

**Summary of Proposed Amendments
to
Division III of the Iowa Court Rules—
Professional Regulation
November, 2011**

General Purpose of Amendments

The proposed amendments would change Division III (Professional Regulation) of the Iowa Court Rules, including the rules regarding lawyer discipline procedure, continuing education, client security claims, and client trust accounts. The proposed amendments are intended to aid the processing of complaints of unethical conduct by Iowa lawyers, reduce the time required to adjudicate complaints, reduce the number of complaints in the first instance through prevention, and address eligibility of certain claims against the client security trust fund.

Iowa Court Rules 34.4 and 34.5

The proposed changes to Iowa Court Rules 34.4 and 34.5 would grant the assistant director for attorney discipline reasonable discretion, to be exercised according to policy guidance from the Attorney Disciplinary Board, to dismiss clearly meritless complaints without further investigation. The proposal is expected to enable the Board to more expeditiously address complaints awaiting initial investigation that are likely to have merit.

Iowa Court Rule 34.7

Iowa Court Rule 34.6(3) currently allows service of the initial complaint on the respondent lawyer by service on the Clerk of the Supreme Court if service cannot otherwise be obtained by certified mail or personal service. The proposed change would amend Iowa Court Rule 34.7 to clarify that service on the Supreme Court Clerk also is available with respect to an Iowa Court Rule 34.7 notice (the notice that is given the respondent if he or she does not respond to the board's initial notice) when the respondent cannot otherwise be served at an address accessible to the court.

Iowa Court Rule 34.23

Iowa Court Rule 34.23 prescribes the form in which complaints of ethics violations should be reported to the Attorney Disciplinary Board. The proposed change would amend the form to include more specific information regarding the complainant's relationship with the lawyer and the forum in which the alleged violation occurred, and to request submission of documents supporting the complaint.

Iowa Court Rule 35.8

Iowa Court Rule 35.8 currently provides for issuance of subpoenas in grievance commission proceedings by the clerk of the district court in the county where the hearing is to be held. No specific provision exists for enforcement by the commission of subpoenas issued by the district court, although failure to honor a subpoena is to be reported to the Supreme Court. The proposed change would accord the Grievance Commission authority to directly issue subpoenas for commission proceedings, along with authority to consider objections to a subpoena or motions to quash. Enforcement of subpoenas issued by the commission would be possible by contempt action in district court. The actual procedure for issuance and completion of subpoenas would parallel the provisions of Iowa Rule of Civil Procedure 1.1701(2). The remainder of the proposed rule parallels a comparable provision in rule 52.20, which accords the Commission on Judicial Qualifications authority to directly issue subpoenas for its proceedings.

Iowa Court Rule 35.9 (New)

In recent years, cases have been submitted to the Grievance Commission divisions on the basis of a stipulation between the parties, with formal hearing on the complaint waived. The level of detail in the stipulations has varied, which sometimes has rendered fully informed consideration of the matter difficult for the Grievance Commission division and for the Supreme Court upon review. The proposed change would create a new Iowa Court Rule 35.9 to provide standards for stipulated submissions and grant divisions of the Grievance Commission discretion to accept a proposed stipulation, reject a proposed stipulation, or conduct a limited hearing to elicit further evidence if appropriate.

Iowa Court Rule 35.10 (as renumbered)

Presiding members of Grievance Commission division do not always submit their division's recommendation and report within the 30 day period provided by current Iowa Court Rule 35.9. The current rule requires division presidents to report their failure to comply with the 30 day submission rule to the parties and the Clerk of the Supreme Court, but in practice no such reports are submitted when division presidents file the recommendation and report late. The proposed change provides a mechanism for division presidents to request an extension of time to file a report and recommendation, subject to the approval of the chair of the commission. If a division president fails to submit either a timely request for extension of time or a timely division report and recommendation, the proposed change requires the Clerk of the Grievance Commission to immediately report the failure to the Director of the Office of Professional Regulation for follow-up and action as appropriate.

Iowa Court Rule 35.16 (as renumbered)

Current Iowa Court Rule 35.15 allows a lawyer to consent to revocation, and Iowa Court Rule 35.3 allows a lawyer to consent to a public reprimand proposed by the Board. In both instances, the final disposition is subject to Court approval, but not to any findings or review by the Grievance Commission. There is no similar expedited procedure in cases where the material facts are undisputed and the parties agree that suspension is appropriate. The proposed change would allow stipulated submission of suspension cases, expediting the processing of cases in which the facts are undisputed and the parties agree to a suspension and any alternative or additional sanctions. If the Court accepts a stipulation and orders a revocation or suspension, the lawyer's affidavit and the response of the Attorney Disciplinary Board would be publicly disclosed.

Iowa Court Rule 36.10

The procedure for issuance of subpoenas now would be addressed in Iowa Court Rule 35.8. The current provisions of Iowa Court Rule 36.10 regarding subpoenas no longer would be necessary.

Iowa Court Rule 39.9

Iowa's client security rules do not expressly address whether claims against the client security trust fund arising from conduct after a lawyer was suspended qualify for coverage. The proposed amendment to Iowa Court Rule 39.9 adopts the ABA model rule approach to coverage of claims arising after a lawyer's license has been suspended. Claims arising from conduct after entry of a suspension order would be covered, but only if the client's reliance on the state of the lawyer's license is reasonable. However, the proposed Iowa rule also would adopt the Michigan qualification that if the conduct giving rise to the claim occurs more than six months after a lawyer's suspension, that reliance would be presumed unreasonable. In any event, revocation would constitute a bright-line date beyond which no claim could arise and be honored.

Iowa Court Rules 41.3 and 42.1

In recent years, as many as one-third of the published disciplinary opinions of the Supreme Court have specifically mentioned substance abuse or mental health issues on the part of the respondent. In addition, staff members at the Attorney Disciplinary Board and the Grievance Commission estimate that the majority of founded disciplinary matters in Iowa involve lawyers with a substance abuse issue, a mental health issue, or both. As a preventive measure designed to reduce lawyer discipline matters and harm to clients, the proposed change would amend the definition of what constitutes legal ethics for purposes of the biennial ethics

continuing legal education (CLE) attendance requirement. The definition now would include instruction specifically designed for lawyers regarding substance abuse and mental health. The biennial ethics attendance requirement would be increased from two to three hours. Iowa would join at least seven other states that allow ethics CLE credit for instruction regarding substance abuse or mental health.

Iowa Court Rule 45.2

The proposed financial recordkeeping rules are based on the ABA Model Rules for Client Trust Account Records, adopted by the ABA on August 9, 2010. The proposed rules also generally reflect informal guidance the Iowa Client Security Commission has provided lawyers during audits and seminars for several years regarding their recordkeeping obligation. Until now, however, specific guidance regarding required recordkeeping has not been included in the Iowa rules. The only specific guidance for Iowa lawyers has been provided by questions on the annual client security report, pertaining to use of trust accounts for client monies, supervision of staff involvement in the trust account, performing monthly reconciliations, lawyer review of monthly reconciliations, and retention of supporting books and records for six years after completion of the employment to which they pertain. The general recordkeeping and electronic records provisions of the ABA model rules for client trust accounts now would be incorporated in the Iowa rules.

This proposed change in chapter 45 of the Iowa rules leaves intact the provisions of Iowa Court Rules 45.7 through 45.10, which generally incorporate the court's guidance regarding advances for fees and costs first set out in *Board of Professional Ethics & Conduct v. Apland*, 577 N.W.2d 50 (Iowa 1998).

Iowa Court Rule 45.2(3)(a)

The amended Iowa Court Rule 45.2(3)(a) lists the financial records a lawyer must maintain with regard to the trust accounts of a law firm. These include the master check book and client subaccount ledgers, and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client funds as required by Iowa Rule of Professional Conduct 32:1.15. The model rule adopted by the ABA would require that lawyers maintain client trust account records for a period of five years after termination of each particular legal engagement or representation. The current Iowa rule provides for a six year retention period, and the proposed Iowa amendment retains the current six year Iowa requirement.

The model rule adopted by the ABA provides for monthly trial balances and quarterly reconciliations of client trust accounts. Long-standing guidance by the Iowa Supreme Court

Client Security Commission calls for monthly trial balances and monthly reconciliations, because the Commission's experience is that failure to perform trial balances and reconciliations of client subaccounts on a monthly basis is a key contributor to loss of accountability for client monies. The proposed Iowa amendment therefore would require monthly trial balances and monthly reconciliations of client subaccounts.

New provisions in the proposed amendment regarding substitute checks or the equivalents, and records of electronic transfers, are necessary given recent changes in banking methods. These were much-needed additions to the ABA model rules, and much-needed additions to the Iowa rules as well. Auditors and other staff at the Client Security Commission routinely receive questions regarding the impact and record requirements of electronic banking methods, and the current rules provide little guidance.

Iowa Court Rule 45.2(3)(b)

Proposed Iowa Court Rule 45.2(3)(b) specifies that only a lawyer admitted to the practice of law in Iowa or a person who is under the direct supervision of the lawyer may be an authorized signatory or authorize electronic transfers from a client trust account. The current Iowa rules do not restrict signature authority to lawyers. Some Iowa firms do delegate signature authority to non-lawyer staff. Iowa firms can limit their exposure to employee conversion by purchasing an employee dishonesty rider to their firm casualty insurance policy. The proposed Iowa rule will not restrict the flexibility of those firms who believe they have trustworthy staff and are willing to accept and address the risk associated with staff signature authority.

Iowa Court Rule 45.2(3)(c)

Proposed Iowa Court Rule 45.2(3)(c) allows the maintenance of trust account records in electronic, photographic, computer, or other media, provided the records comply with other trust account record requirements and can be produced in paper form when necessary. The Client Security Commission will continue to recommend that if trust account records are computerized, regular back-up copies of the records must be created.

Iowa Court Rules 45.2(3)(d) and (e)

Proposed Iowa Court Rules 45.2(3)(d) and (e) require that a lawyer's trust account records be maintained even in the event of dissolution or sale of a law practice.