



These amendments to Division III of the Iowa Court Rules governing  
judicial branch professional regulation are effective January 1, 2018.

Dated this 13th day of December, 2017.

The Iowa Supreme Court

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

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## CHAPTER 31 ADMISSION TO THE BAR

### **Rule 31.1 Board of law examiners.**

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

a. The board of law examiners ~~shall consist~~ consists of five persons admitted to practice law in this state and two persons not admitted to practice law in this state. Members ~~shall be~~ are appointed by the supreme court. A member admitted to practice law ~~shall~~ must be actively engaged in the practice of law in this state.

b. ~~Appointment shall be~~ Appointments are for three-year terms ~~and shall that~~ commence on July 1 of the year in which the appointment is made. Vacancies ~~shall~~ must be filled for the

unexpired term by ~~supreme court~~ supreme court appointment of the ~~supreme court~~. Members ~~shall~~ may serve no more than three terms or nine years, whichever is less.

c. ~~The members thus appointed shall~~ Members must sign a written oath to faithfully and impartially discharge the duties of the office and ~~shall~~ must file the oath in the office of professional regulation. They ~~shall~~ will be compensated for their services in accordance with the provisions of Iowa Code section 602.10106.

d. The supreme court may appoint temporary examiners to assist the board, who ~~shall~~ will receive their actual and necessary expenses to be paid from funds appropriated to the board.

e. ~~The members~~ Members of the board of law examiners and the temporary examiners ~~shall~~ will be paid a per diem in an amount the supreme court sets for each day spent in conducting or grading the examinations of the applicants for admission to the bar and in performing administrative and character and fitness investigation duties. They ~~shall~~ will also be reimbursed for additional expenses necessarily incurred in the performance of such duties.

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

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### **31.1(2) Duties.**

a. The board may adopt rules to govern the method of conducting the bar examination. Such rules ~~shall~~ must be consistent with these rules and are subject to supreme court approval.

b. The authority to pass on the sufficiency of applications for permission to take the bar examination is vested in the board of law examiners, subject to supreme court review.

c. The members of the board authorized to grade examinations ~~shall~~ will make the final decision on passage or failure of each applicant, subject to the rules of the supreme court. The board ~~shall~~ must also recommend to the supreme court for admission to practice law in this state all applicants who pass the bar examination and the Multistate Professional Responsibility Examination, and who meet the requisite character and fitness requirements. The board, in its discretion, may permit an applicant to take the bar examination prior to finally approving that person as to character and fitness. It may impose specific conditions for admission based on its evaluation of character and fitness and ~~shall~~ must withhold recommendation of admission until those conditions are satisfied. An applicant who passes the bar examination ~~shall~~ must satisfy such character and fitness conditions and any other conditions imposed by the board within one year of the date of the applicant’s passage of the examination. This period may be extended by the board upon the applicant’s showing of good cause. If any conditions imposed are not satisfied within the applicable period of time, the applicant’s passage of the examination is null and void and the applicant must retake the bar examination in order to gain admission. The supreme court ~~shall~~ will make the final determination as to those persons who ~~shall~~ be admitted to practice in this state.

d. An applicant who has passed the examination and is eligible for admission must be administered the lawyer’s oath by a supreme court justice within one year of the date the bar examination score was posted or the date of fulfilling all eligibility requirements, whichever is

later. An applicant who fails to be administered the oath within this deadline will no longer be eligible for admission and the applicant's passage of the examination will be null and void. This deadline may only be extended by the board upon a showing of exceptional circumstances.

**Rule 31.2 Registration by law students.**

**31.2(1)** Every person intending to apply for admission to the bar of this state by examination ~~shall~~must, by January 15 of the year after the person commences the study of law in an accredited law school, register with the Iowa board of law examiners on forms furnished by the board and pay the required fee of ~~\$40~~\$50. The board may designate data submitted as a confidential record. Any confidential data ~~shall~~must be segregated by the board and the assistant director from the portion of the registration filed as a public record.

**31.2(2)** If any person ~~shall fail~~fails to so register, the board may, if it finds that a strict enforcement of this rule would work a hardship and that sufficient excuse exists for failing to comply with rule 31.2(1), waive the requirements of this rule as to the date of filing. Refusal of the board to waive such requirement ~~shall~~will be subject to supreme court review. If the registration is not on file by the January 15 registration deadline set forth in rule 31.2(1), but is on file by December 1 immediately preceding the registrant's July examination or July 1 immediately preceding the registrant's February examination, the registration fee will be \$150. If the registration is not timely filed, but is on file by April 1 immediately preceding the registrant's July examination or November 1 immediately preceding the registrant's February examination, the registration fee will be \$250. This fee is not refundable and ~~shall be~~is in addition to the fee required under rule 31.6. The failure to file the registration by the January 15 deadline of rule 31.2(1) may result in delays in conducting the board's character and fitness investigation. The board will not expedite its character and fitness investigation because the registration form is not timely filed. The board may conclude the registrant should not be permitted to take the bar examination until the investigation is completed. The registrant will not be eligible for admission to the bar until the character and fitness process is completed.

**31.2(3)** Registration as a law student under this rule is not deemed an application for permission to take the bar examination.

**31.2(4)** The registration ~~shall~~must be accompanied by letters prepared by three persons not related to ~~applicant~~the registrant by consanguinity or affinity attesting to the registrant's good moral character. The letters must be signed and ~~shall~~ include contact information for the reference provider. The letters ~~shall~~must state how the reference knows the registrant, how long the reference has known the registrant, and the basis for concluding the registrant possesses good moral character.

**31.2(5)** The board ~~shall~~will review each registration and may require the personal presence of any registrant at such time and place as the board may prescribe for interview and examination concerning the registrant's character and fitness. The board may at any time find it advisable to make further inquiry into the character, fitness, and general qualifications of the registrant, and with regard to each registration, the board ~~shall~~will have all of the powers given it in respect to inquiry and investigation of candidates for admission to the bar.

**Rule 31.3 Required examinations.**

**31.3(1) Iowa bar examination.** The provisions of this rule apply to the dates and content of the Iowa bar examination beginning with the February 2016, examination administration.

a. Written examinations for admission to the bar will be held in Polk County, Iowa, commencing with a mandatory orientation session on the Monday preceding the last Wednesday in February and on the Monday preceding the last Wednesday in July.

b. The Iowa ~~Bar Examination~~ bar examination will be the Uniform Bar Examination (UBE) prepared and coordinated by the National Conference of Bar Examiners (NCBE). The UBE is given and graded according to standards agreed upon by all UBE jurisdictions and consists of three components: the Multistate Essay Examination (MEE), the Multistate Bar Examination (MBE), and the Multistate Performance Test (MPT). Applicants must take all three components in the same examination administration to earn a UBE score that is transferable to other UBE jurisdictions. The three-hour MEE component consists of six essay questions, the three-hour MPT component consists of two performance tests, and the MBE component consists of two three-hour sessions of 100 multiple-choice questions each. The schedule may vary for applicants who are granted testing accommodations. Transferred or banked MBE scores are no longer accepted.

c. The MEE portion of the examination consists of questions from subjects the NCBE designates. Some MEE questions may include issues from more than one area of law. Subject matter outlines for the MEE are available on the NCBE ~~web site~~ website.

d. Applicants must achieve a combined, scaled score of 266 or above to pass the examination. The bar examination results require a vote of at least four members of the board of law examiners admitted to practice law in Iowa.

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**Rule 31.4 Admission by transferred UBE score.**

**31.4(1) UBE score transferability.** An applicant who has earned a UBE score in another jurisdiction may transfer the UBE score and file an application for admission by transferred UBE score at any time on or after December 1, 2015, provided:

a. The transferred UBE score is NCBE-certified and is a combined, scaled score of 266 or above.

b. The application includes a nonrefundable administrative fee of ~~\$525~~ \$900.

c. The applicant causes the NCBE to transfer the UBE score no later than three months after the application is filed.

d. The applicant has received an LL.B. or a J.D. degree from a reputable law school fully or provisionally approved by the American Bar Association at the time the applicant graduated. Proof of this requirement will be by affidavit of the law school's dean on ~~an Iowa~~ the board's dean's affidavit form. The affidavit must be made before an officer authorized to administer oaths and having a seal.

e. The applicant has earned a scaled score of at least 80 on the ~~Multistate Professional Responsibility Examination (MPRE)~~ MPRE administered by the NCBE.

f. The applicant has not been denied admission or permission to sit for a bar examination by any jurisdiction on character and fitness grounds.

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**Rule 31.5 Bar examination application—; contents and deadlines.**

**31.5(1)** The board of law examiners and the assistant director ~~shall will~~ prepare such forms as may be necessary for application for examination. The application ~~shall must~~ require the applicant to demonstrate the applicant is a person of honesty, integrity, and trustworthiness, and one who appreciates and will adhere to the Iowa Rules of Professional Conduct as adopted by the supreme court, together with such other information as the board and the assistant director determine to be necessary and proper.

**31.5(2)** Every applicant for admission to the bar ~~shall must~~ make application, under oath, and upon a form furnished by the assistant director. The applicant ~~shall must~~ file the application with the assistant director no later than April 1 preceding the July examination or November 1 preceding the February examination. An applicant who fails the Iowa bar examination and wants to take the next examination must file a new application within the above deadlines or within 30 days of the date the applicant's score is posted in the office of professional regulation, whichever is later. There ~~shall will~~ be no waiver of these deadlines. If any changes occur after the application is filed that affect the applicant's answers, the applicant must amend the application. A new and complete application ~~shall must~~ be filed for each examination for admission.

**31.5(3)** The board may designate portions of the data submitted for this purpose by the applicant or third parties as a confidential record. The board and the assistant director ~~shall must~~ segregate that portion of the application data deemed confidential from the portion ~~which that~~ is filed as a public record. In the event of a request for a hearing on character or fitness under rule 31.11(4) following an initial determination by the board, it may designate any additional information received at the hearing and all proceedings before the board as a confidential record.

**Rule 31.6 Fee.** Every applicant for admission to the bar upon examination must, as a part of the application, remit to the Iowa board of law examiners an application fee. For applicants not previously admitted to practice law in any other state or the District of Columbia, the fee is ~~\$425~~\$550. For applicants previously admitted to practice law in another state or the District of Columbia, the fee is ~~\$525~~\$800. This fee is not refundable and cannot be applied to a subsequent application. The full fee must be remitted within the deadline for filing the bar application under rule 31.5(2).

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**Rule 31.8 Degree requirement.**

**31.8(1)** No person ~~shall will~~ be permitted to take the examination for admission without proof that the person has received the degree of LL.B. or J.D. from a reputable law school fully approved by the American Bar Association. Proof of this requirement ~~shall must~~ be by affidavit of the dean of such law school, and ~~shall must~~ show that the applicant has actually and in good faith pursued the study of law resulting in the degree required by this rule. The affidavit must be made before an officer authorized to administer oaths and having a seal.

**31.8(2)** If an applicant is a student in such a law school and expects to receive the degree of LL.B. or J.D. within 45 days from the first day of the July or February examination, the applicant

~~shall~~may be permitted to take the examination upon the filing of an affidavit by the dean of said school stating that the dean expects the applicant to receive such a degree within this time. No certificate of admission or license to practice law ~~shall~~can be issued until the applicant has received the required degree. If the applicant fails to obtain the degree within the 45-day period, the results of the applicant's examination ~~shall~~will be null and void.

### **Rule 31.9 Moral character and fitness.**

**31.9(1)** The Iowa board of law examiners ~~shall~~may make an investigation of the moral character and fitness of any applicant and may procure the services of any bar association, agency, organization, or individual qualified to make a moral character or fitness report.

*a.* Immediately upon the filing of the application, the chair of the Iowa board of law examiners ~~shall~~must notify the president of a local bar association and the county attorney of the county in which the applicant resides of the filing of the application. If either of said officers is possessed of information ~~which~~that reflects adversely on the moral character or fitness of the applicant, such information ~~shall~~must be transmitted to the chair of the board of law examiners not less than 60 days in advance of the holding of the examination.

*b.* The Iowa board of law examiners ~~shall~~will, subject to supreme court review, determine whether or not the applicant is of good moral character and fitness. In making its determination, the board ~~shall~~may consider the applicant's candor in the application process and in any interactions with the board or its staff.

**31.9(2)** *Denial of permission to take bar examination; denial of recommendation for admission.* When the board of law examiners determines that any person who registers or makes application should not be permitted to take a bar examination, or that an applicant who has passed a bar examination should not be recommended for admission to practice law in Iowa, the board ~~shall~~must notify the applicant in writing of its determination.

*a.* The notice ~~shall~~must provide that the applicant is entitled to a hearing to challenge the determination upon filing a written request for hearing with the assistant director within 10 days after service of the notice.

*b.* The assistant director ~~shall~~must serve the notice on the applicant by mail to the address shown on the applicant's application.

*c.* If no request for hearing is filed, the board's determination ~~shall~~will be final and not subject to review.

*d.* If a request for hearing is filed, the chair of the board ~~shall~~must appoint an attorney member of the board to act as a hearing officer. The hearing officer ~~shall~~must promptly set a hearing, and the assistant director ~~shall~~must notify the applicant by mail at least 10 days before the hearing date of the time and place of hearing.

*e.* Not less than 10 days before the hearing date, the board ~~shall~~must furnish the applicant with copies of all ~~document~~documents and summaries of all other information the board relied on in making its determination.

*f.* The clerk of court in the county where the hearing is held ~~shall have~~has authority to issue any necessary subpoenas for the hearing.

*g.* At the hearing, the applicant ~~shall have~~has the right to appear in person and by counsel. The board may be represented by the attorney general of the ~~state~~State of Iowa or a duly appointed



assistant attorney general. The hearing ~~shall~~must be reported. The hearing officer ~~shall~~may take judicial notice of the information the board considered in the case and ~~shall~~may consider such additional evidence and arguments as may be presented at the hearing. At the hearing, the board ~~shall~~may first present any additional evidence or information that it deems necessary to the proceeding. Thereafter the applicant ~~shall~~may present evidence. The attorney for the board may offer rebuttal evidence at the discretion of the hearing officer. In presiding at the hearing, the hearing officer ~~shall~~will have the power and authority administrative hearing officers possess generally.

*h.* Within 30 days after completion of the hearing, the hearing officer ~~shall~~must provide the board with a hearing transcript, exhibits, and findings of fact and conclusions of law. Based on this information, the board ~~shall~~will prepare and file its final determination with the assistant director. The assistant director ~~shall~~must, by mail, promptly notify the applicant of the board's final determination.

**31.9(3) Supreme court review.** Any applicant aggrieved by a final determination of the board made pursuant to rule 31.9(2) may file a petition requesting review of the determination in the supreme court within 20 days of the mailing of notice of final determination. The petition must be accompanied by a \$150 fee. If no such petition is filed within the 20-day period, the board's determination ~~shall~~is not be subject to review. A petition for review ~~shall~~must state all claims of error and reasons for challenging the board's determination. The board ~~shall~~must transmit to the supreme court its files and the complete record in the case. Unless the court orders otherwise, the petition ~~shall~~be deemed submitted for the court's review on the record previously made. After consideration of the record, the court ~~shall~~may enter its order sustaining or denying the petition. The order of the court ~~shall~~will be conclusive. No subsequent application for admission by a person denied under rule 31.9(2) ~~shall~~will be considered by the board unless authorized by the court upon the applicant's motion accompanied by a prima facie showing of a substantial change of circumstances.

**31.9(4) Costs of review.** In the event an applicant or person who is registered petitions for review under rule 31.9(3) and is unsuccessful, the costs of the ~~appeal~~review will be taxed against the unsuccessful applicant and judgment therefor may be entered in the district court of that person's county of residence, if an Iowa resident, or in the district court for Polk County if a nonresident.

**31.9(5) Failure to comply with support order.** The supreme court may refuse to issue a license to practice law to an applicant for admission to the bar by examination or on motion who fails to comply with a support order.

*a. Procedure.* The Child Support Recovery Unit (CSRU) ~~shall~~may file any certificate of noncompliance that involves an applicant with the ~~clerk of the supreme court office of professional regulation~~. The procedure, including notice to the applicant, ~~shall~~will be governed by Iowa ~~Ct. R. 35.20(1)~~Court Rule 34.20(1), except that the notice ~~shall~~must refer to a refusal to issue a license to practice law to the applicant instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an application for hearing from the applicant, the clerk of district court ~~shall~~must schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing ~~shall~~will be governed by Iowa ~~Ct. R. 35.20(2)~~Court Rule 34.20(2).

*c. Noncompliance certificate withdrawn.* If a withdrawal of a certificate of noncompliance is filed, the supreme court ~~shall~~will curtail any proceedings pursuant to the certificate of noncompliance; or, if necessary, ~~shall~~may immediately take such steps as are necessary to issue a license to the applicant if the applicant is otherwise eligible under rules of the supreme court.

*d. Sharing information.* Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, ~~the clerk of the supreme court and~~ the director of the office of professional regulation ~~are~~is authorized to share information with the CSRU for the sole purpose of allowing the CSRU to identify applicants subject to enforcement under Iowa Code chapter 252J or 598.

**31.9(6)** The supreme court may refuse to issue a license to practice law to an applicant for admission to the bar by examination or on motion who defaults on an obligation owed to or collected by the Iowa College Student Aid Commission.

*a. Procedure.* The Iowa College Student Aid Commission ~~(the commission)~~ ~~shall~~may file any certificate of noncompliance that involves an applicant with the ~~clerk of the supreme court office of professional regulation~~. The procedure, including notice to the applicant, ~~shall~~will be governed by Iowa ~~Ct. R. 35.21(1)~~Court Rule 34.21(1), except that the notice ~~shall~~must refer to a refusal to issue a license to practice law to the applicant instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an application for hearing from the applicant, the clerk of district court ~~shall~~must schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing ~~shall~~will be governed by Iowa ~~Ct. R. 35.21(2)~~Court Rule 34.21(2).

*c. Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court ~~shall~~may curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, ~~shall~~may immediately take such steps as are necessary to issue a license to the applicant if the applicant is otherwise eligible under rules of the court.

**31.9(7)** The supreme court may refuse to issue a license to practice law to an applicant for admission to the bar by examination or on motion who defaults on an obligation owed to or collected by the ~~Centralized Central~~ Collection Unit of the Iowa Department of Revenue (CCU).

*a. Procedure.* The CCU ~~shall~~may file any certificate of noncompliance that involves an applicant with the ~~clerk of the supreme court office of professional regulation~~. The procedure, including notice to the applicant, ~~shall~~will be governed by Iowa ~~Ct. R. 35.22(1)~~Court Rule 34.22(1), except that the notice ~~shall~~must refer to a refusal to issue a license to practice law to the applicant instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an application for hearing from the applicant, the clerk of the district court ~~shall~~must schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing ~~shall~~will be governed by Iowa ~~Ct. R. 35.22(2)~~Court Rule 34.22(2).

*c. Noncompliance certificate withdrawn.* If a withdrawal of a certificate of noncompliance is filed, the supreme court ~~shall~~may curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, ~~shall~~may immediately take such steps as are necessary to issue a license to the applicant if the applicant is otherwise eligible under rules of the supreme court.

*d. Sharing information.* Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, ~~the clerk of the supreme court and~~ the director of the office of professional regulation ~~are~~is authorized to share information with the CCU for the sole purpose of allowing the CCU to identify applicants subject to enforcement under Iowa Code chapter 272D.

**Rule 31.10 Preservation of anonymity.** Each applicant permitted to take the bar examination ~~shall~~will be randomly assigned a number at the beginning of the examination, by which number the applicant ~~shall~~will be known throughout the examination.

Either the assistant director or the director of the office of professional regulation, or ~~their representatives~~a representative, ~~shall~~must prepare a list of the applicants, showing the number assigned to each at the beginning of the examination, certify to such facts, seal said list in an envelope immediately after the beginning of said examination, and retain the same sealed, in their possession, unopened until after the applicant's score has been properly recorded. The envelope ~~shall~~must then be opened in the presence of the Iowa board of law examiners and the correct name entered opposite the number assigned to each applicant, in the presence of the Iowa board of law examiners.

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**Rule 31.12 Admission of attorneys from other jurisdictions—; requirements and fees.**

**31.12(1)** An applicant who meets the requirements of this rule and rule 31.13 may, in the discretion of the court, be admitted to the practice of law in this state without examination.

**31.12(2)** The applicant ~~shall~~must file the application with the National Conference of Bar Examiners through ~~their~~its online character and fitness application process unless an exception is granted by the ~~Office of Professional Regulation~~office of professional regulation. The applicant ~~shall~~must pay a nonrefundable administrative fee of ~~\$525–\$900~~ to the ~~Office of Professional Regulation~~office of professional regulation at the time of filing the application. The character investigation services of the National Conference of Bar Examiners ~~shall~~may be procured in all cases where application for admission on motion is made. The applicant ~~shall~~must pay the investigative fee required by the National Conference of Bar Examiners at the time of filing the application.

**31.12(3)** The application and supporting affidavits, ~~which shall~~must contain specific facts and details as opposed to conclusions, ~~and which shall~~must be made before an officer authorized to administer oaths, and must demonstrate the following:

*a.* The applicant has been admitted to the bar of any other state of the United States or the District of Columbia, has practiced law five full years while licensed within the seven years immediately preceding the date of the application, and still holds a license.

*b.* The applicant is a person of honesty, integrity, and trustworthiness, and one who will adhere to the Iowa Rules of Professional Conduct. In evaluating this factor the court may consider any findings filed with the ~~Office of Professional Regulation~~office of professional regulation by the Commission on the Unauthorized Practice of Law pursuant to Iowa ~~Ct. R.~~Court Rule 37.3.

c. The applicant is not currently subject to lawyer discipline in any other jurisdiction.

**31.12(4)** The applicant ~~shall~~must provide such information as the court deems necessary and proper in connection with the application. If any changes occur that affect the applicant's answers, the applicant must immediately amend the application.

**31.12(5)** The applicant ~~shall~~must designate the supreme court clerk for service of process.

**31.12(6)** For purposes of this rule, the practice of law ~~shall include~~includes the following activities:

a. Representation of one or more clients in the practice of law.

b. Service as a lawyer with a local, state, or federal agency.

c. The teaching of law as a full-time instructor in a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association in this state or some other state.

d. The discharge of actual legal duties as a member of one of the armed services of the United States, if certified as the practice of law by the judge advocate general of such service.

e. Service as a judge in a federal, state, or local court of record.

f. Service as a judicial law clerk.

g. Service as corporate counsel.

h. Service as an employee or officer of any business, but only if such service would ordinarily constitute the practice of law and was performed in a jurisdiction in which the applicant has been admitted to practice.

**31.12(7)** For purposes of this rule, the practice of law ~~shall~~does not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

**31.12(8)** The following applicants ~~shall~~are not ~~be~~ eligible for admission on motion:

a. An applicant who has failed a bar examination administered in this state within five years of the date of filing of the application under this rule.

b. An applicant who has failed five or more bar examinations.

c. An applicant whose Iowa license is in exempt or inactive status under the provisions of rule 39.7 or ~~rule~~ 41.7.

d. An applicant who has been disbarred and not reinstated or whose license is currently suspended in any other jurisdiction.

### **Rule 31.13 Proofs of qualifications; oath or affirmation.**

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#### **31.13(2) Oath or affirmation.**

a. An applicant whose application for admission without examination is granted must appear for admission before a supreme court justice, unless the supreme court orders otherwise based upon a satisfactory showing of exceptional circumstances.

b. An applicant may file a petition seeking permission to be administered the lawyer's oath or affirmation in the jurisdiction in which the applicant is currently licensed or before a judge advocate general if the applicant is currently a member of one of the armed services of the

United States. The petition must set forth in detail: the exceptional circumstances that render the applicant unable to appear for admission before a justice of the supreme court of Iowa; the name, title, business address, and telephone number of the justice, judge, clerk of court, court administrator, or the judge advocate general who will administer the lawyer's oath or affirmation; and the statute or court rule authorizing that person to administer an oath or affirmation.

c. If the supreme court grants the petition, the office of professional regulation ~~shall~~will forward all required documents to the applicant. The applicant will be deemed admitted to the Iowa bar on the date the completed documents are filed with the office of professional regulation.

d. The applicant must take the lawyer's oath or affirmation from an Iowa justice, or file the completed paperwork from an out-of-state oath or affirmation, within six months after the date the application for admission on motion is granted or the application will be deemed to be denied.

**Rule 31.14 Admission pro hac vice before Iowa courts and administrative agencies.**

**31.14(1) Definitions.**

a. An "out-of-state" lawyer is a person who:

(1) Is not admitted to practice law in this state but who is admitted in another state or territory of the United States or of the District of Columbia, or is licensed to practice as a foreign legal consultant in any state or territory of the United States or of the District of Columbia; ~~and~~

(2) Is not disbarred or suspended from practice in any jurisdiction.

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**31.14(4) Application procedure.** An eligible out-of-state lawyer seeking to appear in a proceeding pending in this state as counsel pro hac vice ~~shall~~must file a verified application with the court or agency where the litigation is filed. The out-of-state lawyer ~~shall~~must serve the application on all parties who have appeared in the proceeding, and ~~shall~~must include proof of service. Application forms for admission pro hac vice can be found in rule 31.25.

**31.14(5) Required information for application.** An application filed by the out-of-state lawyer must contain all of the following information:

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k. Whether the out-of-state lawyer has been held formally in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders, and, if so: the nature of the allegations, the name of the court before which such proceedings were conducted, the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings. A copy of the written order or transcript of the oral rulings ~~shall~~must be attached to the application.

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p. If the out-of-state lawyer has appeared pro hac vice in this state in five proceedings within the preceding two years, the application ~~shall~~must contain a statement showing good cause why the out-of-state attorney should be admitted in the present proceeding.

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**31.14(10) Familiarity with rules.** An out-of-state lawyer ~~shall~~must become familiar with the rules of professional conduct, the rules of procedure of the Iowa Supreme Court Attorney Disciplinary Board, the standards for professional conduct, local court or agency rules, and the policies and procedures of the court or agency before which the out-of-state lawyer seeks to practice.

**31.14(11) Periodic fee.** An applicant for admission to appear pro hac vice in any Iowa Court or before any Iowa agency must first register with the office of professional regulation and pay a fee of \$250 to the client security trust fund. The office of professional regulation may prescribe an electronic format for the registration and require submission of the registration and payment in that form.

a. Registration and payment of the fee required by this rule ~~qualifies~~qualify the out-of-state lawyer to file applications for admission pro hac vice in any Iowa court or before any Iowa agency for a period of five years commencing with the date of registration. Upon expiration of the five-year period, the out-of-state lawyer becomes ineligible to file an application for admission pro hac vice in any Iowa court or before any Iowa agency without first registering and paying another fee as required by this rule.

b. An out-of-state lawyer admitted pro hac vice after registration and payment of the fee as required by this rule who later is fully admitted to the bar of Iowa must pay initial, special, and regular assessments to the client security trust fund as required by rule 39.6.

**Rule 31.15 Permitted practice by law students and recent graduates.**

**31.15(1)** Law students enrolled in a reputable law school as defined by rule 31.8 and Iowa Code section 602.10102 and certified to the office of professional regulation by the dean of the school to have completed satisfactorily not less than the equivalent of three semesters of the work required by the school to qualify for the J.D. or LL.B. degree, may, under the following conditions, engage in the practice of law or appear as counsel in the trial or appellate courts of this state:;

a. Appearance by students as defense counsel in a criminal matter in any trial court ~~shall~~must be confined to misdemeanors, and the student ~~shall~~must be under the direct supervision of licensed Iowa counsel who ~~shall~~must be personally present.

b. Appearance by students in matters before the Iowa Supreme Court or the Iowa Court of Appeals ~~shall~~must be under the direct supervision of licensed Iowa counsel who ~~shall~~must be personally present. A student presenting an oral argument before the supreme court or the court of appeals ~~shall~~must file with the clerk of the supreme court an appearance with proof of compliance with rule 31.15(1). The appearance must be filed no less than seven days prior to the argument and ~~shall~~must be served upon all counsel of record and parties not represented by counsel.

c. Appearance or assistance by students in other matters ~~shall~~must be under the general supervision of licensed Iowa counsel, but such counsel need not be personally present in court unless required by order of the court.

**31.15(2)** Students who the dean of a reputable law school certifies have completed not less than the equivalent of two semesters of work required to qualify for the J.D. or LL.B. degree may appear in a representative capacity in a contested case proceeding before an administrative agency.

a. Appearance by students who have completed only two semesters of work ~~shall~~must be under the direct supervision of licensed Iowa counsel who ~~shall~~must be personally present.

b. Students who have completed at least three semesters may appear in a representative capacity in a contested case proceeding before an administrative agency under the general supervision of licensed Iowa counsel, but such counsel need not be personally present unless required by order of the tribunal.

**31.15(3)** Except as allowed by rule 31.15(4), students may not engage in the practice of law or appear as counsel in any court of this state or before an administrative agency unless such practice or appearance is part of an educational program approved by the faculty of the students' law school and not disapproved by the Iowa Supreme Court, and such program is supervised by at least one member of the law school's faculty. Students may continue to practice before courts or administrative agencies of this state after completion of an educational program so long as the placement is substantially the same as it was during the educational program, approved by the law school, and performed with the supervision required under ~~rule-rules~~ 31.15(1) and 31.15(2).

**31.15(4)** Law students may assist licensed Iowa counsel to the same extent as a non-attorney without being part of an educational program or being certified to the office of professional regulation, but the students ~~shall~~must be under the general supervision of licensed Iowa counsel who need not be personally present. Law students may not appear in representative capacities in contested case proceedings before administrative agencies without complying with ~~rule-rules~~ 31.15(2) and 31.15(3), or before trial or appellate courts without complying with rule 31.15(1).

**31.15(5)** Law students ~~shall~~must not receive compensation other than general compensation from an employer-attorney or from a law-school-administered fund.

**31.15(6)** Graduates of reputable law schools who have applied to take the Iowa bar examination are authorized to perform all activities described in this rule on behalf of the public defender's office, the attorney general's office, county attorney offices, or approved legal aid organizations under the following conditions:

a. Supervision of graduates ~~shall~~must be the same as supervision of law students under ~~rule~~ rules 31.15(1) and 31.15(2), but graduates do not need to meet the requirements of rule 31.15(3).

b. Graduates may perform under this rule beginning with the receipt of a law school dean's certification of graduation and terminating either upon the withdrawal or denial of their application to take the Iowa bar examination, their failure of the next administration of the Iowa bar examination, or upon the date of the admissions ceremony for those who pass that examination.

c. Graduates may practice up to 25 hours per week from receipt of a J.D. or LL.B. degree until the administration of the next Iowa bar examination.

d. Graduates are not limited in hours of practice under this rule from administration of the bar ~~exam examination~~ until the date the bar ~~exam examination~~ results are posted for those who fail or the date of the admissions ceremony for those who pass.

e. Graduates who have failed any state bar examination in the past are not eligible to practice under this provision.

f. The supervising organizations listed in rule 31.15(6) ~~shall~~must file a certificate with the ~~Office of Professional Regulation of the Iowa Supreme Court (OPR)~~office of professional regulation listing the starting dates for all graduates practicing under rule 31.15(6) and ~~shall~~must file a second certificate indicating when the practice under this rule has terminated.

~~31.15(7) Approved Legal Aid Organization.~~ For purposes of this rule, an “approved legal aid organization” includes a program sponsored by a bar association, law school, or a not-for-profit legal aid organization, approved by the Iowa Supreme Court, whose primary purpose is to provide legal representation to low-income persons in Iowa.

a. A legal aid organization seeking approval from the court for the purposes of this rule ~~shall~~must file a petition with ~~OPR~~the office of professional regulation certifying that it is a not-for-profit organization and reciting with specificity the following:

- (1) The structure of the organization and whether it accepts funds from its clients.
- (2) The major sources of funds the organization uses.
- (3) The criteria used to determine potential clients’ eligibility for legal services the organization performs.
- (4) The types of legal and nonlegal services the organization performs.
- (5) The names of all members of the Iowa bar who are employed by the organization or who regularly perform legal work for the organization.
- (6) The existence and extent of malpractice insurance that will cover the law student or graduate.

b. An organization designated as an approved legal aid organization under the provisions of rule 31.19(2)(c) is an approved legal aid organization for purposes of this rule.

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

### **Rule 31.16 Registration of house counsel.**

**31.16(1) Who must register.** A lawyer who is not admitted to practice law in Iowa, but who is admitted to practice law in another United States jurisdiction or is a foreign lawyer, and who has a continuous presence in this jurisdiction and is employed as a lawyer by an organization as permitted pursuant to ~~Rule~~rule 32:5.5(d)(1) of the Iowa Rules of Professional Conduct, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, must register as house counsel within 90 days of the commencement of employment as a lawyer or, if currently so employed, then within 90 days of the effective date of this rule. For purposes of rule 31.16:

••••

**31.16(2) Procedure for registering.** The lawyer must submit to the ~~Office of Professional Regulation of the Supreme Court of Iowa~~office of professional regulation the following:



a. If a domestic lawyer, a completed application in the form the office of professional regulation prescribes.

b. If a foreign lawyer, a foreign-licensed attorney application with the National Conference of Bar Examiners through its online character and fitness application process. The applicant must pay the investigative fee that the National Conference of Bar Examiners requires at the time of filing the application.

c. A nonrefundable application fee in the amount of ~~\$500~~\$800 payable to the Iowa board of law examiners.

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**31.16(3) Scope of authority of registered lawyer.**

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c. A lawyer registered under this rule must:

(1) File an annual statement and pay the annual disciplinary fee as Iowa Court Rules 39.5 and 39.8 require.

(2) Fulfill the continuing legal education attendance, reporting, and fee payment requirements set forth in rules 41.3 and 41.4. However, a lawyer is not required to comply with the continuing legal education attendance requirements set forth in rule 41.3 for the calendar year in which the lawyer first registered as house counsel under this rule.

(3) Report to the office of professional regulation within 90 days the following:

1. Termination of the lawyer's employment as described in rule 31.16(2)(h);

2. Whether or not public, any change in the lawyer's license status in another jurisdiction, United States or foreign; ~~and~~

3. Whether or not public, any disciplinary charge, finding, or sanction concerning the lawyer by any disciplinary authority, court, or other tribunal in any jurisdiction, United States or foreign.

• • • •

**31.16(6) Reinstatement.** A registered lawyer whose registration is terminated under rule 31.16(5)(a) ~~above~~ may be reinstated within 180 days of termination upon submission to the office of professional regulation all of the following:

• • • •

**31.16(9) Duration of registration—credit toward admission on motion.**

• • • •

b. *Foreign lawyer.* A foreign lawyer registered under this rule is not subject to the five-year limit on house counsel practice and may remain in that status subject to rule 31.16(5), withdrawal of the registration, or admission following successful completion of the Iowa bar examination. The foreign lawyer is not eligible for admission on motion based on practice while registered in Iowa. The foreign lawyer may either remain as house counsel or may attempt to establish academic equivalency allowing the lawyer to sit for the Iowa bar examination. A foreign lawyer seeking to take the bar examination must:

(1) Obtain a scaled score of at least 80 on the ~~Multistate Professional Responsibility Examination (MPRE)~~ MPRE before seeking permission to take the bar examination. The MPRE score must be from an examination taken within three years immediately preceding the filing date of the application.

.....

**31.16(11)** *Denial of application or suspension of registration for failure to comply with an obligation owed to or collected by the ~~centralized collection unit~~ Central Collection Unit of the Iowa Department of Revenue.* The supreme court may deny a lawyer's application for registration or suspend a lawyer's registration under this rule for failure to comply with an obligation owed to or collected by the ~~centralized collection unit~~ Central Collection Unit of the Iowa Department of Revenue. Rule 31.9(7) governs this procedure.

**31.16(12)** *Denial of application or suspension of registration for failure to comply with an obligation owed to or collected by the Iowa College Student Aid Commission.* The supreme court may deny a lawyer's application for registration or suspend a lawyer's registration under this rule for failure to comply with an obligation owed to or collected by the Iowa College Student Aid Commission. Rule 31.9(6) governs this procedure.

**31.16(13)** *Denial of application or suspension of registration for failure to comply with a support order.* The supreme court may deny a lawyer's application for registration or suspend a lawyer's registration under this rule for failure to comply with a support order. Rule 31.9(5) governs this procedure.

**Rule 31.17 Provision of legal services following determination of major disaster.**

**31.17(1)** *Determination of existence of major disaster.* Solely for purposes of this rule, ~~this court shall~~ the supreme court will determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

a. This state and whether the emergency caused by the major disaster affects the entirety or only a part of the state; or

b. Another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this state pursuant to rule 31.17(3) ~~shall~~ will extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

**31.17(2)** *Temporary practice—pro bono services.* Following the determination of an emergency affecting the justice system in this state pursuant to rule 31.17(1), or a determination that persons displaced by a major disaster in another jurisdiction and residing in this state are in need of pro bono services and the assistance of lawyers from outside of this state is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice, or otherwise restricted from practice in any jurisdiction, may provide legal services in this state on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation, or other direct or indirect pecuniary gain to the lawyer. Such legal services ~~shall~~ must be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program, or through such organization(s) specifically designated by ~~this~~ the supreme court.

**31.17(3)** *Temporary practice—legal services arising out of and reasonably related to a lawyer's practice of law in another jurisdiction, or area of such other jurisdiction, where the disaster occurred.* Following the determination of a major disaster in another United States

jurisdiction, a lawyer who is authorized to practice law and ~~who~~ principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice, or otherwise restricted from practice in any jurisdiction, may provide legal services in this state on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

**31.17(4) Duration of authority for temporary practice.** The authority to practice law in this state granted by rule 31.17(2) ~~shall~~will end when ~~this~~the supreme court determines that the conditions caused by the major disaster have ended except that a lawyer then representing clients in this state pursuant to rule 31.17(2) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer ~~shall~~may not thereafter accept new clients. The authority to practice law in this state granted by rule 31.17(3) ~~shall~~will end 60 days after ~~this~~the supreme court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

**31.17(5) Court appearances.** The authority granted by this rule does not include appearances in court except:

a. Pursuant to ~~this~~the supreme court's pro hac vice admission rule; or

b. If ~~this~~the supreme court, in any determination made under rule 31.17(1), grants blanket permission to appear in all or designated courts of this state to lawyers providing legal services pursuant to rule 31.17(2).

**31.17(6) Disciplinary authority and registration requirement.** Lawyers providing legal services in this state pursuant to rule 31.17(2) or 31.17(3) are subject to ~~this~~the supreme court's disciplinary authority and the Iowa Rules of Professional Conduct as provided in Iowa ~~R. of Prof.~~Rule of Professional Conduct 8.5. Lawyers providing legal services in this state under rule 31.17(2) or 31.17(3) ~~shall~~must, within 30 days from the commencement of the provision of legal services, file a registration statement with the office of professional regulation. A form for the registration statement can be found in rule 31.25. Any lawyer who provides legal services pursuant to this rule ~~shall~~will not be considered to be engaged in the unlawful practice of law in this state.

**31.17(7) Notification to clients.** Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this rule ~~shall~~must inform clients in this state of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this state except as permitted by this rule. They ~~shall~~must not state or imply to any person that they are otherwise authorized to practice law in this state.

*The comment accompanying this rule explains and illustrates the meaning and purpose of the rule. The comment is intended as a guide to interpretation, but the text of the rule is authoritative.*

#### COMMENT

[1] A major disaster in this state or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction

may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit entity or such other organization(s) specifically designated by ~~this the supreme~~ court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency, or an event caused by terrorists or acts of war.

[2] Under rule 31.17(1)(a), ~~this the supreme~~ court ~~shall will~~ determine whether a major disaster causing an emergency affecting the justice system has occurred in this state, or in a part of this state, for purposes of triggering rule 31.17(2). ~~This The supreme~~ court may, for example, determine that the entirety of this state has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by rule 31.17(2) ~~shall will~~ extend only to lawyers authorized to practice law and not disbarred, suspended from practice, or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Rule 31.17(2) permits lawyers authorized to practice law in another jurisdiction, and not disbarred, suspended from practice, or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of this state following a determination of an emergency caused by a major disaster, notwithstanding that they are not otherwise authorized to practice law in this state. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this rule include, but are not limited to, probation, inactive status, disability inactive status, or a ~~non-disciplinary nondisciplinary~~ administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this rule. Lawyers permitted to provide legal services pursuant to this rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, ~~this The supreme~~ court may instead designate other specific organization(s) through which these legal services may be rendered. Under rule 31.17(2), an emeritus lawyer from another United States jurisdiction may provide pro bono legal services on a temporary basis in this state provided that the emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services in this state on a temporary basis under Iowa R. of Prof'l Conduct 32:5.5(c).

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by ~~this the supreme~~ court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under rule 31.17(3) to provide legal services on a temporary basis in this state. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. For purposes of this rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction. For the meaning of "arise out of and reasonably related to," see Iowa R. of Prof'l Conduct 32:5.5, cmt. [14].

[5] Emergency conditions created by major disasters end, and when they do, the authority created by rules 31.17(2) and 31.17(3) also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under rule 31.17(4), ~~this the supreme~~ court determines when those conditions end only for purposes of this rule. The authority granted under rule 31.17(2) ~~shall will~~ end upon such determination, except that lawyers assisting residents of this state under rule 31.17(2) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by rule 31.17(3) will end 60 days after ~~this the supreme~~ court makes such a determination with regard to an affected jurisdiction.

[6] Rules 31.17(2) and 31.17(3) do not authorize lawyers to appear in the courts of this state. Court appearances are subject to the pro hac vice admission rules of ~~this the supreme~~ court. ~~This The supreme~~ court may, in a determination made under rule 31.17(5)(b), include authorization for lawyers who provide legal services in this state under rule 31.17(2) to appear in all or designated courts of this state without need for such pro hac vice admission. A lawyer who has appeared in the courts of this state pursuant to rule 31.17(5) may continue to appear

in any such matter notwithstanding a declaration under rule 31.17(4) that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Iowa R. of Prof'l Conduct 32: 1. 16.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this rule.

[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this state pursuant to rule 31.17(2) or 31.17(3) is disbarred, suspended from practice, or otherwise subject to a public disciplinary sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

### **Rule 31.18 Licensing and practice of foreign legal consultants.**

**31.18(1) *General regulation as to licensing.*** In its discretion, the supreme court may license to practice in the State of Iowa as a foreign legal consultant, without examination, an applicant who:

*a.* Is, and for at least five years has been, a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

*b.* For at least five years preceding his or her application has been a member in good standing of such legal profession and has been lawfully engaged in the practice of law in the foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the foreign country;

*c.* Possesses the good moral character and general fitness requisite for a member of the bar of this state; ~~and~~

*d.* Intends to practice as a foreign legal consultant in this state and to maintain an office in this state for that purpose.

#### **31.18(2) *Application and fee.***

*a.* The applicant ~~shall~~must file an application for a foreign legal consultant license with the National Conference of Bar Examiners through ~~their~~its online character and fitness application process, at ~~http://www.ncbex.org/ea,~~ unless an exception is granted by the ~~Office of Professional Regulation~~office of professional regulation. The applicant ~~shall~~must pay the investigative fee required by the National Conference of Bar Examiners at the time of filing the application.

*b.* In addition, the applicant ~~shall~~must file the following documents and fee with the ~~Office of Professional Regulation~~office of professional regulation:

(1) A certificate from the professional body or public authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted, certifying the applicant's admission to practice, date of admission, and good standing as a lawyer or counselor at law or the equivalent, and certifying that the applicant has not been disciplined and no charges of professional misconduct are pending; ~~or~~ identifying any disciplinary sanctions that have been imposed upon the applicant or any pending charges, complaints, or grievances;

(2) A letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction in the foreign country in which the applicant is admitted;

(3) Duly authenticated English translations of the certificate required by rule 31.18(2)(b)(1) and the letter required by rule 31.18(2)(b)(2) if they are not in English;

(4) The requisite documentation establishing the applicant's compliance with the immigration laws of the United States;

(5) Other evidence as the supreme court may require regarding the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of rule 31.18(1); ~~and.~~

(6) An administrative fee of ~~\$500~~\$800 payable to the ~~Office of Professional Regulation~~office of professional regulation at the time the application is filed.

**31.18(3) Scope of practice.** A person licensed to practice as a foreign legal consultant under this rule may render legal services in this state, but ~~shall~~will not be considered admitted to practice law here, ~~or may not~~ in any way hold himself or herself out as a member of the bar of this state, ~~or and may not~~ do any of the following:

a. Appear as a lawyer on behalf of another person in any court, or before any magistrate or other judicial officer, in this state, ~~(except when admitted pro hac vice pursuant to Iowa Ct. R. Court Rule 31.14);~~

b. Prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;

c. Prepare:

(1) Any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof; ~~or.~~

(2) Any instrument relating to the administration of a decedent's estate in the United States of America;

d. Prepare any instrument in respect of the marital or parental relations, rights, or duties of a resident of the United States of America, or the custody or care of the children of such a resident;

e. Render professional legal advice on the law of this state or of the United States of America, ~~(whether rendered incident to the preparation of legal instruments or otherwise);~~

f. Carry on a practice under, or utilize in connection with such practice, any name, title, or designation other than one or more of the following:

(1) The foreign legal consultant's own name;

(2) The name of the law firm with which the foreign legal consultant is affiliated;

(3) The foreign legal consultant's authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of that country; ~~and.~~

(4) The title "foreign legal consultant," which may be used in conjunction with the words "admitted to the practice of law in [name of the foreign country of his or her admission to practice]."

**31.18(4) Rights and obligations.** Subject to the limitations listed in rule 31.18(3), a person licensed under this rule ~~shall~~will be considered a foreign legal consultant affiliated with the bar of this state and ~~shall~~will be entitled and subject to:

a. The rights and obligations set forth in the Iowa Rules of Professional Conduct or arising from the other conditions and requirements that apply to a member of the bar of this state under the Iowa Court Rules; ~~and.~~

b. The rights and obligations of a member of the bar of this state with respect to:

(1) Affiliation in the same law firm with one or more members of the bar of this state, including by:

1. Employing one or more members of the bar of this state; ~~;~~

2. Being employed by one or more members of the bar of this state or by any partnership {or professional corporation} that includes members of the bar of this state or that maintains an office in this state; ~~and.~~

3. Being a partner in any partnership {or shareholder in any professional corporation} that includes members of the bar of this state or that maintains an office in this state; ~~and.~~

(2) Attorney-client privilege, work-product privilege, and similar professional privileges.

**31.18(5) Discipline.** A person licensed to practice as a foreign legal consultant under this rule ~~shall~~will be subject to professional discipline in the same manner and to the same extent as members of the bar of this state. To this end:

a. Every person licensed to practice as a foreign legal consultant under this rule:

(1) ~~Shall~~Will be subject to the jurisdiction of the supreme court and the Iowa Supreme Court Attorney Disciplinary Board and to reprimand, suspension, removal, or revocation of his or her license to practice by the supreme court and ~~shall~~will otherwise be governed by the Iowa Rules of Professional Conduct and the Iowa Court Rules; ~~and.~~

(2) ~~Shall~~Must execute and file with the clerk of the supreme court, in the form and manner as the court may prescribe:

1. A commitment to observe the Iowa Rules of Professional Conduct and the Iowa Court Rules to the extent applicable to the legal services authorized under rule 31.18(3);

2. A written undertaking to notify the court of any change in the foreign legal consultant's good standing as a member of the foreign legal profession referred to in rule 31.18(1)(a) and of any final action of the professional body or public authority referred to in rule 31.18(2)(b)(1) imposing any disciplinary reprimand, suspension, or other sanction upon the foreign legal consultant; ~~and.~~

3. A duly acknowledged instrument in writing, providing the foreign legal consultant's address in this state and designating the clerk of the supreme court as his or her agent for service of process. The foreign legal consultant ~~shall~~must keep the ~~Office of Professional Regulation~~office of professional regulation advised in writing of any changes of address in this jurisdiction. In any action or proceeding brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within this state or to residents of this state, service ~~shall~~will first be attempted upon the foreign legal consultant at the most recent address filed with the clerk. Whenever after due diligence service cannot be made upon the foreign legal consultant at that address, service may be made upon the clerk. Service made upon the clerk in accordance with this provision is effective as if service had been made personally upon the foreign legal consultant.

b. Service of process on the clerk under rule 31.18(5)(a)(2)~~“3”~~(3) ~~shall~~must be made by personally delivering to the clerk’s office, and leaving with the clerk, or with a deputy or assistant authorized by the clerk to receive service, duplicate copies of the process. The clerk ~~shall~~must promptly send one copy of the process to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the foreign legal consultant at the most recent address provided in accordance with rule 31.18(5)(a)(2)~~“3.”~~(3).

**31.18(6) Required fees and annual statements.** A person licensed as a foreign legal consultant ~~shall~~must pay a \$200 registration fee to the Client Security Commission. The person licensed under this rule ~~shall~~must file an annual statement and pay the annual disciplinary fee as required by Iowa ~~Ct. Rs.~~Court Rules 39.5 and 39.8.

**31.18(7) Revocation of license.** If the supreme court determines that a person licensed as a foreign legal consultant under this rule no longer meets the requirements for licensure set forth in rule 31.18(1)(a) or (b), it ~~shall~~will revoke the foreign legal consultant’s license.

**31.18(8) Admission to bar.** If a person licensed as a foreign legal consultant under this rule is subsequently admitted as a member of the bar of this state under the rules governing admission, that person’s foreign legal consultant license ~~shall~~will be deemed superseded by the license to practice law as a member of the bar of this state.

### **Rule 31.19 Certification and pro bono participation of emeritus attorneys.**

**31.19(1) Purpose.** ~~The following~~This rule establishes the emeritus attorneys pro bono participation program.

#### **31.19(2) Definitions.**

a. *Emeritus attorney.* An “emeritus attorney” is any person who is admitted to practice law in Iowa and is on inactive, active, or retired status at the time of application, or who is or was admitted to practice law before the highest court of any other state or territory of the United States or the District of Columbia, and:

- (1) Does not have a pending disciplinary proceeding;
- (2) Has never been disbarred or had a license to practice law revoked in any jurisdiction;
- (3) Agrees to abide by the Iowa Rules of Professional Conduct and submit to the jurisdiction of the Iowa Supreme Court, the Iowa Supreme Court Attorney Disciplinary Board, and the Iowa Supreme Court Grievance Commission for disciplinary purposes;
- (4) Neither requests nor accepts compensation of any kind for the legal services to be rendered under this chapter; ~~and~~
- (5) Is certified under this rule.

b. *Active.* For purposes of this rule, “active” describes lawyers with the status of corporate, full-time, part-time, government, judge, or military service for purposes of the Client Security Commission.

c. *Approved legal aid organization.* For purposes of this rule, an “approved legal aid organization” ~~shall include~~includes a program sponsored by a bar association, law school, or a not-for-profit legal aid organization, approved by the Iowa Supreme Court, whose primary purpose is to provide legal representation to low-income persons in Iowa. A legal aid organization seeking approval from the court for the purposes of this rule ~~shall~~must file a petition



with the ~~Office of Professional Regulation~~ office of professional regulation certifying that it is a not-for-profit organization and reciting with specificity:

- (1) The structure of the organization and whether it accepts funds from its clients;
- (2) The major sources of funds the organization uses;
- (3) The criteria used to determine potential clients' eligibility for legal services the organization performs;
- (4) The types of legal and nonlegal services the organization performs;
- (5) The names of all members of the Iowa bar the organization employs or who regularly perform legal work for the organization;
- (6) The existence and extent of malpractice insurance that will cover the emeritus attorney;
- (7) The number of attorneys on the organization's board of directors; ~~and~~
- (8) The availability of in-house continuing legal education.

**31.19(3) Activities.**

*a. Permissible activities.* An emeritus attorney, in association with an approved legal aid organization, may perform the following activities:

(1) The emeritus attorney may appear in any court or before any administrative tribunal in this state on behalf of a client of an approved legal aid organization.

(2) The emeritus attorney may prepare pleadings and other documents to be filed in any court or before any administrative tribunal in this state in any matter in which the emeritus attorney is involved. Such pleadings ~~shall~~must include the attorney's status as emeritus attorney and the name of the approved legal aid organization, except as permitted by Iowa Rule of Civil Procedure 1.423.

(3) The emeritus attorney may provide advice, screening, transactional, and other activities for clients of approved legal aid organizations.

*b. Determination of nature of participation.* The presiding judge or hearing officer may, in the judge's or officer's discretion, determine the extent of the emeritus attorney's participation in any proceedings before the court.

**31.19(4) Supervision and limitations.**

*a. Supervision by attorney.* An emeritus attorney must perform all activities authorized by this chapter under the general supervision of the approved legal aid organization.

*b. Representation of status.* Attorneys permitted to perform services under this chapter may only hold themselves out as emeritus attorneys.

*c. Payment of expenses and award of fees.* The prohibition against compensation for the emeritus attorney contained in rule 31.19(2)(a)(4) ~~shall~~does not prevent the approved legal aid organization from reimbursing the emeritus attorney for actual expenses incurred while rendering services under this chapter or from paying continuing legal education attendance fees on behalf of the emeritus attorneys, nor ~~shall~~does it prevent the approved legal aid organization from making such charges for its services as it may otherwise properly charge. The approved legal aid organization ~~shall be~~is entitled to receive all court-awarded attorneys' fees for any representation rendered by the emeritus attorney.

**31.19(5) Certification.** Permission for an emeritus attorney to perform services under this chapter ~~shall become~~ is effective upon filing with and approval by the ~~Office of Professional Regulation~~ office of professional regulation of:

a. A certification from an approved legal aid organization stating that the emeritus attorney is currently associated with that legal aid organization and that all activities of the emeritus attorney will be under the general supervision of the legal aid organization;

b. A certificate from the highest court or agency in the state, territory, or district in which the emeritus attorney previously has been licensed to practice law, certifying that the emeritus attorney is in good standing, does not have a pending disciplinary proceeding, and has never been disbarred or had the license to practice law revoked; ~~and~~.

c. A sworn statement from the emeritus attorney that the emeritus attorney:

(1) Relinquishes status as an inactive, active, or retired lawyer and requests placement in emeritus status for purposes of the Client Security Commission and Commission on Continuing Legal Education;

(2) Understands and will abide by the provisions of the Iowa Rules of Professional Conduct;

(3) Submits to the jurisdiction of the Iowa Supreme Court, the Iowa Supreme Court Attorney Disciplinary Board, and the Iowa Supreme Court Grievance Commission for disciplinary purposes; ~~and~~.

(4) Will neither request nor accept compensation of any kind for the legal services authorized under this chapter.

**31.19(6) Withdrawal of certification.**

a. *Withdrawal of permission to perform services.* Permission to perform services under this chapter ~~shall~~ must cease immediately upon the filing with the office of professional regulation of a notice either:

(1) From the approved legal aid organization stating that the emeritus attorney has ceased to be associated with the organization, which notice must be filed within 30 days after such association has ceased; or

(2) From the Iowa Supreme Court, in its discretion, at any time, stating that permission to perform services under this chapter has been revoked. A copy of such notice ~~shall~~ must be mailed by the office of professional regulation to the emeritus attorney involved and to the approved legal aid organization.

b. *Notice of withdrawal.* If an emeritus attorney's certification is withdrawn for any reason, the approved legal aid organization ~~shall~~ must immediately file a notice of such action in the official file of each matter pending before any court or tribunal in which the emeritus attorney was involved.

**31.19(7) Discipline.** In addition to any appropriate proceedings and discipline that may be imposed upon the emeritus attorney by the Iowa Supreme Court under the court's disciplinary rules, the Iowa Rules of Professional Conduct, or the Code of Iowa, the Iowa Supreme Court may, at any time, with or without cause, withdraw certification under this rule.

**31.19(8) Fees and annual statements.**

a. *Annual report to Client Security Commission.* A lawyer certified under this rule ~~shall~~ must file the annual questionnaire required by Iowa ~~Ct. R.~~ Court Rule 39.11 and the annual statement

required by Iowa ~~Ct. R.~~Court Rule 39.8(1); but ~~shall be~~is exempt from the annual disciplinary fee and fund assessment provided in Iowa ~~Ct. Rs.~~Court Rules 39.5 and 39.6.

*b. Annual ~~Report~~report to Commission on Continuing Legal Education.* A lawyer certified under this rule ~~shall~~must fulfill the continuing legal education attendance, reporting, and fee payment requirements set forth in Iowa ~~Ct. Rs.~~Court Rules 41.3 and 41.4. However, a lawyer ~~shall~~is not ~~be~~ required to comply with the continuing legal education requirements set forth in Iowa ~~Ct. R.~~Court Rule 41.3 for the calendar year in which the lawyer is first certified under this rule. The approved legal aid organization may pay the continuing legal education reporting fee on behalf of the emeritus attorney.

**Rules 31.20 to 31.24 Reserved.**

## CHAPTER 34 ADMINISTRATIVE AND GENERAL PROVISIONS

### GRIEVANCE COMMISSION AND ATTORNEY DISCIPLINARY BOARD

#### **Rule 34.1 Iowa Supreme Court Grievance Commission.**

**34.1(1)** There is hereby created the Iowa Supreme Court Grievance Commission (grievance commission) consisting of 25 attorneys from judicial election district 5C, 15 attorneys from judicial election district 5A, 10 attorneys from judicial election district 6, and 5 attorneys from each other judicial election district, to be appointed by the supreme court. The supreme court will designate one attorney as grievance commission chair. The supreme court will accept nominations for appointment to the grievance commission from any association of attorneys that maintains an office within the State of Iowa or any attorney licensed in Iowa. The grievance commission also consists of no fewer than 5 or more than ~~35~~45 laypersons appointed by the court. Members must serve no more than two three-year terms, and no member who has served two full terms is eligible for reappointment. A member serving as a primary or alternate member of a division of the grievance commission at the time the member's regular term ends must, nonetheless, continue to serve on that division until the division has concluded its duties with respect to the complaint for which the division was appointed.

. . . .

**34.1(3)** A grievance commission member must not represent, in any stage of ~~the~~an investigative or disciplinary ~~proceedings~~proceeding, any attorney against whom an ethical complaint is filed. A grievance commission member may represent an attorney in a malpractice, criminal, or other matter; however, the member must decline representation of the attorney in any stage of the investigative or disciplinary ~~proceedings~~proceeding and must not participate in any hearing or other proceeding before the grievance commission. These prohibitions extend to attorneys associated in a firm with a grievance commission member with respect to those cases in which the member participates or has participated as a member of a division or as an alternate.

**COMMENT:** Rule 34.1 formerly appeared at Iowa Court Rule 35.1. It is amended to delete the requirement for annual designation of the grievance commission chair. The requirement for administrative committee review of the annual grievance commission budget also is removed. Responsibility for formulation and submission of the annual budget for the grievance commission is addressed in chapter 49 of the Iowa Court Rules. Jurisdictional requirements are deleted from the rule and replaced by a reference to the new jurisdiction provision in rule 34.10.

**Rule 34.2 Grievance commission; vice chair duties.** The director of the office of professional regulation must designate a clerk and an assistant clerk for the grievance commission. The director of the office of professional regulation and the grievance commission chair must designate a vice chair. In the chair's absence or inability to act, the vice chair must perform all duties of the chair.

**COMMENT:** Rule 34.2 formerly appeared as Iowa Court Rule 36.1. It is amended to remove the specific designation of the assistant director for boards and commissions as the grievance commission clerk to provide more flexibility in assignment of duties within the office of professional regulation. The provision for short-form references to the grievance commission is moved to rule 34.1(1).

**Rule 34.3 Substitutions and vacancies on the grievance commission.**

**34.3(1)** In the absence of the grievance commission chair and vice chair or inability of the chair and vice chair to perform any of the duties provided in this chapter, the ~~grievance commission~~ director of the office of professional regulation may designate some other member as acting chair to perform the duties.

**34.3(2)** In the absence or inability of a division president to perform any of the duties provided in this chapter, the ~~division chair~~ may designate some other member as acting president to perform the duties. If a vacancy occurs in any division from any cause, the chair, vice chair, or acting chair of the grievance commission must fill the vacancy.

**COMMENT:** Rule 34.3 formerly appeared as Iowa Court Rule 36.16.

**Rule 34.4 Confidentiality of grievance commission.**

**34.4(1)** All records, papers, proceedings, meetings, and hearings of the grievance commission ~~will be~~ are confidential unless the grievance commission recommends that the supreme court reprimand the respondent or suspend or revoke the respondent’s license.

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**34.4(3)** Any other records and papers of the grievance commission concerning any complaint ~~must remain~~ are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent, the attorneys, or the attorneys’ agents involved in the proceeding before the grievance commission. The respondent, the attorneys, or the attorneys’ agents involved in the proceeding before the grievance commission must not disclose any records and papers of the grievance commission concerning any complaint to any third parties unless disclosure is required in the prosecution or defense of disciplinary charges. The confidential records and papers of the grievance commission concerning any complaint are not admissible in evidence in a judicial or administrative proceeding other than the formal grievance commission hearing under rule 36.17.

**34.4(4)** Every witness in every proceeding under this chapter must swear or affirm to tell the truth and not to disclose the existence of the ~~proceedings~~ proceeding or the identity of the respondent until the proceeding is no longer confidential.

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**34.4(7)** Nothing in this chapter prohibits the grievance commission from releasing any information regarding possible criminal violations to appropriate law enforcement authorities, wherever located, or to attorney disciplinary and bar admission authorities in other jurisdictions, or from releasing any information regarding possible violations of the Iowa Code of Judicial Conduct to the Commission on Judicial Qualifications.

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**COMMENT:** Rule 34.4 formerly appeared as Iowa Court Rule 36.18. Rule 34.4(8) is added to clarify application of the public disclosure rule to commission recommendations in cases involving respondents not licensed in Iowa.

**Rule 34.5 Retention of grievance commission records.**

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**34.5(2)** Notwithstanding any required destruction of documents, the grievance commission will permanently maintain a summary of all grievance matters containing the name of the respondent attorney, the disposition, and the respective dates on which the matter was opened and closed.

**COMMENT:** Rule 34.5 formerly appeared as Iowa Court Rule 36.19.

## ATTORNEY DISCIPLINARY BOARD

### **Rule 34.6 Iowa Supreme Court Attorney Disciplinary Board.**

**34.6(1)** There is hereby created the Iowa Supreme Court Attorney Disciplinary Board (disciplinary board). The disciplinary board consists of nine attorney members and three laypersons appointed by the supreme court. The supreme court will designate one of the attorneys as chair. The disciplinary board may appoint a vice chair who must perform all duties of the chair in the chair's absence or inability to act. The supreme court will accept nominations for appointment to the disciplinary board from any association of attorneys that maintains an office within the State of Iowa or any attorney licensed in Iowa. Members ~~must~~ may serve no more than two three-year terms, and no member who has served two full terms is eligible for reappointment. Disciplinary board members are appointed commissioners of the supreme court to initiate or receive and process complaints against any attorney within the jurisdiction of the disciplinary board as described in rule 34.10. Upon completion of any investigation, the board must either dismiss the complaint, admonish or reprimand the attorney, or file and prosecute the complaint before the grievance commission or any grievance commission division. The disciplinary board may additionally refer complaints involving attorneys who are not authorized to practice law in Iowa to the commission on the unauthorized practice of law.

**34.6(2)** A disciplinary board member must not represent, in any stage of ~~the an~~ an investigative or disciplinary ~~proceedings~~ proceeding, any attorney against whom an ethical complaint is filed. To avoid even the appearance of impropriety, a disciplinary board member should not represent any attorney in any malpractice, criminal, or other matter when it appears that the filing of an ethical complaint against that attorney is reasonably likely. These prohibitions extend to attorneys associated in a firm with a disciplinary board member.

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**34.6(4)** The director of the office of professional regulation must, at least 60 days prior to the start of each fiscal year or on a date otherwise specified by the supreme court, submit to the supreme court for its consideration and approval a budget covering the operations of the disciplinary board for the upcoming fiscal year. This budget must include proposed expenditures for staff, support staff, office space, equipment, supplies, and other items necessary to administer the responsibilities of the disciplinary board as set out in this chapter. Supreme court approval of the budget authorizes payment as provided in the budget. A separate bank account designated as the ethics operating account of the disciplinary fund must be maintained for payment of authorized expenditures as provided in the approved budget. ~~Moneys~~ Funds derived from the annual disciplinary fee set out in Iowa Court Rule 39.5 must be deposited in the ethics operating

account to the extent the supreme court authorizes each year for payment of the disciplinary board's authorized expenditures.

**COMMENT:** Rule 34.6 formerly appeared as Iowa Court Rule 35.2. It is amended to delete the requirement for annual designation of the disciplinary board chair. The requirement for an administrative committee for review and submission of the annual disciplinary board budget also is removed. Responsibility for formulation and submission of the annual budget for the disciplinary board is placed with the director of the office of professional regulation, which is consistent with the budget provisions for other boards and commissions of the office of professional regulation in chapter 49 of the Iowa Court Rules.

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**Rule 34.8 Retention of disciplinary board records.**

**34.8(1)** The disciplinary board must maintain files and records relating to allegations of misconduct by an attorney until destruction is authorized pursuant to the following schedule:

- a. Files and records relating to potential complaints the assistant director ~~dismisses~~ declines to open pursuant to rule 35.4(1) may be destroyed one year from the date of the last action on the file.
- b. Files and records relating to ~~all other~~ complaints the disciplinary board dismisses may be destroyed five years from the date of the last action on the file.
- c. All other files and records relating to allegations of respondent misconduct may be destroyed after death of the respondent.
- d. For purposes of this rule ~~34.8(1)~~, destruction of paper files is permitted immediately after the files have been transferred to computer storage.

**34.8(2)** Notwithstanding any required destruction of documents, the disciplinary board must permanently maintain a summary of all complaint matters containing the name of the complainant and the respondent, the disposition of the complaint, and the respective dates on which the complaint was opened and closed.

**COMMENT:** Rule 34.8 formerly appeared as Iowa Court Rule 35.29.

GENERAL DISCIPLINARY RULES OF  
GRIEVANCE COMMISSION AND DISCIPLINARY BOARD

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**Rule 34.10 Jurisdiction.**

**34.10(1)** *Attorneys admitted to practice.* Any attorney admitted to practice law in the State of Iowa, including any formerly admitted attorney with respect to acts committed prior to ~~resignation~~, suspension, disbarment, retirement, or transfer to inactive status or with respect to subsequent acts that amount to the practice of law or constitute a violation of the rules of this chapter or of the Iowa Rules of Professional Conduct or of any rules or code the supreme court subsequently adopts in lieu thereof, any attorney an Iowa court specially admits for a particular proceeding, and any attorney not admitted in Iowa who practices law or renders or offers to render any legal services in Iowa is subject to the disciplinary jurisdiction of the Iowa Supreme Court, the disciplinary board, and the grievance commission.

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### **Rule 34.15 Suspension on conviction of a crime.**

**34.15(1)** Upon the supreme court's receipt of satisfactory evidence that an attorney has pled guilty or nolo contendere to, or has been convicted of, a crime that would be grounds for license suspension or revocation, the court may temporarily suspend the attorney from the practice of law regardless of the pendency of an appeal. Not ~~less~~ fewer than 20 days prior to the effective date of the suspension, the attorney must be notified in writing, directed by restricted certified mail to the attorney's last address as shown by the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and at a designated place to show cause why such suspension should not take place. Any hearing will be informal and the strict rules of evidence will not apply. The court's decision ~~rendered~~ may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time.

**34.15(2)** Any attorney suspended pursuant to this rule must refrain, during the suspension, from all facets of ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; acting as a fiduciary; and when possible, ~~remove all~~ advertising of the attorney's services or holding out to the public that he or she is a licensed attorney. The suspended attorney may, however, act as a fiduciary for an estate, ~~including a~~ conservatorship, or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**34.15(3)** For good cause shown, the supreme court may set aside an order temporarily suspending an attorney from the practice of law as provided above upon the attorney's application and a hearing in accordance with rule 34.25, but such reinstatement does not terminate a pending disciplinary proceeding or bar later proceedings against the attorney.

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### **Rule 34.16 Suspension or disbarment on consent.**

**34.16(1)** An attorney subject to investigation or to a pending proceeding involving allegations of misconduct subject to disciplinary action may acquiesce to suspension or disbarment, but only by ~~delivering to~~ filing with the grievance commission an affidavit stating that the attorney consents to suspension of not more than a specific duration or to disbarment and indicating the following:

*a.* The consent is freely and voluntarily given without any coercion or duress and with full recognition of all implications of the consent.

*b.* The attorney is aware of a pending investigation or proceeding involving allegations that there exist grounds for discipline, the nature of which will be specifically set forth.

*c.* The attorney acknowledges the material facts of the alleged misconduct are true.

*d.* In the event proceedings were instituted upon the matters under investigation, or if existing proceedings were pursued, the attorney could not successfully defend against the proceedings ~~allegations~~.



e. The facts admitted in the affidavit would likely result in the suspension or revocation of the attorney's license to practice law.

f. Any matters in mitigation or aggravation of the alleged misconduct.

g. Consent to any alternative or additional sanctions as provided in rule 36.19.

**34.16(2)** The disciplinary board must file a response to the affidavit, indicating whether the board believes the misconduct admitted in the affidavit would ~~probably~~likely result in suspension or revocation of the attorney's license to practice law and citing any legal authorities supporting its conclusion.

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**34.16(4)** Any order suspending or disbaring an attorney on consent is a matter of public record. If the supreme court enters an order of suspension or disbarment, the affidavit and response will be ~~publicly disclosed~~made available to the public upon request.

COMMENT: Rule 34.16 formerly appeared as Iowa Court Rule 35.16.

### **Rule 34.17 Disability suspension.**

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

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**34.17(4)** Any attorney suspended pursuant to rule 34.17 must refrain, during the suspension, from all facets of ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; acting as a fiduciary; and when possible, ~~remove all~~ advertising of the attorney's services or holding out to the public that he or she is a licensed

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

.....

**34.17(6)**

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

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

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

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

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

**34.17(7)** Any suspended attorney is entitled to apply for reinstatement to active status once each year or ~~at~~upon the expiration of such shorter intervals as the supreme court may provide. The supreme court may reinstate an attorney suspended due to disability upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fully qualified to resume the practice of law. Upon the attorney's filing of an application for reinstatement, the supreme court may take or direct any action deemed necessary or proper to determine whether the suspended attorney's disability has been removed, including an examination of the attorney by qualified medical experts as the supreme court may designate. In its discretion the supreme court may direct that the attorney pay the expenses of the examination.

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

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

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

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

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

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**Rule 34.21 Suspension of attorney’s license for failure to comply with an obligation owed to or collected by the Iowa College Student Aid Commission.** An attorney who defaults on an obligation owed to or collected by the Iowa College Student Aid Commission (aid commission) may be subject to suspension of the attorney’s license to practice law in Iowa.

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**34.21(3) *Noncompliance certificate withdrawn.*** If the aid commission files a withdrawal of certificate of noncompliance, the supreme court will ~~enjoin~~ halt any proceedings pursuant to the certificate of noncompliance or, if necessary, will immediately reinstate the attorney’s license to practice law if the attorney is otherwise eligible under supreme court rules.

COMMENT: Rule 34.21 formerly appeared as Iowa Court Rule 35.21.

**Rule 34.22 Suspension of attorney’s license for failure to comply with an obligation owed to or collected by the ~~Centralized~~ Central Collection Unit of the Iowa Department of Revenue.**

An attorney who defaults on an obligation owed to or collected by the ~~Centralized~~ Central Collection Unit of the Iowa Department of Revenue (CCU) may be subject to suspension of the attorney's license to practice law in Iowa.

....

**34.22(3) *Noncompliance certificate withdrawn.*** If a withdrawal of the certificate of noncompliance is filed, the supreme court will ~~curtail~~ halt any proceedings pursuant to the certificate of noncompliance or, if necessary, will immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under supreme court rules.

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### **Rule 34.23 Suspension generally.**

**34.23(1)** In the event the supreme court suspends an attorney's license to practice law, the suspension continues for the minimum time specified in such order and until the supreme court approves the attorney's written application for reinstatement, if such application is required. In the order of suspension or by order at any time before reinstatement, the supreme court may require the suspended attorney to meet reasonable conditions for reinstatement including, but not limited to, passing the Multistate Professional Responsibility Examination.

**34.23(2)** An attorney whose license has been suspended for a period not exceeding 60 days is not required to file an application for reinstatement, and the court will order reinstatement of the attorney's license on the day after the suspension period expires, subject to the following exceptions:

*a.* The disciplinary board may file and serve within the suspension period an objection to the automatic reinstatement of the attorney. The filing of an objection stays the automatic reinstatement until the supreme court orders otherwise. If the disciplinary board files an objection, the supreme court will set the matter for hearing and the supreme court clerk must enter written notice in conformance with rule 34.25, except that the court may waive the requirement of a 60-day waiting period prior to the hearing date.

*b.* Automatic reinstatement will not be ordered until all costs assessed under rule 36.24 are paid and the reporting and fee payment requirements of rules 39.14(2), 39.17, and 41.10(2) are completed.

**34.23(3)** Any attorney suspended must refrain during such suspension from all facets of ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; acting as a fiduciary; and when possible, ~~remove all~~ advertising of the attorney's services or holding out to the public that he or she is a licensed attorney. Such suspended attorney may, however, act as a fiduciary for an estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**34.23(4)** Nothing in this rule precludes an attorney, law firm, or professional association from employing a suspended attorney to perform ~~only~~ such limited services as laypersons may ethically perform under all of the following conditions:

a. Notice of employment, together with a full job description, must be provided by the employer and ~~employee-suspended attorney~~ to the disciplinary board before employment commences.

b. The employer and ~~employee-suspended attorney~~ must verify and submit informational reports quarterly to the disciplinary board certifying that no aspect of the ~~employee's-suspended attorney's~~ work has involved the unauthorized practice of law.

c. A suspended attorney must not have direct or personal association with any client and must not disburse or otherwise handle funds or property of a client.

**COMMENT:** Rule 34.23 formerly appeared as Iowa Court Rule 35.13. Rule 34.23(2) is amended from former rule 35.13(2) to make clear that satisfaction of reinstatement requirements with the Commission on Continuing Legal Education and the Client Security Commission is a condition precedent to automatic reinstatement, as it is for reinstatement upon application. The rule also is amended to require curtailment of advertising, to the extent possible, during the period of suspension.

### **Rule 34.24 Notification of clients and counsel.**

**34.24(1)** In every case in which a ~~respondent~~an attorney is ordered to be disbarred or suspended, the ~~respondent-attorney~~ must do all of the following:

a. Within 15 days notify in writing the ~~respondent's-attorney's~~ clients in all pending matters of the need to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney.

b. Within 15 days deliver to all clients 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 for obtaining the papers and other property, 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 ~~respondent's-attorney's~~ disbarment or suspension and consequent disqualification to act as an attorney after the effective date of such discipline or transfer to disability inactive status.

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 with the disciplinary board copies of ~~the notices~~each notice sent pursuant to the requirements of this rule and proof of complete performance of the requirements. This is a condition for ~~application for readmission~~reinstatement to practice.

**34.24(2)** The times set forth in rules 34.24(1)(c) and 34.24(1)(g) are reduced to 15 days for respondents who are exempted from filing an application for reinstatement under rule 34.23.

**COMMENT:** Rule 34.24 formerly appeared as Iowa Court Rule 35.23.

## REINSTATEMENT

**Rule 34.25 Procedure on application for reinstatement.** Any person whose certificate to practice law in this state has been suspended may apply for reinstatement subject to the following rules:

**34.25(1) Application.**

a. A proceeding for reinstatement to the practice of law in Iowa must be commenced by written application to the supreme court filed with the supreme court clerk not more than 60 days prior to expiration of the suspension period.

b. The application must state the date of the applicant's original admission, the date and duration of suspension, and that the applicant has complied in all respects with any orders or judgments of the supreme court relating to the suspension.

c. The application must be verified by the oath of the applicant as to the truth of the statements made in the application.

d. The applicant must also submit to the supreme court satisfactory proof that the applicant, at the time of the application, is of good moral character and in all respects worthy of the right to practice law. The application must be accompanied by the recommendation of at least three reputable attorneys currently practicing law in the judicial district in which the applicant then lives and has lived at least one year prior to filing the application. If the applicant does not reside in the district in which the applicant lived at the time of the suspension, the applicant must also file a recommendation from three ~~reputable~~ attorneys in good standing and currently practicing law in the district where the applicant resided at the time of suspension. The required recommendations may not be from judges or magistrates.

e. The applicant must also submit satisfactory proof that the applicant, at the time of the application, has filed all reports, paid all fees, and completed all continuing legal education requirements of chapters 39, 41, and 42 of the Iowa Court Rules.

f. The applicant must submit satisfactory proof that the ~~Client~~ Clients' Security Trust Fund of the Bar of Iowa is repaid in full for all client security conduct or that the Client Security Commission has approved a repayment plan.

**34.25(2) Procedure.** Upon filing of the application and recommendations with the supreme court clerk, the clerk must give written notice containing the date of the suspension, the date of filing the application, and the date of the hearing set by the supreme court, which will be at least 60 days after the filing of such application for reinstatement, to the following persons ~~listed below~~:

- a. The attorney general.
- b. The county attorney where the applicant resides.
- c. The county attorney where the applicant resided at the time of suspension.
- d. The chair of the Iowa Board of Law Examiners.
- e. The assistant director for attorney discipline of the office of professional regulation.
- f. Each judge of the district in which the applicant resided at the time of suspension. The president of a local bar association where the applicant resides.
- g. The president of a local bar association where the applicant resides.
- h. The president of a local bar association where the applicant resided when the certificate was suspended.
- i. The president of The Iowa State Bar Association.

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**34.25(6) Decision.** The supreme court will ~~render~~issue its decision as soon as practicable after the hearing. The supreme court may require the applicant to meet reasonable conditions for reinstatement including, but not limited to, passing the Multistate Professional Responsibility Examination.

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**34.25(10) Iowa Board of Law Examiners' report.** After the application for reinstatement is filed with the supreme court clerk, the ~~disciplinary board~~Iowa Board of Law Examiners will file a report and recommendation with the supreme court regarding the applicant's character and fitness.

**34.25(11) Supreme court actions on application.** Upon review of the application for reinstatement from a revoked attorney, the supreme court may summarily deny the application, request further information, or set a hearing date and direct the supreme court clerk to give the notice provided under rule 34.25(12). The court may appoint a special master or a hearing panel to conduct the hearing. The hearing date must in no case be ~~less~~fewer than 60 days after the filing of the application for reinstatement. Any order denying reinstatement may state whether the attorney is allowed to file a future application and, if so, the minimum amount of time before the application may be filed.

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**34.25(16) Decision.**

a. The supreme court's decision will be determined by majority vote of those justices participating in the proceeding. Any special master or hearing panel appointed to conduct a hearing must file a report containing findings of fact with the supreme court clerk within 30 days after the hearing. The court's review of the record made before the special master or hearing panel will be de novo. An attorney's readmission to practice in another jurisdiction following revocation in Iowa is not binding on the decision of the supreme court on any application for reinstatement to practice in Iowa. The decision rests in the sole discretion of the supreme court.

b. The supreme court in its discretion may place conditions on reinstatement, including, but not limited to, passing the Iowa ~~Bar Examination~~bar examination. If the supreme court does not require the applicant to pass the bar examination, it will impose a requirement that the applicant must report up to 100 hours of continuing legal education. If the applicant refuses or fails to perform any of the conditions, the court may enter an order summarily denying the application or revoking the attorney's license, if admitted, without further hearing. The applicant must post a scaled score of at least 80 on the Multistate Professional Responsibility Exam (MPRE) as a condition of reinstatement. The MPRE score ~~may~~must be from a test taken no longer than three years prior to the date of filing of the application for reinstatement. An applicant may take the MPRE after the court's reinstatement decision, but the attorney will not be reinstated until the required score is filed.

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**34.25(19) Denial of reinstatement for default on student loan obligation.** An attorney who defaults on an obligation owed to or collected by the Iowa College Student Aid Commission (aid commission) may be denied reinstatement of the attorney's license to practice law in Iowa.

*a. Procedure.* The ~~College Student Aid Commission~~aid commission may file with the supreme court clerk any certificate of noncompliance that involves an attorney. Rule 34.21(1) governs the procedure, including notice to the attorney, except that the notice must refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an attorney's application for hearing, the district court clerk must schedule a hearing to be held within 30 days of the date of filing of the application. Rule 34.21(2) governs all matters pertaining to the hearing.

*c. Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court will ~~curtail~~halt any proceedings pursuant to the certificate of noncompliance or, if necessary, will immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible for reinstatement.

**34.25(20)** *Denial of reinstatement for failure to comply with an obligation owed to or collected by the ~~Centralized~~Central Collection Unit of the Iowa Department of Revenue.* An attorney who defaults on an obligation owed to or collected by the ~~Centralized~~Central Collection Unit of the Iowa Department of Revenue (CCU) may be denied reinstatement of the attorney's license to practice law in Iowa.

*a. Procedure.* The CCU may file with the supreme court clerk any certificate of noncompliance that involves an attorney. Rule 34.22(1) governs the procedure, including notice to the attorney, except that the notice must refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an attorney's application for hearing, the district court clerk must schedule a hearing to be held within 30 days of the date of filing of the application. Rule 34.22(2) governs all matters pertaining to the hearing.

*c. Noncompliance certificate withdrawn.* If a withdrawal of a certificate of noncompliance is filed, the supreme court will ~~curtail~~halt any proceedings pursuant to the certificate of noncompliance or, if necessary, will immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible for reinstatement.

**COMMENT:** Rule 34.25 formerly appeared as Iowa Court Rule 35.14.



**CHAPTER 35**  
**IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD**  
**RULES OF PROCEDURE**

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**Rule 35.2 Form of complaint.** Complaint forms, found in rule 35.15, must be available to the public from the disciplinary board. Complaints must be certified under penalty of perjury, except when filed by an officer of the court, and may include whatever ~~exhibits~~ supporting documents the complainant desires to submit.

**COMMENT:** Rule 35.2 formerly appeared as Iowa Court Rule 34.2. It is amended to conform an internal reference to the new rule numbers, and to reflect actual practice with respect to dissemination of complaint forms.

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**Rule 35.4 Procedure upon receipt of complaint.**

**35.4(1)** Upon receiving a complaint, the assistant director for attorney discipline must evaluate all information coming to his or her attention from the complaint or from any other sources alleging attorney misconduct or incapacity. The assistant director is authorized to decline to open an investigation of a complaint if the information, if true, would not constitute misconduct or incapacity or if the complaint is facially frivolous, stale, lacking in adequate factual detail, duplicative, ~~or is~~ outside the disciplinary board's jurisdiction, or does not otherwise reasonably warrant investigation. The disciplinary board may adopt policies to guide the assistant director in the exercise of this authority.

**35.4(2)** The disciplinary board must make a record indicating the date on which the complaint was filed, the name and address of the complainant, the name and address of the respondent, and a brief statement of the charges made. This record ultimately must show the final disposition of the matter when it is completed.

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**35.4(5)** A potential complaint declined pursuant to this rule may not be deemed a complaint for any purpose. A potential complaint declined pursuant to this rule will not be docketed under rule 35.4(2), and the disciplinary board or the respondent must not report or disclose the complaint to any person or authority for any reason.

**35.4(6)** A true copy of any complaint against a current member of the grievance commission or the disciplinary board involving alleged violations of an attorney's oath of office or of the Iowa Rules of Professional Conduct or laws of the United States or State of Iowa must be promptly forwarded to the Chief Justice of the Iowa Supreme Court.

**COMMENT:** Rules 35.4(1) through 35.4(5) formerly appeared at Iowa Court Rule 34.4. Rule 35.4(6) formerly appeared as Iowa Court Rule 35.24(3). Rule 35.4 is amended to conform an internal reference to the new rule numbers.

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**Rule 35.6 Notification of respondent; response.**

**35.6(1)** The disciplinary board must forward to the respondent a copy of the complaint and copies of chapters 35 and 36 of the Iowa Court Rules. However, if ~~the~~ a potential complaint is

declined pursuant to rule 35.4(1), the disciplinary board need not notify the respondent and no response is required.

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**35.7(3) Failure to respond—temporary suspension.** If a response is not provided within 10 days of receipt of the notice issued pursuant to rule 35.7(1) or within the time allowed under rule 35.7(2), the disciplinary board must certify the respondent’s failure to respond to the supreme court clerk.

a. Upon receipt of the disciplinary board’s certificate, the supreme court clerk must issue a notice to the attorney that the attorney’s license to practice law will be temporarily suspended unless the attorney causes the board to file a withdrawal of the certificate within 20 days of the date of issuance of the clerk’s notice.

b. If the attorney responds to the complaint within the 20-day period, the disciplinary board must immediately withdraw the certificate and no suspension will occur.

c. If the disciplinary board has not withdrawn the certificate and the 20-day notice period expires, the court will enter an order temporarily suspending the attorney’s license to practice law in the State of Iowa.

d. If the attorney responds to the complaint after a temporary suspension order is entered, the disciplinary board must, within five days of receiving the response, either withdraw the certificate or file with the supreme court a report indicating that the attorney has responded but stating cause why the attorney’s license should not be reinstated and the suspension should be continued under the provisions of Iowa Court Rule 34.14, 34.15, or 34.16.

e. If the disciplinary board seeks to continue the suspension under the provisions of Iowa Court Rule 34.14, 34.15, or 34.16, the supreme court will either reinstate the attorney or enter an appropriate order under the applicable rule.

f. If the disciplinary board files a withdrawal of the certificate after temporary suspension of the attorney’s license, the supreme court will immediately reinstate the attorney’s license to practice law if the attorney is otherwise eligible under the rules of the court.

g. During the initial 30 days of a temporary suspension under this rule, the attorney must give the notice Iowa Court Rule 34.24 requires to those clients whose interests may be adversely affected by the attorney’s suspension.

h. When the suspension period under this rule exceeds 30 days, the attorney must comply with the requirements of Iowa Court Rule 34.24 as to all clients.

i. An attorney whose license is suspended under the provisions of rule 35.7(3)(c) must pay a fee of \$100 to the office of professional regulation as a condition precedent to reinstatement.

**COMMENT:** Rule 35.7 formerly appeared as Iowa Court Rule 34.7. It is amended to conform internal references to the new rule numbers.

**Rule 35.8 Disciplinary board actions upon receipt of response.**

**35.8(1)** Upon receipt of a response, the disciplinary board must do one of the following:

a. Dismiss the complaint and notify the complainant and the respondent of the dismissal in writing.

b. Cause the case to be docketed for disciplinary board consideration at its next hearing-meeting.

c. Arrange for ~~either~~ the disciplinary board’s counsel or ~~a local bar association~~ another entity to investigate the complaint as the board chair or the chair’s designee deems appropriate.

(1) All investigations done by a person or entity other than the disciplinary board's counsel or its in-house staff must be done in a manner as directed by and under the supervision of the board.

(2) The results of the investigation must be forwarded to the disciplinary board with any recommendation for the board's final action.

**35.8(2)** The disciplinary board has subpoena power during any investigation conducted on its behalf to compel the appearance of witnesses or the production of documents before the person or entity designated to conduct the investigation on behalf of the board.

**35.8(3)** The disciplinary board chair, or any other board member in the absence of the chair, has authority to issue subpoenas.

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**Rule 35.11 Hearing-meetings.** The disciplinary board must hold hearing-meetings at least quarterly and may hold them telephonically. A majority of the disciplinary board constitutes a quorum. The chair, or the chair's designee, must see to the preparation of a record of hearing-meetings, which becomes a part of the permanent files of the supreme court. Any evidence must be taken under oath or affirmation and may be made of record. Upon completion of the consideration of any matter before the disciplinary board, the members, by majority vote of those present, must do one of the following:

**35.11(1)** Continue the matter.

**35.11(2)** Dismiss the complaint and notify the complainant and the respondent of the dismissal.

**35.11(3)** Admonish the respondent, who must be notified in writing that the respondent has 30 days from the date of mailing to file an exception with the assistant director for attorney discipline, who upon receipt of the exception must then ~~refer~~return the admonition to the disciplinary board. The disciplinary board may dismiss, admonish, reprimand, or file a formal complaint with the grievance commission. In cases of admonition, the disciplinary board must notify the complainant of the board's opinion concerning the matter and its communication with the attorney involved.

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**Rule 35.12 Reprimand.** If the disciplinary board reprimands an attorney, a copy of the reprimand must be filed with the grievance commission clerk, who must cause a copy of the reprimand to be served on the attorney by personal service in the manner of an original notice in civil suits or by restricted certified mail with a notice attached stating that the attorney has 30 days from the date of completed service to file an exception to the reprimand with the grievance commission clerk. Service is complete on the date of personal service or the date shown by the postal receipt of delivery of the notice to the attorney.

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**35.12(2)** In the event the attorney files a timely exception to the reprimand, no report of the reprimand will be made to the supreme court clerk and the reprimand must be stricken from the grievance commission records.

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**Rule 35.13 Order for mental or physical examination or treatment.**

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**35.13(4) Review.** An attorney who disagrees with the disciplinary board's order may seek review from the supreme court by filing ~~nine copies of~~ a petition for review with the supreme court clerk and serving one copy of the petition on the disciplinary board within seven days after receipt of the board's order. The disciplinary board may file ~~nine copies of~~ a response to the petition with the supreme court clerk and serve one copy of the response on the attorney within seven days after service of the petition. The matter will be promptly set for hearing before one or more justices of the supreme court. The disciplinary board's order is stayed upon the filing of the petition for review.

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**35.13(7) "Condition."** For purposes of this rule, "condition relating to the attorney's impairment" means any physiological, mental or psychological condition, impairment, or disorder, including ~~drug or alcohol addiction or abuse~~ substance-related disorder.

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#### **Rule 35.14 Deferral of further proceedings.**

**35.14(1) Deferral.** With agreement of the assistant director for attorney discipline and the attorney, the board may defer further proceedings pending the attorney's compliance with conditions the board imposes for supervision of the attorney for a specified period of time not to exceed one year unless the board extends the time prior to the conclusion of the specified period. Proceedings may not be deferred under any of the following circumstances:

a. The conduct under investigation involves misappropriation of funds or property of a client or a third party.

b. The conduct under investigation involves a criminal act that reflects adversely on the attorney's honesty, trustworthiness, or fitness as an attorney in other respects.

c. The conduct under investigation resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person, unless restitution is made a condition of deferral.

~~d. The attorney has previously been disciplined or has been placed under supervision as provided in this rule.~~

~~e. The attorney has failed to respond to the disciplinary board's notices of complaint concerning the conduct under investigation.~~

**35.14(2) Conditions.** In imposing conditions, the disciplinary board must consider the nature and circumstances of the conduct under investigation and the history, character, and condition of the attorney. The conditions the disciplinary board may impose include, but are not limited to, the following:

a. Periodic reports to the ~~diversion coordinator and the~~ assistant director for attorney discipline.

b. Supervision of the attorney's practice or accounting procedures.

c. Satisfactory completion of a course of study.

d. Successful completion of the Multistate Professional Responsibility Examination.

e. Compliance with the provisions of the Iowa Rules of Professional Conduct.

f. Restitution.

g. Psychological counseling or treatment.

h. Substance-related disorder counseling or treatment.

- i. Abstinence from alcohol or drugs.
- j. Cooperation with the Iowa Lawyers Assistance Program.
- k. Fee arbitration.

**35.14(3) Affidavit.** Prior to the disciplinary board's deferral of further proceedings, the attorney

must execute an affidavit setting forth all of the following:

- a. The attorney's admission of the conduct under the disciplinary board's investigation.
- b. The conditions the disciplinary board will impose for supervision of the attorney, including the period of supervision.
- c. The attorney's agreement to the conditions to be imposed.
- d. An acknowledgement that the attorney understands that if the attorney fails to comply with the conditions the disciplinary board has imposed, a formal complaint may be filed with the grievance commission, both for the matters raised in the original complaint to the board and for the attorney's failure to comply with the conditions of supervision.
- e. A statement that, if the attorney fails to comply with the conditions of supervision, the attorney's admissions with respect to the attorney's conduct may be introduced as evidence in any subsequent proceedings before the disciplinary board or the grievance commission.
- f. An acknowledgement that the attorney joins in the disciplinary board's deferral determination freely and voluntarily and understands the nature and consequences of the board's action.

**35.14(4) Supervision.** The diversion coordinator, who may be the assistant director for attorney discipline, is responsible for supervising the attorney's compliance with the conditions the disciplinary board imposes. Where appropriate, the diversion coordinator may recommend to the disciplinary board modifications of the conditions and must report to the board the attorney's failure to comply with the conditions or to cooperate with the diversion coordinator.

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## CHAPTER 36 GRIEVANCE COMMISSION RULES OF PROCEDURE

### Rule 36.1 Complaints.

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**36.1(2)** Every complaint filed against an attorney with the grievance commission by the disciplinary board must be signed and sworn to by the disciplinary board chair and served upon the attorney as provided in rule 36.5. The complaints must be sufficiently clear and specific in their charges to reasonably inform the attorney against whom the complaint is made of the misconduct the attorney is alleged to have committed.

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**Rule 36.4 Grievance commission; divisions.** Grievance commission commissioners may act as a body or in such divisions as the grievance commission chair may direct. Each division must consist of five members. The chair must designate the personnel of each division for each complaint as required. The chair must appoint one member to serve as division president. The chair will select ~~one~~two additional ~~member~~members as ~~an alternate~~alternates.

**COMMENT:** Rule 36.4 formerly appeared as Iowa Court Rule 36.2.

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**Rule 36.6 Filing and service of documents.** All answers, motions, applications, petitions, and pleadings in connection with a complaint must be filed in duplicate. The grievance commission clerk must prepare and mail copies to the parties respondent, ~~the disciplinary board chair, attorneys of record,~~ and the grievance commission chair if the commission is sitting as a whole or to the grievance commission division president to whom the complaint has been referred. On ~~and after~~ the day fixed for hearing, the papers may be filed in duplicate with the grievance commission chair or the division president, who must notify all parties ~~and attorneys~~ of the filing and file a copy with the grievance commission clerk.

**COMMENT:** Rule 36.6 formerly appeared as Iowa Court Rule 36.11. It is amended to conform an internal reference to the new rule numbers and reduce duplication with rule 36.2.

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### Rule 36.8 Notices by complainant and respondent.

**36.8(1) Allegation of misappropriation or conversion.** If the complainant intends to assert that a respondent misappropriated or converted client or third-party funds in violation of rule 32:1.15 or chapter 45 of the Iowa Court Rules, the complainant must specifically allege in ~~its~~the complaint the respondent's misappropriation or conversion for personal use without a colorable future claim to the funds. The division president may for good cause shown allow amendment of the complaint to specifically allege misappropriation or conversion, provided the respondent is given notice of the amendment and an adequate opportunity to respond before the hearing commences. In granting leave to amend, the division president may impose terms and conditions, including a delay or continuance of the hearing.

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**COMMENT:** Rule 36.8 is a new rule, intended to require notice of an allegation of misappropriation and use of the colorable future claim defense in trust account conversion cases. In 2014, the supreme court discussed the advisability of specifically alleging misappropriation or conversion for personal use in the complaint so that the respondent has adequate notice. *Iowa Sup. Ct. Att’y Disciplinary Bd. v. Kelsen*, 855 N.W.2d 175 (Iowa 2014). The supreme court subsequently stated that a complaint alleging theft or misappropriation must “specifically allege misappropriation or conversion of a client retainer for personal use without a colorable future claim.” *Iowa Sup. Ct. Att’y Disciplinary Bd. v. Cepican*, 861 N.W.2d 841 (Iowa 2015). In another 2014 attorney discipline case, the supreme court addressed allocation of the burden of proof with respect to the so-called colorable future claim defense to conversion of client funds held in trust. The court decided to allocate the burden of coming forward with evidence of a colorable future claim to the respondent attorney, but left the burden of proving conversion with the attorney disciplinary board. *Iowa Sup. Ct. Att’y Disciplinary Bd. v. Carter*, 847 N.W.2d 228 (Iowa 2014). Rule 36.8 requires that the complainant specifically include in its complaint any allegation of misappropriation or conversion, and the rule incorporates a notice requirement for a respondent intending to assert the colorable future claim defense, similar to the notice requirements for alibi, insanity, diminished capacity, and other defenses described in Iowa Rule of Criminal Procedure 2.11(11). [Court Order January 26, 2016, effective April 1, 2016]

### **Rule 36.9 Challenge regarding impartiality; four-member divisions.**

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**36.9(2)** With the consent of the complainant and the respondent, a grievance commission division may consist of four members. If the four-member division is evenly divided between a recommendation of sanction ~~and~~ or dismissal, the division must enter a dismissal of the complaint pursuant to the provisions of rule 36.19. Upon such dismissal, the complainant may apply for permission to appeal pursuant to rule 36.22.

**COMMENT:** Rule 36.9 formerly appeared at Iowa Court Rule 36.13. It is amended to conform an internal rule reference to the new rule numbers.

### **Rule 36.10 Setting case for hearing; pretrial conference and scheduling order.**

**36.10(1)** After 30 days have elapsed from the date of service of the complaint and a grievance commission division is appointed to hear the matter, the grievance commission clerk must arrange a telephone conference with the division members and; the parties, ~~and the attorneys~~ to schedule the hearing, discovery, and other pretrial matters. Notice of the telephone conference must be provided at least 10 days prior to the scheduled telephone conference.

**36.10(2)** The hearing must be held not less than 60 days nor more than 90 days after service of the complaint. At least 10 days before the date set for the hearing, the grievance commission clerk must mail to all parties and ~~attorneys~~ division members a copy of the order setting the hearing. If a party does not participate in the scheduling conference, the grievance commission clerk must provide notice of the hearing to the party by restricted certified mail or personal service.

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**Rule 36.13 Discovery.** In any disciplinary proceeding or action taken by the disciplinary board, discovery is permitted as provided in Iowa Rules of Civil Procedure 1.501(2) and 1.501(3), 1.502 through 1.504, 1.505(2), 1.506, 1.508 through 1.517, 1.701, 1.704, 1.705, and 1.707 through 1.717. The attorney against whom a complaint is filed, in addition to the restriction stated in Iowa Rule of Civil Procedure 1.503(1), is not required to answer an interrogatory pursuant to Iowa Rule of Civil Procedure 1.509, a request for admission pursuant to Iowa Rule of Civil Procedure 1.510, a question upon oral examination pursuant to Iowa Rule of Civil Procedure 1.701, or a question upon written interrogatories pursuant to Iowa Rule of Civil Procedure 1.710, if the answer would be self-incriminatory. In addition,

evidence and testimony may be perpetuated as provided in Iowa Rules of Civil Procedure 1.721 through 1.728. If either party is to utilize discovery, it must be commenced within 30 days after service of the complaint. The grievance commission may permit amendments to the complaint to conform to the proof or to raise new matters as long as the respondent has notice and a reasonable time to prepare a defense prior to the date set for hearing. The grievance commission or any grievance commission division may receive an application and may enter an order to enforce discovery or to perpetuate any evidence. Discovery pursuant to this rule includes a respondent's right to obtain a copy of the disciplinary board's file pursuant to Iowa Court Rule 35.4(3)(4).

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### **Rule 36.15 Subpoenas.**

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**36.15(2)** Any attack on the validity of a subpoena must be heard or determined by the grievance commission chair, ~~or by the division president,~~ or any division member to whom a complaint has been referred. Any resulting order is not appealable prior to entry of the grievance commission final ruling, report, or recommendation. Disobedience of a grievance commission subpoena is punishable as contempt in the district court for the county where the hearing is to be held. A contempt proceeding is not a matter of public record.

**COMMENT:** Rule 36.15 formerly appeared as Iowa Court Rule 35.8. It is amended to conform an internal reference to the new rule numbers and to flow more logically.

### **Rule 36.16 Stipulated submissions.**

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**COMMENT:** Rule 36.16 formerly appeared as Iowa Court Rule 35.9. It is amended to conform an internal reference to the new rule numbers. In addition, more specific requirements for the content of stipulated submissions and more specific provisions regarding the effect of stipulations are included based on the decisions of *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Haskovec*, \_\_\_869 N.W.2d \_\_\_554 (Iowa 2015) and *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Gailey*, 790 N.W.2d 801 (Iowa 2010).

### **Rule 36.17 Conduct of hearing.**

**36.17(1)** At the time and place set for the hearing upon any complaint, the grievance commission or division must proceed to hear the evidence, ~~briefs of authorities,~~ and arguments of the parties. The hearing is not open to the public.

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**COMMENT:** The majority of rule 36.17 formerly appeared at Iowa Court Rule 36.14. Rules 36.17(3) and 36.17(4) formerly appeared at Iowa Court Rule 35.7. [Court Order January 26, 2016, effective April 1, 2016]

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### **Rule 36.19 Action upon complaint; report of decision.**

**36.19(1)** At the conclusion of a hearing upon any complaint against an attorney, the grievance commission may permit a reasonable time for the parties to file post-hearing briefs and arguments. The commissioners must dismiss the complaint, issue a private admonition, or recommend that the supreme court reprimand the respondent or suspend or revoke the respondent's license. If the commissioners recommend a reprimand, suspension, or revocation, they must file with the ~~supreme court clerk~~ grievance commission clerk a report of their findings of fact, conclusions of law, and recommendations within 60 days of the date set for filing of the last responsive brief and argument. The report must be titled in the name of



the complainant versus the accused attorney as respondent. As part of its report, the grievance commission may recommend additional or alternative sanctions such as restitution, costs, practice limitations, appointment of a trustee or receiver, passage of a bar examination or the Multistate Professional Responsibility Examination, attendance at continuing legal education courses, or other measures consistent with the purposes of attorney discipline. ~~The report must contain a proof of service showing it was served.~~ The clerk of the grievance commission must promptly file the report with the supreme court clerk and must serve the report upon the complainant and the respondent as provided in Iowa Rule of Appellate Procedure 6.701. The matter then stands for disposition in the supreme court.

**36.19(2)** All reports and recommendations of the commissioners must be concurred in by at least 3 members of the division or at least 12 members of the grievance commission, as the case may be, all of whom must have been present throughout the proceedings. Any commissioner has the right to file with the ~~supreme court clerk~~ grievance commission clerk a dissent from the majority determination or report. The clerk must promptly serve a copy of a dissent on the respondent parties.

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### **Rule 36.22 Appeal.**

**36.22(1)** Pursuant to rule 36.19, the respondent may appeal to the supreme court from the report or recommendation the grievance commission files. The respondent's notice of appeal must be filed with the grievance commission clerk within 10 days after service of the report or recommendation on the respondent. The respondent must serve a copy of the notice of appeal on the complainant ~~or complainant's counsel~~ pursuant to Iowa Rule of Appellate Procedure 6.701. Promptly after filing the notice of appeal with the grievance commission clerk, the respondent must mail or deliver a copy of the notice to the supreme court clerk.

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### **Rule 36.24 Costs.**

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**36.24(2)** Within 30 days of the filing of the grievance commission report, the clerk of the grievance commission must serve the complainant and the respondent with a bill of costs and file the bill with the supreme court clerk. An appeal does not obviate this requirement. The complainant and the respondent have 10 days from the date of service to file written objections with the supreme court and the grievance commission clerk. Any objections filed must be considered by the grievance commission division president or the president's designee. The president or the designee must rule on the objections within 10 days. The supreme court will consider the ruling and objections upon disposition of the matter under rule 36.21 or 36.22. The supreme court clerk must tax additional costs associated with an appeal as in other civil actions.

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**CHAPTER 37**  
**COMMISSION ON THE UNAUTHORIZED PRACTICE OF LAW**

Rule 37.1	Commission on the Unauthorized Practice of Law
Rule 37.2	Injunctions
Rule 37.3	Unauthorized practice of <del>non-admitted attorneys</del> <u>nonadmitted</u> <u>lawyers</u>
Rule 37.4	Domestic violence and sexual assault victim counselors
Rule 37.5	Limited real estate practice

## CHAPTER 37

### COMMISSION ON THE UNAUTHORIZED PRACTICE OF LAW

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

**37.1(1)** There is created a commission for the abatement of the unauthorized practice of law, which ~~shall be~~ known as the Commission on the Unauthorized Practice of Law (commission). This commission ~~shall comprise~~ comprises seven lawyer members and two nonlawyer members, all of who shall be whom are appointed by the supreme court. The supreme court ~~shall~~ may accept nominations for appointment to the commission from any association of lawyers ~~which that~~ maintains an office within the ~~state~~ State of Iowa or any ~~attorney~~ lawyer licensed in Iowa. The court ~~shall~~ will designate annually one lawyer commission member to be the chair. Members ~~shall~~ may serve no more than three three-year terms, and a member who has served three full terms ~~shall~~ is not be eligible for reappointment. The ~~commission shall~~ commission's purpose is to receive complaints and make investigations with respect to the alleged unauthorized practice of law within this state.

. . . .

**37.1(3)** Commission expenses must be paid from the disciplinary fee account of the ~~client security fund~~ Clients' Security Trust Fund of the Bar of Iowa. The director of the office of professional regulation must, annually on or before May 1 or on a date otherwise specified by the supreme court, submit a budget to the supreme court for the next fiscal year.

#### **Rule 37.2 Injunctions.**

. . . .

**37.2(2)** The complaint ~~shall~~ must be filed with the clerk of the district court, be given a docket number, and be captioned in the Iowa District Court for \_\_\_\_\_ County. The commission ~~shall~~ must be designated as the complainant. The respondent ~~shall~~ must be named and designated as the respondent. The complaint ~~shall~~ must be presented to the chief judge of the judicial district for entry of an order to be served on the respondent requiring that person to appear before the court and show cause why that person should not be enjoined from such activity. The show-cause hearing ~~shall~~ will be held before the chief judge or another judge designated by the chief judge.

**37.2(3)** If it appears that the facts are incapable of being adequately developed at a summary hearing, the matter may be set for trial before that judge, who ~~shall~~ will hear the evidence and make findings of fact and an appropriate dispositional order.

[Court Order April 17, 1990, effective June 1, 1990; November 9, 2001, effective February 15, 2002]

**Rule 37.3 Unauthorized practice of ~~non-admitted attorneys~~ nonadmitted lawyers.** If the commission makes a determination that any person who is admitted to practice in another jurisdiction but is not admitted to practice in this state has violated an injunction issued in compliance with rule 37.2, the commission ~~shall~~ must report its findings to the office of

professional regulation, and the court may, in its discretion, use such information for purposes of admissions under Iowa ~~Ct. R.~~ Court Rule 31.12.

**Rule 37.4 Domestic violence, ~~and sexual assault, and sexual abuse~~ victim counselors.**

**37.4(1)** In all proceedings under Iowa Code chapters 236, 236A, and 664A, a victim counselor, as defined in Iowa Code section 915.20A(1)(d), who is affiliated with a member domestic violence program of the Iowa Coalition Against Domestic Violence or a member of the sexual assault program of the Iowa Coalition Against Sexual Assault, and whose program has registered with the Iowa Coalition Against Domestic Violence or the Iowa Coalition Against Sexual Assault as providing services under this rule, ~~shall be~~ is allowed to do the following:

a. To distribute the pro se forms prescribed by the department of justice pursuant to Iowa Code ~~section~~ sections 236.3A and 236A.4 and to assist victims of domestic violence in the preparation of such forms.

b. To describe to victims the proceedings under chapters 236, 236A, and 664A and to assist them in their role as witnesses.

c. To accompany victims throughout all stages of proceedings under Iowa Code chapters 236, 236A, and 664A.

d. To attend all court proceedings, including sitting in chambers and at counsel table, to confer with the plaintiffs, and, at the judge's discretion, to address the court; however, domestic violence and sexual assault victim counselors ~~shall not~~ cannot examine witnesses, make arguments to the court, or otherwise act in a representative capacity for victims of domestic violence.

**37.4(2)** The Iowa Coalition Against Domestic Violence and the Iowa Coalition Against Sexual Assault ~~shall~~ must provide to the director of the office of professional regulation, on an annual basis and more frequently as necessary, an updated list of its member programs ~~which~~ that perform the services provided under this rule.

....

**Rule 37.5 Limited real estate practice.**

....

**37.5(2) Scope of practice authorized.** Except to the extent authorized by this rule, the selection, preparation, and completion of legal documents in connection with real estate transactions by nonlawyers constitutes the unauthorized practice of law unless the nonlawyer is acting on his or her own behalf as a buyer or seller.

a. Upon written request of a buyer or seller, a nonlawyer may select, prepare, and complete form documents for use incident to a residential real estate transaction of four units or less. Such documents ~~shall be~~ are limited to:

(1) Purchase offers or purchase agreements, provided the parties are given written notice that these are binding legal documents and competent legal advice should be sought before signing;

(2) Groundwater hazard statements; ~~and~~ ,

(3) Declaration of value forms.

~~Nonlawyers may not charge for preparation of the legal documents authorized by this rule.~~

b. Nonlawyers ~~shall not~~ cannot select, prepare or complete:

- (1) Deeds;<sub>2</sub>
- (2) Real estate installment sales contracts;<sub>2</sub>
- (3) Affidavits of identity or nonidentity;<sub>2</sub>
- (4) Affidavits of payment of spousal or child support;~~or~~<sub>2</sub>
- (5) Any other documents necessary to correct title problems or deficiencies.

c. Nonlawyers may not charge for preparation of the legal documents authorized by this rule.

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

Rule 38.1	Jurisdiction, authorization, and scope
Rule 38.2	Definitions
Rule 38.3	Officers
Rule 38.4	Meetings and quorum
Rule 38.5	Complaints to the commission
Rule 38.6	Investigation procedure
Rule 38.7	Determination following investigation
Rule 38.8	Confidentiality
Rule 38.9	Immunity

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

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

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

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

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

~~“Commission”~~ “Commission” means the Commission on the Unauthorized Practice of Law.

~~“Respondent”~~ “Respondent” is the person or entity whose conduct is the subject of a complaint to the commission or a proceeding in district court pursuant to Iowa ~~Ct. R.~~ Court Rule 37.2.

~~“Shall”~~ “Must” is mandatory and ~~“may”~~ “may” is permissive.

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

**Rule 38.4 Meetings and quorum.**

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

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

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

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

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

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

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

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

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

### **Rule 38.6 Investigation procedure.**

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

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

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

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

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

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

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

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

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

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



**Rule 38.7 Determination following investigation.** After the results of an investigation are returned

to the commission, the commission may do any of the following:

**38.7(1)** Close the file and so notify the complainant;~~or,~~

**38.7(2)** Contact the respondent to obtain an agreement by the respondent to cease and desist from the unauthorized practice of law;~~or,~~

**38.7(3)** Initiate an action pursuant to Iowa ~~Ct. R.~~ Court Rule 37.2.

**Rule 38.8 Confidentiality.**

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

**38.8(2)** Notwithstanding Iowa ~~Ct. R.~~ Court Rule 38.8(1):

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

*b.* The chairperson or other designee of the commission may issue one or more clarifying announcements when the subject matter of a complaint or petition is of broad public interest. No other member of the commission ~~shall~~ may make any public statement concerning any matter before the commission without prior approval of the commission.

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

*d.* Nothing in this chapter ~~shall prohibit~~ prohibits the commission from releasing information to its counsel.

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

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

## CHAPTER 39 CLIENT SECURITY COMMISSION

Rule 39.1	Client Security Commission
Rule 39.2	Principal executive officer
Rule 39.3	Clients' <del>security trust fund</del> <u>Security Trust Fund</u> of the <del>bar</del> <u>Bar</u> of Iowa
Rule 39.4	Audit—; banking—; budget
Rule 39.5	Annual disciplinary fee
Rule 39.6	Fund assessments
Rule 39.7	Exemption <del>and</del> ; retirement
Rule 39.8	Enforcement
Rule 39.9	Claims
Rule 39.10	Investigations <del>and</del> ; audits
Rule 39.11	Annual questionnaire
Rule 39.12	Investigations; audits, <del>and</del> ; annual questionnaire—; enforcement
Rule 39.13	Attorneys acting as fiduciaries
Rule 39.14	Reinstatement from exemption or suspension
Rule 39.15	Denial of reinstatement for failure to comply with certain obligations
Rule 39.16	Attorneys <del>Practicing</del> <u>practicing</u> in Iowa <del>Under</del> <u>under</u> the <del>Multijurisdictional Practice Rule</del> <u>multijurisdictional practice rule</u>
Rule 39.17	Collection of court costs and other fees
Rule 39.18	Requirement for death or disability designation and authorization

## 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,” (commission), which ~~shall have~~ has the duties and powers provided in this chapter.

**39.1(2) Duties of commission.** The commission ~~shall have~~ has 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~~ will 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~~ All subsequent appointments ~~shall~~ will be for a term of four years, and any commissioner who has served two full terms ~~shall not be~~ is not eligible for reappointment. A vacancy occurring during a term ~~shall~~ will be filled by the supreme court for the unexpired portion thereof.

**39.1(4) Organization and meetings.** The commissioners ~~shall~~ must 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~~ will be held at the call of the chair or of the majority of the commissioners. Five commissioners ~~shall~~ will 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~~ may 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~~ must serve without compensation but ~~shall~~ be entitled to reimbursement from the fund for their expenses reasonably incurred in the performance of their duties.

### **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~~must 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~~may 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~~requires.

e. Upon request of the commission, institute disciplinary proceedings before the grievance commission pursuant to chapter ~~35-36~~ of the Iowa Court Rules.

f. Perform such other functions and duties as may be directed by the supreme court.

**Rule 39.3 Clients' ~~security trust fund~~ Security Trust Fund of the ~~bar~~ 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"~~)(fund) is hereby authorized and created.

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

**39.3(3) Purpose.** The purpose of the fund ~~shall be~~is 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~~that 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~~also has 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~~must 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 ~~the Iowa public employees' retirement system~~ Public Employees' Retirement System); provided, however, the commission ~~shall not be~~is

not 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~~will 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 that~~ 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~~Authorization for payment of claims, however, shallmay 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~~ commission in connection with disciplinary proceedings based on attorney defalcations or which are initiated pursuant to rule 39.2(3)(e).

j. To fund programs ~~which that~~ the commission believes will assist in preventing defalcations by attorneys. The annual allocation for any such program ~~shall not~~ must 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~~are obligatory when rendered.

**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~~ must 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.

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**39.4(3) Budget.** At least 60 days prior to the commencement of each fiscal year or on a date otherwise specified by the supreme court, 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.

**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~~ must 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~~ is 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~~ is exempt from payment of this fee.

### **Rule 39.6 Fund assessments.**

**39.6(1) Assessments.** As a condition to continuing membership in the bar of Iowa, including the right to practice law before Iowa courts, every bar member, unless exempt or retired under the provisions of rule 39.6(6) or rule 39.7, ~~shall~~ must 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~~ is to be paid annually and deposited in the fund created pursuant to the provisions of rule 39.3. Assessments ~~shall be~~ are due on or before March 10 of each year, for that calendar year. A calendar year is defined as the period of time from January 1 through December 31.

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**39.6(3) Certificate of sufficiency.** The commission ~~shall~~ must determine the net value of the cash and securities in the fund as of December 1 of each year. The commission ~~shall~~ must 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~~ equals 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~~ will be payable for the next calendar year after the date of the certificate of sufficiency. This special assessment ~~shall~~ will 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~~ must 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~~ must pay to the commission a special assessment of \$70. Net income from the practice of law ~~shall be~~ is 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~~must pay to the commission a special assessment of \$70. However, a retired judge or justice recalled for temporary service ~~shall~~is 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~~must 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~~is exempt from any assessment under this rule.

### **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~~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~~will be required from such member unless the member thereafter engages in the practice of law in the ~~state~~State of Iowa, in which case the certificate of exemption ~~shall~~must without further order of court stand revoked, and the member ~~shall~~must 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~~must 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~~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~~Iowa Court 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~~must 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~~rules 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 following: examination of examining abstracts; consummation of consumating real estate transactions; preparation of preparing legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; as well as the representation of representing others in any Iowa courts; the right to represent others in any Iowa courts; or to regularly prepare preparing legal instruments; secure securing legal rights, advise advising others as to their legal rights or the effect of contemplated actions upon their legal rights, or to hold holding oneself out to so do; or to be one who instructs instructing others in legal rights; or to be and being 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.

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**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~~must, 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~~must 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~~must file the statement required by this rule at the time of admission but no annual fees or assessments ~~shall be~~ are payable until the time above provided. All attorneys failing to file the required statement by March 10 of each year ~~shall~~must, 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~~will 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~~schedule:

<del>Filed</del> <u>filed</u> :	Penalty:
After March 10 but before April 12	\$100
After April 11 but before May 12	\$150
After May 11 <u>but before June 12</u>	\$200
After June 11	\$250

**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.~~Rule of Civil Procedure 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 above for notice of delinquency.

**39.8(3)** Any attorney suspended pursuant to this chapter ~~shall~~must 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~~attorney.

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~~requirements of this rule.

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

**39.8(4)** Any attorney suspended pursuant to this chapter ~~shall~~must 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.

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**Rule 39.8(6) Copy of application for reinstatement.** An attorney who has been summarily suspended under this rule must file an application with the clerk of the supreme court for reinstatement, and a copy of said application must be forwarded to the director of the office of professional regulation and to the Iowa Supreme Court Attorney Disciplinary Board at least ten days prior to any action upon the application.

Comment: Rule 39.8(6) formerly appeared as Iowa Court Rule 40.7.

### **Rule 39.9 Claims.**

**39.9(1)** The commission ~~shall~~will 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~~The 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~~must 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~~ will 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~~ The claim did not 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~~ will 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~~ will be made, and the order in which payment ~~shall~~ will 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~~ may 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)** By regulation approved by the supreme court, ~~The the~~ commission ~~shall~~ must, ~~by regulation approved by the supreme court,~~ fix the maximum amount ~~which that~~ any one claimant may recover from the fund and the aggregate maximum amount ~~which that~~ 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~~ has any right in the fund as third-party beneficiary or otherwise. Reimbursement by claim on the fund ~~shall be~~ is 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~~ will 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~~ is 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~~ is inadmissible as evidence in any disciplinary or contempt proceeding.

### **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~~ must 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~~ must 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~~ that 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.~~ Court Rule 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~~ must promptly report such

circumstances to the commission. A copy of such report ~~shall~~must be furnished to the member affected.

**39.10(6)** ~~However, client~~Client trust funds and property held by an Iowa licensed attorney whose law office is situated in another state ~~shall~~are 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~~are 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~~Iowa Court 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~~Iowa Court Rule 34.135.1.

*d.* An attorney signatory on the account was suspended from practice under the provisions of chapter 35 of the Iowa Court Rules.

*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~~Iowa Court Rule 35.1734.17 or ~~35.18~~34.18 for an attorney signatory on the account.

*g-h.* An attorney signatory on the account was issued a certificate of noncompliance pursuant to rule~~Iowa Court Rule 34.20(1), 34.21(1), or 34.22(1)~~.

**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 39.11 Annual questionnaire.**

**39.11(1)** The director, under the supervision of the supreme court and the commission, ~~shall~~will 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~~The questionnaire may be, (but is not required to be), incorporated as a part of the annual statement provided in rule 39.8(1). This purpose of this questionnaire shallis to 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~~will be addressed as provided in rule 39.12.

**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~~the 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~~an answer 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 ~~35-36~~ 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~~must 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 ~~35-36~~ of the Iowa Court Rules or Iowa Code section 602.10123. If proceedings are initiated pursuant to chapter ~~35-36~~ 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~~has 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~~has the authority to issue a subpoena.

c. The district court for the county in which the investigation is being conducted ~~shall have~~has 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~~has authority to administer an oath or affirmation to a witness.

**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~~must 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~~will 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~~must 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.

....

~~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~~must pay all delinquent fees, assessments and late filing penalties due under rules 39.5, 39.6 ~~and 39.8, and 39.17~~, and a reinstatement fee of \$100.

**39.14(2)** An attorney who seeks or applies for reinstatement from suspension under ~~chapter 35~~chapters 34 or 36 of the Iowa Court Rules 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, and 39.17~~ 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.

....

**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-Central~~ Collection Unit of the Iowa 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-Central~~ Collection Unit of the Iowa Department of Revenue. The procedure ~~shall be~~is governed by ~~rule~~Iowa Court Rule 35.22~~34.22~~.

**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 Iowa College Student Aid Commission. The procedure ~~shall be~~ is governed by ~~rule Iowa Court Rule 35.21~~ 34.21.

**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~~ is governed by ~~rule 35.20~~ Iowa Court Rule 34.20.

**Rule 39.16 Attorneys ~~Practicing~~ practicing in Iowa ~~Under~~ under the ~~Multijurisdictional Practice Rule~~ 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~~ must 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 of the Iowa Court Rules, cooperate with investigations and audits under rule 39.10, and be subject to the provisions of rule 39.12 and 39.17.

**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~~ 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 or regaining 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.

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**Rule 39.18 Requirement for death or disability designation and authorization.**

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

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

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

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

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

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

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

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

a. A “*qualified attorney-servicing association*” is a bar association, all or part of whose members are admitted to practice law in the ~~state~~ State of Iowa; a company authorized to sell attorneys professional liability insurance in Iowa; or an Iowa bank with trust powers issued by the Iowa Division of Banking.

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

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



**CHAPTER 40**  
**REGULATIONS OF THE CLIENT SECURITY COMMISSION**

Rule 40.1	Definitions
Rule 40.2	Applications for reimbursement
Rule 40.3	Processing applications
Rule 40.4	Subrogation for reimbursement made
Rule 40.5	General purposes
Rule 40.6	General provisions
<del>Rule 40.7</del>	<del>Copy of application for reinstatement</del>

**CHAPTER 40**  
**REGULATIONS OF THE CLIENT SECURITY COMMISSION**

**Rule 40.1 Definitions.** For the purpose of this chapter, the following definitions shall apply:

The ~~“commissioner”~~ “Commissioner” shall ~~mean~~ means the commissioners of the Client Security Commission.

~~“Dishonest conduct”~~ shall ~~mean~~ “Dishonest conduct” means wrongful acts committed by a lawyer against a person in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

The ~~“fund”~~ shall ~~mean~~ “Fund” means the Clients’ Security Trust Fund of the Bar of Iowa.

A ~~“lawyer”~~ shall ~~mean~~ “Lawyer” means one who, at the time of the act complained of, had the right to practice law in the State of Iowa. The fact that the act complained of took place outside the ~~state~~ of Iowa does not necessarily mean that the lawyer was not engaged in the practice of law in ~~the state~~ of Iowa.

~~“Reimbursable losses”~~ “Reimbursable losses” means ~~are only~~ those losses as set out in Iowa Ct. R. Court Rule 39.9.

**Rule 40.2 Applications for reimbursement.**

**40.2(1)** The commissioners shall ~~must~~ prepare a form of application for reimbursement; ~~in.~~ In their discretion, the commissioners may waive a requirement that a request be filed on such form.

**40.2(2)** The form shall ~~must~~ require, at a minimum, the following information:

- a. The name and address of the lawyer.
- b. The amount of the alleged loss claimed.
- c. The date or period of time during which the alleged loss was incurred.
- d. Name and address of the party requesting reimbursement.
- e. The general statement of facts relative to the request for reimbursement.
- f. Verification by the party requesting reimbursement.

**40.2(3)** The form or application shall ~~must~~ contain the following statement in bold type:

~~“IN ESTABLISHING THE CLIENTS’ SECURITY TRUST FUND OF THE BAR OF IOWA THE SUPREME COURT OF IOWA DID NOT CREATE, NOR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS IN THE PRACTICE OF LAW. ALL REIMBURSEMENTS OF LOSSES OF THE CLIENTS’ SECURITY TRUST FUND SHALL BE A MATTER OF GRACE IN THE SOLE DISCRETION OF THE COMMISSIONERS ADMINISTERING THE FUND AND NOT AS A MATTER OF RIGHT. NO CLIENT OR ANY OTHER PERSON OR ORGANIZATION SHALL HAVE ANY RIGHT IN THE FUND AS A THIRD-PARTY BENEFICIARY OR OTHERWISE.”~~

**In establishing the Clients’ Security Trust Fund of the Bar of Iowa the Iowa Supreme Court did not create, nor acknowledge any legal responsibility for the acts of individual lawyers in the practice of law. All reimbursements of losses of the Clients’ Security Trust Fund of the Bar of Iowa are a matter of grace in the sole discretion of the commissioners**

**administering the fund and not a matter of right. No client or any other person or organization has any right in the fund as a third-party beneficiary or otherwise.**

**40.2(4)** Applications ~~shall~~must be in the form attached and ~~shall~~must be addressed to the Client Security Commission, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

**Rule 40.3 Processing applications.**

**40.3(1)** The ~~commission's chair shall~~ director of the office of professional regulation will cause each such application to be sent to the commissioners or other parties or organizations for investigation and report. A copy ~~shall~~must be served upon or sent by certified mail to the lawyer, at the lawyer's last-known address, who it is claimed committed the dishonest act. Whenever feasible, any investigative lawyer to whom such application is referred ~~shall~~must not practice in the county wherein the alleged defalcating attorney practiced. ~~From time to time, the chair may request of the applicant further information with respect to the alleged claim.~~

**40.3(2)** When, in the opinion of the person or persons to whom the application has been referred for investigation the application is clearly not for a reimbursable loss, no further investigation need be conducted, but a report with respect to such application ~~shall~~must be made to the commission.

**40.3(3)** The person or persons to whom a report is referred for investigation ~~shall~~will conduct such investigation as to them seems necessary and desirable in order to determine whether the ~~same claim~~ is for a reimbursable loss and in order to guide the commissioners in determining the extent, if any, to which the claim ~~shall~~must be reimbursed from the fund. Any information so obtained by the person or persons ~~shall~~will be used solely by or for the commissioners and ~~shall will otherwise constitute confidential information.~~ When information is received by the commission indicating an apparent violation of the criminal laws by a lawyer, such information ~~shall~~must be reported to the ~~supreme court for such action as the court deems necessary by letter addressed to the state court administrator enclosed in an envelope marked "CONFIDENTIAL."~~ attorney disciplinary board.

**40.3(4)** Reports with respect to applications ~~shall~~must be submitted by the ~~person or persons to whom they have been referred for investigation to the chair~~ director of the office of professional regulation to each member of the commission as soon as reasonably possible. ~~The chair shall summarize each report in detail as deemed necessary and shall send to each member of the commission a copy of such summary.~~

**40.3(5)** At the meetings of the commission the commissioners will conduct such investigation or review as seems necessary or desirable in order to determine whether the applications are for a reimbursable loss; and to guide the commissioners in determining the extent, if any, to which the applicant ~~shall~~may be reimbursed. After studying the summaries or applications to be processed, any commissioner may request that testimony be presented. Absent such recommendation or request, applications ~~shall~~will be processed on the basis of information contained in the report of the person or persons who investigated such application and in the summary. In all cases, the alleged defalcating attorney or the attorney's personal representative ~~shall~~must be given an opportunity to be heard by the commissioners if they so request.

**40.3(6)** The commission in its sole discretion ~~shall~~will determine the amount of loss, if any, for which any person ~~shall~~may be reimbursed from the fund. ~~{See Iowa Ct. R. 39.9(2)}~~. However, the maximum amount ~~which that~~ any one claimant may recover from the fund ~~shall be~~ is \$100,000 and the aggregate maximum amount which may be recovered from the fund because of the dishonest conduct of any one attorney ~~shall be~~ is \$300,000.

**Comment:** The November 26, 2013, amendments of claim reimbursement limits apply only to claims arising from attorney conduct occurring on or after January 1, 2014.

**Rule 40.4 Subrogation for reimbursement made.** In the event reimbursement is made to a person or organization, the fund ~~shall~~will be subrogated to ~~their~~the person's or organization's rights in said amount, and the fund may bring such action as is deemed advisable against the lawyer, the lawyer's assets or estate, either in the name of the person, or in the name of the Clients' Security Trust Fund of the Bar of Iowa. The party receiving funds shall be is required to execute a subrogation agreement in ~~said~~this regard. Upon commencement of an action by the fund pursuant to its subrogation rights, it ~~shall~~must advise the reimbursed party at the party's last-known address. ~~That~~The reimbursed party may then join in such action to press a claim for any loss in excess of the amount of the above reimbursement, but the fund shall will have first priority to any recovery on such suit.

**Rule 40.5 General purposes.** In any given case, the commissioners may waive technical adherence to these regulations in order to achieve the objectives of the fund.

**Rule 40.6 General provisions.** The annual report of the commissioners to the supreme court ~~shall be~~ is public information after it is filed with the court. Upon prior approval of the commission, such information as the commission may approve concerning payments made to applicants for reimbursement, including information with regard to the lawyer involved and the facts upon which the reimbursement is made, may be released as public information. Other than as set out above, other information regarding applications for reimbursement, payments made by the fund, or any actions of the commissioners ~~shall~~are not ~~be~~considered public information without the express prior approval of the court.

~~**Rule 40.7 Copy of application for reinstatement.** An attorney who has been summarily suspended under Iowa Ct. R. 39.8 must file an application with the clerk of the supreme court for reinstatement, and a copy of said application shall be forwarded to the director of the office of professional regulation and to the Iowa Supreme Court Attorney Disciplinary Board at least ten days prior to any action upon the application.~~

## 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~~will 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~~will be enforced.

### **Rule 41.2 Continuing legal education commission.**

**41.2(1)** There is hereby established a ~~commission on continuing legal education~~Commission on Continuing Legal Education (commission) consisting of 12 members. The supreme court ~~shall~~will appoint to the commission ~~ten~~10 resident members of this state who are currently licensed to practice law in the ~~state~~State of Iowa, and ~~two~~2 residents of this state who are not lawyers. The court ~~shall~~must designate from among the members of the commission a chair who ~~shall~~will 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~~All members, except for those appointed to fill unexpired terms, ~~shall be~~are appointed for a term of three years. No member ~~shall~~can serve more than two consecutive complete terms as a member of the commission. The supreme court ~~shall~~may adopt rules and regulations governing the operations and activities of the commission.

**41.2(2)** The commission ~~shall have~~has 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~~that 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>+</sup> not inconsistent with this chapter to govern the operations and activities of the commission. See chapter 42 of the Iowa Court Rules.
- 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;
- g. ~~to~~To present an annual budget and a recommended annual fee for costs of administering this chapter.
- g~~h~~. To report promptly to the supreme court concerning any violation of this chapter by any member of the bar of this state.

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<sup>+</sup> ~~See chapter 42 of the Iowa Court Rules.~~

~~hi. On~~ To file with the supreme court 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~~ will not be compensated but ~~shall~~ may be reimbursed for expenses incurred by them in the performance of their duties upon vouchers approved by the supreme court.

#### **Rule 41.3 Continuing legal education requirement.**

**41.3(1)** Each attorney admitted to practice in this state ~~shall~~ must 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~~ must include a minimum of 3 hours, every two calendar years, devoted exclusively to the area of legal ethics. Excess hours of education devoted to 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.

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#### **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~~ must 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~~ must make a written report to the commission, in such form as the commission ~~shall~~ prescribes, concerning completion of accredited legal education during the preceding calendar year; ~~provided, however,~~ However, that an attorney ~~shall~~ is 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 in this state. Each annual report ~~shall~~ must 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~~ must make a written report to the commission, in such form as the commission ~~shall~~ prescribes, 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~~ is 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~~ must, 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~~ must 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~~ schedule:

<del>Filed</del> <u>filed</u> :	Penalty:
After March 10 but before April 12	\$100
After April 11 but before May 12	\$150
After May 11 <u>but before June 12</u>	\$200
<u>After June 11</u>	<u>\$250</u>

....

**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.~~ Rule of Civil Procedure 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 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~~ 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~~ will 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~~ must 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~~ attorney.

*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~~ requirements of this rule.

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

**41.5(3)** Any attorney suspended pursuant to this chapter ~~shall~~ must 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(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~~ requirements or make the required reports.

**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~~ are deemed confidential and ~~shall~~ must not be disclosed, except in furtherance of ~~its~~ the commission's 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.

**Rule 41.7 Inactive practitioners.** A member of the bar who is not engaged in the practice of law in the ~~state~~ State of Iowa as defined in Iowa ~~Ct. R.~~ Court Rule 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~~ is permitted to 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 ~~heretofore~~ 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~~ Iowa Court Rules 39.7, 42.6, and this rule.

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

....

**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. rules~~ 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~~must 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. rules~~ 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.

**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-Central~~ Collection Unit of the Iowa 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-Central~~ Collection Unit of the Iowa Department of Revenue. The procedure ~~shall be~~is governed by ~~rule-Iowa Court Rule 35.22~~34.22.

**41.11(2)** *Denial of reinstatement for failure to comply with an obligation owed to or collected by the Iowa College Student Aid Commission.* The supreme court may deny a ~~lawyer's~~an attorney's application for reinstatement under ~~rule-Iowa Court Rule~~ 41.7 or 41.10 for failure to comply with an obligation owed to or collected by the Iowa College Student Aid Commission. The procedure ~~shall is~~be governed by ~~rule 35.21~~Iowa Court Rule 34.21.

**41.11(3)** *Denial of reinstatement for failure to comply with a support order.* The supreme court may deny a ~~lawyer's~~an attorney's application for reinstatement under ~~rule-Iowa Court Rule~~ 41.7 or 41.10 for failure to comply with a support order. The procedure ~~shall be~~is governed by ~~rule 35.20~~34.20.

**Rule 41.12 Basic skills course requirement.**

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**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~~will 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~~attorneys 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~~An attorney 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.

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**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-Iowa~~ Court 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-Iowa~~ Court Rule 42.3. Any provider of the Basic Skills Course is required to report attendance in the manner specified by the commission.

**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~~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~~State of Iowa and may not apply for reinstatement, but the member may be certified as an emeritus attorney under ~~rule-Iowa~~ Court 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~~must 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-rules~~ 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.

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

Rule 42.1	Definitions
Rule 42.2	Continuing legal education <del>requirement</del> <u>requirements</u>
Rule 42.3	Standards for accreditation
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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”~~ “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”~~ “Attorney” means any person licensed to practice law in the ~~state~~ State of Iowa.

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

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

(5) An ~~“hour”~~ “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”~~ “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”~~ “Unmoderated activity” means a ~~CLE~~ continuing legal education (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”~~ “Quorum” of the entire commission means six or more members of the commission.

(9) ~~“Moderated activity”~~ “Moderated activity” includes the following:

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 listing 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.

#### **Rule 42.2 Continuing legal education ~~requirement~~requirements.**

**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. Court Rule~~ 41.3(1). ~~Every two years~~ Each ~~each~~ attorney ~~shall~~ must also, ~~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~~ CLE 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)~~ 42.4.

**42.2(3)** Hours of continuing legal education credit may be awarded for preparation of an accredited continuing legal education presentation. ~~A lawyer~~ An attorney 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~~ An attorney who prepares written materials without making the presentation or serving on a panel of speakers.

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

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

d. ~~A lawyer~~An attorney 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.~~Court Rule 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.

### **Rule 42.3 Standards for accreditation.**

**42.3(1)** A ~~continuing legal education~~CLE 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 the attorneys or individuals should be considered experts concerning the subject matter of the program, and the activity 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~~according to its guidelines.

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### **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~~must 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~~must approve or deny such application in writing or by electronic mail within 30 days of receipt of such application. The application ~~shall~~must 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~~must pay to the commission a prescribed nonrefundable application fee for each activity. No application fee ~~shall~~is 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.

**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~~will be granted unless written application therefor ~~shall be~~is 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.

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**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~~must be applied first to the minimum educational requirement for the preceding year and ~~shall will then~~ 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.

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

**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~~must, prior to engaging in the practice of law in the ~~state~~State of Iowa as defined in Iowa ~~Ct. R.~~Court Rule 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~~\$100 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.~~Court Rule 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~~has been in effect for such applicant, but limited to a maximum requirement of 100 hours. The continuing legal education required for reinstatement ~~shall~~must 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~~was 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~~must furnish evidence of compliance with the requirements of rule 42.7(1)(b).

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**Rule 42.10 Hearings.** In the event of denial, in whole or in part, of any application, the applicant ~~shall have~~has the right, within 20 days after ~~the sending receipt~~ 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~~is 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.~~Court Rule 41.5(4) ~~shall~~must be before a quorum of the entire commission.

**Rule 42.11 Notice of failure to comply.** In the event an attorney fails to comply with the provisions of Iowa ~~Ct. R.~~Court Rule 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~~must notify ~~said the~~ attorney in writing of such apparent noncompliance and ~~said the~~ attorney ~~shall~~will have 15 days from the mailing of ~~said the~~ notice to cure ~~said the~~ failure to comply or make an appropriate application under rule 42.5. If the failure to comply is not cured or such application is not approved, the commission ~~shall~~must report promptly to the supreme court the failure of the attorney to comply with chapter 41 of the Iowa Court Rules.

## CHAPTER 43 LAWYER TRUST ACCOUNT COMMISSION

### Rule 43.1 Composition.

**43.1(1) *Members.*** The Lawyer Trust Account Commission ~~shall consist~~(commission) consists of seven members, four of whom ~~shall~~must be members of the bar of Iowa having their principal offices in this state. Three members ~~shall~~must be residents of this state who are not lawyers.

**43.1(2) *Appointment.*** The members ~~shall be~~ are appointed by the supreme court of Iowa.

**43.1(3) *Terms.*** The term of office ~~shall be for members is~~ is three years ~~except that two of the members first appointed shall serve for an initial term of one year and two of the members first appointed shall serve for an initial term of two years.~~ Each member ~~shall~~must continue to serve until a successor is appointed and qualified. No member may serve for longer than two successive terms and until a successor is appointed and qualified.

**43.1(4) *Vacancies.*** Vacancies ~~shall~~will be filled by appointment of a person to serve for the unexpired portion of the vacant term.

### Rule 43.2 Powers and duties.

**43.2(1) *General.*** The commission ~~shall have~~has general supervisory authority over the administration of these rules.

**43.2(2) *Receipt and investment of funds.*** The commission ~~shall receive~~receives funds from lawyers' interest-bearing trust accounts and ~~make~~makes appropriate temporary investments of such funds pending disbursement of them. The commission may also accept funds from other sources. All funds received ~~shall be~~ are held by the commission as an agency of the supreme court.

**43.2(3) *Disbursement of funds.*** The commission ~~shall~~must disburse funds received as follows:

*a.* Such sums as are necessary for the employment of staff and administration of activities authorized under these rules.

*b.* The remaining funds for the tax-exempt public purposes, which the supreme court may prescribe from time to time consistent with Internal Revenue Code regulations and rulings.

**43.2(4) *Records and reports.*** The commission ~~shall~~must maintain adequate books and records reflecting all transactions and ~~shall~~ submit quarterly reports of its financial and other activities to the supreme court. At least once a year, and at such additional times as the supreme court may order, the commission ~~shall~~must file with the supreme court a written report reviewing in detail the administration of the fund during the year together with an audit of the fund certified by an Iowa certified public accountant.

### Rule 43.3 Officers.

**43.3(1) *Chairperson.*** The supreme court ~~shall~~will designate from among the members of the commission a chairperson who will serve ~~as such~~ at the pleasure of the court.

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### Rule 43.4 Director.

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

**43.4(2) Duties.** The director ~~shall be~~ is responsible and accountable to the commission for the proper administration of these rules.

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**43.4(4) Records.** All information obtained by the commission in the administration of these rules ~~shall be~~ is public information, except that individual remittance reports with required attachments ~~shall be~~ are confidential unless directed by the court or chair to be made public. Individual remittance reports and attachments ~~shall~~ must be available for examination and reproduction by an officer or agent of the Client Security Commission, for purposes of carrying out duties under chapter 39 of the Iowa Court Rules.

**Rule 43.5 Compensation and expenses.** Members of the commission ~~shall~~ serve without compensation but ~~shall~~ may be paid their reasonable and necessary expenses incurred in the performance of their duties. All expenses of the operation of the commission ~~shall~~ must be paid from funds the commission receives from lawyers’ interest-bearing trust accounts or income earned thereon.

**Rule 43.6 Disposition of funds upon dissolution.** If the Lawyer Trust Account Commission is discontinued, any funds then on hand ~~shall~~ must be transferred to its successor agency or organization qualifying under the Internal Revenue Code, if any, for distribution for the purposes specified under rule 43.2 or, if there is no successor, to the general fund of the ~~state~~ State of Iowa.

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**CHAPTER 44**  
**LAWYER TRUST ACCOUNT COMMISSION GRANT CRITERIA**  
**AND GUIDELINES**

Rule 44.1	Interest on lawyers' trust account program (IOLTA)
Rule 44.2	Statement of purpose
Rule 44.3	Grant criteria
Rule 44.4	Eligible applicants
Rule 44.5	Rejection of grant applications
Rule 44.6	Grant applications are property of commission
Rule 44.7	Grantee costs
Rule 44.8	Inquiry
Rule 44.9	Copies of applications; signature
Rule 44.10	Prime grantee responsibility
Rule 44.11	Access to books and records
Rule 44.12	Contract terms
Rule 44.13	Project completion date
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Rule 44.15	Grant application procedures
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Rule 44.21	FORMS — Grant Application Forms
	Form 1: Cover Sheet
	Form 2: Summary of Grant Request
	Form 3: Financial Budget Form
	Form 4: Financial Budget Form — Personnel Costs
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	Form 6: Funding Sources
	Form 7: Legal Problem Categories
	Form 8: Program Activity
	Form 9: Nondiscrimination Statement
	Form 10: Checklist of Enclosures

## CHAPTER 44 LAWYER TRUST ACCOUNT COMMISSION GRANT CRITERIA AND GUIDELINES

### **Rule 44.1 Interest on lawyers' trust account program (IOLTA).**

**44.1(1)** The Lawyer Trust Account Commission (commission) was created by the supreme court to receive interest on lawyers' pooled trust accounts. Lawyers' pooled trust accounts hold client funds that are so small in amount or held for such a brief period that it is not possible for the funds to economically benefit the individual client. Previously, ~~attorneys'~~ lawyers' pooled trust accounts earned no interest. Effective July 1, 1985, an interest on lawyers' trust account program (IOLTA) was created to benefit charitable and educational interests. The commission has adopted grant criteria by which the interest earned will be disbursed. The commission reserves the right to change these criteria as it continues to assess how and where its funds might be best used.

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**44.1(3)** Grant applications are available from the commission at the following address:

Lawyer Trust Account Commission  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319  
(515) 725-8029

[http://www.iowacourts.gov/Professional Regulation/Attorney RegulationCommissions/IOLTA](http://www.iowacourts.gov/Professional%20Regulation/Attorney%20RegulationCommissions/IOLTA)  
The grantGrant applications will also be located on the Iowa Judicial Branch website of the Iowa Supreme Court.

### **Rule 44.2 Statement of purpose.**

**44.2(1)** The commission will use the interest earned on IOLTA accounts as directed by the supreme court. The funds are to be used for the tax-exempt public purposes, which the supreme court may prescribe from time to time consistent with Internal Revenue Code regulations and rulings.

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**Rule 44.3 Grant criteria.** The commission desires to make the best use of IOLTA funds and obtain maximum effect from each grant. The following guidelines, with exception where necessary, will be used to assist in the grant decision-making process:

**44.3(1)** The commission favors funding groups or organizations as opposed to individuals.

**44.3(2)** The commission favors challenge grants; or other types of fund-matching arrangements to leverage IOLTA money.

**44.3(3)** Grant applicants should, if possible, have sources of income in addition to the IOLTA funds requested. Generally, the commission does not intend to be the primary source of financial

support for a sustained period of time, and the applicant should demonstrate an ability to function eventually without the assistance of the commission.

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**Rule 44.4 Eligible applicants.** To be eligible to receive funds from the commission, an applicant must do all of the following:

**44.4(1)** Qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), or otherwise demonstrate the charitable purposes of the applicant organization and project.

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**44.4(7)** Unless exempted, agree to file with the commission, within 90 days after the end of the grant period, an audit of IOLTA funds received certified by a certified public accountant licensed to practice in Iowa.

....

**Rule 44.5 Rejection of grant applications.** The commission reserves the right to reject any or all grant applications ~~which~~that do not, in its opinion, meet the purposes of this program.

....

**Rule 44.11 Access to books and records.** The commission or any of its duly authorized representatives ~~shall~~must have access for purposes of audit and examination to ~~any~~ books, documents, papers, and records of the grantee.

**Rule 44.12 Contract terms.** The grant application must state when the grantee will start the project, which should be within 60 days of the award. If during the performance of the project the grantee deviates from the grant, the grant may, at the discretion of the commission, be terminated at any time. If a dispute arises in the performance of the grant ~~which~~that cannot be settled between the parties, the dispute ~~shall~~must be submitted to arbitration pursuant to Iowa Code chapter 679A.

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**Rule 44.15 Grant application procedures.** To aid in the comparative evaluation of proposals, all grant applications must contain the information set forth in rule 44.15(1) in the order listed.

**44.15(1) Organization and contents of proposal.**

a. Cover sheet (rule 44.21, Form 1).

b. Summary of grant request (rule 44.21, Form 2).

c. A written narrative proposal on 8<sup>1</sup>/<sub>2</sub> x 11 inch paper, not to exceed ten double-spaced typewritten pages, which sets forth:

(1)The objectives of the project~~/or~~or organization for which funds are requested.

(2)The methods by which the objectives are to be accomplished.

(3)The qualifications of key individuals responsible for the project~~/or~~or organization.

(4)The period of time expected to complete the project (if applicable).

(5) Whether support has been or is being requested from other funding sources.

(6) The audit mechanism ~~which~~ that will be utilized to provide accountability for the requested funds.

(7) The extent to which the program serves a reasonable number of clients, its service area, the nature and scope of legal services provided and its impact on the community's demonstrated needs.

(8) The extent to which two or more programs in the service area cooperate in the provision of legal assistance.

(9) The extent of participation from the bar within the program's service area ~~in the program~~.

(10) The extent to which the program has systems to assure the quality of services provided.

(11) The plans for evaluating the success of the project ~~or~~ organization in meeting the objectives.

(12) Such additional information as the applicant believes desirable.

*d.* Financial budget form (rule 44.21, Forms 3, 4, and 5).

*e.* Funding sources (rule 44.21, Form 6).

*f.* Legal problem categories (rule 44.21, Form 7).

*g.* Program activity (rule 44.21, Form 8).

*h.* Nondiscrimination statement (rule 44.21, Form 9).

*i.* Checklist of enclosures (rule 44.21, Form 10).

**44.15(2) Processing of grant applications.**

*a.* One written copy and one electronic copy of the application should be directed to the director of the office of professional regulation at the following addresses:

Lawyer Trust Account Commission  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319

[iolta@iowacourts.gov](mailto:iolta@iowacourts.gov)

*b.* The commission will make all recommendations on grant awards, subject to final approval by the supreme court.

~~*b.c.*~~ Applicant must submit one original written copy and one electronic copy of its proposal.

*d.* There can be no extensions of or exceptions to established deadlines.

~~*e.e.*~~ Grant awards will be announced by the supreme court or by the commission with the approval of the court.

**Rules 44.16 to 44.20 Reserved.**

## **CHAPTER 45**

### **CLIENT TRUST ACCOUNT RULES**

Rule 45.1	Requirement for client trust account
Rule 45.2	Action required upon receiving funds; <del>accounting</del> ; <del>and</del> ; records
Rule 45.3	Type of accounts and institutions where trust accounts must be established
Rule 45.4	Pooled interest-bearing trust account
Rule 45.5	Definition of “allowable monthly service charges”
Rule 45.6	Lawyer certification
Rule 45.7	Advance fee <del>and</del> ; expense payments
Rule 45.8	General retainer
Rule 45.9	Special retainer
Rule 45.10	Flat fee
Rule 45.11	Designation of successor signatories



## CHAPTER 45 CLIENT TRUST ACCOUNT RULES

**Rule 45.1 Requirement for client trust account.** Funds a lawyer receives from clients or third persons for matters arising out of the practice of law in Iowa ~~shall~~must be deposited in one or more identifiable interest-bearing trust accounts at a financial institution with a branch geographically located in Iowa. The trust account ~~shall~~must be clearly designated as “Trust Account.” No funds belonging to the lawyer or law firm may be deposited in this account except:

1. Funds reasonably sufficient to pay or avoid imposition of fees and charges that are a lawyer’s or law firm’s responsibility, including fees and charges that are not “allowable monthly service charges” under the definition in rule 45.5, may be deposited in this account; ~~or.~~

2. Funds belonging in part to a client and in part ~~presently~~currently or potentially to the lawyer or law firm must be deposited in this account, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion ~~shall~~must not be withdrawn until the dispute is finally resolved.

3. Other property of clients or third persons ~~shall~~must be identified as such and appropriately safeguarded.

### **Rule 45.2 Action required upon receiving funds; ~~accounting, and; records.~~**

**45.2(1) Authority to endorse or sign client’s name.** Upon receipt of funds or other property in which a client or third person has an interest, a lawyer ~~shall~~must not endorse or sign the client’s name on any check, draft, security, ~~or~~ evidence of encumbrance, ~~or~~ transfer of ownership of realty or personalty, or any other document without the client’s prior express authority. A lawyer signing an instrument in a representative capacity ~~shall~~must so indicate by initials or signature.

**45.2(2) Accounting and returning funds or property.** Except as stated in this chapter or otherwise permitted by law or by agreement with the client, a lawyer ~~shall~~must promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and ~~shall~~must promptly render a full accounting regarding such property.

#### **45.2(3) Maintaining records.**

a. A lawyer who practices in this jurisdiction ~~shall~~must maintain current financial records as provided in these rules and required by Iowa ~~R. of Prof. C.~~Rule of Professional Conduct 32:1.15 and ~~shall~~must retain the following records for a period of six years after termination of the representation:

(1) Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee, and purpose of each disbursement; ~~;~~

(2) Ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed; ~~;~~

(3) Copies of retainer and compensation agreements with clients as required by Iowa ~~R. of Prof.~~ Rule of Professional Conduct 32:1.5;

(4) Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) Copies of bills for legal fees and expenses rendered to clients;

(6) Copies of records showing disbursements on behalf of clients;

(7) The physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks provided by a financial institution;

(8) Records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient, and the trust account name or number from which money is withdrawn;

(9) Copies of monthly trial balances and monthly reconciliations of the client trust accounts maintained by the lawyer; ~~and~~

(10) Copies of those portions of client files that are reasonably related to client trust account transactions.

*b.* With respect to trust accounts required by Iowa ~~R. of Prof.~~ Rule of Professional Conduct 32:1.15:

(1) Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer ~~shall~~ may be an authorized signatory or authorize transfers from a client trust account;

(2) Receipts ~~shall~~ must be deposited intact and records of deposit should be sufficiently detailed to identify each item; ~~and~~

(3) Withdrawals ~~shall~~ must be made only by check payable to a named payee and not to cash, or by authorized bank transfer.

*c.* Records required by this rule may be maintained by electronic, photographic, computer, or other media provided that the records otherwise comply with these rules and that printed copies can be produced. These records ~~shall~~ must be accessible to the lawyer.

*d.* Upon dissolution of a law firm or of any legal professional corporation, the partners ~~shall~~ must make reasonable arrangements for the maintenance of the records specified in this rule.

*e.* Upon the sale of a law practice, the seller ~~shall~~ must make appropriate arrangements for the maintenance of the records specified in this rule.

**Rule 45.3 Type of accounts and institutions where trust accounts must be established.** Each trust account referred to in rule 45.1 ~~shall~~ must be an interest-bearing account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company selected by the law firm or lawyer in the exercise of ordinary prudence. The financial institution must be authorized by federal or state law to do business in Iowa and insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Interest-bearing trust funds may be placed in accounts at credit unions only to the extent that each individual client's funds are eligible for insurance. Interest-bearing trust funds ~~shall~~ must be placed in accounts from which withdrawals or transfers

can be made without delay when such funds are required, subject only to any notice period which the depository institution is required to observe by law or regulation.

**Rule 45.4 Pooled interest-bearing trust account.**

**45.4(1)** *Deposits of nominal or short-term funds.* A lawyer who receives a client's or third person's funds ~~shall~~must maintain a pooled interest-bearing trust account for deposits of funds that are nominal in amount or reasonably expected to be held for a short period of time. A lawyer ~~shall~~must inform the client or third person that the interest accruing on this account, net of any allowable monthly service charges, will be paid to the Lawyer Trust Account Commission established by the supreme court.

**45.4(2)** *Exceptions to using pooled interest-bearing trust accounts.* All client or third person funds ~~shall~~must be deposited in an account specified in rule 45.4(1) unless they are deposited in:

a. A separate interest-bearing trust account for the particular third person, client, or client's matter on which the interest, net of any transaction costs, will be paid to the client or third person; or

b. A pooled interest-bearing trust account with subaccountings that will provide for computation of interest earned by each client's or third person's funds and the payment thereof, net of any transaction costs, to the client or third person.

**45.4(3)** *Accounts generating positive net earnings.* If the client's or the third person's funds could generate positive net earnings for the client or third person, the lawyer ~~shall~~must deposit the funds in an account described in rule 45.4(2). In determining whether the funds would generate positive net earnings, the lawyer ~~shall~~must consider the following factors:

a. The amount of the funds to be deposited;<sub>2</sub>

b. The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;<sub>2</sub>

c. The rates of interest or yield at the financial institution in which the funds are to be deposited;<sub>2</sub>

d. The cost of establishing and administering the account, including service charges, the cost of the lawyer's services, and the cost of preparing any tax reports required for interest accruing to a client's benefit;<sub>2</sub>

e. The capability of financial institutions described in rule 45.3 to calculate and pay interest to individual clients;<sub>2</sub> ~~and~~<sub>2</sub>

f. Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

**45.4(4)** *Directions to depository institutions.* As to accounts created under rule 45.4(1), a lawyer or law firm ~~shall~~must direct the depository institution:

a. To remit interest or dividends, net of any allowable monthly service charges, as computed in accordance with the depository institution's standard accounting practice, at least quarterly, to the Lawyer Trust Account Commission;<sub>2</sub>

b. To transmit with each remittance to the Lawyer Trust Account Commission a copy of the depositor's statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, the amount of allowable monthly service charges deducted, if any, and the account balance(s) for the period covered by the report;<sub>2</sub> ~~and~~<sub>2</sub>

c. To report to the Client Security Commission in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds. In the case of a dishonored instrument, the report ~~shall~~must be identical to the overdraft notice customarily forwarded to the depositor, and ~~shall~~must include a copy of the dishonored instrument, if such a copy is normally provided to depositors. In the case of instruments that are honored when presented against insufficient funds, the report ~~shall~~must identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, and the amount of overdraft. If an instrument presented against insufficient funds is not honored, the report ~~shall~~must be made simultaneously with, and within the time provided by law for, any notice of dishonor. If the instrument is honored, the report ~~shall~~must be made within five banking days of the date of presentation for payment against insufficient funds.

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**Rule 45.6 Lawyer certification.** Every lawyer required to have a client trust account ~~shall~~must certify annually, in such form as the supreme court may prescribe, that the lawyer or the law firm maintains, on a current basis, records required by Iowa R. of Prof'l ~~Conduct~~Rule of Professional Conduct 32:1.15(a).

**Rule 45.7 Advance fee; ~~and~~ expense payments.**

**45.7(1) Definition of advance fee payments.** “Advance fee payments” are payments for contemplated services that are made to the lawyer prior to the lawyer’s having earned the fee.

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**Rule 45.9 Special retainer.**

**45.9(1) Definition.** A “special retainer” is a fee that is charged for the performance of contemplated services rather than for the lawyer’s availability. Such a fee is paid in advance of performance of those services.

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**Rule 45.10 Flat fee.**

**45.10(1) Definition.** A “flat fee” is one that embraces all services that a lawyer is to perform, whether the work be relatively simple or complex.

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**Rule 45.11 Designation of successor signatories.** A lawyer who is the sole lawyer signatory on an attorney trust account may designate, in an instrument acceptable to the depository for the trust account, a successor signatory, who ~~shall~~must be a member of the bar in good standing and admitted to the practice of law in Iowa, and whose authority ~~shall~~must become effective upon the occurrence of an event or events described in the instrument. The event or events described in the instrument may include death, disappearance, abandonment of law practice, temporary or permanent incapacity, suspension, or disbarment.

**CHAPTER 46**  
**RULES OF THE BOARD OF EXAMINERS OF**  
**SHORTHAND REPORTERS**

Rule 46.1	Authorization and scope
Rule 46.2	Definitions
Rule 46.3	Organization, meetings, and information
Rule 46.4	Applications
Rule 46.5	Examination
Rule 46.6	Certification
Rule 46.7	Fees
Rule 46.8	Continuing education requirement
Rule 46.9	Approval of activity
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Rule 46.11	Penalty for failure to satisfy continuing education requirements
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Rule 46.14	Contested case proceedings
Rule 46.15	Disciplinary sanctions
Rule 46.16	Military service and veteran reciprocity
Rule 46.17	Certification by reciprocity

## CHAPTER 46 RULES OF THE BOARD OF EXAMINERS OF SHORTHAND REPORTERS

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**Rule 46.2 Definitions.** In this chapter:

(1) ~~“Certified shorthand reporter”~~ “Certified shorthand reporter” is an individual who has demonstrated by examination administered by the board of examiners that such individual has achieved proficiency in shorthand equivalent in the discretion of the board to the standard of the National Court Reporters Association for the earned designation of Registered Professional Reporter, namely, the demonstrated ability to write dictated tests at 180 words per minute (question and answer — technical dictation), 200 words per minute (multivoice dictation for transcription or readback), and 225 words per minute (question and answer dictation), or such equivalents thereof as the board may select, each at 95 percent accuracy or better, and demonstrated written knowledge of the reporter’s duties, Iowa legal procedure, and correct English usage at 70 percent accuracy or better. Individuals who hold the designation of Registered Professional Reporter from the National Court Reporters Association by passing ~~said~~ the association’s examination on or after May 1, 1973, and are in good standing with such association, may, upon application to the board of examiners, become certified shorthand reporters upon successfully passing a written examination concerning a reporter’s duties, Iowa legal procedure, and correct English usage at 70 percent accuracy or better.

(2) ~~“Shorthand”~~ “Shorthand” is a method of writing rapidly with stenographic machine by substituting characters, abbreviations, or symbols for letters, words, or phrases.

(3) ~~“Shorthand reporting”~~ “Shorthand reporting” is the professional skill, ~~whose~~ the practice of which by official shorthand reporters and freelance shorthand reporters serves the judicial branch of state government in courts of record, references by such courts or the law, depositions taken by shorthand reporters, or proceedings of like character, with the end in view of ensuring the accuracy and integrity of the record upon which courts rely for evidence, trial, and appellate review.

**Rule 46.3 Organization, meetings, and information.**

**46.3(1)** The officers of the ~~board shall be~~ Board of Examiners of Shorthand Reporters (board) ~~are~~ are a chairperson, selected by the supreme court of Iowa, and a secretary elected at the September meeting, each to serve for a term of one year, or until a successor is elected. Each ~~shall~~ must perform the duties incumbent upon the office.

**46.3(2)** The board ~~shall~~ must hold regular meetings for examination of applicants and the transaction of other business ~~at least twice per year, on the second Saturday of March and September of each year in Des Moines, Iowa, commencing at 9 a.m., or at such other times or places as the board may hereafter designate.~~ Special meetings may be held upon the call of any two members of the board. A majority of three or more members of the board ~~shall~~ constitute ~~constitutes~~ a quorum. Business ~~shall~~ must not be conducted unless a quorum is present. All actions of the board ~~shall~~ require a simple majority vote of those present.

**46.3(3)** The board ~~shall~~must, at least 60 days prior to the start of each fiscal year, or on a date otherwise requested by the supreme court 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~~will authorize payment as provided in the budget. A separate bank account designated as the certified shorthand reporter 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 certified reporter operating account for payment of the board's authorized expenditures.

**46.3(4)** The director of the office of professional regulation ~~shall~~will serve as the administrator for the board. Information may be obtained from the director at the Office of Professional Regulation, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319, by mail or in person during office hours.

**Rule 46.4 Applications.** Candidates for examination ~~shall~~must make written application on the form approved by the board and provided by the board's office. An application must be on file with the administrator at the board's office at least 30 days before the date of the examination, unless the board for good cause shown grants an applicant additional time to file or otherwise waives the 30-day filing deadline. Good cause for this purpose ~~shall~~may include illness, military service, unavoidable casualty or misfortune, or other grounds beyond the control of the applicant. A new application is required for each examination. An applicant to become a certified shorthand reporter ~~shall~~must not be examined until ~~said~~the applicant has satisfied the board that the applicant's educational and special training includes at least one of the following:

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**Rule 46.5 Examination.**

**46.5(1)** Applicants ~~shall~~bear required to write shorthand from dictation of regular court proceedings, or such other matter as may be selected by the board of examiners, for such periods as ~~shall~~be required at varying speeds within the standard.

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**46.5(3)** Applicants ~~shall~~bear required to transcribe such part of the dictation as the board of examiners may indicate.

**46.5(4)** Applicants ~~shall~~bear required to read aloud such part of the dictated matter as the board of examiners may indicate.

**46.5(5)** Applicants ~~shall~~bear required to furnish their own equipment and supplies for taking shorthand. Applicants ~~shall~~must make their own transcript on a provided computer or typewriter unless the applicant is otherwise notified.

**46.5(6)** Upon completion of the examination, all shorthand notes, transcripts, and other papers used in connection with an examination ~~shall~~must be returned to the board.

**46.5(7)** Testing rules and guidelines of the National Court Reporters Association and the Board of the Academy of Professional Reporters for Registered Professional Reporters ~~shall~~must be used as a guide to procedure.

**Rule 46.6 Certification.** Each person who has achieved the designation of certified shorthand reporter ~~shall~~will be issued a certificate by the board ~~of examiners~~. The certificate may be signed by the chairperson and secretary or by all of the board members.

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**Rule 46.8 Continuing education requirement.**

**46.8(1)** Units of continuing education credits as approved by the board ~~of examiners of shorthand reporters shall~~must be completed by each reporter in active practice in Iowa. Failure to comply with the continuing education requirements ~~shall~~will be grounds for disciplinary action under rule 46.11. In order to comply, a reporter ~~shall~~must meet the requirements of rule 46.8(1)(a) or 46.8(1)(b):

*a. ~~Obtain~~Continuing education requirements.*

(1) ~~A reporter must obtain~~ at least three continuing education units (CEUs) within a three-year period by attending or participating in seminars, workshops, or courses, integrally relating to the field of shorthand reporting, and which contribute directly to the professional competency of the shorthand reporter. One hour of continuing education credit ~~shall equal~~equals ~~.1 continuing education unit~~CEU.

(2) ~~Continuing education activities shall~~must be conducted by individuals who have special education, training, and experience, and the individuals should be considered experts concerning the subject matter of the program. Attendance at any approved national, regional, or state seminar will be acceptable.

(3) ~~Continuing education units~~CEUs earned in any one reporting period may be carried over for credit in one or more succeeding reporting periods, constituting the three-year period previously provided, but can not be carried over to any successive three-year period.

(4) ~~Commencing October 1, 2002, the~~The annual reporting cycle ~~shall~~will run from October 1 through September 30. Continuing education requirements and the three-year reporting cycle for newly certified shorthand reporters will commence October 1 of the year following the year of their certification.

*b. ~~Alternative requirements.~~* In lieu of the requirements set forth in rule 46.8(1)(a), the board will accept satisfactory evidence of compliance with the current continuing education requirements of the National Court Reporters Association for retention on its Registry of Professional Reporters.

**46.8(2)** The board may, in individual cases involving disability, hardship, or extenuating circumstances, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time ~~shall~~will be granted unless written application is made and signed by the reporter. The board 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 board.

**46.8(3)** Reporters who are not actively engaged in practice may obtain from the board a certificate of exemption from continuing education requirements. Application for such exemption ~~shall~~must contain a statement that the applicant will not engage in the practice of



shorthand reporting in Iowa without first complying with the regulations governing reinstatement after exemption.

**46.8(4)** Inactive practitioners who have been granted a certificate of exemption from these regulations ~~shall~~ or who have been suspended must, prior to engaging in the practice of shorthand reporting in Iowa, satisfy the following requirements for reinstatement:

*a.* Submit written application for reinstatement to the board upon forms prescribed by the board together with a reinstatement fee of \$50, ~~and~~.

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

(1) Active shorthand reporting in another state of the United States or the District of Columbia and completion of continuing education requirements that are the substantial equivalent to the requirements set forth in these rules for court reporters in Iowa as determined by the board.

(2) Completion of ~~continuing education units (CEUs)~~ CEUs sufficient to satisfy education requirements for the period of inactivity if seeking reinstatement within three years of being granted a certificate of exemption.

(3) Successful passing of either the ~~state~~ State of Iowa's certificate examination or the National Court Reporters Association's examination within one year immediately prior to the submission of such application for reinstatement.

**Rule 46.9 Approval of activity.** A reporter seeking credit for attendance and participation in an educational activity other than those sponsored or approved by the National or Iowa Court Reporters Associations ~~shall~~ must submit to the board, within 30 days after completion of such activity, a request for credit, including a brief résumé of the activity, its dates, subjects, instructors and their qualifications, and the number of credit hours requested ~~therefor~~. Within 60 days after receipt of such application, the board ~~shall~~ must advise the reporter in writing by ~~ordinary~~ electronic mail whether the activity is approved and the number of hours are allowed ~~therefor~~. A reporter not complying with the requirements of this rule may be denied credit for such activity.

**Rule 46.10 Continuing education reports.**

**46.10(1)** On or before December 1 of each year, each reporter ~~shall~~ must file with the board, on forms provided by the board, a signed report concerning completion of continuing education for the prior reporting period. ~~Said~~ The report, along with the annual renewal fee, ~~shall~~ must be sent to the board's office, ~~Office of Professional Regulation, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.~~ The board may prescribe an electronic report form and require submission of the report in that form, submitted and filed electronically using the reporter's account with the office of professional regulation.

**46.10(2)** All active reporters who fail to file the annual report on or before December 1 of each year ~~shall~~ must pay a penalty of \$100.

**Rule 46.11 Penalty for failure to satisfy continuing education requirements.** The board may revoke or suspend the license of any reporter who fails to comply with rule 46.10 or who files a report showing a failure to complete the required number of education credits ~~provided~~.

that at least 30 days prior to the suspension or revocation, notice of the delinquency has been served upon the reporter in the manner provided for the service of original notices in Iowa ~~R. Civ. P.~~ Rule of Civil Procedure 1.305 or has been forwarded to the reporter by restricted certified mail, return receipt requested, addressed to the reporter's last-known address. The reporter ~~shall~~must be given the opportunity during the 30 days to file in the board's office an affidavit establishing that the noncompliance was not willful and tender the documents and sums and penalties which, if accepted, would cure the delinquency. Alternatively, the reporter may file in the board's office a request, in duplicate, for hearing to show cause why the reporter's certificate should not be suspended or revoked. The board ~~shall~~must grant a hearing if requested. If the board orders a suspension or revocation it ~~shall~~must notify the reporter by either of the methods provided above. The suspension or revocation ~~shall~~must continue until the board has approved the reporter's written application for reinstatement.

**Rule 46.12 Disciplinary action.** The board may, upon its own initiative, ~~or~~ at the request of the ~~supreme court of Iowa~~ Supreme Court, or pursuant to complaint by a third party, begin disciplinary procedures against any reporter for violations of the board rules or the Code of Iowa ~~against any reporter~~.

**46.12(1)** Charges against a reporter brought by a third party must be in writing, signed by the complainant, filed with the board, and contain substantiating evidence to support the complainant's allegations. The complaint ~~shall~~must include complainant's address and telephone number, be dated, identify the reporter, and give the address and any other information about the reporter ~~which that~~ the complainant may have concerning the matter.

**46.12(2)** Such complaint, which will be held in confidence as required by law, ~~shall~~must be reviewed by the board. If the board concurs in the seriousness of the allegations made by the complainant, the board ~~shall, in writing,~~must advise the reporter in writing of the charges involved. The reporter ~~shall have~~has 30 days from the receipt of the board's notice to answer the charges in writing. The reporter may request a personal appearance before the board. The board ~~shall~~must then review again the charges made and determine whether the complaint can be disposed of informally or if contested case proceedings should be commenced.

**Rule 46.13 Causes for disciplinary action.** The board may revoke or suspend a certificate, or impose any of the disciplinary sanctions included in this chapter for any of the following reasons:

**46.13(1)** All grounds listed in Iowa Code section 602.3203.

**46.13(2)** Failure to file an annual report showing satisfaction of the current requirement of continuing education or submission of a false report of continuing education.

**46.13(3)** Conviction of a misdemeanor related to the profession or occupation of the reporter.

**46.13(4)** Unless otherwise required by law, a violation of Iowa ~~R. Civ. P.~~ Rule of Civil Procedure 1.713(1) or 1.713(2) in any state, federal, administrative, or other proceeding.

**46.13(5)** The board's receipt of a certificate of noncompliance from the Child Support Recovery Unit; pursuant to the procedures set forth in Iowa Code chapter 252J.

**46.13(6)** The board's receipt of a certificate of noncompliance from the Iowa College Student Aid Commission; pursuant to the procedures set forth in Iowa Code chapter 261.

**46.13(7)** The board's receipt of a certificate of noncompliance from the ~~Centralized~~ Central Collection Unit of the Iowa Department of Revenue, pursuant to the procedures set forth in Iowa Code chapter 272D.

**Rule 46.14 Contested case proceedings.**

**46.14(1)** Contested case proceedings ~~which that~~ involve possible disciplinary sanctions ~~shall~~ must be set for hearing on not less than ~~ten~~ 10 days' notice to all parties. Notice of hearing ~~shall~~ must be in writing and ~~shall~~ must be served either by personal service or certified mail, return receipt requested.

**46.14(2)** The notice ~~shall~~ must include all of the following information:

- a. A statement of the time, place, and nature of the hearing.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- c. A reference to the particular sections of the statutes and rules involved.
- d. A concise statement of the matters asserted, or if the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved.

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**46.14(6)** After the conclusion of a hearing, the board ~~shall~~ must take any of the actions set forth in rule 46.15. The board's actions ~~shall~~ must be set forth in writing, and a copy of the conclusions and decisions ~~shall~~ must be served upon all parties and the ~~supreme court of Iowa~~ Supreme Court. The board may permit a reasonable time for the parties to file posthearing briefs and arguments. The report of the board ~~shall~~ must be made within 60 days after the date set for the filing of the last responsive brief and argument. If the board cannot reasonably make its determination or file its report within such time limit, it ~~shall~~ must report that fact and the reasons therefor to the parties and to the clerk of the supreme court. Any determination or report of the board need only be concurred in by a majority of the board members sitting, and any member has the right to file a dissent from the majority determination or report.

**46.14(7)** Procedures for the handling of all contested case proceedings ~~shall~~ are governed, to the extent not specifically set forth in this chapter, ~~be governed~~ by the Iowa Administrative Procedure Act.

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**Rule 46.16 Military service and veteran reciprocity.**

**46.16(1) Definitions.** In this rule:

a. ~~“Military service”~~ “Military service” means honorably serving: in federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. section 10101.

b. ~~“Military service applicant”~~ “Military service applicant” is an individual requesting credit toward certification for military education, training, or service obtained or completed in military service.

c. ~~“Veteran”~~ “Veteran” is an individual who meets the definition of “veteran” in Iowa Code section 35.1(2).

**46.16(2) *Military education, training, and service credit.*** A military service applicant may apply for credit for verified military education, training, or service toward any experience or educational requirement for certification by submitting a military service application to the board office.

*a.* The application may be submitted with an application for certification or examination or prior to an applicant's applying for certification or to take an examination. No fee is required for submission of an application for military service credit.

*b.* The applicant must identify the experience or educational certification requirement to which the credit would be applied if granted. Credit may not be applied to an examination requirement.

*c.* The applicant must provide documents, military transcripts, a certified affidavit, or forms that verify completion of the relevant military education, training, or service, which may include, when applicable, the applicant's Certificate of Release or Discharge from Active Duty (DD Form 214) or Verification of Military Experience and Training (~~VMET~~) (DD Form 2586).

*d.* Upon receipt of a completed military service application, the board will promptly determine whether the verified military education, training, or service satisfies all or any part of the identified experience or educational qualifications for certification.

*e.* The board will grant the application in whole or in part if the board determines that the verified military education, training, or service satisfies all or part of the experience or educational qualifications for certification.

*f.* The board will inform the military service applicant in writing of the credit, if any, given toward an experience or educational qualification for certification, or explain why no credit was granted. The applicant may request reconsideration upon submission of additional documentation or information.

*g.* A military service applicant aggrieved by the board's decision may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case must be made within 30 days of issuance of the board's decision. No fees or costs may be assessed against the military service applicant in connection with a contested case conducted pursuant to this rule 46.16(2).

*h.* The board will grant or deny the military service application prior to ruling on the application for certification. The applicant is not required to submit any fees in connection with the certification application unless the board grants the military service application. If the board does not grant the military service application, the applicant may withdraw the certification application or request that the application be placed in pending status for up to one year or as mutually agreed. Withdrawal of a certification application does not preclude subsequent applications supported by additional documentation or information.

**46.16(3) *Veteran reciprocity.***

*a.* A veteran with an unrestricted professional certificate as a shorthand reporter in another jurisdiction may apply for certification in Iowa through reciprocity. A veteran must pass any examinations required for certification to be eligible for certification through reciprocity and will be given credit for examinations previously passed when consistent with board rules on examination requirements. A veteran's fully completed application for certification submitted under rule 46.16(3) will be expedited and given priority.

*b.* A veteran's application for certification must contain all of the information required of all applicants for certification who hold unrestricted certificates in other jurisdictions and who are applying for certification by reciprocity, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. The applicant must use the same forms as any other applicant for certification by reciprocity and must additionally provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2).

*c.* Upon receipt of a fully completed certification application, the board will promptly determine if the professional or occupational licensing requirements of the jurisdiction where the veteran is certified are substantially equivalent to the certification requirements in Iowa. The board will make this determination based on information the applicant supplies and such additional information as the board may acquire from the applicable jurisdiction. The board may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, postgraduate experience, and examination required for certification.

*d.* The board will promptly grant a certificate to the veteran if the applicant is certified in the same or similar profession in another jurisdiction whose certification requirements are substantially equivalent to those required in Iowa and the applicant has passed the written examination administered by the board pursuant to rule 46.5(2), unless the applicant is ineligible for certification based on other grounds, such as the applicant's disciplinary or criminal background.

*e.* If the board determines that the certification requirements in the jurisdiction in which the veteran is certified are not substantially equivalent to those required in Iowa, the board will promptly inform the veteran of the additional experience, education, or examinations required for certification in Iowa.

*f.* Unless the applicant is ineligible for certification based on other grounds, such as disciplinary or criminal background, the following apply:

(1) If a veteran has not passed the required examinations for certification, the applicant may not be issued a provisional certificate but may request that the certification application be placed in pending status for up to one year or as mutually agreed to provide the veteran with the opportunity to satisfy the examination requirements.

(2) If additional experience or education is required for the applicant's qualifications to be considered substantially equivalent, the applicant may request that the board issue a provisional certificate for a specified period of time during which the applicant will successfully complete the necessary experience or education. The board may issue a provisional certificate for a specified period of time upon such conditions as the board deems reasonably necessary to protect the health, welfare, or safety of the public, unless the board determines that the deficiency is of a character that the public health, welfare, or safety will be adversely affected if a provisional certificate is granted.

(3) If a request for a provisional certificate is denied, the board will issue an order fully explaining the decision and inform the applicant of the steps the applicant may take to receive a provisional certificate.

(4) If a provisional certificate is issued, the application for full certification will be placed in pending status until the applicant successfully completes the necessary experience or education or the provisional certificate expires, whichever occurs first. The board may extend a provisional certificate on a case-by-case basis for good cause.

~~f.g.~~ A veteran who is aggrieved by the board's decision to deny an application for a reciprocal certificate or a provisional certificate, or who is aggrieved by the terms under which a provisional certificate will be granted, may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case must be made within 30 days of issuance of the board's decision. No fees or costs will be assessed against the veteran in connection with a contested case conducted pursuant to this rule 46.16(3).

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**Rule 46.17 Certification by reciprocity.**

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**46.17(7)** The certification requirements of another jurisdiction are substantially equivalent to those of Iowa, if in that jurisdiction an individual must demonstrate by examination, administered by the licensing authority of the jurisdiction, proficiency in stenographic shorthand equivalent to the standard of the National Court Reporters Association for the earned designation of Registered Professional Reporter.

## **CHAPTER 47**

### **COURT INTERPRETER AND TRANSLATOR RULES**

Rule 47.1	Definitions
Rule 47.2	Minimum qualifications of a court interpreter
Rule 47.3	Scheduling and appointing a court interpreter
Rule 47.4	Classification of oral language court interpreters
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Rule 47.7	Mandatory continuing education
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Rule 47.9	Language Access in the Courts Advisory Committee
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Rule 47.15	Administration
Rule 47.16	Immunity

## CHAPTER 47 COURT INTERPRETER AND TRANSLATOR RULES

[Prior to April 1, 2008, see Chapter 14]

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### **Rule 47.2 Minimum qualifications of a court interpreter.**

#### **47.2(1) Qualifications.**

*a. Minimum age.* A court interpreter must be at least 21 years old.

*b. Education.* A court interpreter must have completed at least the equivalent of two years or 48 credit hours of college courses or must have completed the requirements in ~~rules~~rule 47.4 or 47.5 to qualify for the Iowa roster of court interpreters.

*c. Approval of office of professional regulation.*

(1) *Court interpreter application form.* A court interpreter must complete an application form, developed by the director of the Office of Professional Regulation of the Iowa Supreme Court (the OPR), on which the interpreter provides information about the interpreter's education, experience,

prior misconduct, and references to assist the court in determining the interpreter's qualifications for court interpreting.

(2) *Criminal records search.* A criminal records search will be completed by the OPR or a designee of the OPR at the time the application to be a court interpreter is filed with the OPR. The criminal record search may be waived for an interpreter who has had a criminal records search completed by the OPR or a designee of the OPR within six months of the filing date of the application.

(3) *No prior disqualifying misconduct.* The OPR will review the applicant's application and criminal background check for possible disqualifying misconduct as identified in rule 47.2(1)(c)(3)(~~1~~) through (2). When reviewing possible disqualifying misconduct, the OPR will weigh any mitigating or aggravating factors identified in rule 47.10(6) and the applicant's candor in the application process. The OPR may determine whether the misconduct disqualifies the applicant from being a court interpreter. Possible disqualifying misconduct includes:

1. A felony or any lesser crime of dishonesty or moral turpitude for which the applicant was convicted in any jurisdiction. An offense is a felony if it was classified as a felony in the jurisdiction where the conviction was entered at the time of the conviction.

2. Ethical misconduct that resulted in the bar or suspension of the interpreter from interpreting in any jurisdiction.

*d. Oath or affirmation.* At the start of a court proceeding or a deposition in which an interpreter is present to facilitate communication with an LEP participant, the judicial officer presiding at the court proceeding or an attorney involved in taking the deposition must ask the interpreter on the record to swear or affirm that the interpreter has the knowledge and skills to interpret completely and accurately in a legal proceeding, understands and will abide by the Code of Professional Conduct for Court Interpreters and Translators in Chapter 48 of the Iowa Court Rules, and will interpret in court to the best of the interpreter's ability.

*e. Sign language interpreter qualifications.* In addition to meeting the minimum qualifications in ~~rule~~rules 47.2(1)(a) through (d), a sign language interpreter must be licensed by the Iowa



Board of Sign Language Interpreters and Transliterators pursuant to Iowa Code chapter 154E, except as allowed under Iowa Code section 154E.4, and must meet the qualifications to be at least a Class B interpreter in rule 47.5(2).

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**Rule 47.3 Scheduling and appointing a court interpreter.**

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**47.3(4) *Priorities in the selection of an oral language interpreter.*** Subject to exceptions identified in rule 47.3(6), the court or court personnel must select the highest classified interpreter who is reasonably available for the court proceeding, giving preference to interpreters who are on Iowa’s roster of court interpreters and using the following classification order:

a. Class A certified interpreter, defined in rules 47.4(1) and 47.4(5)(a).

b. Class B noncertified interpreter, defined in rule 47.4(2).

c. Class C noncertified interpreter, defined in ~~rule~~rules 47.4(3) and 47.4(5)(b).

d. Oral language interpreter on the list of approved interpreters in another jurisdiction. When there is no interpreter on Iowa’s roster of court interpreters who is reasonably available, court personnel must seek an interpreter who is on an official list of certified or qualified interpreters approved by another state court system before selecting an unclassified interpreter as defined in rule 47.4(4).

e. Unclassified noncertified interpreter, defined in rule 47.4(4). An unclassified interpreter will be selected only when there is no reasonably available interpreter who meets the minimum qualifications of rule 47.2(1).

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**47.3(6) *Exceptions to the priorities for selecting a court interpreter.***

a. *Court proceedings within a magistrate’s jurisdiction.* For any court proceeding within a magistrate’s jurisdiction, except a court proceeding involving a simple misdemeanor domestic assault charge, the court may appoint a reasonably available Class B or Class C noncertified interpreter on Iowa’s roster of court interpreters before seeking the services of a Class A certified interpreter.

b. *Interpreter required on short notice.* If a court receives notice for the need of an interpreter ~~after 4 p.m. the previous workday or~~ after 4 p.m. the previous workday, and the court determines that rescheduling the court proceeding would not be appropriate under the circumstances, the court may appoint the highest classified interpreter who is available to interpret at the required time and location. A Spanish interpreter, however, must be at least a Class C interpreter, and an American Sign Language interpreter must be at least a Class B interpreter.

c. *Unavailability of certified court interpreter.*

(1) If court personnel are unable to locate a reasonably available certified court interpreter for a legal proceeding in an indictable criminal case or termination of parental rights case, court personnel will conduct a regional or national search.

(2) If court personnel are unable to locate a reasonably available certified court interpreter for cases other than indictable criminal or termination of parental rights, court personnel may conduct a regional or national search.

(3) If court personnel are unable to locate an available certified court interpreter after a regional or national search, court personnel will attempt to locate a noncertified interpreter who is on the Iowa roster of court interpreters or who is on a list of qualified noncertified interpreters maintained by another state court system.

(4) If court personnel are unable to locate an available certified or a qualified noncertified interpreter under ~~rule~~ rules 47.3(6)(c)(1) through (3), court personnel may appoint an interpreter who is not on a list of qualified interpreters maintained by any state court system.

(5) Court personnel may request assistance from state court administration in conducting a regional or national search for a court interpreter.

*d. Civil pretrial proceedings.* For any proceeding other than a trial, the court may appoint a reasonably available Class B noncertified interpreter.

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**47.3(8) Order appointing a court interpreter.**

*a.* When a court interpreter is identified consistent with ~~rule 47.2~~ rule 47.3, the court will enter an order appointing the interpreter prior to the legal proceeding, unless the court has previously entered an order appointing the interpreter for all subsequent proceedings in the case.

*b.* When the court appoints an interpreter for an LEP defendant at an initial appearance, whether the interpreter appears in person or through a remote interpreter service, the order appointing the interpreter must also include the appointment of a qualified interpreter for all subsequent proceedings in the case consistent with rules 47.3(4) through (7), or the order must direct the district court administrator to schedule a qualified interpreter for all subsequent proceedings in the case consistent with rules 47.3(4) through (7).

*c.* An order appointing an interpreter must identify the interpreter's classification under rule 47.4, identify the sign or oral language for which the interpreter is needed, and set the level of compensation for the interpreter consistent with the state court administrator's standard statewide fees and policies for compensation.

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**47.3(13) Interpreter cancellation and substitution.** When a court interpreter learns that the interpreter will be unable to fulfill the terms of an appointment or agreement to interpret during a court proceeding, the interpreter must:

*a.* Promptly arrange for a substitute interpreter who resides in the county where the court proceeding is scheduled to occur, or a county contiguous to that county, and who has a classification under rule 47.4 that is equal to or greater than the original interpreter's classification. When a substitute interpreter has been secured, the original interpreter must promptly inform the district court administrator's office or the clerk of district court where the court proceeding is scheduled and the attorney whose client needs an interpreter, if applicable, regarding the substitution.

*b.* If the original interpreter is unable to secure a substitute interpreter consistent with ~~rule 47.2(13)(a)~~ rule 47.3(13)(a), the original interpreter must promptly inform the district court administrator's office or the clerk of district court where the court proceeding is scheduled that a substitute interpreter is needed for the court proceeding.

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**Rule 47.4 Classification of oral language court interpreters.**

**47.4(1)** *Class A oral language court interpreter.* A Class A oral language court interpreter is a certified interpreter who has met the requirements in rule 47.6 to be on the Iowa roster of court interpreters and has done one of the following:

*a.* Satisfied all certification requirements for an oral language interpreter established by the Federal Court Interpreter Certification Program or the National Association of Judiciary Interpreters and Translators.

*b.* Taken oral interpretation examinations for court interpreter certification approved by the Language Access Services ~~Division~~ Section of the National Center for State Courts (NCSC) and achieved a passing score of at least 70 percent correct on each of the three parts of the oral examination (sight interpretation of written documents, consecutive interpretation, and simultaneous interpretation) in a single test session.

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**47.4(4)** *Unclassified oral language court interpreter.* An unclassified oral language interpreter has not met the requirements under ~~rules~~ rule 47.4(1), (2), or (3) to be a Class A, Class B, or Class C oral language interpreter and has not met the requirements to be on an official list of qualified court interpreters in another state.

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**Rule 47.5 Classification of sign language court interpreters.**

**47.5(1)** *Class A sign language court interpreter.* A Class A sign language court interpreter is a certified interpreter who:

*a.* Holds a permanent license issued by the Iowa Board of Sign Language Interpreters and Translators and a “specialist certificate: legal (SC:L)” or a conditional legal interpreting permit—relay (CLIP-R) from the National Testing System of the Registry of Interpreters for the Deaf (RID); or

*b.* Is a licensed sign language court interpreter in a state other than Iowa that has licensing requirements comparable to the requirements in Iowa Code section 154E.3 and holds a valid SC:L from the RID. Pursuant to Iowa Code section 154E.4(2)(a)(~~a~~)(a), an interpreter who meets these requirements may interpret in Iowa for up to 14 days per year without obtaining an Iowa license.

**47.5(2)** *Class B sign language court interpreter.* A Class B sign language court interpreter is a noncertified interpreter who:

*a.* Holds a permanent license issued by the Iowa Board of Sign Language Interpreters and Translators and has at least one of the following certificates: a certificate based on the National Interpreter Certification (NIC) examination; an advanced (NAD IV) or master (NAD V) certificate from the National Association for the Deaf (NAD); a valid comprehensive skills certificate (CSC), a master comprehensive skills certificate (MCSC), both a certificate of interpretation (CI) and a certificate of transliteration (CT), or a certified deaf interpreter (CDI) certificate from the National Testing System of the RID; or

*b.* Is a licensed sign language court interpreter in a state other than Iowa that has licensing requirements comparable to the requirements in Iowa Code section 154E.3, and who holds one of the certificates or qualifications identified in rule 47.5(2)(a); and is on a list of noncertified

sign language interpreters (without an SC:L) approved by the state court interpreter program in another state. Pursuant to Iowa Code section 154E.4(2)(a)(a) an interpreter who meets these requirements may interpret in Iowa for up to 14 days per year without obtaining an Iowa license.

**Rule 47.6 Iowa roster of court interpreters.**

**47.6(1) Management.** The director of the ~~Iowa Supreme Court Office of Professional Regulation (the OPR)~~ OPR will maintain and publish the Iowa roster of court interpreters and may determine the order in which interpreters must complete the testing and training requirements in rule 47.4 to qualify for the roster.

**47.6(2) Testing and training requirements.** To be included on the roster, an interpreter must meet the qualifications in rule 47.4 and the following requirements:

*a. Ethics exam.* All interpreters must take a written exam on the Code of Professional Conduct for Court Interpreters and achieve a score of at least 75 percent correct, unless the interpreter has taken the same or a similar exam in another state within the past five years and achieved a score of at least 75 percent correct.

*b. Written exam approved by the NCSC.* Interpreters must achieve a score of at least 80 percent correct on a written exam for court interpreters that the National Center for State Courts (~~NCAC~~)NCSC has approved and that includes at least the following areas: general English vocabulary, legal terminology, and legal procedures. This requirement may be waived by the director of the OPR if the interpreter has taken the same test in Iowa or another jurisdiction within the past five years, achieved a score of 80 percent correct, and has regularly provided court interpreter services each year since taking the exam.

*c. Oral proficiency interview exam.* Under the supervision of OPR staff or a designee of the OPR director, an oral language interpreter must complete an oral proficiency interview exam offered by ALTA Language Services in the interpreter's non-English language and achieve a score of at least 11 on a scale of 12. Interpreters classified as class A or B before July 1, 2015, are not be required to take this exam. ~~Class C interpreters on the Iowa roster of court interpreters before July 1, 2015, must pass this exam within six months after that date to remain on the roster.~~ Interpreters not on the roster before July 1, 2015, must pass ALTA's oral proficiency interview exam to be listed on the roster.

*d. Court interpreter orientation program.* An interpreter must complete the court interpreter orientation program approved by the director of the OPR. The director of the OPR may waive this requirement for an interpreter who has completed a similar training program in another jurisdiction within the past three years, and who has regularly provided court interpreter services each year since completing that program.

**Rule 47.7 Mandatory continuing education.** Interpreters on the Iowa statewide roster of court interpreters must satisfy continuing education requirements to remain on the roster and to maintain a certified status.

**47.7(1) Annual report deadline, fee, and hours required.**

*a. Annual report deadline.* Beginning in 2017, by May 15 of each year, interpreters on the Iowa roster of court interpreters must report to the OPR continuing education hours for the previous calendar year, using a form the OPR provides.

*b. Annual report fee.* Upon the filing of the annual continuing education report, interpreters on the statewide roster must pay a fee of \$10 to the OPR.

*c. Required hours of continuing education.* Beginning in 2016, during each calendar year interpreters on the Iowa roster of court interpreters must attend at least six hours of continuing education that contributes directly to the professionalism and competency of the court interpreter. At least one of the six hours must address court interpreter ethics. Court interpreters on the Iowa roster of court interpreters do not have to meet these continuing education requirements during the first calendar year the interpreters are on the roster, but they must file the annual continuing education report and pay the annual continuing education fee by May 15 of the following calendar year.

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**Rule 47.8 Application, test registration, and continuing education fees.**

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**47.8(4)** The registration fees for the three-part oral interpretation certification examination approved by the NCSC's Language Access Services ~~Division~~ Section is \$250 for Iowa residents and \$500 for nonresidents.

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**47.10(3) Procedures for complaints against oral language court interpreters or translators.**

*a. Complaints.* A complaint against a court interpreter or a translator must be filed with the OPR on a form available from that office or through the Iowa Judicial Branch website. A complaint must be signed by the complainant, provide the complainant's full address, telephone number, and email address, if any, and contain substantiating evidence supporting the complaint.

*b. Review of complaints.* The OPR will review all complaints and may seek additional information from the complainant if necessary. The OPR will refer the complaint to the chair of the advisory committee. The chair will appoint a panel of at least three advisory committee members to consider the complaint.

*c. Dismissal of complaints.* The advisory committee panel may dismiss the complaint without further action if it appears the complaint wholly lacks merit, alleges conduct that does not constitute misconduct or rise to the level of a disciplinary violation under the Code of Professional Conduct for Court Interpreters and Translators, or does not comply with the requirements for a complaint or is not supplemented as requested. In such instances, the OPR will notify the complainant of the advisory committee panel's decision. The advisory committee panel's summary dismissal is not subject to review.

*d. Responses to complaints.* If the advisory committee panel does not dismiss the complaint, the OPR will notify the interpreter or translator of the complaint and direct the interpreter or translator to provide a written response to the complaint within 21 days after notice of the complaint is issued. A failure to file a timely response or obtain an extension of time in which to do so will be deemed an admission of the interpreter or translator to the facts alleged in the complaint. The OPR may forward the interpreter's or translator's response to the complainant and allow the complainant to file a reply within 14 days after service of the response. After all responses have been received, or the time for filing responses has expired, the advisory committee panel may summarily dismiss the complaint pursuant to rule 47.10(3)(c) or assign the

matter for further investigation. If the complaint is dismissed, the OPR will notify the complainant and the interpreter or translator of the advisory committee panel's decision.

*e. Advisory committee action.* If the advisory committee panel does not dismiss the complaint, the panel will review the complaint upon the papers filed unless the interpreter or translator requests a hearing or the panel determines that a hearing is necessary.

*f. Hearing and decision.*

(1) *Time and format of hearing.* A hearing will be scheduled to occur within 60 days after the complaint is assigned to the advisory committee panel. The hearing will be informal and strict rules of evidence will not apply. During the hearing, the interpreter or translator has the right to be represented by counsel at the interpreter's or translator's expense, to confront and cross-examine witnesses, and to present evidence. The attorney general or the attorney general's designee may present evidence in support of the complaint at the hearing, except to the extent that facts have been deemed admitted under rule 47.10(3)(d).

(2) *Location; subpoenas; and recording.* The hearing will be held in the county where the interpreter or translator resides or where the alleged violation occurred unless the OPR and the interpreter or translator agree otherwise. An advisory committee panel member, the interpreter or translator, or the attorney general or the attorney general's designee may request the clerk of the district court of the county in which the disciplinary hearing is to be held to issue subpoenas in connection with the matter, and the clerk will issue the subpoenas. Any member of the advisory committee panel is empowered to administer oaths or affirmations to all witnesses. The hearing will be recorded electronically, unless the interpreter or translator pays for a court reporter and the subsequent transcript, if necessary.

(3) *Burden of proof.* Any grounds for discipline under rule 47.10(5) must be shown by a convincing preponderance of the evidence.

(4) *Advisory committee panel actions.* The advisory committee panel may:

1. Dismiss the complaint.
2. Impose a private admonition.
3. Enter into a stipulated disposition with the interpreter.
4. Impose a public reprimand.
5. Require the interpreter to refund fees to a client for court interpreter services.
6. Require that the interpreter take specified education courses.
7. Suspend or revoke the interpreter's roster status or certification, if any.
8. Suspend or bar the interpreter from interpreting in legal proceedings or court-ordered programs, or both.

(5) *Advisory committee panel decision.* Within 60 days after the hearing, the advisory committee panel will file a written decision with the OPR. The OPR will promptly serve a copy of the decision on the interpreter or translator by restricted certified mail.

*g. Petition for review.* The interpreter or translator may file a petition for review of the advisory committee panel's decision with the Iowa Supreme Court. The petition for review must be filed with the clerk of the supreme court within 30 days after the OPR serves the decision on the interpreter or translator. The interpreter or translator must serve a copy of the petition and any attachments on the OPR and any attorneys appearing in the disciplinary proceeding. The petition must state all claims of error that were raised before the panel and the reasons for

challenging the panel's determination before the supreme court. The petition must be accompanied by a \$150 filing fee. The OPR will transmit the complete record in the case to the clerk of the supreme court.

*h. Submission and decision on review.* Unless the supreme court orders otherwise, the petition will be submitted based upon the record previously made and without oral argument. After considering the record, the court may sustain or deny the petition or enter such other appropriate order. The court's order is conclusive, and no petition for rehearing is permitted.

*i. Costs.* Costs of the disciplinary proceeding will be assessed against the interpreter or translator for any private admonition, public sanction, or any agreed disposition that taxes costs against the interpreter or translator. For purposes of this rule, costs include those expenses normally taxed as costs in state civil actions pursuant to Iowa Code chapter 625, including but not limited to expert witness fees, and translation, transcription, and interpreter fees. The interpreter or translator must pay the costs as a condition for reinstatement.

*j. Application for reinstatement.* An interpreter or translator may file an application for reinstatement from an order suspending or revoking a certification, roster status, or privilege of interpreting or translating in court. The application must be filed with the OPR and include payment of a \$100 reinstatement fee. The application must be served upon the clerk of the supreme court, all attorneys appearing in the underlying disciplinary proceeding, the state court administrator, and the chief judge of the judicial district in which the interpreter or translator resides. The application must show that all conditions for reinstatement imposed in the panel's decision or any resulting supreme court decision have been satisfied, the interpreter or translator is currently fit to interpret or translate in court, and all costs have been paid. The interpreter or translator must also swear or affirm that the interpreter or translator did not provide interpreting or translating services in any legal or court proceeding during the suspension period.

*k. Reinstatement decision.* The OPR will forward the application for reinstatement to the full advisory committee. The committee may direct that reinstatement be granted, set the matter for hearing, or enter such other disposition or order as the matter requires.

*l. Confidentiality.*

(1) All records, papers, proceedings, meetings, and hearings of the advisory committee panel are confidential, unless the panel imposes the following: a public reprimand; a suspension or revocation of a certification, roster status, or privilege to interpret or translate before the courts; a requirement that fees be refunded to a client for court services; or a form of discipline that the panel and the interpreter or translator agree should be made public.

(2) If the advisory committee panel imposes public discipline, the decision and the complaint filed with the OPR will become public documents upon filing with the clerk of the supreme court.

(3) Any other records and papers concerning any complaint against an interpreter or translator will remain privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the interpreter or translator, the attorneys, or the attorneys' agents involved in the disciplinary proceeding before the advisory committee panel. The interpreter or translator, the attorneys, or the attorneys' agents involved in the disciplinary proceeding before the panel may not disclose to any third parties any records and papers of the advisory committee or advisory committee panel concerning any complaint unless

disclosure is required in the prosecution or defense of disciplinary charges. The confidential records and papers concerning any complaint are not admissible as evidence in a judicial or administrative proceeding other than the formal interpreter or translator disciplinary proceeding under this rule.

(4) Every witness in every disciplinary proceeding under rule 47.10 must swear or affirm to tell the truth and not to disclose the existence of the disciplinary proceedings or the identity of the interpreter or translator until the disciplinary proceeding is no longer confidential under these rules.

(5) Any communications, papers, and materials concerning any complaint that may come into the possession of a committee member ~~is~~ are confidential, and the member must keep such confidential material in a safe and secure place.

(6) Nothing in this rule prohibits the advisory committee or an advisory committee panel from releasing any information regarding possible criminal violations to appropriate law enforcement authorities, wherever located, or to interpreter or translator disciplinary and admission authorities in other jurisdictions.

*m. Temporary suspension.* Notwithstanding the provisions of this rule, the state court administrator may temporarily suspend the right of any interpreter or translator to interpret or translate in legal proceedings, court-ordered programs, and offices of the Iowa Judicial Branch upon a showing of a clear violation of the Iowa Code of Professional Conduct for Court Interpreters and Translators and of exigent circumstances demonstrating that the interpreter or translator currently lacks the capacity to interpret court proceedings or translate court documents. Any order suspending an interpreter's or translator's right to interpret or translate in Iowa courts must provide the interpreter or translator with an opportunity to appear before the supreme court and show cause why the temporary suspension order should be lifted.

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#### **Rule 47.13 Written translations of court-related material.**

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**47.13(3)** *Priorities in the appointment of a translator of court-related material.* When a translator of court-related material is needed, the court will appoint a translator in the following order of preference:

*a.* Certified as a translator by the ATA or NAJIT in the required language combination (e.g., Spanish to English translation);

*b.* A Class A certified oral language court interpreter as defined in rule 47.4(1); ~~and~~

*c.* If there is no person available who meets the qualifications in rule ~~47.12(2)(a)~~ 47.13(3)(a) or (b) and who could deliver the translated material through regular or electronic mail by the required date, the court may approve a translator who has a degree from a four-year college or university and has sufficient knowledge and experience as a translator of English and the other required language to provide a complete and accurate written translation of the court-related material.

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**47.13(5)** *Application for written translation of ~~a~~ court-related material.* When a party or attorney in a case involving an LEP person wants a written translation of court-related material



from English into another language, or from another language into English, and the court or other government entity will be responsible for paying the translator, the LEP person or the LEP person's attorney must file with the court a timely application for a written translation of the court-related material. The application must include:

*a.* An explanation of the need for a written translation of the court-related material and why an oral or sign language interpretation of the court-related material would not be sufficient to ensure due process under the circumstances.

*b.* The name, contact information, qualifications, and certifications of the proposed translator.

*c.* The number of words in the document to be translated, or the number of minutes of recorded communication involving one or more LEP persons, the hourly fee or fee per word to be paid to the translator, and the total translation fee to be paid to the translator.

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**CHAPTER 48**  
**CODE OF PROFESSIONAL CONDUCT FOR COURT**  
**INTERPRETERS**  
**AND TRANSLATORS**

[Prior to April 1, 2008, see Chapter 15]

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DEFINITIONS

Throughout this chapter:

(1) *Court interpreter or interpreter.* A “court interpreter” or an “interpreter;” ~~as used in this chapter,~~ means an oral or sign language interpreter who transfers the meaning of spoken or written words or signs into the equivalent meaning in another oral or sign language during a legal proceeding.

(2) *Court proceeding.* A “court proceeding” is any action before a state court judicial officer that has direct legal implications for any person.

(3) *Legal proceeding.* “Legal proceeding;” ~~as used in this chapter,~~ includes any court proceeding, any deposition conducted in preparation for a court proceeding, any case settlement negotiation in an existing court case, and any attorney-client communication necessary for preparation for a court proceeding in an existing court case.

(4) *Limited English proficient (LEP) participant or person.* An “LEP participant or person” has a limited ability to speak, read, write, or understand English because the person’s primary language is not English or because the person is deaf, deaf-blind, or hard-of-hearing.

(5) *Sight translation.* “Sight translation” is the act of transferring verbally, or through the use of sign language, the meaning of written text in one language into the equivalent meaning in another language.

(6) *Source language.* “Source language” is the spoken, written, or signed communication that an interpreter or translator is to transfer into the equivalent meaning in another language, which is the “target language.”

(7) *Target language.* “Target language” is the language into which a text, document, or speech is translated.

(8) *Translator.* A “translator;” ~~as used in this chapter,~~ accurately transfers the meaning of written, oral, or signed words and phrases in one language into the equivalent meaning in written words and phrases of a second language, or accurately produces a written transcript in English of electronically recorded testimony or other court communication in which one or more of the participants has limited English proficiency.

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*Preparation by an interpreter for a legal proceeding.*

The ethical responsibility to interpret accurately and completely includes the responsibility of properly preparing for interpreting assignments. An interpreter is encouraged to obtain public documents and other public information necessary to become familiar with the nature and purpose of a proceeding. Prior preparation is especially important when testimony or documents are likely to include highly specialized terminology and subject matter.

To avoid any impropriety, or even the appearance of impropriety, an interpreter should seek permission of the court before conducting any preparation involving access to confidential information. Courts may grant such permission when it is necessary for the interpreter to discharge the interpreter's professional responsibilities.

Preparation may include, but is not limited to, the following:

(1) Reviewing public documents in the court file, such as motions and supporting affidavits, witness lists, and jury instructions; the criminal complaint, information, and preliminary hearing transcript in a criminal case; and the summons, petition, and answer in a civil case;

(2) Reviewing information from public sources such as dictionaries, newspapers, online case records, or internet sites;

(3) Reviewing documents in the possession of counsel, such as police reports, witness summaries, deposition transcripts, and presentence investigation reports;

(4) Contacting any other interpreters involved in the case for information on language use or style;

(5) Contacting attorneys involved in the case for additional information on anticipated testimony or exhibits;

(6) Anticipating and discussing interpreting issues related to the case with the judicial officer, but only in the presence of counsel for all parties unless the court directs otherwise.

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### **Canon 3 Impartiality and avoidance of conflict of interest**

**An interpreter must be impartial and unbiased and must refrain from conduct that may give an appearance of bias. An interpreter must disclose any real or perceived conflict of interest.**

*Comment to Canon 3.*

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Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest and must be disclosed to the judicial officer, or if the legal proceeding is outside of court, to all attorneys involved in the proceeding. An interpreter should only divulge necessary information when disclosing the conflict of interest. The disclosure must not include privileged or confidential information. The following circumstances create potential conflicts of interest that a court interpreter must disclose:

(1) The interpreter is a friend, associate, or relative of a party, counsel for a party, a witness, or a victim (in a criminal case) involved in the proceedings;

(2) The interpreter or the interpreter’s friend, associate, or relative has a financial interest in the subject matter in controversy, a shared financial interest with a party to the proceeding, or any other interest that might be affected by the outcome of the case;

(3) The interpreter has served in an investigative capacity for any party involved in the case;

(4) The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;

(5) The interpreter is an attorney or witness in the case;

(6) The interpreter has previously been retained for employment by one of the parties;

(7) For any other reason, the interpreter’s independence of judgment would be compromised in the course of providing services.

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## **Canon 8**

### **Assessing and reporting impediments to performance**

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*Comment to Canon 8.*

#### *Impediments to competent performance*

If the communication mode or language variety of the LEP person cannot be readily interpreted, the interpreter should notify the appropriate authority, such as a judicial officer, an attorney, or another person with authority over the proceeding.

An interpreter should notify the appropriate authority of any circumstances (e.g., environmental conditions or physical limitations) that impede the ability to deliver interpreting services adequately. For example, these circumstances may include that the courtroom is not sufficiently quiet for the interpreter to hear or be heard by the LEP person, more than one person is speaking at the same time, or a person is speaking too quickly for the interpreter to accurately interpret. A sign language interpreter must ensure that the interpreter can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movements, as well as hand gestures. A sign language interpreter must also ensure that the LEP person can see the interpreter clearly.

An interpreter should notify the judicial officer or other appropriate authority of the need to take periodic breaks in order to maintain mental and physical alertness and prevent interpreter fatigue. An interpreter should inform the judicial officer when the use of team interpreting is necessary.

Even a competent and experienced interpreter may encounter situations where routine proceedings unexpectedly involve slang, idiomatic expressions, regional dialect, or technical or specialized terminology unfamiliar to the interpreter (e.g., ~~the unscheduled testimony of an expert witness~~). When such situations occur, the interpreter should request a brief recess in order to become familiar with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, the interpreter should inform the judicial officer, or if the legal proceeding is outside of court, the interpreter should inform all attorneys involved in the proceeding.

An interpreter should refrain from accepting a case that has language or subject matter that is likely to exceed the interpreter’s capabilities. An interpreter should also notify the judicial officer or other appropriate authority if the interpreter is unable to perform adequately for any reason.

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**Canon 9**  
**Duty to report criminal convictions and ethical violations**

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*Comment to Canon 9.*

Interpreters must disclose to the OPR the types of criminal convictions and disciplinary actions that potentially constitute “disqualifying misconduct” pursuant to ~~rule~~ Iowa Court Rule 47.2(1)(c)(3). An interpreter who observes another interpreter commit a serious violation of the Code of Conduct should file a written complaint with the OPR using the form provided by that office. Discretion should be exercised by the interpreter who observed the alleged unethical conduct when determining whether the alleged violation was sufficiently substantial to warrant discipline. Minor ~~or~~ infrequent interpreting errors might be technical violations of Canon 1, but they probably would not warrant discipline. Some examples of serious ethical violations by court interpreters include: frequent failures to interpret accurately or completely in court; falsification of a claim for interpreter services; publicly discussing confidential attorney-client communications; or clearly providing legal advice to an LEP person in court.

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**CHAPTER 49**  
**OFFICE OF PROFESSIONAL REGULATION**

Rule 49.1	Office of Professional Regulation of the Supreme Court of Iowa
Rule 49.2	Board and commission budgets
Rule 49.3	Authority to allocate funds
Rule 49.4	Fees for certificates; score transfers, <del>and</del> ; copies

**CHAPTER 49**  
**OFFICE OF PROFESSIONAL REGULATION**

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**Rule 49.2 Board and commission budgets.** Annual budgets for the continuing legal education commission, the client security commission, the lawyer trust account commission, the grievance commission, the board of examiners of shorthand reporters, the board of law examiners, the unauthorized practice of law commission, and the court interpreter examination and licensing program, ~~shall~~must be prepared for each fiscal year running from July 1 through June 30. At least 60 days prior to the start of each fiscal year or on date otherwise specified by the supreme court, the director ~~shall~~must submit to the supreme court annual operating budgets for each of these boards and commissions, which may be amended as necessary.

**Rule 49.3 Authority to allocate funds.** The fees collected under the provisions of chapters 39, 41, and 42 of the Iowa Court Rules may be allocated and used for such purposes within the office of professional regulation as the supreme court may direct.

**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.

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