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## **CHAPTER 36**

### **GRIEVANCE COMMISSION RULES OF PROCEDURE**

#### **Rule 36.1 Complaints.**

**36.1(1)** Any complaint of the Iowa Supreme Court Attorney Disciplinary Board (disciplinary board) must be filed with the Iowa Supreme Court Grievance Commission (grievance commission) in the name of the disciplinary board as the complainant and against the attorney named in the charges as the respondent. The disciplinary board must prosecute the complaint and charges before the grievance commission until final disposition.

**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.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**COMMENT:** Rule 36.1(1) formerly appeared as Iowa Court Rule 36.3. Rule 36.1(2) formerly appeared at Iowa Court Rule 35.5. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 36.2 Docket; complaints; filings.**

**36.2(1)** The grievance commission clerk must maintain a permanent docket of complaints in substantially the same manner as the records relating to civil actions in district court. The clerk must separately number and file each complaint. All subsequent answers, motions, applications, petitions, pleadings, orders, or other related documents will be made part of the file.

**36.2(2)** The grievance commission clerk must file and preserve all complaints, answers, motions, applications, petitions, pleadings, orders, records, reports, exhibits, evidence, and other documents or things filed under this chapter or received in evidence in a hearing before the grievance commission in Des Moines, Iowa, and the files must at all times be available to the supreme court or anyone the court designates.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.2(1) formerly was included in Iowa Court Rule 36.4. Rule 36.2(2) formerly appeared at Iowa Court Rule 35.5. Rule 36.2 is amended to conform an internal reference to the new rule numbers and to reduce duplication with rule 36.4. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.3 Report of filing.** The grievance commission clerk must report the filing of each complaint to the grievance commission chair, who must by written order direct that the grievance commission as a whole, or a specified division of the commission, hear each complaint.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.3 formerly appeared as Iowa Court Rule 36.5. [Court Order January 26, 2016, effective April 1, 2016]

**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 two additional members as alternates.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**COMMENT:** Rule 36.4 formerly appeared as Iowa Court Rule 36.2. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 36.5 Notice to respondent.**

**36.5(1)** Upon the filing of a complaint, the grievance commission clerk must serve a written notice of the complaint, a copy of the complaint, and a copy of chapter 36 of the Iowa Court Rules upon the respondent.

**36.5(2)** The grievance commission clerk may serve notice of the complaint by personal service in the manner of an original notice in civil suits or by restricted certified mail to the respondent's last address as shown by records accessible to the supreme court. The notice must inform the respondent of the 20-day period following completed service of the notice to file a written answer to the complaint. Written return of service must be made by the person making the service if by personal service, or by the grievance commission clerk with postal receipts attached to the return if by restricted certified mail, and the return of service must be filed. Service is complete on the date of personal service or on the date shown by the postal receipt of delivery of the notice to the respondent or refusal of the

respondent to accept delivery. The notice is sufficient if it substantially complies with the form that accompanies these rules.

**36.5(3)** If service cannot be obtained pursuant to rule 36.5(2), the grievance commission clerk may serve notice of the complaint on the supreme court clerk, who is appointed to receive service on behalf of attorneys subject to Iowa's disciplinary authority. Iowa R. Prof'l Conduct 32:8.5 cmt. [1]. Service upon the supreme court clerk is deemed to be completed service of the notice on the respondent. Simultaneously with serving notice on the supreme court clerk, the grievance commission clerk must forward the notice and a copy of the complaint to the respondent by restricted certified mail to the respondent's last address as shown by records accessible to the supreme court. The notice must instruct the respondent to file a written answer to the complaint within 20 days after completed service of the notice. The grievance commission clerk must file with the supreme court clerk an affidavit attesting that notice was sent to the respondent by restricted certified mail.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.5 formerly appeared as Iowa Court Rule 36.6. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**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 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 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 of the filing and file a copy with the grievance commission clerk.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**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. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.7 Answer.** The respondent must file a written answer to the complaint within 20 days from the completed service of notice. For good cause shown upon written application, the grievance commission may grant an extension of time for filing an answer. If the respondent fails or refuses to file an answer within the time specified, the allegations of the complaint are deemed admitted, and the matter will proceed to a hearing on the issue of the appropriate sanction.

[Court Order January 26, 2016, effective April 1, 2016]

**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 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.

**36.8(2) Colorable future claim.** A respondent who intends to rely on the defense of a colorable future claim to funds taken from a trust account to avoid a finding of misappropriation must, within the time set for the making of pretrial motions or at such later time as the division president directs, file written notice of such intention. The division president may for good cause shown allow late filing of the notice. The respondent bears the burden of coming forward with evidence in support of a colorable future claim, but the burden to prove conversion remains with the complainant.

**36.8(3) Failure to comply.** If a respondent fails to abide by the time period described in rule 36.8(2), the respondent may not offer evidence on the issue of colorable future claim without leave of the division president for good cause shown. In granting leave, the division president may impose terms and conditions including a delay or continuance of hearing.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**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; December 13, 2017, effective January 1, 2018]

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

**36.9(1)** Within the time allowed for filing an answer to the complaint, the respondent may challenge the impartiality of any member of the grievance commission or division by filing a motion setting forth the grounds for challenge. The motion will be disposed of as provided in rule 36.14. If the challenge is sustained, the vacancy thus created will be filled as provided in rule 36.4.

**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 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.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**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. [Court Order January 26, 2016, effective April 1, 2016]

**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 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 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.

**36.10(3)** The division president must file a scheduling order regarding discovery and other pretrial matters after the telephone conference. The scheduling order must specify deadlines for disclosure of expert witnesses, service of discovery requests, service of responses to discovery, exchange of witness and exhibit lists, exchange of exhibits, amendment of pleadings, objections to witnesses or exhibits, motions to resolve discovery issues, and any other pretrial matters the division president deems appropriate.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**COMMENT:** Rule 36.10 formerly appeared as Iowa Court Rule 35.7. It is amended to conform an internal reference to the new rule numbers and eliminate duplication with rule 36.11. In addition, provisions for a mandatory pretrial conference and a scheduling order regarding discovery and other pretrial matters are added, reflecting actual grievance commission pretrial practice. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.11 Time and place of hearing.** The grievance commission chair or the division president to whom a complaint has been referred must direct a hearing to be held upon the complaint in the respondent’s county of residence or, at the discretion of the grievance commission chair, within any other judicial district as most nearly serves the convenience of the parties and must designate by written order the time and place for the hearing. If the respondent files written objections to conducting the hearing in the respondent’s county of residence, the hearing must be held at such other place as the grievance commission chair or division president directs by written order, in which case a new notice of the hearing date must be given.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.11 formerly appeared as Iowa Court Rule 36.8. It is amended to eliminate duplication with rule 36.10. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.12 Continuances.** A hearing may not be continued except for good cause, upon written application supported by affidavit. Except in a case of emergency, any motion for continuance must

be filed at least seven days before the day of hearing. Any objections to continuance must be filed promptly.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.12 formerly appeared as Iowa Court Rule 36.9. It is amended to include language formerly in Iowa Court Rule 35.7 regarding the written application and affidavit. [Court Order January 26, 2016, effective April 1, 2016]

**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(4).

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**COMMENT:** Rule 36.13 formerly appeared as Iowa Court Rule 35.6. It is amended to conform an internal reference to the new rule numbers. Rule 36.13 also is amended based on changes to discovery rules for civil cases adopted effective January 1, 2015, with the goal of selectively incorporating the new discovery rules in civil cases to reflect current discovery practice before the grievance commission. The incorporated rules allow discovery by oral deposition, written interrogatories, requests for admission, requests for production, physical or mental examination, and depositions upon written interrogatories. Iowa Rule of Civil Procedure 1.507 regarding a discovery plan is not incorporated. Current grievance commission practice, incorporated in rule 36.10, is to craft a discovery plan that accommodates the hearing date and enter a scheduling order at the time the hearing date is set by telephone conference. Iowa Rules of Civil Procedure 1.501(1) and 1.505 are not incorporated because the contemplated initial disclosures are not relevant in attorney disciplinary cases or are already subject to disclosure in other parts of the attorney disciplinary process and the timing provisions are not compatible with the pace of attorney disciplinary proceedings. Similarly, Iowa Rule of Civil Procedure 1.702 regarding small claims and Iowa Rule of Civil Procedure 1.706 regarding substituted parties do not apply in attorney disciplinary proceedings. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.14 Prehearing motions and hearings.** If prompt written request is filed by or on behalf of any party for a hearing upon any preliminary motion or application filed in connection with a complaint, the chair of the grievance commission sitting as a whole or the division president to whom such complaint has been referred must by written order set a time and place of hearing on the motion or application and must notify all parties and attorneys. After the hearing, or if none is requested, the grievance commission chair or division president, as the case may be, or any member of the grievance commission or division designated by the chair or president must file a written ruling upon the motion or application, and thereafter all parties must promptly comply with the ruling's terms and conditions.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.14 formerly appeared as Iowa Court Rule 36.12. [Court Order January 26, 2016, effective April 1, 2016]

### **Rule 36.15 Subpoenas.**

**36.15(1)** The grievance commission has subpoena power on behalf of the disciplinary board and the attorney against whom a complaint is filed to compel the appearance of persons or the production of documents during discovery and the final hearing. The grievance commission clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete the subpoena for service. An attorney licensed or otherwise authorized to practice law in Iowa, as an officer of the court, also may issue and sign a subpoena.

**36.15(2)** Any attack on the validity of a subpoena must be heard or determined by the grievance commission chair, 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.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**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. [Court Order January 26, 2016, effective April 1, 2016]

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

**36.16(1)** The parties may stipulate and agree to waive formal hearing and submit the complaint to the grievance commission for its decision on the basis of a written stipulation the parties approve and file with the grievance commission clerk. The grievance commission may consider the complaint on the basis of the stipulation, refuse to accept the stipulation and proceed with a formal hearing, or accept the stipulation but conduct a limited hearing to elicit such additional evidence as the grievance commission may deem necessary to facilitate informed consideration of the complaint. A stipulation under this rule must be submitted not less than 15 days before the date set for hearing. A stipulation submitted pursuant to this rule may include a statement regarding the proposed discipline, including additional or alternative sanctions as provided in rule 36.19. A stipulation submitted pursuant to this rule must include:

*a.* For each rule violation stipulated, a separate paragraph stating supporting facts sufficient to allow the grievance commission and the supreme court to find a factual basis for concluding the violation occurred.

*b.* A separate statement of conclusions of law as to the stipulated violations.

*c.* A separate description of mitigating and aggravating circumstances.

*d.* A stipulation as to all exhibits.

*e.* A waiver of the formal hearing, the parties' agreement to submit the matter on the basis of the stipulation, and an agreement to closure of the record unless the grievance commission directs further proceedings.

*f.* If the parties stipulate to a sanction, a separate paragraph supported by citations to prior Iowa Supreme Court discipline decisions and a discussion as to why those decisions support the stipulated sanction.

**36.16(2)** If the grievance commission accepts a stipulation of facts, the stipulation binds the parties, the grievance commission, and the supreme court. The grievance commission must interpret the stipulation of facts with reference to its subject matter and in light of the surrounding circumstances and the whole record, including the state of the pleadings, issues involved, and any additional evidence elicited at a limited hearing.

**36.16(3)** A stipulation as to violations or sanctions is not binding on the grievance commission or the supreme court. The grievance commission must consider the statement of proposed discipline, but the statement does not limit the commission. The commission may recommend greater or lesser discipline, including additional or alternative sanctions.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**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). [Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

### **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 and arguments of the parties. The hearing is not open to the public.

**36.17(2)** The respondent may present character evidence by sworn affidavit, which must be filed as part of the respondent's exhibits. The affidavit must be admitted into evidence unless the complainant indicates, at least three days prior to the scheduled hearing date, that it intends to cross-examine the affiant. In such case, the affidavit must not be received into evidence, and the affiant must testify in the manner of all other witnesses. The respondent may similarly offer the character evidence of a subpoenaed judge by sworn affidavit, subject to the same constraints if the complainant timely indicates its intention to cross-examine the affiant judge. All other witnesses must testify at the hearing after administration of an oath or affirmation by a grievance commission member or other person authorized by law to administer oaths, and their testimony must be officially reported by a duly qualified court reporter.

**36.17(3)** If the respondent previously has been publicly reprimanded, the respondent's license has been suspended or revoked, or the respondent has been disbarred, a certified copy of said action must be admitted into evidence at any hearing involving disciplinary proceedings without the necessity of

a bifurcated hearing. The grievance commission and the supreme court will consider this evidence with all other evidence in the case in determining the respondent's fitness to practice law in the State of Iowa.

**36.17(4)** Either party may use principles of issue preclusion in an attorney discipline case if all of the following conditions exist:

*a.* The issue has been resolved in a civil proceeding that resulted in a final judgment or in a criminal proceeding that resulted in a finding of guilt, even if the disciplinary board was not a party to the prior proceeding.

*b.* The burden of proof in the prior proceeding was greater than a preponderance of the evidence.

*c.* The party seeking preclusive effect has given written notice to the opposing party, not less than 10 days prior to the hearing, of the party's intention to invoke issue preclusion.

**36.17(5)** The respondent may defend and has the right to participate in the hearing in person and by counsel to cross-examine, to be confronted by witnesses, and to present evidence.

**36.17(6)** The presentation of evidence must conform to the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence. The grievance commission chair or division president will determine all questions of procedure, including objections to evidence.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**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; December 13, 2017, effective January 1, 2018]

**Rule 36.18 Oaths.** Any member of the grievance commission may administer oaths or affirmations to all witnesses and must cause such testimony to be officially reported by a court reporter.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.18 formerly appeared as Iowa Court Rule 36.10. [Court Order January 26, 2016, effective April 1, 2016]

**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 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 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 grievance commission clerk a dissent from the majority determination or report. The clerk must promptly serve a copy of a dissent on the parties.

**36.19(3)** If the grievance commission dismisses the complaint or issues a private admonition, no report may be made to the supreme court except as provided in rule 34.13; however, the grievance commission must, within 10 days of its determination, serve a copy of its determination or report on the complainant and the attorney concerned as provided in this rule. If the complainant does not apply for an appeal within 10 days after such service, the grievance commission's determination is final.

**36.19(4)** If the commissioners dismiss the charges, no publicity will be given to any of the proceedings except at respondent's request.

**36.19(5)** A copy of the grievance commission's report must be filed with the Client Security Commission.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**COMMENT:** Rule 36.19 formerly appeared as Iowa Court Rule 36.15. It is amended to conform an internal reference to the new rule numbers and to complement rule 36.20. [Court Order January 26, 2016, effective April 1, 2016]



**Rule 36.20 Additional time for decision upon request.** If the grievance commission cannot reasonably make its determination or file its report within 60 days of the date set for the filing of the last responsive brief and argument, the division president may file a request for an extension of time with the grievance commission clerk prior to expiration of the 60-day period. The clerk must serve a copy of the request on the grievance commission chair and the parties. The grievance commission chair must file a written decision on the extension request with the grievance commission clerk, who must serve a copy on all parties. If the division fails to file its decision or a request for an extension of time within 60 days of the date set for the filing of the last responsive brief and argument, the grievance commission clerk must promptly notify the director of the office of professional regulation of the failure.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.20 formerly appeared at Iowa Court Rule 35.10. It is amended to conform an internal reference to the new rule numbers and to reflect the provisions moved to or already present in rule 36.19. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.21 Supreme court disposition if no appeal.**

**36.21(1)** Within 14 days after a report is filed with the supreme court clerk, the grievance commission clerk must transmit to the supreme court clerk the entire record made before the grievance commission. If no appeal is taken or application for permission to appeal is filed within the 10-day period provided in rule 36.22, the supreme court will set a date for submission of the grievance commission report. The supreme court will notify the parties that they may file written statements with the supreme court in support of or in opposition to the discipline the grievance commission recommends. Statements in support of or in opposition to the recommended discipline must be served and filed no later than seven days before the date set for submission. Upon submission, the supreme court will proceed to review de novo the record made before the grievance commission and determine the matter without oral argument or further notice to the parties. Upon de novo review the supreme court may impose a lesser or greater sanction than the discipline the grievance commission recommends.

**36.21(2)** The supreme court may revoke or suspend the license of an attorney admitted to practice law in Iowa upon any of the following grounds: conviction of a felony, conviction of a misdemeanor involving moral turpitude, violation of any provision of the Iowa Rules of Professional Conduct, or any cause now or hereafter provided by statute or these rules.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.21 formerly appeared as Iowa Court Rule 35.11. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**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 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.

**36.22(2)** The complainant may apply to the supreme court for permission to appeal from a determination, ruling, report, or recommendation of the grievance commission. The application must be filed within 10 days after service of the determination, ruling, report, or recommendation on the complainant. The supreme court may grant such appeal in a manner similar to the granting of interlocutory appeals in civil cases under the Iowa Rules of Appellate Procedure. The filing fee and the docket fee may be waived upon the complainant's written request.

**36.22(3)** An appeal of the grievance commission's dismissal of a complaint or of the grievance commission's decision to issue a private admonition must remain confidential. In making such application, and in any subsequent briefs, the complainant must refer to the respondent as "Attorney Doe No. (insert grievance commission number)," instead of using the respondent's name. All references to the respondent during oral arguments must be to "Attorney Doe." In the event the supreme court reverses or modifies the report of the grievance commission, the court order of reversal or modification is a public record.

**36.22(4)** After a notice of appeal is filed or permission to appeal is granted, the appeal must proceed pursuant to the Iowa Rules of Appellate Procedure to the full extent those rules are not inconsistent with this chapter. Within seven days of the filing of the notice of appeal or the filing of

the order granting permission to appeal, appellant must pay the filing fee pursuant to Iowa Rule of Appellate Procedure 6.702 and must file the combined certificate Iowa Rule of Appellate Procedure 6.804 requires. The matter must be captioned under the title given to the action before the grievance commission with the appellant identified as such pursuant to Iowa Rule of Appellate Procedure 6.109(2), unless rule 36.22(3) requires otherwise. The abbreviated time limits specified in Iowa Rule of Appellate Procedure 6.902 apply. Extensions of time must not be granted except upon a verified showing of the most unusual and compelling circumstances. Review is de novo. If a respondent's appeal is dismissed for lack of prosecution pursuant to Iowa Rule of Appellate Procedure 6.1202 or for any other reason, the supreme court must proceed to review and decide the matter pursuant to rule 36.21 as if no appeal had been taken.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**COMMENT:** Rule 36.22 formerly appeared as Iowa Court Rule 35.12. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.23 Harmless error; substantial prejudice test.** An omission, irregularity, or other defect in procedure will not render void or ineffective any act of the grievance commission, division, or any member thereof unless substantial prejudice is shown to have resulted.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.23 formerly appeared as Iowa Court Rule 36.17. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 36.24 Costs.**

**36.24(1)** In the event that an order of revocation, suspension, or public reprimand results from formal charges of misconduct, the supreme court will assess against the respondent the costs of the proceeding. For the purposes of this rule, costs include those expenses normally taxed as costs in state civil actions pursuant to the provisions of Iowa Code chapter 625.

**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.

**36.24(3)** In its final decision, the supreme court will order the respondent to pay restitution to the complainant for such costs as the supreme court may approve. A suspended or disbarred attorney may not file an application for reinstatement or readmission until the amount of such restitution for costs assessed under this rule is fully paid or waived by the supreme court.

[Court Order January 26, 2016, effective April 1, 2016; December 13, 2017, effective January 1, 2018]

**COMMENT:** Rule 36.24 formerly appeared as Iowa Court Rule 35.27. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.25 Forms.**

**Rule 36.25 — Form 1: *Notice of Complaint.***

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**Before the Iowa Supreme Court Grievance Commission**

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**Iowa Supreme Court**

**Attorney Disciplinary Board,**

**Complainant,**

**vs.**

\_\_\_\_\_, Attorney at Law, of

*Full name: first, middle, last*

\_\_\_\_\_, Iowa

**Respondent.**

**Notice of Complaint**

To: \_\_\_\_\_  
*Respondent's name*

Respondent:

You are notified that there is now a complaint on file with the Iowa Supreme Court Grievance Commission Clerk at the Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319, alleging that you have committed unethical practices as an attorney and counselor at law.

A copy of the complaint and a copy of chapter 36 of the Iowa Court Rules are attached and made a part of this notice.

You are further notified to file your written answer to the complaint within 20 days from the completed service of this notice and to abide by any further orders of the grievance commission made in accordance with chapter 36 of the Iowa Court Rules.

You are further notified that the grievance commission will hear this complaint in accordance with the rules and will take action as may be warranted by the facts and circumstances disclosed at the hearing.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
*Month Year*

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*Grievance Commission Clerk*  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319