in paper form.

e. Reissued certificates of admission.

**49.4(2)** Fees collected under rule 49.4(1) are allocated to the board or commission preparing the certificate or providing the copies for such purposes as the supreme court may direct.