

1 **Chapter 34**

2 **Administrative and General Provisions**

3

4 **General Disciplinary Rules of**
5 **Grievance Commission and Disciplinary Board**

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7 **34.17 Disability suspension.**

8 **34.17(1)** In the event an attorney is at any time in any jurisdiction duly
9 adjudicated a mentally incapacitated person, or a person with a substance-
10 related disorder, or is committed to an institution or hospital for treatment
11 thereof, the clerk of any court in Iowa in which the adjudication or commitment
12 is entered must, within 10 days, certify the adjudication or commitment to the
13 supreme court clerk.

14 **34.17(2)** Upon the filing of an adjudication or commitment certificate or a
15 like certificate from another jurisdiction, upon a supreme court determination
16 pursuant to a sworn application on behalf of a local bar association, or upon a
17 disciplinary board determination that an attorney is not discharging
18 professional responsibilities due to disability, incapacity, abandonment of
19 practice, or disappearance, the supreme court may enter an order suspending
20 the attorney's license to practice law in this state until further order of the
21 court. Not less than 20 days prior to the effective date of the suspension, the
22 attorney or the attorney's guardian, and the director of the institution or
23 hospital to which the attorney has been committed, if any, must be notified in
24 writing, directed by restricted certified mail to the last address as shown in the
25 records accessible to the supreme court, that the attorney has a right to appear
26 before one or more justices of the supreme court at a specified time and place
27 and show cause why such suspension should not take place. Upon a showing

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1 of exigent circumstances, emergency, or other compelling cause, the supreme
2 court may reduce or waive the 20-day period and the effective date of action set
3 forth above. Any hearing will be informal and the strict rules of evidence will
4 not apply. The decision rendered may simply state the conclusion and decision
5 of the participating justice or justices and may be orally delivered to the
6 attorney at the close of the hearing or sent to the attorney in written form at a
7 later time. A copy of such suspension order must be given to the suspended
8 attorney or to the attorney's guardian and to the director of the institution or
9 hospital to which the suspended attorney has been committed, if any, by
10 restricted mail or personal service as the supreme court may direct.

11 **34.17(3)** Upon the voluntary retirement of an Iowa judicial officer for
12 disability under Iowa Code section 602.9112, or upon the involuntary
13 retirement of an Iowa judicial officer for disability under Iowa Code section
14 602.2106(3)(a), the supreme court may enter an order suspending the retired
15 judicial officer's license to practice law in this state in the event the underlying
16 disability prevents the discharge of an attorney's professional responsibilities.
17 The suspension is effective until further order of the supreme court. A copy of
18 the suspension order must be given to the suspended attorney or to the
19 attorney's guardian and to the director of the institution or hospital to which
20 the suspended attorney is committed, if any, by restricted mail or personal
21 service as the supreme court may direct.

22 **34.17(4)** Any attorney suspended pursuant to rule 34.17 must refrain,
23 during the suspension, from all facets of ordinary law practice including, but
24 not limited to, the examination of abstracts; consummation of real estate
25 transactions; preparation of legal briefs, deeds, buy and sell agreements,
26 contracts, wills, and tax returns; acting as a fiduciary; and when possible,
27 remove all advertising of the attorney's services or holding out to the public

1 that he or she is a licensed attorney. The suspended attorney may, however,
2 act as a fiduciary for an estate, including a conservatorship or guardianship, of
3 any person related to the suspended attorney within the second degree of
4 affinity or consanguinity.

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

8 **34.17(6)**

9 *a.* Upon being notified of the suspension of an attorney, the chief judge in
10 the judicial district in which the attorney practiced may appoint an attorney or
11 attorneys to serve as trustee to inventory the attorney's files, sequester client
12 funds, and take any other appropriate action to protect the interests of the
13 attorney's clients and other affected persons. In appointing a trustee, the chief
14 judge will give due regard to any designation or stand-by nomination made
15 under the provisions of Iowa Court Rule 39.18. Any trustee appointment is
16 subject to supreme court confirmation. The appointed attorney serves as a
17 special member of the board and as a commissioner of the supreme court for
18 the purposes of the appointment.

19 *b.* While acting as trustee, the trustee must not serve as an attorney for the
20 clients of the disabled attorney or other affected persons. The trustee also must
21 not examine any papers or acquire any information concerning real or potential
22 conflicts with the trustee's clients. Should any such information be acquired
23 inadvertently, the trustee must, as to such matters, protect the privacy
24 interests of the disabled attorney's clients by prompt recusal or refusal of
25 employment.

26 *c.* The trustee may seek reasonable fees and reimbursement of costs of the
27 trust from the suspended attorney. If reasonable efforts to collect such fees and

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1 costs are unsuccessful, the trustee may submit a claim for payment from the
2 Clients' Security Trust Fund of the Bar of Iowa. The Client Security
3 Commission, in the exercise of its sole discretion, must determine the merits of
4 the claim and the amount of any payment from the fund.

5 *d.* When the suspended attorney is reinstated to practice law in this state,
6 all pending representation of clients is completed, or the purposes of the trust
7 are accomplished, the trustee may apply to the appointing chief judge for an
8 order terminating the trust.

9 *e.* Trustee fees and expenses paid by the Client Security Commission must
10 be assessed to the disabled attorney by the Client Security Commission and
11 are due upon assessment. Trustee fees and expenses assessed under this rule
12 must be paid as a condition of reinstatement and may be collected by the
13 Client Security Commission as part of the annual statement and assessment
14 required by rule 39.8.

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

18 **34.18(1)** Upon a sworn application on behalf of a local bar association, an
19 attorney or entity designated or nominated on a stand-by basis as described in
20 Iowa Court Rule 39.18, or the disciplinary board showing that a practicing
21 attorney has died or has been suspended or disbarred from the practice of law
22 and that a reasonable necessity exists, the chief judge in the judicial district in
23 which the attorney practiced may appoint an attorney to serve as trustee to
24 inventory the attorney's files, sequester client funds, and take any other
25 appropriate action to protect the interests of the attorney's clients and other
26 affected persons. In appointing a trustee, the chief judge will give due regard to
27 any designation or stand-by nomination made under the provisions of Iowa

1 Court Rule 39.18. The appointment is subject to supreme court confirmation.
2 The appointed attorney serves as a special member of the disciplinary board
3 and as a commissioner of the supreme court for the purposes of the
4 appointment.

5 **34.18(2)** While acting as trustee, the trustee must not serve as an attorney
6 for the clients of the disabled attorney or other affected persons. The trustee
7 also must not examine any papers or acquire any information concerning real
8 or potential conflicts with the trustee's clients. If the trustee acquires such
9 information inadvertently, the trustee must, as to such matters, protect the
10 privacy interests of the disabled attorney's clients by prompt recusal or refusal
11 of employment.

12 **34.18(3)** The trustee may seek reasonable fees and reimbursement of costs
13 of the trust from the deceased attorney's estate or the attorney whose license to
14 practice law has been suspended or revoked. If reasonable efforts to collect
15 such fees and costs are unsuccessful, the trustee may submit a claim for
16 payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client
17 Security Commission, in the exercise of its sole discretion, must determine the
18 merits of the claim and the amount of any payment from the fund.

19 **34.18(4)** When all pending representation of clients is completed or the
20 purposes of the trust are accomplished, the trustee may apply to the
21 appointing chief judge for an order terminating the trust.

22 **34.18(5)** Trustee fees and expenses paid by the Client Security Commission
23 must be assessed to the deceased, suspended, or disbarred attorney by the
24 Client Security Commission and are due upon assessment. Trustee fees and
25 expenses assessed under this rule must be paid as a condition of
26 reinstatement and may be collected by the Client Security Commission as part
27 of the annual statement and assessment required by rule 39.8.

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2 Chapter 39

3 Client Security Commission

4

5 **[New proposed] Rule 39.18 Requirement for death or disability designation** 6 **and authorization.**

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8 **39.18(1) Required designation and authorization in annual questionnaire.**

9 a. Each attorney in private practice must identify and authorize each year,
10 as part of the annual questionnaire required by Iowa Court Rule 39.11, a
11 qualified lawyer servicing association, an Iowa law firm that includes Iowa
12 attorneys in good standing, or an active Iowa attorney in good standing, to
13 serve as the attorney's designated representative or representatives under this
14 rule. An attorney may identify and authorize an Iowa law firm of which the
15 attorney is a member to serve under this rule.

16 b. The attorney or entity designated under this rule is authorized to review
17 client files, notify each client of the attorney's death or disability, and
18 determine whether there is a need for other immediate action to protect the
19 interests of clients.

20 c. The attorney or entity designated under this rule also is authorized to
21 serve as a successor signatory for any client trust account maintained by the
22 private practitioner under Iowa Court Rule 45.11, prepare final trust
23 accountings for clients, make trust account disbursements, properly dispose of
24 inactive files, and arrange for storage of files and trust account records.

25 d. The authority of the attorney or entity designated under this rule takes
26 effect upon the death or disability of the designated attorney. The designated
27 attorney or entity may apply to the chief judge of the judicial district in which

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1 the designating attorney practiced for an order confirming the death or
2 disability of the designating attorney.

3 **39.18(2)** *Client list and location of key information.* Each attorney in private
4 practice must maintain a current list of active clients, in a location accessible
5 by the attorney or entity designated under this rule. As part of the annual
6 questionnaire required by Iowa Court Rule 39.11, each attorney in private
7 practice must identify the custodian and the location of the client list, the
8 custodian and location of electronic and paper files and records, and the
9 custodian and location of passwords and other security protocols required to
10 access the electronic files and records. The attorney or entity designated under
11 this rule is authorized to access electronic and paper files and records as
12 necessary to perform duties as a designated attorney, and is authorized to
13 access passwords and other security protocols required to access those
14 electronic files and records.

15 **39.18(3)** *Supplemental plan.* An attorney in private practice may prepare a
16 written plan that is supplemental to the designation and authority in the
17 annual client security questionnaire. The supplemental written plan may
18 designate an attorney or entity to collect fees, pay firm expenses and client
19 costs, compensate staff, terminate leases, liquidate or sell the practice, or
20 perform other law firm administration tasks. The supplemental written plan
21 also may nominate an attorney or entity to serve as trustee if proceedings are
22 commenced under the provisions of Iowa Court Rules 34.17 or 34.18.

23 **39.18(4)** *Durability.* A designation or plan under this rule must include
24 language sufficient to make the designated attorneys' or entity's powers
25 durable in the event of the private practitioner's disability. See Iowa Code §
26 633B.104; Iowa R. Prof'l Conduct 32:1.3 cmt. [5].

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1 **39.18(5) Conflicts of interest.** A designated attorney or entity must not
2 examine any documents or acquire any information containing real or potential
3 conflicts with the designated attorney’s clients. Should any such information
4 be acquired inadvertently, the designated attorney or entity must, as to such
5 matters, protect the privacy interests of the planning attorney’s clients by
6 prompt recusal or refusal of employment.

7 **39.18(6) Availability of Trustee Provisions.** A designated attorney or entity
8 may petition the court, at any time, for appointment as the trustee or
9 appointment of an independent trustee under the provisions of Iowa Court
10 Rules 34.17 or 34.18, as applicable.

11 **39.18(7) Definitions.** For purposes of this rule, the following definitions
12 apply:

13 a. A “qualified lawyer servicing association” is a bar association all or part of
14 whose members are admitted to practice law in the state of Iowa; a company
15 authorized to sell lawyers professional liability insurance in Iowa; or an Iowa
16 bank with trust powers issued by the Iowa Department of Banking.

17 b. A “law firm” is a minimum of two attorneys in a law partnership,
18 professional corporation, or other association authorized to practice law.

19 c. An “attorney in private practice” includes an active Iowa attorney who
20 resides outside Iowa but engages in the private practice of law in Iowa.

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