

CHAPTER 35
IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD
RULES OF PROCEDURE

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Rule 35.2 Form of complaint. Complaint forms, found in rule 35.15, must be available to the public from the disciplinary board. Complaints must be certified under penalty of perjury, except when filed by an officer of the court, and may include whatever ~~exhibits supporting documents~~ the complainant desires to submit.

COMMENT: Rule 35.2 formerly appeared as Iowa Court Rule 34.2. It is amended to conform an internal reference to the new rule numbers, and to reflect actual practice with respect to dissemination of complaint forms.

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Rule 35.4 Procedure upon receipt of complaint.

35.4(1) Upon receiving a complaint, the assistant director for attorney discipline must evaluate all information coming to his or her attention from the complaint or from any other sources alleging attorney misconduct or incapacity. The assistant director is authorized to decline to open an investigation of a complaint if the information, if true, would not constitute misconduct or incapacity or if the complaint is facially frivolous, stale, lacking in adequate factual detail, duplicative, ~~or is~~ outside the disciplinary board's jurisdiction, ~~or~~ does not otherwise reasonably warrant investigation. The disciplinary board may adopt policies to guide the assistant director in the exercise of this authority.

35.4(2) The disciplinary board must make a record indicating the date on which the complaint was filed, the name and address of the complainant, the name and address of the respondent, and a brief statement of the charges made. This record ultimately must show the final disposition of the matter when it is completed.

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35.4(5) A potential complaint declined pursuant to this rule may not be deemed a complaint for any purpose. A potential complaint declined pursuant to this rule will not be docketed under rule 35.4(2), and the disciplinary board or the respondent must not report or disclose the complaint to any person or authority for any reason.

35.4(6) A true copy of any complaint against a current member of the grievance commission or the disciplinary board involving alleged violations of an attorney's oath of office or of the Iowa Rules of Professional Conduct or laws of the United States or State of Iowa must be promptly forwarded to the Chief Justice of the Iowa Supreme Court.

COMMENT: Rules 35.4(1) through 35.4(5) formerly appeared at Iowa Court Rule 34.4. Rule 35.4(6) formerly appeared as Iowa Court Rule 35.24(3). Rule 35.4 is amended to conform an internal reference to the new rule numbers.

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Rule 35.6 Notification of respondent; response.

35.6(1) The disciplinary board must forward to the respondent a copy of the complaint and copies of chapters 35 and 36 of the Iowa Court Rules. However, if ~~the~~ a potential complaint is

declined pursuant to rule 35.4(1), the disciplinary board need not notify the respondent and no response is required.

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35.7(3) Failure to respond—temporary suspension. If a response is not provided within 10 days of receipt of the notice issued pursuant to rule 35.7(1) or within the time allowed under rule 35.7(2), the disciplinary board must certify the respondent’s failure to respond to the supreme court clerk.

a. Upon receipt of the disciplinary board’s certificate, the supreme court clerk must issue a notice to the attorney that the attorney’s license to practice law will be temporarily suspended unless the attorney causes the board to file a withdrawal of the certificate within 20 days of the date of issuance of the clerk’s notice.

b. If the attorney responds to the complaint within the 20-day period, the disciplinary board must immediately withdraw the certificate and no suspension will occur.

c. If the disciplinary board has not withdrawn the certificate and the 20-day notice period expires, the court will enter an order temporarily suspending the attorney’s license to practice law in the State of Iowa.

d. If the attorney responds to the complaint after a temporary suspension order is entered, the disciplinary board must, within five days of receiving the response, either withdraw the certificate or file with the supreme court a report indicating that the attorney has responded but stating cause why the attorney’s license should not be reinstated and the suspension should be continued under the provisions of Iowa Court Rule 34.14, 34.15, or 34.16.

e. If the disciplinary board seeks to continue the suspension under the provisions of Iowa Court Rule 34.14, 34.15, or 34.16, the supreme court will either reinstate the attorney or enter an appropriate order under the applicable rule.

f. If the disciplinary board files a withdrawal of the certificate after temporary suspension of the attorney’s license, the supreme court will immediately reinstate the attorney’s license to practice law if the attorney is otherwise eligible under the rules of the court.

g. During the initial 30 days of a temporary suspension under this rule, the attorney must give the notice Iowa Court Rule 34.24 requires to those clients whose interests may be adversely affected by the attorney’s suspension.

h. When the suspension period under this rule exceeds 30 days, the attorney must comply with the requirements of Iowa Court Rule 34.24 as to all clients.

i. An attorney whose license is suspended under the provisions of rule 35.7(3)(c) must pay a fee of \$100 [to the office of professional regulation](#) as a condition precedent to reinstatement.

COMMENT: Rule 35.7 formerly appeared as Iowa Court Rule 34.7. It is amended to conform internal references to the new rule numbers.

Rule 35.8 Disciplinary board actions upon receipt of response.

35.8(1) Upon receipt of a response, the disciplinary board must do one of the following:

a. Dismiss the complaint and notify the complainant and the respondent of the dismissal in writing.

b. Cause the case to be docketed for disciplinary board consideration at its next hearing-meeting.

c. Arrange for ~~either~~ the disciplinary board’s counsel or ~~a local bar association~~[another entity](#) to investigate the complaint as the board chair or the chair’s designee deems appropriate.

(1) All investigations done by a person or entity other than the disciplinary board's counsel or its in-house staff must be done in a manner as directed by and under the supervision of the board.

(2) The results of the investigation must be forwarded to the disciplinary board with any recommendation for the board's final action.

35.8(2) The disciplinary board has subpoena power during any investigation conducted on its behalf to compel the appearance of witnesses or the production of documents before the person or entity designated to conduct the investigation on behalf of the board.

35.8(3) The disciplinary board chair, or any other board member in the absence of the chair, has authority to issue subpoenas.

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Rule 35.11 Hearing-meetings. The disciplinary board must hold hearing-meetings at least quarterly and may hold them telephonically. A majority of the disciplinary board constitutes a quorum. The chair, or the chair's designee, must see to the preparation of a record of hearing-meetings, which becomes a part of the permanent files of the supreme court. Any evidence must be taken under oath or affirmation and may be made of record. Upon completion of the consideration of any matter before the disciplinary board, the members, by majority vote of those present, must do one of the following:

35.11(1) Continue the matter.

35.11(2) Dismiss the complaint and notify the complainant and the respondent of the dismissal.

35.11(3) Admonish the respondent, who must be notified in writing that the respondent has 30 days from the date of mailing to file an exception with the assistant director for attorney discipline, who upon receipt of the exception must then ~~refer~~return the admonition to the disciplinary board. The disciplinary board may dismiss, admonish, reprimand, or file a formal complaint with the grievance commission. In cases of admonition, the disciplinary board must notify the complainant of the board's opinion concerning the matter and its communication with the attorney involved.

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Rule 35.12 Reprimand. If the disciplinary board reprimands an attorney, a copy of the reprimand must be filed with the grievance commission clerk, who must cause a copy of the reprimand to be served on the attorney by personal service in the manner of an original notice in civil suits or by restricted certified mail with a notice attached stating that the attorney has 30 days from the date of completed service to file an exception to the reprimand with the grievance commission clerk. Service is complete on the date of personal service or the date shown by the postal receipt of delivery of the notice to the attorney.

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35.12(2) In the event the attorney files a timely exception to the reprimand, no report of the reprimand will be made to the supreme court clerk and the reprimand must be stricken from the grievance commission records.

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Rule 35.13 Order for mental or physical examination or treatment.

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35.13(4) Review. An attorney who disagrees with the disciplinary board's order may seek review from the supreme court by filing ~~nine copies of~~ a petition for review with the supreme court clerk and serving one copy of the petition on the disciplinary board within seven days after receipt of the board's order. The disciplinary board may file ~~nine copies of~~ a response to the petition with the supreme court clerk and serve one copy of the response on the attorney within seven days after service of the petition. The matter will be promptly set for hearing before one or more justices of the supreme court. The disciplinary board's order is stayed upon the filing of the petition for review.

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35.13(7) "Condition." For purposes of this rule, "condition relating to the attorney's impairment" means any physiological, mental or psychological condition, impairment, or disorder, including ~~drug or alcohol addiction or abuse~~ substance-related disorder.

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Rule 35.14 Deferral of further proceedings.

35.14(1) Deferral. With agreement of the assistant director for attorney discipline and the attorney, the board may defer further proceedings pending the attorney's compliance with conditions the board imposes for supervision of the attorney for a specified period of time not to exceed one year unless the board extends the time prior to the conclusion of the specified period. Proceedings may not be deferred under any of the following circumstances:

a. The conduct under investigation involves misappropriation of funds or property of a client or a third party.

b. The conduct under investigation involves a criminal act that reflects adversely on the attorney's honesty, trustworthiness, or fitness as an attorney in other respects.

c. The conduct under investigation resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person, unless restitution is made a condition of deferral.

~~d. The attorney has previously been disciplined or has been placed under supervision as provided in this rule.~~

~~e. The attorney has failed to respond to the disciplinary board's notices of complaint concerning the conduct under investigation.~~

35.14(2) Conditions. In imposing conditions, the disciplinary board must consider the nature and circumstances of the conduct under investigation and the history, character, and condition of the attorney. The conditions the disciplinary board may impose include, but are not limited to, the following:

a. Periodic reports to the ~~diversion coordinator and the~~ assistant director for attorney discipline.

b. Supervision of the attorney's practice or accounting procedures.

c. Satisfactory completion of a course of study.

d. Successful completion of the Multistate Professional Responsibility Examination.

e. Compliance with the provisions of the Iowa Rules of Professional Conduct.

f. Restitution.

g. Psychological counseling or treatment.

h. Substance-related disorder counseling or treatment.

- i. Abstinence from alcohol or drugs.
- j. Cooperation with the Iowa Lawyers Assistance Program.
- k. Fee arbitration.

35.14(3) Affidavit. Prior to the disciplinary board's deferral of further proceedings, the attorney

must execute an affidavit setting forth all of the following:

- a. The attorney's admission of the conduct under the disciplinary board's investigation.
- b. The conditions the disciplinary board will impose for supervision of the attorney, including the period of supervision.
- c. The attorney's agreement to the conditions to be imposed.
- d. An acknowledgement that the attorney understands that if the attorney fails to comply with the conditions the disciplinary board has imposed, a formal complaint may be filed with the grievance commission, both for the matters raised in the original complaint to the board and for the attorney's failure to comply with the conditions of supervision.
- e. A statement that, if the attorney fails to comply with the conditions of supervision, the attorney's admissions with respect to the attorney's conduct may be introduced as evidence in any subsequent proceedings before the disciplinary board or the grievance commission.
- f. An acknowledgement that the attorney joins in the disciplinary board's deferral determination freely and voluntarily and understands the nature and consequences of the board's action.

35.14(4) Supervision. The diversion coordinator, who may be the assistant director for attorney discipline, is responsible for supervising the attorney's compliance with the conditions the disciplinary board imposes. Where appropriate, the diversion coordinator may recommend to the disciplinary board modifications of the conditions and must report to the board the attorney's failure to comply with the conditions or to cooperate with the diversion coordinator.

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