

## CHAPTER 34

### ADMINISTRATIVE & GENERAL PROVISIONS

#### Grievance Commission

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

**34.1(1)** There is hereby created the Grievance Commission of the Supreme Court of Iowa consisting of 25 attorneys ~~lawyers~~ from judicial election district 5C, 15 attorneys ~~lawyers~~ from judicial election district 5A, 10 attorneys ~~lawyers~~ from judicial election district 6, and 5 attorneys ~~lawyers~~ from each other judicial election district, to be appointed by the supreme court. The court will ~~shall~~ designate one of them, ~~annually~~, as chair of the commission. The supreme court will ~~shall~~ accept nominations for appointment to the commission from any association of attorneys ~~lawyers~~ which maintains an office within the state of Iowa or any attorney licensed in Iowa. The grievance commission ~~shall~~ also consists of no fewer than 5 nor more than 35 laypersons appointed by the court. Members must ~~shall~~ serve no more than two three-year terms, and no member who has served two full terms is ~~shall~~ be eligible for reappointment. A member serving as a primary or alternate member of a division of the commission at the time the member's regular term ends must, ~~shall~~, nonetheless, continue to serve on that division until the division has concluded its duties with respect to the complaint for which the division was appointed.

**34.1(2)** The Grievance Commission of the Supreme Court of Iowa is hereafter referred to as the commission, and the members thereof are referred to as the commissioners. The grievance commission shall have an administrative committee consisting of the chair, the director of the office of professional regulation, and a nonlawyer commission member appointed by the court. The administrative committee shall, at least 60 days prior to the start of each fiscal year, submit to the court for consideration and approval a budget covering the commission's operations for the upcoming fiscal year. The grievance commission, or a duly appointed division thereof, must shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Rules of Professional Conduct, the laws of the United States, and the laws of the state of Iowa or any other state or territory within their respective jurisdictions, by attorneys lawyers within the jurisdiction of the commission as described in rule 34.10. who are members of the bar of the supreme court. The grievance commission, or a duly appointed division thereof, also must shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Rules of Professional Conduct by lawyers practicing law in Iowa who are not members of the bar of the supreme court. The grievance commission has shall have such other powers and duties as are provided in these rules.

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

*This rule formerly appeared at Iowa Court Rule 35.1. It has been amended to delete the requirement for annual designation of the Grievance Commission chairperson. The requirement for administrative committee review of the annual commission budget also has been removed. Responsibility for formulation and submission of the annual budget for the commission is addressed in chapter 49. Jurisdictional requirements have been deleted from the rule and replaced by a reference to the new jurisdiction provision in rule 34.10. The provision for short form references to the commission and the commissions is moved to this rule from the former rule 36.1, which now appears in part at rule 34.2.*

**Rule 34.2 Grievance commission — clerk.** ~~The Grievance Commission of the Supreme Court of Iowa is hereafter referred to as the commission, and the members thereof are referred to as the commissioners. The assistant director for boards and commissions of the office of professional regulation shall serve as clerk for the grievance commission. The director of the office of professional regulation must shall designate a clerk and an assistant clerk for the grievance commission. In the chair's absence or inability to act, the vice chair must shall perform all duties of the chair. See Iowa Ct. R. 35.1.~~

*This rule formerly appeared at Iowa Court Rule 36.1. It has been amended to remove the specific designation of the assistant director for boards and commissions as the clerk of the commission, to provide more flexibility in assignment of duties within the Office of Professional Regulation. The provision for short form references to the commission and the commissions is moved from this rule to rule 34.1(2).*

**Rule 34.3 Substitutions and vacancies.** In case of the absence or inability of the chair and vice chair of the commission sitting as a whole to perform any of the duties provided for herein, said commission may designate some other member as acting chair to perform such duties. In case of the absence or inability of the president of a division to perform any of the duties provided for herein, said division may designate some other member thereof as acting president to perform such duties. If a vacancy occurs in any division from any

cause, the same ~~must shall~~ be filled by the chair, vice chair or acting chair of the commission.

*This rule formerly appeared at Iowa Court Rule 36.16.*

**Rule 34.4 Confidentiality.**

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

**34.4(2)** If the commission recommends that the supreme court reprimand the respondent or suspend or revoke the respondent's license, the commission's report of reprimand or recommendations for license suspension or revocation ~~is shall be~~ a public document upon its filing with the clerk of the supreme court. In addition, if the commission recommends the supreme court reprimand the respondent or suspend or revoke the respondent's license, the complaint filed with the commission by the Iowa Supreme Court Attorney Disciplinary Board ~~is shall become~~ a public document.

**34.4(3)** Any other records and papers of the commission concerning any complaint ~~must shall~~ remain privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent, the attorneys, or the attorneys' agents involved in the proceeding before the commission. The respondent, the attorneys, or the attorneys' agents involved in the proceeding before the commission ~~must shall~~ not disclose any records and papers of the commission concerning any complaint to any third parties unless disclosure is required in the prosecution or defense of disciplinary charges. The confidential records and papers of the commission concerning any complaint ~~are shall~~ not be admissible in evidence in a judicial or administrative proceeding other than the formal commission proceeding under rule ~~36.17 36.14~~.

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

**34.4(5)** All communications, papers, and materials concerning any complaint which may come into the hands of a commission member ~~must shall~~ remain confidential and the member ~~must shall~~ keep the same in a safe and secure place.

**34.4(6)** The clerk of the commission, the chair, or a member of the commission designated by the chair may issue one or more clarifying announcements when the subject matter of a complaint is of broad public interest and failure to supply information on the status and nature of the formal proceedings could threaten public confidence in the administration of justice. No other member of the commission ~~may shall~~ make any public statement concerning any matter before the commission without prior approval of the commission.

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

**34.4(8)** For purposes of this rule, a commission recommendation that a respondent not licensed in Iowa be publicly censured or reprimanded, or be ordered, enjoined, or otherwise directed not to practice in Iowa for any period of time, is deemed the equivalent of a recommendation to reprimand, suspend, or revoke.

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

#### **Rule 34.5 Retention of records.**

**34.5(1)** The commission must ~~shall~~ permanently retain the complaint, answer, amendments to the complaint and answer, and the commission recommendation for discipline or other disposition for each docketed grievance case. Commission files and records relating to a docketed grievance complaint otherwise may ~~shall~~ be destroyed after the death of the respondent attorney. For purposes of this section, destruction of paper records after such records have been transferred to computer storage is permitted immediately after such transfer.

**34.5(2)** Notwithstanding any required destruction of documents, the grievance matters containing the name of the respondent attorney, the disposition, and the respective dates the matter was opened and closed.

*This rule formerly appeared at Iowa Court Rule 36.19.*

### **Attorney Disciplinary Board**

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

**34.6(1)** There is hereby created the Iowa Supreme Court Attorney Disciplinary Board. The Iowa Supreme Court Attorney Disciplinary Board is hereafter referred to as the board. The board ~~shall~~ consists of nine attorneys ~~lawyers~~ and three laypersons appointed by the supreme court. The supreme court will ~~shall~~ designate one of the attorneys ~~lawyers~~, ~~annually~~, as chair. The supreme court will ~~shall~~ accept nominations for appointment to the board from any association of attorneys ~~lawyers~~ which maintains an office within the state of Iowa or any attorney licensed in Iowa. Members must ~~shall~~ serve no more than two three-year terms, and no member who has served two full terms is ~~shall be~~ eligible for reappointment. The board members are appointed

commissioners of the supreme court to initiate or receive, and process complaints against any attorney within the jurisdiction of the board, as described in rule 34.10, ~~licensed to practice law in this state for alleged violations of the Iowa Rules of Professional Conduct and laws of the United States or the state of Iowa. Similarly, the members may initiate or receive, and process complaints against any attorney who is not licensed to practice law in this state, but who engages in the practice of law in Iowa, for alleged violations of the Iowa Rules of Professional Conduct.~~ Upon completion of any such investigation, the board must ~~shall~~ either dismiss the complaint, admonish or reprimand the attorney, or file and prosecute the complaint before the grievance commission or any division thereof. Complaints involving attorneys who are not authorized to practice law in Iowa may additionally be referred to the commission on the unauthorized practice of law.

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

**34.6(3)** The assistant director for attorney discipline of the office of professional regulation is ~~shall serve as~~ the principal executive officer of the board. Wherever in this chapter a reference to the “assistant director” appears, it ~~shall~~ refers to the assistant director for attorney discipline of the office of professional regulation. The assistant director is ~~shall be~~ responsible to the board, to the director of the office of professional regulation, and to the supreme court for proper administration of these rules. Subject to the approval of the supreme court, the board may ~~shall~~ employ such other persons as it deems necessary for the proper administration of this chapter. The assistant director and other employees of the board will ~~shall~~ receive such compensation and expenses as the supreme court may ~~shall~~ fix upon recommendation of the director of the office of professional regulation.

**34.6(4)** ~~The board shall have an executive committee consisting of the chair, the assistant director, and one nonlawyer member of the board appointed by the court. The~~ director of the office of professional regulation ~~executive committee of the board~~ must, shall, at least 60 days prior to the start of each fiscal year, submit to the court for its consideration and approval a budget covering the operations of the board for the upcoming fiscal year. This budget must ~~shall~~ include proposed expenditures for staff, support staff, office space, equipment, supplies and other items necessary to administer the responsibilities of the board as set out in these rules. Approval of the budget by the court ~~shall~~ authorizes payment as provided in the budget. A separate bank account designated as the ethics operating account of the disciplinary fund must ~~shall~~ be maintained for payment of authorized expenditures as provided in the approved budget. Moneys derived from the annual disciplinary fee set

out in Iowa Ct. R. 39.5 ~~must~~ shall be deposited in the ethics operating account to the extent authorized each year by the supreme court, for payment of the board's authorized expenditures.

*This rule formerly appeared at Iowa Court Rule 35.2. It has been amended to delete the requirement for annual designation of the board chair. The requirement for an administrative committee for review and submission of the annual board budget also has been removed. Responsibility for formulation and submission of the annual budget for the board is placed with the director of the Office of Professional Regulation, which is consistent with the budget provisions for other boards and commissions of the Office of Professional Regulation as set out in chapter 49.*

**Rule 34.7 Advisory Opinions Prohibited.** The board must not render advisory opinions, either orally or in writing.

*This rule is adapted from rule 4C of the ABA Model Rules for Lawyer Disciplinary Enforcement. A similar prohibition was adopted for the board by order of the court in 2005.*

**Rule 34.14 Additional board duties.**

~~**34.14(1)** The board may authorize participation and directory listing by Iowa lawyers in an organization or association of lawyers engaged in a particular area of practice, as provided in Iowa Rule of Professional Conduct 32:7.7(e)(2), and may revoke such authorization at any time for any reasons it deems appropriate. Authorization shall not be granted unless all of the following facts have been established to the satisfaction of the board:~~

~~a. All Iowa participants have complied with the requirements of Iowa Rule of Professional Conduct 32:7.4.~~

~~b. Participation is based upon meeting stated high standards of professionalism and competence in the area of practice.~~

~~c. The organization or association regularly conducts training or professional learning and exchange concerning the area of practice involved.~~

~~d. Neither the organization or association nor anyone other than the Iowa lawyer has any part in or share in the conduct or practice of law in the area of practice of law involved and does not participate in any way in fees charged by the Iowa participant.~~

~~**34.14(2)** The board shall approve a reporting form for legal services plans as contemplated by Iowa Rule of Professional Conduct 32:7.7(d)(4)(x). The legal service plan shall be required to report the terms of its plan, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities. If it appears from such annual report or any other source that the organization is not operating in accordance with the rules of the supreme court and the Iowa Rules of Professional Conduct, such~~

facts shall be reported by the board to the court for such action as the supreme court may deem appropriate.

~~**34.14(3)** The board may approve organizations through which attorneys can be certified as specialists in particular fields of law.~~

~~**34.14(4)** The board shall retain copies of written solicitations and direct or e-mail communications which attorneys are required to file with the board pursuant to Iowa R. Prof'l Conduct 32:7.3.~~

*This rule formerly appeared at Iowa Court Rule 34.14. The proposed change deletes rule 34.14 in its entirety. Based on the changes in the attorney advertising rules adopted during 2012, the board duties described in rule 34.14 no longer are necessary.*

### **Rule 34.8 Retention of records.**

**34.8(1)** Board files and records relating to allegations of misconduct by an attorney must ~~shall~~ be retained by the board until destruction is authorized pursuant to the following schedule:

a. Files and records relating to complaints dismissed by the assistant director pursuant to rule ~~35.4(1)~~ ~~34.4(1)~~ may ~~shall~~ be destroyed one year from the date of the last action on the file.

b. Files and records relating to all other complaints dismissed by the board may ~~shall~~ be destroyed five years from the date of the last action on the file.

c. All other files and records relating to allegations of misconduct by an attorney may ~~shall~~ be destroyed after the death of the attorney.

d. For purposes of this section, destruction of paper files after such files have been transferred to computer storage is permitted immediately after such transfer.

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

*This rule formerly appeared at Iowa Court Rule 35.29.*

## **Rules of Board and Commission Procedure**

### **Rule 35.28 Rules**

~~The grievance commission and the disciplinary board shall each adopt reasonable rules prescribing the procedure to be followed in all disciplinary proceedings before each such body, which rules shall be subject to supreme court approval.~~

*The current Iowa Court Rule 35.28 is eliminated as unnecessary.*

## General Disciplinary Rules

**Rule 34.9 Effective dates.** The rules in chapters 34, 35, and 36 apply prospectively and retrospectively ~~These rules shall have prospective and retrospective application~~ to all alleged violations, complaints, hearings, and dispositions thereof on which a hearing has not actually been commenced before the grievance commission prior to the effective date of these rules.

*This rule formerly appeared at Iowa Court Rule 35.26. It has been amended to make clear its application to all three chapters.*

### **Rule 34.10 Jurisdiction.**

**34.10(1) Attorneys Admitted to Practice.** Any attorney admitted to practice law in this jurisdiction, including any formerly admitted attorney with respect to acts committed prior to resignation, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of these rules or of the Rules of Professional Conduct or any rules or code subsequently adopted by the court in lieu thereof, and any attorney specially admitted by a court of this jurisdiction for a particular proceeding and any attorney not admitted in this jurisdiction who practices law or renders or offers to render any legal services in this jurisdiction, is subject to the disciplinary jurisdiction of the supreme court, the board, and the commission.

**34.10(2) Former Judges.** A former judge who has resumed the status of a attorney is subject to the jurisdiction of the board and the commission not only for conduct as a attorney but also for misconduct that occurred while the attorney was a judge and would have been grounds for discipline under the rules of professional conduct for attorneys, provided that the misconduct was not the subject of a judicial disciplinary proceeding as to which there has been a final determination by the supreme court.

**34.10(3) Incumbent Judges.** Incumbent judges shall not be subject to the jurisdiction of the board or the commission. However, if an incumbent judge is to be removed from office in the course of a judicial discipline or disability proceeding, the supreme court shall first afford the board and the respondent an opportunity to submit a recommendation whether attorney discipline should be imposed, and if so, the extent thereof.

*This rule is adapted from rule 6 of the ABA Model Rules for Lawyer Disciplinary Enforcement.*

**Rule 34.11 Limitation of Actions.** Proceedings under chapters 34, 35, and 36 are exempt from all statutes of limitation.

*This rule is adapted from rule 32 of the ABA Model Rules for Lawyer Disciplinary Enforcement. It is consistent with Iowa precedent.*

**Rule 34.12 Immunity.**

**34.12(1)** Complaints submitted to the grievance commission or the disciplinary board, or testimony with respect thereto, are ~~shall~~ be privileged and no lawsuit predicated thereon may be instituted.

**34.12(2)** Claims against members of the grievance commission, the disciplinary board, and the director, assistant directors, and the staff of the office of professional regulation are subject to the Iowa Tort Claims Act set forth in Iowa Code chapter 669.

**34.12(3)** On application from the board or the commission and notice to the appropriate prosecuting authority, the supreme court may grant immunity from criminal prosecution to a witness in a discipline or disability proceeding.

*The first two paragraphs of this rule formerly appeared at the first two paragraphs of Iowa Court Rule 35.24. The third paragraph is adapted from rule 12B of the ABA Model Rules for Lawyer Disciplinary Enforcement.*

**Rule 34.13 Reports.** The chair of the grievance commission and the chair of the disciplinary board must, ~~shall~~, on February 1 of each year, submit to the supreme court a consolidated report of the number of complaints received and processed during the prior calendar year, a synopsis of each such complaint, and the disposition thereof. The name of the attorney charged and the name of the complainant must ~~shall~~ be omitted, but a synopsis of the charges made and a report of disposition must ~~shall~~ be included.

*This rule formerly appeared at Iowa Court Rule 35.25.*

**Rule 34.14 Interim suspension for threat of harm.**

**34.14(1)** Upon receipt of evidence demonstrating probable cause that an attorney ~~a lawyer~~ subject to the disciplinary jurisdiction of the supreme court has committed a violation of the Iowa Rules of Professional Conduct that poses a substantial threat of serious harm to the public, the board must ~~shall~~ do all of the following:

a. Transmit the evidence along with a verified petition for interim suspension pending formal disciplinary proceedings to the court. The petition must ~~shall~~ state with particularity the disciplinary rules alleged to have been violated by the attorney ~~lawyer~~ and the exact nature of the threat of serious harm to the public.

b. Promptly notify the attorney ~~lawyer~~ by any reasonable means that a petition has been filed, followed by service of the petition.

**34.14(2)** Upon receipt of the petition and evidence, the court will ~~shall~~ determine whether the board has established, by a convincing preponderance of the evidence, that a disciplinary violation posing a substantial threat of serious harm to the public exists. If such a disciplinary violation is established,

the court may enter an order immediately suspending the attorney lawyer pending final disposition of a disciplinary proceeding predicated upon such conduct or may order such other action as it deems appropriate. The order may provide that any further proceedings based on the attorney's lawyer's conduct be expedited. If a suspension order is entered, the court may direct the chief judge of the judicial district in which the attorney lawyer practiced to appoint a trustee under rule 34.16 35.17.

**34.14(3)** An attorney A lawyer suspended pursuant to this rule may file a petition to dissolve or modify the interim suspension order. The attorney lawyer must serve the petition on the board's counsel and the chief judge of the judicial district in which the attorney lawyer practiced. The court will shall promptly schedule the matter for hearing before one or more justices. The hearing must shall be set for a date no sooner than seven days after the petition is filed unless both parties and the court agree to an earlier date. At the hearing, the attorney lawyer has shall bear the burden of demonstrating that the suspension order should be dissolved or modified.

*This rule formerly appeared at Iowa Court Rule 35.4.*

**Rule 34.15 Conviction of a crime.**

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

**34.15(2)** Any attorney suspended pursuant to this rule must shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**34.15(3)** For good cause shown, the supreme court may set aside an order temporarily suspending an attorney from the practice of law as provided above upon application by such attorney and a hearing in accordance with rule

34.25, 35.14, but such reinstatement does not ~~shall~~ ~~neither~~ terminate a pending disciplinary proceeding or ~~nor~~ bar later proceedings against the attorney.

**34.15(4)** An attorney temporarily suspended under the provisions of this rule must ~~shall~~ be promptly reinstated upon the filing of sufficient evidence disclosing the underlying conviction of a crime has been finally reversed or set aside, but such reinstatement does not ~~shall~~ ~~neither~~ terminate a pending disciplinary proceeding or ~~nor~~ bar later proceedings against the attorney.

**34.15(5)** The clerk of any court in this state in which an attorney has pled guilty or nolo contendere to, or been convicted of, a crime as set forth above must, ~~shall~~, within ten days, transmit a certified record of the proceedings to the clerk of the supreme court.

*This rule formerly appeared at Iowa Court Rule 35.15.*

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

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

a. The consent is freely and voluntarily given absent any coercion or duress, with full recognition of all implications attendant upon such consent.

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

c. The attorney acknowledges the material facts so alleged are true.

d. In the event proceedings were instituted upon the matters under investigation, or if existent proceedings were pursued, the attorney could not successfully defend against same.

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

f. Any matters in mitigation or aggravation.

g. Consent to any alternative or additional sanctions as provided in rule 36.19 35.10.

**34.16(2)** The Iowa Supreme Court Attorney Disciplinary Board must ~~shall~~ file a response to the affidavit, indicating whether it believes the misconduct admitted in the affidavit would probably result in suspension or revocation of the attorney's license to practice law and citing any legal authorities supporting its conclusion.

**34.16(3)** Upon receipt of such affidavit and response, the grievance commission must ~~shall~~ cause the same to be filed with the clerk of the supreme court. The supreme court will ~~shall~~ enter an order suspending the attorney's license to practice law for a period no greater than the stipulated duration, or disbarring the attorney on consent, unless it determines the misconduct admitted in the affidavit is insufficient to support the discipline to

which the attorney has consented. The court may also order any of the alternative or additional sanctions to which the respondent has consented. If the court determines the affidavit does not set forth facts that support imposition of the discipline to which the attorney has consented, it may either enter an order allowing the parties to supplement the affidavit or an order declining to accept the affidavit. An order declining to accept the affidavit does shall not bar further disciplinary proceedings against the attorney, nor does shall it preclude the court from imposing any sanction warranted by the attorney's conduct upon review of a grievance commission determination.

**34.16(4)** Any order suspending or disbaring an attorney on consent is shall be a matter of public record. If an order of suspension or disbarment is entered, the affidavit and response must shall be publicly disclosed.

*This rule formerly appeared at Iowa Court Rule 35.16.*

**Rule 34.17 Disability suspension.**

**34.17(1)** In the event an attorney is shall at any time in any jurisdiction be duly adjudicated a mentally incapacitated person, or person with a substance-related disorder, or is shall be committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which any such adjudication or commitment is entered must, shall, within ten days, certify same to the clerk of the supreme court.

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

attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

**34.17(3)** Upon the voluntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.9112 or upon the involuntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.2 106(3)(a), the supreme court may enter an order suspending the retired judicial officer's license to practice law in this state in the event the underlying disability prevents the discharge of professional responsibilities of an attorney. The suspension will ~~shall~~ be effective until further order of the court. A copy of such suspension order must ~~shall~~ be given to the suspended attorney, or to the attorney's guardian and the director of the institution or hospital to which such suspended attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

**34.17(4)** Any attorney suspended pursuant to this rule must ~~shall~~ refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**34.17(5)** No attorney suspended due to disability under this rule may engage in the practice of law in this state until reinstated by order of the supreme court.

**34.17(6)** Upon being notified of the suspension of the attorney, the chief judge in the judicial district in which the attorney practiced must ~~shall~~ appoint an attorney or attorneys to serve as trustee to inventory the files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons. Such appointment is ~~shall be~~ subject to supreme court confirmation. The appointed attorney ~~shall~~ serves as a special member of the Iowa Supreme Court Attorney Disciplinary Board and as a commissioner of the supreme court for the purposes of the appointment. While acting as a trustee, the trustee must ~~shall~~ not serve as an attorney for the clients of the disabled attorney and other affected persons. Neither may ~~shall~~ the trustee examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee must, ~~shall~~, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment. The trustee may seek reasonable fees and reimbursement of costs of the trust from the suspended attorney. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must ~~shall~~ determine the merits of the claim and the amount of any payment from the fund. When the suspended attorney is reinstated to practice law in this state, or all pending representation of clients has been completed, or the purposes of

the trust have been accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust. Trustee fees and expenses paid by the Client Security Commission must be assessed to the disabled attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement, and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8 if not previously paid.

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

**34.17(8)** The filing of an application for reinstatement to active status by an attorney suspended due to disability ~~shall~~ constitute a waiver of any doctor-patient privilege with regard to any treatment of the attorney during the period of the disability. The attorney must ~~shall~~ also set forth in the application for reinstatement the name of every psychiatrist, psychologist, physician and hospital or any other institution by whom or in which the petitioning attorney has been examined or treated since the disability suspension and must ~~shall~~ also furnish to the supreme court written consent that any such psychiatrist, psychologist, physician and hospital or other institution may divulge any information and records requested by the supreme court or any court-appointed medical experts.

**34.17(9)** When an attorney has been suspended due to disability and thereafter the attorney is judicially held to be competent or cured, the supreme court may dispense with further evidence regarding removal of the disability and may order reinstatement to active status upon such terms as are deemed reasonable.

*This rule formerly appeared at Iowa Court Rule 35.17. It has been amended to provide for recovery of trustee fees and costs paid by the Client Security Commission through the annual assessment and reporting process and also as a condition of reinstatement.*

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

Upon a sworn application on behalf of a local bar association or the Iowa Supreme Court Attorney Disciplinary Board showing that a practicing attorney has died or been suspended or disbarred from the practice of law and a

reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced must ~~shall~~ appoint an attorney to serve as trustee to inventory the files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons. Such appointment is ~~is shall be~~ subject to confirmation by the supreme court. The appointed attorney ~~lawyer shall~~ shall serve as a special member of the Iowa Supreme Court Attorney Disciplinary Board as a commissioner of the supreme court for the purposes of the appointment. While acting as a trustee, the trustee must ~~shall~~ not serve as an attorney for the clients of the disabled attorney and other affected persons. Neither may ~~shall~~ the trustee examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee must, ~~shall~~, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment. The trustee may seek reasonable fees and reimbursement of costs of the trust from the deceased attorney's estate or the attorney whose license to practice law has been suspended or revoked. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must ~~shall~~ determine the merits of the claim and the amount of any payment from the fund. When all pending representation of clients has been completed or the purposes of the trust have been accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust. Trustee fees and expenses paid by the Client Security Commission must be assessed to the deceased, suspended, or disbarred attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement, and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8 if not previously paid.

*This rule formerly appeared at Iowa Court Rule 35.18. It has been amended to provide for recovery of trustee fees and costs paid by the Client Security Commission through the annual assessment and reporting process and also as a condition of reinstatement.*

#### **Rule 34.19 Reciprocal discipline.**

**34.19(1)** Any attorney admitted to practice in this state, upon being subjected to professional disciplinary action in another jurisdiction or in any federal court, must ~~shall~~ promptly advise the Iowa Supreme Court Attorney Disciplinary Board, in writing, of such action. Upon being informed that an attorney admitted to practice in this state has been subjected to discipline in another jurisdiction or any federal court, the board must ~~shall~~ obtain a certified copy of such disciplinary order and file it in the office of the clerk of the supreme court.

**34.19(2)** Upon receipt of a certified copy of an order disclosing an attorney admitted to practice in this state has been disciplined in another jurisdiction or any federal court, the supreme court ~~will~~ ~~shall~~ promptly give notice thereof by restricted certified mail or personal service directed to such attorney containing: a copy of the disciplinary order from the other jurisdiction or federal court, and an order directing that such disciplined attorney file in the supreme court, within 30 days after receipt of the notice, any objection that imposition of identical discipline in this state would be too severe or otherwise unwarranted, giving specific reasons. A like notice shall be sent, by ordinary mail, to the board, which ~~has~~ ~~shall have~~ the right to object on the ground that the imposition of identical discipline in this state would be too lenient or otherwise unwarranted. If either party so objects, the matter ~~must~~ ~~shall~~ be set for hearing before three or more justices of the supreme court and the parties notified by restricted certified mail at least ten days prior to the date set. At such hearing a certified copy of the testimony, transcripts, exhibits, affidavits and other matters introduced into evidence in such jurisdiction or federal court ~~must~~ ~~shall~~ be admitted into evidence as well as any findings of fact, conclusions of law, decision and orders. Any such findings of fact ~~are~~ ~~shall be~~ conclusive and not subject to readjudication. Thereafter, the supreme court ~~may~~ ~~shall~~ enter such findings, conclusions and orders that it deems appropriate.

**34.19(3)** If neither party objects within 30 days from service of the notice, the supreme court may impose the identical discipline, unless the court finds that on the face of the record upon which the discipline is predicated it clearly appears that any of the following exist:

- a. The disciplinary procedure was so lacking in notice and opportunity to be heard as to constitute a deprivation of due process.
- b. There was such infirmity of proof establishing misconduct as to give rise to the clear conviction that the supreme court could not, conscientiously, accept as final the conclusion on that subject.
- c. The misconduct established warrants substantially different discipline in this state.

**34.19(4)** If the supreme court determines that any such factors exist, it may enter an appropriate order. Rule ~~34.25~~ 35-14 shall apply to any subsequent reinstatement or reduction or stay of discipline.

*This rule formerly appeared at Iowa Court Rule 35.19.*

**Rule 34.20 Suspension of attorney's license for failure to comply with a support order.** An attorney who fails to comply with a support order may be subject to a suspension of the attorney's license to practice law in Iowa.

**34.20(1)** Procedure. The Child Support Recovery Unit (CSRU) ~~may~~ ~~shall~~ file any certificate of noncompliance with a support order which involves an attorney with the supreme court by filing the certificate with the office of professional regulation of the supreme court at 1111 E. Court Ave., Des Moines, Iowa 50319. Upon receipt of the certificate of noncompliance, the

director of the office of professional regulation of the supreme court ~~must shall~~ issue a notice to the attorney. The following rules ~~shall~~ apply and must shall be recited in the notice:

a. The attorney's license to practice law will be suspended unless the attorney causes the CSRU to file a withdrawal of certificate of noncompliance within 30 days of the date of issuance of the notice.

b. The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the county in which the underlying support order is filed.

c. The application for hearing must be filed with the district court clerk within 30 days of the date of issuance of the notice, and copies of the application must be provided to the CSRU and the office of professional regulation of the supreme court by regular mail.

d. The filing of the application ~~shall~~ automatically stays the supreme court's action on the certificate of noncompliance.

e. The provisions of this rule ~~shall~~ prevail over those of any other statute or rule to the extent they may conflict.

**34.20(2)** District court hearing.

a. Upon receipt of an application for hearing by the attorney, the clerk of the district court must shall schedule a hearing to be held within 30 days of the date of filing of the application. The clerk must shall mail copies of the order setting hearing to the obligor, the CSRU, and the office of professional regulation of the supreme court.

b. Prior to the hearing, the district court must shall receive a certified copy of the CSRU's written decision and certificate of noncompliance from the CSRU and a certified copy of the notice from the office of professional regulation of the supreme court.

c. If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance must shall be lifted.

d. The district court's scope of review is shall-be limited to determining if there has been a mistake of fact relating to the attorney's support delinquency. The court must shall not consider visitation or custody issues, and must shall not modify the support order.

e. If the district court concludes the CSRU erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of certificate of noncompliance, the court must shall order the CSRU to file a withdrawal of certificate of noncompliance with the office of professional regulation of the supreme court.

**34.20(3)** Noncompliance certificate withdrawn. If a withdrawal of certificate of noncompliance is filed, the supreme court must shall curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, must shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under rules of the court.

**34.20(4)** Sharing information. Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the director of the

office of professional regulation of the supreme court is authorized to share information with the CSRU for the sole purpose of allowing the CSRU to identify licensees subject to enforcement under Iowa Code chapter 252J or 598.

*This rule formerly appeared at Iowa Court Rule 35.20.*

**Rule 34.21 Suspension of attorney's license for failure to comply with an obligation owed to or collected by the College Student Aid Commission.**

An attorney who defaults on an obligation owed to or collected by the College Student Aid Commission (commission) may be subject to a suspension of the attorney's license to practice law in Iowa.

**34.21(1)** Procedure. The commission ~~may~~ ~~shall~~ file any certificate of noncompliance which involves an attorney with the supreme court by filing the certificate with the office of professional regulation of the supreme court at 1111 E. Court Ave., Des Moines, Iowa 50319. Upon receipt of the certificate of noncompliance, the director of the office of professional regulation of the supreme court ~~must~~ ~~shall~~ issue a notice to the attorney. The following rules ~~shall~~ apply and ~~must~~ ~~shall~~ be recited in the notice:

a. The attorney's license to practice law will be suspended unless the attorney causes the commission to file a withdrawal of certificate of noncompliance within 30 days of the date of issuance of the notice.

b. The attorney must contact the commission to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance.

c. The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the attorney's county of residence.

d. The application for hearing must be filed with the district court clerk within 30 days of the date of issuance of the notice, and copies of the application must be provided to the commission and the office of professional regulation of the supreme court by regular mail.

e. The filing of the application ~~shall~~ automatically ~~stays~~ the supreme court's action on the certificate of noncompliance.

f. The provisions of this rule ~~shall~~ prevail over those of any other statute or rule to the extent they may conflict.

**34.21(2)** District court hearing.

a. Upon receipt of an application for hearing by the attorney, the clerk of district court ~~must~~ ~~shall~~ schedule a hearing to be held within 30 days of the date of filing of the application. The clerk ~~must~~ ~~shall~~ mail copies of the order setting hearing to the attorney, the commission, and the office of professional regulation of the supreme court.

b. Prior to the hearing, the district court ~~must~~ ~~shall~~ receive a certified copy of the commission's written decision and certificate of noncompliance from the commission and a certified copy of the notice from the office of professional regulation of the supreme court.

c. If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance ~~shall~~ must be lifted.

d. The district court's scope of review shall be limited to determining if there has been a mistake of fact relating to the attorney's delinquency.

e. If the district court concludes the commission erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of the certificate of noncompliance, the court ~~shall~~ must order the commission to file a withdrawal of the certificate of noncompliance with the office of professional regulation of the supreme court.

**34.21(3)** Noncompliance certificate withdrawn. If a withdrawal of certificate of noncompliance is filed, the supreme court ~~shall~~ must curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, ~~shall~~ must immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under rules of the court.

*This rule formerly appeared at Iowa Court Rule 35.21.*

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

**34.22(1)** Procedure. The Centralized Collection Unit of the Department of Revenue (CCU) ~~shall~~ may file any certificate of noncompliance which involves an attorney with the supreme court by filing the certificate with the office of professional regulation of the supreme court at 1111 E. Court Ave., Des Moines, Iowa 50319. Upon receipt of the certificate of noncompliance, the director of the office of professional regulation of the supreme court ~~shall~~ must issue a notice to the attorney. The following rules ~~shall~~ apply and ~~shall~~ must be recited in the notice:

a. The attorney's license to practice law will be suspended unless the attorney causes the CCU to file a withdrawal of the certificate of noncompliance within 30 days of the date of issuance of the notice.

b. The attorney must contact the CCU to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance.

c. The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the county where the majority of the liability was incurred.

d. The application for hearing must be filed with the clerk of the district court within 30 days of the date of issuance of the notice, and copies of the application must be provided to the CCU and the office of professional regulation of the supreme court by regular mail.

e. The filing of the application ~~shall~~ automatically stay the supreme court's action on the certificate of noncompliance.

f. The provisions of this rule ~~shall~~ prevail over those of any other statute or rule to the extent they may conflict.

**34.22(2)** District court hearing.

a. Upon receipt of an application for hearing by the attorney, the clerk of the district court ~~must shall~~ schedule a hearing to be held within 30 days of the date of filing of the application. The clerk ~~must shall~~ mail copies of the order setting hearing to the attorney, the CCU, and the office of professional regulation of the supreme court.

b. Prior to the hearing, the district court ~~must shall~~ receive a certified copy of the CCU's written decision and certificate of noncompliance from the CCU and a certified copy of the notice from the office of professional regulation of the supreme court.

c. If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance ~~must shall~~ be lifted.

d. The district court's scope of review ~~is shall be~~ limited to demonstration of the amount of the liability owed or the identity of the person.

e. If the district court concludes the CCU erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of the certificate of noncompliance, the court ~~must shall~~ order the CCU to file a withdrawal of the certificate of noncompliance with the office of professional regulation of the supreme court.

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

**34.22(4)** Sharing information. Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the director of the office of professional regulation of the supreme court is authorized to share information with the CCU for the sole purpose of allowing the CCU to identify licensees subject to enforcement under Iowa Code chapter 272D.

*This rule formerly appeared at Iowa Court Rule 35.22.*

### **Rule 34.23 Suspension.**

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

**34.23(2)** An attorney whose license has been suspended for a period not exceeding three months ~~60 days~~ is shall not be required to file an application for reinstatement, and the court ~~must~~ order reinstatement of the attorney's license on the day after the suspension period has expired, subject to the following exceptions. The Iowa Supreme Court Attorney Disciplinary Board may file and serve within the suspension period an objection to the automatic

reinstatement of the attorney. The filing of an objection ~~shall~~ stays the automatic reinstatement until ordered otherwise by the court. If the board files an objection, the court ~~must shall~~ set the matter for hearing and the clerk ~~must shall~~ enter written notice in conformance with rule ~~34.25 35.14~~, except that the court may waive the requirement of a 60-day waiting period prior to the hearing date. Automatic reinstatement ~~must shall~~ not be ordered until all costs assessed under rule ~~36.23 35.27~~ have been paid and the reporting and fee payment requirements of rules 39.14(2) and 41.10(2) have been completed.

**34.23(3)** Any attorney suspended ~~must shall~~ 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; and when possible,~~ remove all advertising of the attorney's services or holding out to the public that he or she is a licensed attorney. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**34.23(4)** Nothing in this rule shall preclude an attorney, law firm, or professional association from employing a suspended attorney to perform such services only as may be ethically performed by laypersons employed in attorneys' offices, under all of the following conditions:

a. Notice of employment, together with a full job description, ~~must shall~~ be provided to the board before employment commences.

b. Informational reports, verified by the employer and employee, ~~must shall~~ be submitted quarterly to the board. Such reports ~~must shall~~ contain a certification that no aspect of the employee's work has involved the unauthorized practice of law.

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

*This rule formerly appeared at Iowa Court Rule 35.13. The maximum suspension period for which a formal application for reinstatement is not required has been extended from 60 days to 3 months to reduce administrative overhead associated with reinstatements. In comparison, rule 24 of the ABA Model Rules for Disciplinary Enforcement provides for reinstatement without formal application for any suspension up to six months. Rule 34.23(3) is amended to make clear that satisfaction of reinstatement requirements with the Commission on Continuing Legal Education and the Client Security Commission are conditions to precedent to automatic reinstatement, as they are for reinstatement upon application. The rule also is amended to require curtailment of advertising, to the extent possible, during the period of suspension.*

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

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

a. Within 15 days notify in writing the respondent's 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 respondent's disbarment or suspension and consequent disqualification to act as an attorney after the effective date of such discipline or transfer to disability inactive status.

e. Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

f. Keep and maintain records of the steps taken to accomplish the foregoing.

g. Within 30 days file with the Iowa Supreme Court Attorney Disciplinary Board copies of the notices sent pursuant to the requirements of this rule and proof of complete performance of the requirements, and this is ~~shall be~~ a condition for application for readmission to practice.

**34.24(2)** The times set forth in 34.24(1)(c) ~~35.23(1)(e)~~ and 34.24(1)(g) ~~35.23(1)(g)~~ of this rule are ~~shall be~~ reduced to 15 days for respondents who are exempted from filing an application for reinstatement under rule 34.23 ~~35.13~~.

*This rule formerly appeared at Iowa Court Rule 35.23.*

## **Reinstatement**

### **Rule 34.25 Procedure on application for reinstatement.**

Any person whose certificate to practice law in this state was suspended may apply for reinstatement subject to the following rules:

#### **34.25(1) Application.**

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

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

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

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

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

f. The applicant must submit satisfactory proof that the Client Security Trust Fund has been repaid in full, or that the Client Security Commission has approved a repayment plan, for all client security conduct.

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

a. The attorney general.

b. The county attorney where the applicant resides.

c. The county attorney where the applicant resided at the time of suspension.

d. The chair of the Iowa Board of Law Examiners.

e. The assistant director for attorney discipline of the office of professional regulation.

f. Each judge of the district in which the applicant resided at the time of suspension.

g. The president of a local bar association where the applicant resides.

h. The president of a local bar association where the applicant resided when the certificate was suspended.

i. The president of The Iowa State Bar Association.

**34.25(3)** Written statements. Such persons, after receipt of the notice and before the date fixed for hearing, may submit to the clerk of the supreme court written statements of fact and comments regarding the current fitness of the applicant to practice law.

**34.25(4)** Notices of witnesses and exhibits. At least 14 days prior to the scheduled hearing date, the applicant and the Iowa Supreme Court Attorney Disciplinary Board must provide notice to the court and the opposing party of the names and expected testimony of any witnesses they intend to produce and

must file and serve copies of any exhibits they intend to introduce at the hearing. The opposing party may provide notice of any rebuttal witnesses or exhibits no later than 7 days prior to the scheduled hearing date. The court may waive these deadlines only upon good cause shown.

**34.25(5)** Hearing. The reinstatement hearing will be held at the time and place designated by the court. The applicant bears the burden of demonstrating that the applicant is of good moral character, is fit to practice law, and has complied in all respects with the terms of the order or judgment of suspension. The hearing will be public unless the court orders otherwise upon motion of a party. The hearing will be informal and the strict rules of evidence will not apply. The court may impose reasonable time limits on the length of the hearing.

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

**34.25(7)** Reinstatement after revocation. In the event the supreme court revokes an attorney's license to practice law, the attorney is not eligible to apply for reinstatement until at least five years after the date of revocation. For purposes of this reinstatement rule, "revoked attorney" includes an attorney whose license to practice law has been revoked or an attorney who has been disbarred. Similarly, "revocation" includes "disbarment" and "revoked" includes "disbarred."

**34.25(8)** Pre-filing requirements. Prior to filing the application, the attorney must:

- a. File the attorney's character and fitness application with the National Conference of Bar Examiners (NCBE) and pay the NCBE's application fee; and
- b. Pay an administrative fee of \$525 to the Iowa Board of Law Examiners.

**34.25(9)** Filing and contents of application. An application for reinstatement by a revoked attorney must:

- a. Be filed with the clerk of the supreme court and be served on the Iowa Board of Law Examiners.

- b. State the date of the applicant's original admission and the date of revocation, and recite that the applicant has complied in all respects with rule 34.24 ~~35.23~~ and any orders and judgment of the supreme court relating to the revocation.

- c. Include satisfactory proof that the applicant, at the time of the application, is of good moral character and is in all respects worthy of readmission to the bar. The applicant must provide a detailed affidavit describing the applicant's personal, educational, and work history since the date of revocation. The application must be accompanied by the recommendation of at least three attorneys currently practicing law in the judicial district in which the applicant then lives and has lived at least one year prior to filing the application. If the applicant does not reside in the district in which the applicant lived at the time of the revocation, the applicant must also file a recommendation from three attorneys currently practicing law in the district where the applicant resided at

the time of revocation. The required recommendations may not be from judges or magistrates.

d. Include satisfactory proof that the applicant, at the time of the application, has paid all fees required by the provisions of chapters 39, 41, and 42 of the Iowa Court Rules.

e. Include satisfactory proof that the Client Security Trust Fund has been repaid in full, or that the Client Security Commission has approved a repayment plan, for all client security claim payments paid from the Client Security Trust Fund under rule 39.9 based on the applicant's conduct.

f. Include satisfactory proof that the applicant, at the time of the application, has paid all costs assessed against the applicant under rule ~~36.24~~ 35.27.

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

**34.25(11)** Supreme court actions on application. Upon review of the application for reinstatement from a revoked attorney, the court may summarily deny the application, request further information, or set a hearing date and direct the clerk to give the notice provided under rule ~~34.25(12)~~ 35.14(12). The court may appoint a special master or a hearing panel to conduct the hearing. The hearing date must in no case be less than 60 days after the filing of the application for reinstatement. Any order denying reinstatement may state whether the attorney is allowed to file a future application and, if so, the minimum amount of time before the application can be filed.

**34.25(12)** Procedure. Upon direction of the supreme court, the clerk must give written notice of the revoked attorney's application for reinstatement to the persons listed below. Such notice must contain the date of the revocation, the date of filing the application, and the date of the hearing, if any, set by the court.

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

**34.25(13)** Written statements. Such persons, after receipt of the notice and before the date fixed for hearing, may submit to the clerk of the supreme court

written statements of fact and comments regarding the current fitness of the applicant to practice law.

**34.25(14)** Notices of witnesses and exhibits. At least 14 days prior to the scheduled hearing date, the applicant and the Iowa Supreme Court Attorney Disciplinary Board must provide notice to the court, or to the special master or hearing panel, if applicable, and the opposing party of the names and expected testimony of any witnesses they intend to produce and file and serve copies of any exhibits they intend to introduce at the hearing. The parties may provide notice of any rebuttal witnesses or exhibits no later than 7 days prior to the scheduled hearing date. The court, or the special master or hearing panel, if applicable, may waive these deadlines only upon good cause shown.

**34.25(15)** Hearing. The reinstatement hearing must be held at the time and place the court designates. The applicant bears the burden of demonstrating that the applicant is of good moral character, is fit to practice law, and has complied in all respects with the terms of the order or judgment of revocation. The hearing will be public unless the court orders otherwise upon motion of a party. The hearing will be informal, and strict rules of evidence will not apply. The court may impose reasonable time limits on the length of the hearing, which must be recorded.

**34.25(16)** Decision.

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

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

**34.25(17)** Applicability of rules to attorneys permanently enjoined from practicing law in Iowa. Rules ~~34.25(7) 35.14(7)~~ through ~~34.25(16) 35.14(16)~~ also apply to attorneys not licensed in Iowa who have been enjoined by the Iowa Supreme Court from practicing law in Iowa on a permanent basis. Such attorneys who seek to have the injunction lifted must follow the procedures set

forth for revoked attorneys in those rules, and their applications will be processed in the same manner.

**34.25(18)** Denial of reinstatement for failure to comply with a support order. An attorney who fails to comply with a support order may be denied reinstatement of the attorney's license to practice law in Iowa.

*a.* Procedure. The Child Support Recovery Unit (CSRU) must file with the clerk of the supreme court any certificate of noncompliance that involves an attorney. The procedure, including notice to the attorney, is governed by rule 34.20(1) ~~35.20(1)~~, except that the notice must refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

*b.* District court hearing. Upon receipt of an attorney's application for hearing, the clerk of district court must schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing are governed by rule 34.20(2) ~~35.20(2)~~.

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

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

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

*a.* Procedure. The College Student Aid Commission may file with the clerk of the supreme court any certificate of noncompliance that involves an attorney. The procedure, including notice to the attorney, is governed by rule 34.21(1) ~~35.21(1)~~, except that the notice must refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

*b.* District court hearing. Upon receipt of an attorney's application for hearing, the clerk of district court must schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing are governed by rule 34.21(2) ~~35.21(2)~~.

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

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

*a.* Procedure. The CCU may file with the clerk of the supreme court any certificate of noncompliance that involves an attorney. The procedure, including notice to the attorney, is governed by rule 34.22(1) ~~35.22(1)~~, except that the notice must refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

*b.* District court hearing. Upon receipt of an attorney's application for hearing, the clerk of the district court must schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing are governed by rule 34.22(2) ~~35.22(2)~~.

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

*This rule formerly appeared at Iowa Court Rule 35.14.*