

CHAPTER 36 GRIEVANCE COMMISSION RULES OF PROCEDURE

Rule 36.1 Complaints.

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

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Rule 36.4 Grievance commission; divisions. Grievance commission commissioners may act as a body or in such divisions as the grievance commission chair may direct. Each division must consist of five members. The chair must designate the personnel of each division for each complaint as required. The chair must appoint one member to serve as division president. The chair will select ~~one~~two additional member-members as ~~an alternate~~alternates.

COMMENT: Rule 36.4 formerly appeared as Iowa Court Rule 36.2.

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Rule 36.6 Filing and service of documents. All answers, motions, applications, petitions, and pleadings in connection with a complaint must be filed in duplicate. The grievance commission clerk must prepare and mail copies to the parties respondent, the disciplinary board chair, attorneys of record, and the grievance commission chair if the commission is sitting as a whole or to the grievance commission division president to whom the complaint has been referred. On ~~and after~~ the day fixed for hearing, the papers may be filed in duplicate with the grievance commission chair or the division president, who must notify all parties ~~and attorneys~~ of the filing and file a copy with the grievance commission clerk.

COMMENT: Rule 36.6 formerly appeared as Iowa Court Rule 36.11. It is amended to conform an internal reference to the new rule numbers and reduce duplication with rule 36.2.

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Rule 36.8 Notices by complainant and respondent.

36.8(1) Allegation of misappropriation or conversion. If the complainant intends to assert that a respondent misappropriated or converted client or third-party funds in violation of rule 32:1.15 or chapter 45 of the Iowa Court Rules, the complainant must specifically allege in ~~its~~the complaint the respondent's misappropriation or conversion for personal use without a colorable future claim to the funds. The division president may for good cause shown allow amendment of the complaint to specifically allege misappropriation or conversion, provided the respondent is given notice of the amendment and an adequate opportunity to respond before the hearing commences. In granting leave to amend, the division president may impose terms and conditions, including a delay or continuance of the hearing.

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COMMENT: Rule 36.8 is a new rule, intended to require notice of an allegation of misappropriation and use of the colorable future claim defense in trust account conversion cases. In 2014, the supreme court discussed the advisability of specifically alleging misappropriation or conversion for personal use in the complaint so that the respondent has adequate notice. *Iowa Sup. Ct. Att’y Disciplinary Bd. v. Kelsen*, 855 N.W.2d 175 (Iowa 2014). The supreme court subsequently stated that a complaint alleging theft or misappropriation must “specifically allege misappropriation or conversion of a client retainer for personal use without a colorable future claim.” *Iowa Sup. Ct. Att’y Disciplinary Bd. v. Cepican*, 861 N.W.2d 841 (Iowa 2015). In another 2014 attorney discipline case, the supreme court addressed allocation of the burden of proof with respect to the so-called colorable future claim defense to conversion of client funds held in trust. The court decided to allocate the burden of coming forward with evidence of a colorable future claim to the respondent attorney, but left the burden of proving conversion with the attorney disciplinary board. *Iowa Sup. Ct. Att’y Disciplinary Bd. v. Carter*, 847 N.W.2d 228 (Iowa 2014). Rule 36.8 requires that the complainant specifically include in its complaint any allegation of misappropriation or conversion, and the rule incorporates a notice requirement for a respondent intending to assert the colorable future claim defense, similar to the notice requirements for alibi, insanity, diminished capacity, and other defenses described in Iowa Rule of Criminal Procedure 2.11(11). [Court Order January 26, 2016, effective April 1, 2016]

Rule 36.9 Challenge regarding impartiality; four-member divisions.

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36.9(2) With the consent of the complainant and the respondent, a grievance commission division may consist of four members. If the four-member division is evenly divided between a recommendation of sanction ~~and~~ or dismissal, the division must enter a dismissal of the complaint pursuant to the provisions of rule 36.19. Upon such dismissal, the complainant may apply for permission to appeal pursuant to rule 36.22.

COMMENT: Rule 36.9 formerly appeared at Iowa Court Rule 36.13. It is amended to conform an internal rule reference to the new rule numbers.

Rule 36.10 Setting case for hearing; pretrial conference and scheduling order.

36.10(1) After 30 days have elapsed from the date of service of the complaint and a grievance commission division is appointed to hear the matter, the grievance commission clerk must arrange a telephone conference with the division members and; the parties, ~~and the attorneys~~ to schedule the hearing, discovery, and other pretrial matters. Notice of the telephone conference must be provided at least 10 days prior to the scheduled telephone conference.

36.10(2) The hearing must be held not less than 60 days nor more than 90 days after service of the complaint. At least 10 days before the date set for the hearing, the grievance commission clerk must mail to all parties and attorneys-division members a copy of the order setting the hearing. If a party does not participate in the scheduling conference, the grievance commission clerk must provide notice of the hearing to the party by restricted certified mail or personal service.

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Rule 36.13 Discovery. In any disciplinary proceeding or action taken by the disciplinary board, discovery is permitted as provided in Iowa Rules of Civil Procedure 1.501(2) and 1.501(3), 1.502 through 1.504, 1.505(2), 1.506, 1.508 through 1.517, 1.701, 1.704, 1.705, and 1.707 through 1.717. The attorney against whom a complaint is filed, in addition to the restriction stated in Iowa Rule of Civil Procedure 1.503(1), is not required to answer an interrogatory pursuant to Iowa Rule of Civil Procedure 1.509, a request for admission pursuant to Iowa Rule of Civil Procedure 1.510, a question upon oral examination pursuant to Iowa Rule of Civil Procedure 1.701, or a question upon written interrogatories pursuant to Iowa Rule of Civil Procedure 1.710, if the answer would be self-incriminatory. In addition,

evidence and testimony may be perpetuated as provided in Iowa Rules of Civil Procedure 1.721 through 1.728. If either party is to utilize discovery, it must be commenced within 30 days after service of the complaint. The grievance commission may permit amendments to the complaint to conform to the proof or to raise new matters as long as the respondent has notice and a reasonable time to prepare a defense prior to the date set for hearing. The grievance commission or any grievance commission division may receive an application and may enter an order to enforce discovery or to perpetuate any evidence. Discovery pursuant to this rule includes a respondent's right to obtain a copy of the disciplinary board's file pursuant to Iowa Court Rule 35.4~~(3)~~(4).

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Rule 36.15 Subpoenas.

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36.15(2) Any attack on the validity of a subpoena must be heard or determined by the grievance commission chair, ~~or by~~ the division president, or any division member to whom a complaint has been referred. Any resulting order is not appealable prior to entry of the grievance commission final ruling, report, or recommendation. Disobedience of a grievance commission subpoena is punishable as contempt in the district court for the county where the hearing is to be held. A contempt proceeding is not a matter of public record.

COMMENT: Rule 36.15 formerly appeared as Iowa Court Rule 35.8. It is amended to conform an internal reference to the new rule numbers and to flow more logically.

Rule 36.16 Stipulated submissions.

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COMMENT: Rule 36.16 formerly appeared as Iowa Court Rule 35.9. It is amended to conform an internal reference to the new rule numbers. In addition, more specific requirements for the content of stipulated submissions and more specific provisions regarding the effect of stipulations are included based on the decisions of *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Haskovec*, ~~—869~~ N.W.2d ~~—554~~ (Iowa 2015) and *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Gailey*, 790 N.W.2d 801 (Iowa 2010).

Rule 36.17 Conduct of hearing.

36.17(1) At the time and place set for the hearing upon any complaint, the grievance commission or division must proceed to hear the evidence, ~~briefs of authorities,~~ and arguments ~~of the parties~~. The hearing is not open to the public.

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COMMENT: The majority of rule 36.17 formerly appeared at Iowa Court Rule 36.14. Rules 36.17(3) and ~~36.17~~(4) formerly appeared at Iowa Court Rule 35.7. [Court Order January 26, 2016, effective April 1, 2016]

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Rule 36.19 Action upon complaint; report of decision.

36.19(1) At the conclusion of a hearing upon any complaint against an attorney, the grievance commission may permit a reasonable time for the parties to file post-hearing briefs and arguments. The commissioners must dismiss the complaint, issue a private admonition, or recommend that the supreme court reprimand the respondent or suspend or revoke the respondent's license. If the commissioners recommend a reprimand, suspension, or revocation, they must file with the ~~supreme court clerk~~ grievance commission clerk a report of their findings of fact, conclusions of law, and recommendations within 60 days of the date set for filing of the last responsive brief and argument. The report must be titled in the name of

the complainant versus the accused attorney as respondent. As part of its report, the grievance commission may recommend additional or alternative sanctions such as restitution, costs, practice limitations, appointment of a trustee or receiver, passage of a bar examination or the Multistate Professional Responsibility Examination, attendance at continuing legal education courses, or other measures consistent with the purposes of attorney discipline. ~~The report must contain a proof of service showing it was served.~~ The clerk of the grievance commission must promptly file the report with the supreme court clerk and must serve the report upon the complainant and the respondent as provided in Iowa Rule of Appellate Procedure 6.701. The matter then stands for disposition in the supreme court.

36.19(2) All reports and recommendations of the commissioners must be concurred in by at least 3 members of the division or at least 12 members of the grievance commission, as the case may be, all of whom must have been present throughout the proceedings. Any commissioner has the right to file with the ~~supreme court clerk~~ grievance commission clerk a dissent from the majority determination or report. The clerk must promptly serve a copy of a dissent on the ~~respondent parties.~~

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Rule 36.22 Appeal.

36.22(1) Pursuant to rule 36.19, the respondent may appeal to the supreme court from the report or recommendation the grievance commission files. The respondent's notice of appeal must be filed with the grievance commission clerk within 10 days after service of the report or recommendation on the respondent. The respondent must serve a copy of the notice of appeal on the complainant ~~or complainant's counsel~~ pursuant to Iowa Rule of Appellate Procedure 6.701. Promptly after filing the notice of appeal with the grievance commission clerk, the respondent must mail or deliver a copy of the notice to the supreme court clerk.

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Rule 36.24 Costs.

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36.24(2) Within 30 days of the filing of the grievance commission report, the clerk of the grievance commission must serve the complainant and the respondent with a bill of costs and file the bill with the supreme court clerk. An appeal does not obviate this requirement. The complainant and the respondent have 10 days from the date of service to file written objections with the supreme court and the grievance commission clerk. Any objections filed must be considered by the grievance commission division president or the president's designee. The president or the designee must rule on the objections within 10 days. The supreme court will consider the ruling and objections upon disposition of the matter under rule 36.21 or 36.22. The supreme court clerk must tax additional costs associated with an appeal as in other civil actions.

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