

CHAPTER 39
CLIENT SECURITY COMMISSION

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CHAPTER 39 CLIENT SECURITY COMMISSION

Rule 39.1 Client Security Commission.

39.1(1) *Commission.* There is hereby created a Client Security Commission (commission), which has the duties and powers provided in this chapter.

39.1(2) *Duties of commission.* The commission 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 will appoint five members of the Iowa bar and two laypersons who are residents of this state to the commission. All appointments will be for a term of four years, and any commissioner who has served two full terms is not eligible for reappointment. A vacancy occurring during a term will be filled by the supreme court for the unexpired portion thereof.

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

[Court Order December 5, 1973; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; May 25, 2004; April 20, 2005, and July 1, 2005, effective July 1, 2005; December 13, 2017, effective January 1, 2018]

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 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 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 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 requires.

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

f. Perform such other functions and duties as may be directed by the supreme court.
[Court Order December 5, 1973; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; November 20, 2015, effective January 1, 2016; December 13, 2017, effective January 1, 2018]

Rule 39.3 Clients' Security Trust Fund of the Bar of Iowa.

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

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

39.3(3) *Purpose.* The purpose of the fund 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 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, 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 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); provided, however, the commission 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 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 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. Authorization for payment of claims, however, may 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 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 that the commission believes will assist in preventing defalcations by attorneys. The annual allocation for any such program 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 are obligatory when rendered.

[Court Order November 9, 2001, effective February 15, 2002; November 26, 2013, effective December 1, 2013; December 13, 2017, effective January 1, 2018]

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 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.

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

39.4(3) Budget. At least 60 days prior to the commencement of each fiscal year 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.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; November 20, 2015, effective January 1, 2016; December 13, 2017, effective January 1, 2018]

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, 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 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 is exempt from payment of this fee.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; December 2, 2011; April 25, 2014; August 19, 2016, effective September 1, 2016; December 13, 2017, effective January 1, 2018]

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, 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 is to be paid annually and deposited in the fund created pursuant to the provisions of rule 39.3. Assessments 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.

39.6(2) Initial and regular assessment schedule.

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

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

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

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

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

39.6(3) Certificate of sufficiency. The commission must determine the net value of the cash and securities in the fund as of December 1 of each year. The commission 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 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) will be payable for the next calendar year after the date of the certificate of sufficiency. This special assessment 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 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 must pay to the commission a special assessment of \$70. Net income from the practice of law for the purposes of this rule 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, must pay to the commission a special assessment of \$70. However, a retired judge or justice recalled for temporary service is not 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 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 is exempt from any assessment under this rule.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; November 26, 2013, effective December 26, 2013; April 25, 2014; August 19, 2016, effective September 1, 2016; December 13, 2017, effective January 1, 2018]

Rule 39.7 Exemption; retirement.

39.7(1) *Certificate of exemption.* A member of the bar of the supreme court who is not engaged in the practice of law in the State of Iowa may be granted a certificate of exemption by the commission, and thereafter no fee or assessment except for an annual exemption fee of \$50 and late filing penalties will be required from such member unless the member thereafter engages in the practice of law in the State of Iowa, in which case the certificate of exemption must without further order of court stand revoked, and the member 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 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 39.7(1).

39.7(2) *Certificate of retirement.* A member of the bar of the supreme court who is fully retired from the practice of law in the State of Iowa and does not intend ever again to practice law in Iowa may be granted a certificate of retirement. Thereafter, no fee, assessment, annual statement, or questionnaire is required from such member. A member granted a certificate of retirement is not entitled to practice law in the state of Iowa and may not apply for reinstatement, but the member may be certified as an emeritus attorney under 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 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 rules 41.13 and 39.7(2).

39.7(3) *Practice of law.* The practice of law as that term is employed in this chapter includes the following: examining abstracts; consummating real estate transactions; preparing legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; representing others in any Iowa courts;

the right to represent others in any Iowa courts; regularly preparing legal instruments; securing legal rights, advising others as to their legal rights or the effect of contemplated actions upon their legal rights, or holding oneself out to do so; instructing others in legal rights; 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.

39.7(4) Transition provisions.

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

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

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

d. Attorneys who are in exempt status as of December 31, 2017, will be accorded legacy status. Attorneys in legacy status will have no fee payment or reporting responsibilities. For a period of five years commencing January 1, 2018, and ending December 31, 2022, attorneys in legacy status may apply for conversion to exempt status, emeritus status under rule 31.19, retired status under rule 39.7(2), or reinstatement to active status under rule 39.14(3). On or after January 1, 2023, attorneys in legacy status are not entitled to apply for conversion to exempt status or apply for reinstatement to active status under rule 39.14(3), but they may apply for emeritus status under rule 31.19 or retired status under rule 39.7(2).

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; August 19, 2016, effective September 1, 2016, rules 39.7(1) and 39.7(2), effective January 1, 2018; December 13, 2017, effective January 1, 2018]

Rule 39.8 Enforcement.

39.8(1) To facilitate the collection of the annual fees and assessments provided for in rules 39.5, 39.6, 39.7(1), and 39.17, all members of the Iowa bar required to pay the fees and assessments 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 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 must file the statement required by this rule at the time of admission but no annual fees or assessments are payable until the time above provided. All attorneys failing to file the required statement by March 10 of each year 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 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:

If filed:	Penalty:
After March 10 but before April 12	\$100
After April 11 but before May 12	\$150
After May 11 but before June 12	\$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 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 provided above for notice of delinquency.

39.8(3) Any attorney suspended pursuant to this chapter 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 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 requirements of this rule.

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

39.8(4) Any attorney suspended pursuant to this chapter 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, conservatorship, or guardianship of any person related to the suspended attorney within the second degree of affinity or consanguinity.

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

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 10 days prior to any action upon the application.

Comment: Rule 39.8(6) formerly appeared as Iowa Court Rule 40.7. [Court Order December 13, 2017, effective January 1, 2018]
[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; April 25, 2008; June 5, 2008, effective July 1, 2008; January 19, 2010; April 25, 2014; November 20, 2015, effective January 1, 2016; August 19, 2016, effective September 1, 2016; December 13, 2017, effective January 1, 2018]

Rule 39.9 Claims.

39.9(1) The commission 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. 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 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.

(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 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. 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 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 will be made, and the order in which payment 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 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 commission must fix the maximum amount that any one claimant may recover from the fund and the aggregate maximum amount that may be recovered because of the dishonest conduct of any one attorney.

39.9(4) No claimant or any other person or organization has any right in the fund as third-party beneficiary or otherwise. Reimbursement by claim on the fund 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 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 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 is inadmissible as evidence in any disciplinary or contempt proceeding.

[Court Order December 5, 1973; April 22, 1974; October 16, 1974; April 9, 1975; April 10, 1975; August 29, 1975; October 28, 1976; November 21, 1977; January 15, 1979; June 20, 1980; April 21, 1982; November 13, 1984; April 25, 1985; February 16, 1990, effective March 15, 1990; December 15, 1994, effective January 3, 1995; March 6, 1995; January 24, 2000; November 9, 2001, effective February 15, 2002; February 20, 2012; December 10, 2012; December 13, 2017, effective January 1, 2018]

Rule 39.10 Investigations; audits.

39.10(1) Each member of the bar of Iowa, in filing the statement required by rule 39.8(1), 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 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 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 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 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 must promptly report such circumstances to the commission. A copy of such report must be furnished to the member affected.

39.10(6) Client trust funds and property held by an Iowa licensed attorney whose law office is situated in another state are not 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 are not 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 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 Iowa Court Rule 35.1.

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 Iowa Court Rule 34.17 or 34.18 for an attorney signatory on the account.

h. An attorney signatory on the account was issued a certificate of noncompliance pursuant to 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.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; November 20, 2015, effective January 1, 2016; December 10, 2012; December 13, 2017, effective January 1, 2018]

Rule 39.11 Annual questionnaire.

39.11(1) The director, under the supervision of the supreme court and the commission, 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. 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 is 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 will be addressed as provided in rule 39.12.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; June 5, 2008, effective July 1, 2008; December 10, 2012; December 13, 2017, effective January 1, 2018]

Rule 39.12 Investigations; audits; annual questionnaire; enforcement.**39.12(1) Failure of bar members to cooperate.**

a. The 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 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 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 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, 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 36 of the Iowa Court Rules or Iowa Code section 602.10123. If proceedings are initiated pursuant to chapter 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 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, has the authority to issue a subpoena.

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

[Court Order December 5, 1973; September 19, 1974; October 16, 1974; April 9, 1975; April 30, 1982; August 14, 1986, and August 18, 1986, effective September 2, 1986; May 10, 1990, effective July 2, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 9, 2003; April 20, 2005, effective July 1, 2005; December 5, 2007; December 10, 2012; December 13, 2017, effective January 1, 2018]

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 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 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 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.

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

[Court Order November 9, 2001, effective February 15, 2002; December 10, 2012; December 13, 2017, effective January 1, 2018]

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 must pay all delinquent fees, assessments and late filing penalties due under rules 39.5, 39.6, 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 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, 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.

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

[Court Order April 25, 2008; August 10, 2009; November 20, 2015, effective January 1, 2016; December 10, 2012; December 13, 2017, effective January 1, 2018]

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 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 Central Collection Unit of the Iowa Department of Revenue. The procedure is governed by Iowa Court Rule 34.22.

39.15(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 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 is governed by Iowa Court Rule 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 is governed by Iowa Court Rule 34.20.

[Court Order June 5, 2008, effective July 1, 2008; February 20, 2012; December 13, 2017, effective January 1, 2018]

Rule 39.16 Attorneys practicing in Iowa under the multijurisdictional practice rule. An attorney who establishes an office or other systematic and continuous presence in Iowa for the practice of law under the provisions of rule of professional conduct 32:5.5(d)(2) 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 rules 39.12 and 39.17.

[Court Order December 10, 2012; December 13, 2017, effective January 1, 2018]

Rule 39.17 Collection of court costs and other fees.

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

39.17(2) As a condition to continuing 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.

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

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

[Court Order November 20, 2015, effective January 1, 2016; December 10, 2012; December 13, 2017, effective January 1, 2018]

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 Iowa Court Rule 45.11, prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records.

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

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

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

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

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

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

[Court Order November 20, 2015, effective January 1, 2016; November 24, 2015, effective March 1, 2016; January 15, 2016, effective January 1, 2017; August 29, 2016, effective January 1, 2018; November 18, 2016, effective December 25, 2017; December 13, 2017, effective January 1, 2018]