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CHAPTER 36

RULES OF PROCEDURE OF THE GRIEVANCE COMMISSION

Rule 36.1 Complaints — ~~Iowa Supreme Court Attorney Disciplinary Board.~~

36.1(1) Any complaint filed by the Iowa Supreme Court Attorney Disciplinary Board ~~must shall~~ be filed with the grievance commission in the name of the board as the complainant and against the attorney named in said charges as the respondent. The complaint and charges ~~must shall~~ be prosecuted by the board before the commission until final disposition.

36.1(2) ~~Rule 35.5 Complaints.~~ Every complaint filed against an attorney with the ~~grievance~~ commission ~~must shall~~ be signed and sworn to by the chair of the board and served upon the attorney concerned as provided by rule 36.5. ~~the rules of the grievance commission.~~ Such complaints ~~must shall~~ be sufficiently clear and specific in their charges to reasonably inform the attorney against whom the complaint is made of the misconduct alleged to have been committed.

The first portion of the rule formerly appeared at Iowa Court Rule 36.3. The second portion of the rule formerly appeared at Iowa Court Rule 35.5.

Rule 36.2 Docket - complaints - filings. ~~Complaints — filing — docketing.~~

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

36.2(2) 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 must shall be filed with and preserved by the clerk of the grievance commission in Des Moines, Iowa, and ~~must shall~~ at all times be available to the supreme court or anyone designated by the court.

~~**36.2(2)** The clerk shall cause each complaint to be separately numbered and filed; and all subsequent motions, pleadings, orders or other related documents shall be made part of such file. The clerk shall also provide for a permanent docket to be kept as required by Iowa Ct. R. 35.5. All complaints filed by or on behalf of the board shall be docketed therein, and such file and docket shall be kept in substantially the same manner as the records relating to civil actions in district court.~~

1 *The first paragraph of this rule formerly was included in Iowa Court Rule 36.4.*
2 *The second paragraph of this rule formerly appeared at Iowa Court Rule 35.5. It*
3 *has been amended to conform an internal rule reference to the new rule numbers*
4 *and to reduce duplication with rule 36.4.*

5
6 **Rule 36.3 Report of filing.** The clerk must ~~shall~~ report the filing of each
7 complaint to the chair of the commission, who must ~~shall~~ by written order
8 direct that the complaint be heard by the commission as a whole or a specified
9 division thereof.

10
11 *This rule formerly appeared at Iowa Court Rule 36.5.*

12
13 **Rule 36.4 Grievance commission — divisions.** The commissioners may act
14 as a body or in such divisions as the chair may direct. Each division must ~~shall~~
15 consist of five members. The personnel of each division must ~~shall~~ be selected
16 and designated by the chair for each complaint as required. The chair must
17 ~~shall~~ appoint one of said members to serve as president of said division. One
18 additional member must ~~shall~~ be selected as an alternate.

19
20 *This rule formerly appeared at Iowa Court Rule 36.2.*

21
22 **Rule 36.5 Notice to respondent.**

23 **36.5(1)** Upon the filing of a ~~such~~ complaint, the clerk of the grievance
24 commission must ~~shall~~ serve a written notice thereof with a copy of the
25 complaint and copies of chapters ~~35 and~~ 36 of the Iowa Court Rules upon the
26 respondent.

27 **36.5(2)** The clerk may serve notice of the complaint by personal service in
28 the manner of an original notice in civil suits or by restricted certified mail to
29 the respondent's last address as shown by records accessible to the court. The
30 notice must ~~shall~~ also notify said respondent to file a written answer to the
31 complaint within 20 days after completed service of the notice. Written return
32 of service must ~~shall~~ be made by the person making the service if by personal
33 service, or by the clerk with postal receipts attached to the return if by
34 restricted certified mail, and such return of service must ~~shall~~ be filed in the
35 cause. Service is ~~shall be deemed~~ complete on the date of personal service or
36 date shown by the postal receipt of delivery of said notice to the respondent or
37 refusal of the respondent to accept delivery. The notice is ~~shall be deemed~~
38 sufficient if it substantially complies with the form that accompanies these
39 rules.

40 **36.5(3)** If service cannot be obtained pursuant to rule 36.5(2) ~~36.6(2)~~, the
41 clerk of the grievance commission may serve notice of the complaint on the
42 clerk of the supreme court who is appointed to receive service on behalf of
43 attorneys ~~lawyers~~ subject to Iowa's disciplinary authority. Iowa R. Prof'l
44 Conduct 32:8.5 cmt. [1]. Service upon the clerk of the supreme court is deemed
45 to be completed service of the notice on the respondent. Simultaneously with
46 serving notice on the clerk of the supreme court, the clerk of the grievance

1 commission ~~must shall~~ forward the notice and a copy of the complaint to the
2 respondent by restricted certified mail to the respondent's last address as
3 shown by records accessible to the court. The notice ~~must shall~~ notify said
4 respondent to file a written answer to the complaint within 20 days after
5 completed service of the notice. The clerk ~~must shall~~ file with the clerk of the
6 supreme court an affidavit attesting that notice was sent to the respondent by
7 restricted certified mail.

8
9 *This rule formerly appeared at Iowa Court Rule 36.6. It has been amended to*
10 *conform an internal rule reference to the new rule numbers.*

11
12 **Rule 36.6 Filing and service of documents.** All answers, motions,
13 applications, petitions, and pleadings in connection with a complaint ~~must~~
14 ~~shall~~ be filed in duplicate, ~~with the grievance commission clerk's office in Des~~
15 ~~Moines, Iowa.~~ The clerk ~~must shall~~ prepare and mail copies to the respondent,
16 the chair of the board, attorneys of record, and to the chair of the commission
17 if sitting as a whole, or to the president of a division of the commission to
18 whom such complaint has been referred. On and after the day fixed for
19 hearing, such papers may be filed in duplicate with the chair of the
20 commission or the president of the division, who ~~must shall~~ notify all parties
21 and attorneys of the filing and file a copy ~~shall be filed~~ with the clerk.

22
23 *This rule formerly appeared at Iowa Court Rule 36.11. It has been amended to*
24 *conform an internal rule reference to the new rule numbers and reduce*
25 *duplication with rule 36.2.*

26
27 **Rule 36.7 Answer.** The respondent ~~must shall~~ file a written answer to the
28 complaint within 20 days from the completed service of notice. For good cause
29 shown upon written application, the grievance commission may grant an
30 extension of time for filing an answer. If the respondent fails or refuses to file
31 such answer within the time specified, the allegations of the complaint are
32 ~~shall be~~ considered admitted, and the matter ~~must shall~~ proceed to a hearing
33 on the issue of the appropriate sanction.

34
35 *This rule formerly appeared at Iowa Court Rule 36.7.*

36
37 **Rule 36.8 Notices by complainant and respondent**

38 **36.8(1) Allegation of misappropriation or conversion.** If the complainant
39 intends to assert that a respondent misappropriated or converted client or
40 third party funds in violation of rule 32:1.15 or chapter 45 of the court rules,
41 the complainant must specifically allege in its complaint the misappropriation
42 or conversion for personal use without a colorable future claim. The division
43 president may for good cause shown allow amendment of the complaint to
44 specifically allege misappropriation or conversion, provided the respondent is
45 given notice of the amendment and an adequate opportunity to respond before

1 the hearing commences. In granting leave to amend, the division president
2 may impose terms and conditions including a delay or continuance of hearing.

3 **36.8(2)** Colorable future claim. A respondent who intends to rely on the
4 defense of a colorable future claim to funds taken from a trust account to avoid
5 a finding of misappropriation must, within the time set for the making of
6 pretrial motions or at such later time as the division president directs, file
7 written notice of such intention. The division president may for good cause
8 shown allow late filing of the notice. The respondent bears the burden of
9 coming forward with evidence in support of a colorable future claim, but the
10 burden to prove conversion remains with the complainant.

11 **36.8(3)** Failure to comply. If a respondent fails to abide by the time period
12 described in this rule, the respondent may not offer evidence on the issue of
13 colorable future claim without leave of the division president for good cause
14 shown. In granting leave, the division president may impose terms and
15 conditions including a delay or continuance of hearing.

16
17 *Rule 36.8 is a new rule, intended to require notice of an allegation of*
18 *misappropriation and use of the colorable future claim defense in trust account*
19 *conversion cases. In 2014, the court discussed the advisability of specifically*
20 *alleging misappropriation or conversion for personal use in the complaint so that*
21 *the respondent has adequate notice. Iowa Supreme Ct. Att’y Disciplinary Bd. v.*
22 *Kelsen, 855 N.W.2d 175 (Iowa 2014). The court subsequently stated that a*
23 *complaint alleging theft or misappropriation must “specifically allege*
24 *misappropriation or conversion of a client retainer for personal use without a*
25 *colorable future claim.” Iowa Supreme Ct. Att’y Disciplinary Bd. v. Cepican, ___*
26 *N.W.2d ___ (Iowa 2015). In another attorney disciplinary case decided in 2014,*
27 *the court addressed allocation of the burden of proof with respect to the so-called*
28 *colorable future claim defense to conversion of client funds held in trust. The*
29 *court decided to allocate the burden of coming forward with evidence of a*
30 *colorable future claim to the respondent attorney, but left the burden of proving*
31 *conversion with the Attorney Disciplinary Board. Iowa Supreme Ct. Att’y*
32 *Disciplinary Bd. v. Carter, 847 N.W.2d 228 (Iowa 2014). The proposed new rule*
33 *36.20 requires that the complainant specifically include in its complaint any*
34 *allegation of misappropriation or conversion, and incorporates a notice*
35 *requirement for a respondent intending to assert the colorable future claim*
36 *defense, similar to the notice requirements for alibi, insanity, diminished*
37 *capacity, and other defenses described in Iowa Rule of Criminal Procedure*
38 *2.11(11).*

39
40 **Rule 36.9 Challenge regarding impartiality — four member divisions.**
41 Within the time allowed for filing an answer to the complaint, the respondent
42 may challenge the impartiality of any member of the commission or division by
43 filing a motion setting forth the grounds therefor. Said motion must shall be
44 disposed of as provided in rule 36.14 36.12. If the challenge is sustained, the
45 vacancy thus created must shall be filled as provided in rule 36.4 36.16.

1 With the consent of the complainant and the respondent, a division of the
2 grievance commission may consist of four members. In the event the four-
3 member division is evenly divided between a recommendation of sanction and
4 dismissal, the division must ~~shall~~ enter a dismissal of the complaint pursuant
5 to the provisions of Iowa Ct. R. 36.20 ~~35.9~~. Upon such dismissal, the
6 complainant may apply for permission to appeal pursuant to Iowa Ct. R. 36.22
7 ~~35.11~~.

8
9 *This rule formerly appeared at Iowa Court Rule 36.13. It has been amended to*
10 *conform an internal rule reference to the new rule numbers.*

11
12 **Rule 36.10 Setting case for hearing, pretrial conference and scheduling**
13 **order. Hearing.**

14 **36.10** After the complaint is served, a division of the grievance commission
15 is appointed to hear the matter, and 30 days have elapsed from the date of
16 service of the complaint, the clerk of the grievance commission must arrange a
17 telephone conference with members of the division and the parties to schedule
18 the hearing, discovery, and other pretrial matters. Notice of the telephone
19 conference must be provided at least ten days prior to the scheduled telephone
20 conference.

21 The hearing must be held not less than 60 days nor more than 90 days after
22 the service of the complaint. The clerk must mail a copy of the order setting
23 the hearing to all parties and attorneys at least ten days before the date set for
24 the hearing. If a party does not participate in the scheduling conference, notice
25 of the hearing must be provided to such party by restricted certified mail or
26 personal service.

27 A scheduling order regarding discovery and other pretrial matters must be
28 filed by the division president after the telephone conference. The scheduling
29 order must specify deadlines for disclosure of expert witnesses, service of
30 discovery requests, service of responses to discovery, exchange of witness and
31 exhibit lists, exchange of exhibits, amendment of pleadings, objections to
32 witnesses or exhibits, motions to resolve discovery issues, and any other
33 pretrial matters deemed appropriate by the division president.

34 ~~Upon the expiration of 30 days from the date of service of the complaint, the~~
35 ~~grievance commission shall immediately set the matter for hearing and notify~~
36 ~~the parties by restricted certified mail or personal service. Such notice shall be~~
37 ~~provided at least ten days prior to the scheduled hearing date.~~

38 ~~After the complaint is served and a division of the grievance commission is~~
39 ~~appointed to hear the matter, the clerk of the grievance commission shall~~
40 ~~arrange a telephone conference with members of the division and the parties to~~
41 ~~schedule the hearing. Notice of the hearing shall be provided at least ten days~~
42 ~~prior to the scheduled hearing.~~

43 ~~The hearing shall be held not less than 60 days nor more than 90 days after~~
44 ~~the service of the complaint. The commission may grant reasonable~~
45 ~~continuances upon written application supported by affidavit. Proceedings,~~

1 ~~hearings, and papers filed before the grievance commission or any division~~
2 ~~thereof shall be confidential, subject to disclosure under Iowa Ct. R. 36.18.~~

3
4 *This rule formerly appeared at Iowa Court Rule 35.7. It has been amended to*
5 *conform an internal rule reference to the new rule numbers and eliminate*
6 *duplication with rule 36.11. In addition, provisions for a mandatory pretrial*
7 *conference and a scheduling order regarding discovery and other pretrial matters*
8 *are added, reflecting actual commission pretrial practice.*

9
10 **Rule 36.11 Time and place of hearing. Hearing.** The chair of the
11 commission, or the president of any division to which a complaint has been
12 referred, must shall direct a hearing to be held upon the complaint ~~within a~~
13 ~~reasonable time~~ in the county of the respondent's residence or, at the
14 discretion of the chair, within any other judicial district as ~~shall~~ most nearly
15 serves the convenience of the parties and must shall designate by written order
16 the time and place for the hearing. ~~The clerk must shall mail a copy of the~~
17 ~~order to all parties and attorneys at least ten days before the date set for the~~
18 ~~hearing.~~ If the respondent files written objections to hearing the complaint in
19 the county of the respondent's residence, the hearing must shall be held at
20 such other place as the chair or division president ~~shall~~ directs by written
21 order, in which case a new notice of the hearing date must shall be given.

22
23 *This rule formerly appeared at Iowa Court Rule 36.8. It has been edited to*
24 *eliminate duplication with rule 36.10.*

25
26 **Rule 36.12 Continuances.** A hearing must shall not be continued except for
27 good cause, upon written application supported by affidavit. Except in case of
28 emergency, any motion for continuance must shall be filed at least seven days
29 before the day of hearing. Any objections to continuance must shall be filed
30 promptly.

31
32 *This rule formerly appeared at Iowa Court Rule 36.9. It has been amended to*
33 *include language formerly in rule 35.7 regarding the written application and*
34 *affidavit.*

35
36 **Rule 36.13 Discovery.** In any disciplinary proceeding or action taken by the
37 board, discovery is shall be permitted as provided in Iowa Rs. Civ. P. 1.501(2)
38 and (3), 1.502 through 1.504, 1.505(2), 1.506, 1.508 through to 1.517, 1.701,
39 1.702, 1.704, 1.705, and 1.707 through and 1.714 to 1.717. The attorney
40 against whom a complaint has been filed, in addition to the restriction stated
41 in Iowa R. Civ. P. 1.503(1), is shall not be required to answer an interrogatory
42 pursuant to Iowa R. Civ. P. 1.509, a request for admission pursuant to Iowa R.
43 Civ. P. 1.510, a question upon oral examination pursuant to Iowa R. Civ. P.
44 1.701, or a question upon written interrogatories pursuant to Iowa R. Civ. P.
45 1.710, if the answer would be self-incriminatory. In addition thereto, evidence
46 and testimony may be perpetuated as provided in Iowa Rs. Civ. P. 1.721 to

1 1.728. If either party is to utilize discovery, it must be commenced within 30
2 days after service of the complaint. The commission may permit amendments
3 to the complaint to conform to the proof or to raise new matters as long as the
4 respondent has notice thereof and a reasonable time to prepare a defense
5 thereto prior to the date set for hearing. The grievance commission, or any
6 division thereof, may shall receive an application and may enter an order to
7 enforce discovery or to perpetuate any evidence. Discovery pursuant to this
8 rule includes an attorney's right to obtain a copy of the board's file pursuant to
9 the provisions of Iowa Ct. R. 35.4(3) ~~34.4(2)~~.

10
11 *This rule formerly appeared at Iowa Court Rule 35.6. It has been amended to*
12 *conform an internal rule reference to the new rule numbers. The rule also has*
13 *been amended based on changes in discovery rules for civil cases adopted*
14 *effective January 1, 2015, with the goal of selectively incorporating the new*
15 *discovery rules in civil cases to reflect current discovery practice before the*
16 *commission. The incorporated rules allow discovery by oral deposition, written*
17 *interrogatories, requests for admission, requests for production, physical or*
18 *mental examination, and depositions upon written interrogatories. Iowa Rule of*
19 *Civil Procedure 1.507 regarding a discovery plan is not incorporated. Current*
20 *commission practice, incorporated in the new rule 36.10, is to craft a discovery*
21 *plan that accommodates the hearing date and enter a scheduling order at the*
22 *time the hearing date is set by telephone conference. Iowa Rules of Civil*
23 *Procedure 1.501(1) and 1.505 are not incorporated because the contemplated*
24 *initial disclosures are not relevant in attorney discipline cases or are already*
25 *subject to disclosure in other parts of the attorney discipline process, and the*
26 *timing provisions are not compatible with the pace of attorney discipline*
27 *proceedings. Similarly, Iowa Rule of Civil Procedure 1.702 regarding small claims*
28 *and Iowa Rule of Civil Procedure 1.706 regarding substituted parties do not*
29 *apply in attorney discipline proceedings.*

30
31 **Rule 36.14 Prehearing motions and hearings. Request for hearing —**
32 **preliminary matters.** If prompt written request is filed by or on behalf of any
33 party for a hearing upon any preliminary motion or application filed in
34 connection with a complaint, the chair of the commission sitting as a whole or
35 the president of the division to whom such complaint has been referred must
36 ~~shall~~ by written order fix a time and place of hearing upon such motion or
37 application and must shall notify all parties and attorneys. After such hearing
38 or if none is requested, the chair or president of a division, as the case may be,
39 or any member of the commission or division designated by the chair or
40 president, must shall file a written ruling upon such motion or application, and
41 thereafter all parties must shall promptly comply with the ruling's terms and
42 conditions.

43
44 *This rule formerly appeared at Iowa Court Rule 36.12.*
45

1 **Rule 36.15 Subpoenas.** The commission ~~has shall have~~ subpoena power on
2 behalf of the board and the attorney against whom a complaint has been filed
3 to compel the appearance of persons or the production of documents during
4 discovery and the final hearing. The clerk of the grievance commission must
5 issue a subpoena, signed but otherwise in blank, to a party who requests it.
6 That party must complete it for service. An attorney licensed or otherwise
7 authorized to practice law in Iowa also may issue and sign a subpoena as an
8 officer of the court.

9 Any attack on the validity of a subpoena ~~must shall~~ be heard or determined
10 by the chair of the commission, the president, or any member of a division to
11 which a complaint has been referred. Any resulting order is not appealable
12 prior to entry of the final ruling, report, or recommendation of the commission.
13 Disobedience of the commission's subpoena ~~is shall be~~ punishable as contempt
14 in the district court for the county where the hearing is to be held. A contempt
15 proceeding will not be a matter of public record. ~~The clerk of the grievance~~
16 ~~commission must issue a subpoena, signed but otherwise in blank, to a party~~
17 ~~who requests it. That party must complete it for service. An attorney licensed~~
18 ~~or otherwise authorized to practice law in Iowa also may issue and sign a~~
19 ~~subpoena as an officer of the court. Any member of the grievance commission~~
20 ~~is hereby empowered to administer oaths or affirmations to all witnesses and~~
21 ~~must shall cause such testimony to be officially reported by a court reporter.~~

22
23 *This rule formerly appeared at Iowa Court Rule 35.8. It has been amended to*
24 *conform an internal rule reference to the new rule numbers and to flow more*
25 *logically. The deleted last sentence duplicates a similar provision in rule 36.18.*
26

27 **Rule 36.16 Stipulated submissions.** The parties may stipulate and agree to
28 waive formal hearing and submit the complaint to the commission for its
29 decision on the basis of a written stipulation approved by the parties and filed
30 with the clerk of the commission. The commission may consider the complaint
31 on the basis of the stipulation, or refuse to accept the stipulation and proceed
32 with a formal hearing, or accept the stipulation but conduct a limited hearing
33 to elicit such additional evidence as the commission may deem necessary to
34 facilitate informed consideration of the complaint. A stipulation under this rule
35 must be submitted not less than 15 days before the date set for hearing. A
36 stipulation submitted pursuant to this rule may include a statement regarding
37 the proposed discipline, including additional or alternative sanctions as
38 provided in rule ~~36.20 35.10~~. The commission must consider the statement of
39 proposed discipline, but is not limited by the statement and may recommend
40 greater or lesser discipline, including additional or alternative sanctions. A
41 stipulation submitted pursuant to this rule must include:

- 42 1. A statement of the relevant facts;
- 43 2. A separate statement of conclusions of law as to the stipulated violations;
- 44 3. A separate description of mitigating and aggravating circumstances;
- 45 4. A stipulation as to all exhibits; and

1 5. A waiver of the formal hearing, the parties' agreement to submit the
2 matter on the basis of the stipulation, and an agreement to closure of the
3 record unless the commission directs further proceedings.

4
5 *This rule formerly appeared at Iowa Court Rule 35.9. It has been amended to*
6 *conform an internal rule reference to the new rule numbers.*

7
8 **Rule 36.17 Conduct of hearing.**

9 **36.17(1)** At the time and place fixed for the hearing upon any complaint,
10 the commission or division must ~~shall~~ proceed to hear the evidence, briefs of
11 authorities and arguments. The hearing is not ~~shall be~~ open to the public.

12 **36.17(2)** The respondent may present character evidence by sworn affidavit,
13 which shall be filed as part of the respondent's exhibits. The affidavit must
14 ~~shall~~ be admitted into evidence unless the complainant indicates, at least three
15 days prior to the scheduled hearing date, that it intends to cross-examine the
16 affiant. In such case, the affidavit must ~~shall~~ not be received into evidence, and
17 the affiant must ~~shall~~ testify in the manner of all other witnesses. The
18 respondent may similarly offer the character evidence of a subpoenaed judge
19 by sworn affidavit, subject to the same constraints if the complainant timely
20 indicates its intention to cross-examine the affiant judge. All other witnesses
21 must ~~shall~~ testify at the hearing after administration of an oath or affirmation
22 by a member of the grievance commission or other person authorized by law to
23 administer oaths, and their testimony must ~~shall~~ be taken in writing by a duly
24 qualified reporter.

25 **36.17(3)** In the event an attorney previously has been publicly reprimanded
26 or an attorney's license has been suspended or revoked or the attorney has
27 been disbarred, a certified copy of said action must ~~shall~~ be admitted into
28 evidence at any hearing involving disciplinary proceedings without the
29 necessity of a bifurcated hearing. The grievance commission and the supreme
30 court will ~~shall~~ consider this evidence along with all other evidence in the case
31 in determining the attorney's fitness to practice law in the state of Iowa.

32 **36.17(4)** Principles of issue preclusion may be used by either party in an
33 attorney a lawyer disciplinary case if all of the following conditions exist:

34 a. The issue has been resolved in a civil proceeding that resulted in a final
35 judgment, or in a criminal proceeding that resulted in a finding of guilt, even if
36 the Iowa Supreme Court Attorney Disciplinary Board was not a party to the
37 prior proceeding.

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

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

43 **36.17(5)** The respondent may defend and has ~~shall have~~ the right to
44 participate in the hearing in person and by counsel, to cross-examine, to be
45 confronted by witnesses, and to present evidence, ~~in accordance with the Iowa~~
46 ~~Rules of Civil Procedure and the Iowa Rules of Evidence.~~

1 **36.17(6)** The presentation of evidence must shall conform to the Iowa Rules
2 of Civil Procedure and the Iowa Rules of Evidence. All questions of procedure,
3 including objections to evidence, must shall be determined by the chair of the
4 commission or president of the division.

5
6 *The majority of this rule formerly appeared at Iowa Court Rule 36.14.*
7 *Subparagraphs (3) and (4) formerly appeared at rule 35.7.*

8
9 **Rule 36.18 Oaths.** Any member of the grievance commission is hereby
10 empowered to administer oaths or affirmations to all witnesses and must shall
11 cause such testimony to be officially reported by a court reporter.

12
13 *This rule formerly appeared at Iowa Court Rule 36.10.*

14
15 **Rule 36.19 Action upon complaint — report of decision.** At the conclusion
16 of a hearing upon any complaint against an attorney, the grievance commission
17 may permit a reasonable time for the parties to file post-hearing briefs and
18 arguments. At the conclusion of a hearing upon any complaint against an
19 attorney, the The commissioners must are empowered to dismiss the
20 complaint, issue a private admonition, or recommend that the supreme court
21 reprimand the respondent or suspend or revoke the respondent's license. If the
22 commissioners recommend a reprimand, suspension, or revocation, they must
23 shall file with the supreme court clerk a report of their findings of fact,
24 conclusions of law, and recommendations within 60 days of the date set for
25 filing of the last responsive brief and argument. Such report must be entitled in
26 the name of the complainant versus the accused attorney as the respondent.
27 As part of its report, the commission may recommend additional or alternative
28 sanctions such as restitution, costs, practice limitations, appointment of a
29 trustee or receiver, passage of a bar examination or the Multistate Professional
30 Responsibility Examination, attendance at continuing legal education courses,
31 or other measures consistent with the purposes of attorney discipline. The
32 report must shall contain a proof of service showing it was served upon the
33 complainant and the respondent as provided in Iowa R. App. P. 6.31. The
34 matter shall then stand for disposition in the supreme court.

35 All reports and recommendations of the commissioners must shall be
36 concurred in by at least 3 members of the division or at least 12 members of
37 the commission, as the case may be, all of whom must shall have been present
38 throughout the proceedings. Any commissioner has the right to file with the
39 supreme court clerk a dissent from the majority determination or report. The
40 clerk must shall promptly cause a copy of a dissent to be served on the
41 respondent.

42 If the grievance commission dismisses the complaint or issues a private
43 admonition, no report may shall be made to the supreme court, except as
44 provided in rule 34.13 35.25; however, the grievance commission must, shall,
45 within 10 days of its determination, serve a copy of its determination or report
46 on the complainant and the attorney concerned as provided in this rule.

1 ~~chapter 36 of the Iowa Court Rules.~~ If no appeal is applied for by the
2 complainant within 10 days after such service, the grievance commission's
3 determination ~~is shall~~ be final.

4 If the commissioners dismiss the charges, no publicity will ~~shall~~ be given to
5 any of the proceedings except at the request of the respondent.

6 A copy of the commission's report must ~~shall~~ be filed with the Client
7 Security Commission.

8
9 *This rule formerly appeared at Iowa Court Rule 36.15. It has been amended to*
10 *conform an internal rule reference to the new rule numbers and to complement*
11 *rule 36.20.*

12
13 **Rule 36.20 Additional time for decision upon application. Decision.** At the
14 conclusion of a hearing upon any complaint against an attorney, the grievance
15 commission may permit a reasonable time for the parties to file post hearing
16 briefs and arguments. The commission shall dismiss the complaint, issue a
17 private admonition, or recommend to the supreme court that the attorney be
18 reprimanded or the attorney's license to practice law be suspended or revoked.
19 If the grievance commission recommends a reprimand or suspension or
20 revocation of the attorney's license, it shall file with the supreme court its
21 written findings of fact, conclusions of law, and recommendations. As part of
22 its report, the commission may recommend additional or alternative sanctions
23 such as restitution, costs, practice limitations, appointment of a trustee or
24 receiver, passage of a bar examination or the Multistate Professional
25 Responsibility Examination, attendance at continuing legal education courses,
26 or other measures consistent with the purposes of attorney discipline.

27 A copy of the commission's report shall be filed with the Client Security
28 Commission. The disposition or report of the grievance commission shall be
29 made or filed with the supreme court within 60 days of the date set for the
30 filing of the last responsive brief and argument. If the commission cannot
31 reasonably make its determination or file its report within 60 days of the date
32 set for the filing of the last responsive brief and argument, such time limit, the
33 division president may file a request for an extension of time with the clerk of
34 the commission prior to the expiration of the applicable 60-day period. The
35 clerk must ~~shall~~ serve a copy of the request on the chair of the commission and
36 the parties. The chair of the commission must ~~shall~~ file a written decision on
37 the extension request with the clerk, who must ~~shall~~ serve a copy on all
38 parties. If the division fails to file its decision or a request for an extension of
39 time within 60 days of the date set for the filing of the last responsive brief and
40 argument, the clerk must ~~shall~~ promptly notify the director of the office of
41 professional regulation of the failure. ~~Any determination or report of the~~
42 ~~commission need only be concurred in by a majority of the commissioners~~
43 ~~sitting. Any commissioner has the right to file with the supreme court a dissent~~
44 ~~from the majority determination or report. Such matter shall then stand for~~
45 ~~final disposition in the supreme court. If the grievance commission dismisses~~
46 ~~the complaint or issues a private admonition, no report shall be made to the~~

1 ~~supreme court, except as provided in rule 34.14 35.25; however, the grievance~~
2 ~~commission shall, within 10 days of its determination, serve a copy of its~~
3 ~~determination or report on the complainant and the attorney concerned as~~
4 ~~provided in chapter 36 of the Iowa Court Rules. If no appeal is applied for by~~
5 ~~the complainant within 10 days after such service, the grievance commission's~~
6 ~~determination shall be final. Any report of reprimand or recommendations for~~
7 ~~license suspension or revocation shall be a public document upon its filing~~
8 ~~with the clerk of the supreme court.~~

9
10 *This rule formerly appeared at Iowa Court Rule 35.10. It has been amended to*
11 *conform an internal rule reference to the new rule numbers and to reflect the*
12 *provisions moved to or already present in rule 36.19.*

13
14 **Rule 36.21 Supreme court disposition if no appeal.**

15 **36.21(1)** ~~Any report filed by the grievance commission with the supreme~~
16 ~~court shall be served upon the complainant and the attorney concerned as~~
17 ~~provided by chapter 36 of the Iowa Court Rules. Such report shall be entitled in~~
18 ~~the name of the complainant versus the accused attorney as the respondent.~~
19 ~~Within 14 days after a report is filed with the clerk of the supreme court, the~~
20 ~~clerk of the grievance commission must shall transmit to the clerk of the~~
21 ~~supreme court the entire record made before the commission. If no appeal is~~
22 ~~taken or application for permission to appeal is filed within the 10-day period~~
23 ~~provided in rule 36.22 35.12, the supreme court will shall set a date for~~
24 ~~submission of the commission report. The supreme court will shall notify the~~
25 ~~parties that they may file written statements with the supreme court in support~~
26 ~~of or in opposition to the discipline the grievance commission recommended.~~
27 ~~Statements in support of or opposition to the recommended discipline must~~
28 ~~shall be served and filed no later than seven days before the date set for~~
29 ~~submission. Upon submission, the supreme court will shall proceed to review~~
30 ~~de novo the record made before the commission and determine the matter~~
31 ~~without oral argument or further notice to the parties. Upon such review de~~
32 ~~novo the supreme court may impose a lesser or greater sanction than the~~
33 ~~discipline recommended by the grievance commission.~~

34 **36.21(2)** The supreme court may revoke or suspend the license of an
35 attorney admitted to practice in Iowa upon any of the following grounds:
36 conviction of a felony, conviction of a misdemeanor involving moral turpitude,
37 violation of any provision of the Iowa Rules of Professional Conduct, or any
38 cause now or hereafter provided by statute or these rules.

39
40 *This rule formerly appeared at Iowa Court Rule 35.11. It has been amended to*
41 *conform an internal rule reference to the new rule numbers.*

42
43 **Rule 36.22 Appeal.**

44 **36.22(1)** The respondent may appeal to the supreme court from the report
45 or recommendation filed by the grievance commission pursuant to rule 36.19.
46 ~~35.10 to the supreme court.~~ The respondent's notice of appeal must be filed

1 with the clerk of the grievance commission within ten days after service of the
2 report or recommendation on the respondent. The respondent ~~must~~ ~~shall~~ serve
3 a copy of the notice of appeal on the complainant or its counsel pursuant to
4 Iowa R. App. P. 6.701. Promptly after filing the notice of appeal with the clerk
5 of the grievance commission, the respondent ~~must~~ ~~shall~~ mail or deliver a copy
6 of the notice to the clerk of the supreme court.

7 **36.22(2)** The complainant may apply to the supreme court for permission to
8 appeal from a determination, ruling, report, or recommendation of the
9 grievance commission. The application ~~must~~ ~~shall~~ be filed within ten days after
10 service of the determination, ruling, report, or recommendation on the
11 complainant. The supreme court may grant such appeal in a manner similar to
12 the granting of interlocutory appeals in civil cases under the Iowa Rules of
13 Appellate Procedure. The filing fee and the docket fee ~~may~~ ~~shall~~ be waived upon
14 the complainant's written request.

15 **36.22(3)** An appeal of the grievance commission's dismissal of a complaint
16 or of the grievance commission's decision to issue a private admonition ~~must~~
17 ~~shall~~ remain confidential. In making such application, and in any subsequent
18 briefs, the complainant ~~must~~ ~~shall~~ refer to the respondent as "Attorney Doe No.
19 (insert grievance commission number)," instead of using the respondent's
20 name. All references to the respondent during oral arguments shall be to
21 "Attorney Doe." In the event the supreme court reverses or modifies the report
22 of the grievance commission, such court order of reversal or modification is
23 ~~shall become~~ a public record.

24 **36.22(4)** After a notice of appeal is filed or permission to appeal is granted,
25 the appeal ~~must~~ ~~shall~~ proceed pursuant to the Iowa Rules of Appellate
26 Procedure to the full extent those rules are not inconsistent with this rule.
27 Within seven days of the filing of the notice of appeal or the filing of the order
28 granting permission to appeal, appellant ~~must~~ ~~shall~~ pay the filing fee pursuant
29 to Iowa R. App. P. 6.702 and ~~must~~ ~~shall~~ file the combined certificate Iowa R.
30 App. P. 6.804 requires. The matter ~~must~~ ~~shall~~ be captioned under the title
31 given to the action before the grievance commission with the appellant
32 identified as such pursuant to Iowa R. App. P. 6.109(2) unless otherwise
33 required by rule 36.22(3) ~~35.12(3)~~. The abbreviated time limits specified in Iowa
34 R. App. P. 6.902 ~~shall~~ apply. Extensions of time ~~must~~ ~~shall~~ not be granted
35 except upon a verified showing of the most unusual and compelling
36 circumstances. Review is ~~shall be~~ de novo. If a respondent's appeal is
37 dismissed for lack of prosecution pursuant to Iowa R. App. P. 6.1202 or for any
38 other reason, the supreme court ~~must~~ ~~shall~~ proceed to review and decide the
39 matter pursuant to rule 36.21 ~~35.11~~ as if no appeal had been taken.

40
41 *This rule formerly appeared at Iowa Court Rule 35.12. It has been amended to*
42 *conform an internal rule reference to the new rule numbers.*

43
44 **Rule 36.23 Harmless error — substantial prejudice test.** An omission,
45 irregularity, or other defect in procedure shall not render void or ineffective any

1 act of the commission or a division or any member thereof unless substantial
2 prejudice is shown to have resulted.

3
4 *This rule formerly appeared at Iowa Court Rule 36.17. It has been amended to*
5 *conform an internal rule reference to the new rule numbers.*
6

7
8 **Rule 36.24 Costs.**

9 **36.24(1)** In the event that an order of revocation, suspension, or public
10 reprimand results from formal charges of misconduct, the supreme court will
11 ~~shall~~ assess against the respondent attorney the costs of the proceeding. For
12 the purposes of this rule, costs ~~shall~~ include those expenses normally taxed as
13 costs in state civil actions pursuant to the provisions of Iowa Code chapter 625.

14 **36.24(2)** Within 30 days of the filing of the commission report, the
15 commission must ~~shall~~ serve the complainant and the respondent with a bill of
16 costs and file the bill with the clerk of the supreme court. An appeal does not
17 obviate this requirement. The complainant and the respondent ~~shall~~ have ten
18 days from the date of service to file written objections with the supreme court
19 and the clerk of the grievance commission. Any objections filed must ~~shall~~ be
20 considered by the president of the grievance commission division or the
21 president's designee. The president or the designee must ~~shall~~ rule on the
22 objections within ten days. The ruling and objections will ~~shall~~ be considered
23 by the supreme court upon disposition of the matter under rule 36.21 or 36.22
24 ~~35.11 or 35.12~~. Additional costs associated with an appeal must ~~shall~~ be taxed
25 by the clerk as in other civil actions.

26 **36.24(3)** In its final decision, the supreme court will ~~shall~~ order the
27 respondent to pay restitution to the complainant for such costs as the supreme
28 court may approve. A suspended or disbarred attorney may not file an
29 application for reinstatement or readmission until the amount of such
30 restitution for costs assessed under this rule has been fully paid, or waived by
31 the supreme court.

32
33 *This rule formerly appeared at Iowa Court Rule 35.27. It has been amended to*
34 *conform an internal rule reference to the new rule numbers.*
35

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

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6

This rule and form formerly appeared at Iowa Court Rule 36.21.

BEFORE THE GRIEVANCE COMMISSION OF
THE SUPREME COURT OF IOWA

Iowa Supreme Court
Attorney Disciplinary Board,
Complainant,
vs.
Name, Attorney at Law,
of _____, Iowa,
Respondent.

NOTICE OF COMPLAINT

7
8
9

To _____,
Respondent:

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

A copy of the complaint and copies of chapters 35 and 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 commission made in accordance with chapter 36 of the Iowa Court Rules.

You are further notified that the 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.

10 Dated this _____ day of _____, 20 ____.

11
12

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

13
14
15