

**Office of Professional Regulation Discussion  
of Recommended Changes  
to Division III of the Iowa Court Rules  
August 21, 2015**

**Rules 31.1, 37.1, 38.2, 39.2, 39.4, 42.8, 43.4, 49.1**

When the concept of establishing an office of professional regulation (OPR) was adopted in late 2007, a new chapter 49 was approved to authorize the organizational changes and staff assignments intended to implement the concept. Now that OPR has been in operation for several years, more flexibility in assignment of assistant director duties is necessary to accommodate future changes in office staff and structure. The proposed changes would eliminate specific assistant director assignments except for the assistant director for attorney discipline, to provide flexibility in designation of assistant director duties within the main office of OPR. The proposed changes also amend budget approval processes to place the entire responsibility within OPR, which reflects actual practice.

**Rule 31.15(8)**

Some students practicing under the student practice rule have identified themselves in pleadings and motions as “student attorneys,” which some court staff members have found misleading. The proposed rule would specify that “law student” is the proper identification for law students practicing under the student practice rule.

**Rule 38.6, Rule 38.7**

The proposed change in rule 38.6 conforms the unauthorized practice procedure rules to current staffing and practice.

**Rule 39.8(2), Rule 39.17**

Court rules establish various fees, costs, and penalties payable by Iowa attorneys, but do not provide a specific method for collection beyond citation for contempt in some instances. Iowa R. App. P. 6.1202(2)(penalty for failure to comply with appellate deadline); Iowa Ct. R. 40.4 (subrogation rights of Client Security Commission for claims paid). The proposed change in rule 39.8(2) and new rule 39.17 would allow the Client Security Commission to assess certain amounts owed by an attorney for collection with the annual client security statement. The assessable amounts would include unpaid fines, penalties, and court costs owed any Iowa court or OPR, or any reimbursement due the Client Security Commission. Failure to timely pay the assessed

amounts with the annual statement submission would be grounds for suspension.

### **Rule 39.10(3), Rule 39.10(7)**

The Client Security Commission conducts most trust account audits as part of a periodic rotation. However, in recent years an increased number of audits have been directed for cause, based on specific information that provides an articulable basis for suspecting that trust account rules may have been violated. The increased special audit load has increased annual operating costs of the Client Security Commission. The proposed rule change would allow the Client Security Commission to recoup the cost of an audit conducted for cause from the attorney signatory or signatories on the account. Audit costs would only be collectible, however, if the audit in fact shows that the account was not in substantial compliance with the trust account rules, and one of the seven objectively verifiable incidents described in the rule triggered the audit.

An internal rule reference also is corrected.

### **Rule 39.18**

In 2011, the Office of Professional Regulation published a succession planning handbook for solo practitioners. At that same time, client security auditors began advising sole practitioners regarding the need for a succession plan during periodic trust account audits. Despite these efforts, the auditors continue to find that few sole practitioners have written succession plans, and trustee appointments continue to be necessary when sole practitioners are suspended, become disabled, or die. The proposed rule 39.18 would require succession plans and allow enforcement of the provision under rule 39.10(5).

### **Rule 41.9**

The Commission on Continuing Legal Education recommends adoption of a reciprocity rule with respect to continuing legal education (CLE) attendance, intended to ease the reporting process for out-of-state attorneys and likely reduce the number of out-of-state CLE events submitted for accreditation in Iowa. Because some of Iowa's neighboring states have lesser requirements and different CLE policies, the approach recommended would allow nonresident attorneys to certify attendance of the same number of hours required for resident Iowa attorneys, and that those hours were accredited by the CLE regulatory body in the attorney's resident state. The proposed rule would deny the out-of-state reporting exemption to attorneys who, although residing outside Iowa, are in fact practicing in Iowa.

## **Rule 42.1**

In the spring of 1995, the court issued its response to the final report of the Equality in the Courts Task Force. The court's response included the following policy and intended notification to the Commission on CLE:

the impact of race, national origin, ethnicity, and sex on issues related to court system interaction and case or controversy outcome, and professional relationships between attorneys and judges where race, national origin, ethnicity, or sex is a potential factor are issues that should be regular subjects offered to attorneys and judges as part of their continuing legal education. Further, *the court shall notify the commission on continuing legal education that anti-bias training is an ethical issue for attorneys and judges thereby qualifying such training for credit towards the ethics requirement.*

*(Emphasis added.)*

Staff at OPR searched the archive of CLE meeting minutes from 1992-2002 and the index of archived orders from the court maintained by the supreme court clerk, but could not find a formal statement of the policy being referenced above or any reference to it in the CLE meeting minutes. There was no formal definition of "legal ethics" in the rules of the commission until the 2013 edition. However, a review of the prior editions of the Iowa Court Rules indicates that changes were made in Canon 3 (A)(8) of the Judicial Canons to implement the court's policy of 1995.

Based on the staff's recommendation, the commission now has implemented the 1995 policy by granting ethics credit to CLE activities that otherwise meet the necessary CLE criteria and deal with anti-bias or anti-discrimination matters. The commission's accreditation policies also have been amended to reflect the 1995 policy.

Although the court's response in 1995 was limited to "race, national origin, ethnicity, and sex" the initial recommendations of the task force mentioned that other prohibited categories should be included. The commission therefore recommends that the definition of legal ethics in rule 42.1(6) be amended to reflect the 1995 policy. "Gender identity" is not listed in rule 51:2.3(B), but the commission recommends it be included in the CLE rule change to reflect the protected classes designated in chapter 216 of the Iowa Code.

## **Rule 42.2**

Iowa is one of only a few states not offering some form of credit for speaking at accredited continuing legal education events. After review of the matter and

discussion as to whom should be awarded credit, for what work, and in what amount, the commission voted unanimously at its fall 2014 meeting to propose a change to rule 42.2(3). An attorney who speaks at an accredited CLE event would be entitled to one hour of preparation credit for each hour of instruction presented, up to a maximum of three hours of preparation credit per year. Preparation credit would be applied against the regular CLE attendance requirement of fifteen hours per year, but not against the legal ethics attendance requirement of three hours each biennium ending in the odd-numbered year. Excess hours of preparation credit would not carry over to the next year. An attorney would need to actually make a presentation or serve as a speaker on a panel and prepare supporting written materials to be entitled to the credit. The preparation credit would not be available to an attorney who prepares a course directed primarily to persons preparing for admission to practice law, or who receives compensation, other than reasonable expenses, for preparing or presenting the continuing legal education.

#### **Rule 49.4**

OPR routinely provides certificates of official records, transferred examination scores, and copies of official records in paper and electronic form. No specific authority exists in the court rules for collection of appropriate fees by OPR when these requests are fulfilled. The proposed rule would allow OPR to collect a fee, to be set by the court, for preparation of certificates, examination scores, and copies of official records.