

1 the appointment.

2

3 **COMMENT:** Rule 34.18 formerly appeared as Iowa Court Rule 35.18. It is amended to provide for recovery of trustee fees and costs the Client
4 Security Commission pays through the annual assessment and reporting process and also as a condition of reinstatement. [Court Order January
5 26, 2016, effective April 1, 2016]

6

1 application for exempt status and of rule 39.7(2) regarding a separate fully ~~retired~~relinquished status are
2 effective January 1, 2018.

3 *b.* On or before December 31, 2017, attorneys in active status may apply for and be granted exempt
4 status without payment of an annual fee, or emeritus status under Iowa Court Rule 31.19.

5 *c.* On or after January 1, 2018, attorneys in active status may apply for and be granted exempt status
6 with payment of an annual fee, emeritus status under rule 31.19, or retired status under rule 39.7(2).

7 *d.* Attorneys who are in exempt status as of December 31, 2017, will be accorded legacy status.
8 Attorneys in legacy status will have no fee payment or reporting responsibilities. For a period of five years
9 commencing January 1, 2018, and ending December 31, 2022, attorneys in legacy status may apply for
10 conversion to exempt status, emeritus status under rule 31.19, ~~retired~~relinquished status under rule
11 39.7(2), or reinstatement to active status under rule 39.14(3). On or after January 1, 2023, attorneys in
12 legacy status are not entitled to apply for conversion to exempt status or apply for reinstatement to active
13 status under rule 39.14(3), but they may apply for emeritus status under rule 31.19 or ~~retired~~relinquished
14 status under rule 39.7(2).

15 **Rule 39.8 Enforcement.**

16

17 **39.8(5)** Attorneys who have been suspended pursuant to this chapter or who currently hold a
18 certificate of exemption or ~~retirement certificate issued pursuant to rule 39.7(2)~~ and who practice law or
19 who hold themselves out as being authorized to practice law in this state are engaged in the
20 unauthorized practice of law and may also be held in contempt of the court or may be subject to
21 disciplinary action as provided by chapter 35 of the Iowa Court Rules.

22

23 **Rule 39.14 Reinstatement from exemption or suspension.**

24 **39.14(1)** An attorney who has been suspended for failure to pay the annual fee or assessment or for
25 failure to file the statement, supplement, or questionnaire required by these rules may be reinstated upon
26 a showing that such failure was not willful and by filing the statement required by rule 39.8(1) and the
27 questionnaire required by rule 39.11. An attorney seeking reinstatement after suspension for failure to
28 comply with the provisions of this rule must pay all delinquent fees, assessments and late filing penalties
29 due under rules 39.5, 39.6, 39.8, and 39.17, and a reinstatement fee of \$100.

30 **39.14(2)** An attorney who seeks or applies for reinstatement from suspension under chapters 34 or 36
31 of the Iowa Court Rules must first file the statement required by rule 39.8(1) and the questionnaire
32 required by rule 39.11, pay all fees, assessments, and late filing penalties due and unpaid under rules 39.5,
33 39.6, 39.8, and 39.17 ~~at the time of the suspension~~, pay the current fee and assessment required by rules
34 39.5 and 39.6, and pay a reinstatement fee of \$100.

1 **39.14(3)** An attorney who has been granted a certificate of exemption under the provisions of rule
2 39.7 may be reinstated after filing the statement required by rule 39.8(1) and the questionnaire required
3 by rule 39.11, paying all fees, assessments, and late filing penalties due ~~at the time the exemption was~~
4 granted and unpaid, and paying the current fee and assessment required by rules 39.5 and 39.6.

5

6 **Rule 39.18 Requirement for death or disability designation and authorization.**

7 **39.18(1)** *Required designation and authorization in annual questionnaire.*

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

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

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

20 d. The authority of the attorney or entity designated under this rule takes effect upon the death or
21 disability of the designated attorney. The designated attorney or entity may apply to the chief judge of
22 the judicial district in which the designating attorney practiced for an order confirming the death or
23 disability of the designating attorney. A copy of the order will be delivered to the office of professional
24 regulation.

25 **39.18(2)** *Client list and location of key information.* Each attorney in private practice must maintain a
26 current list of active clients, in a location accessible by the attorney or entity designated under this rule.
27 As part of the annual questionnaire required by rule 39.11, each attorney in private practice must identify
28 ~~the custodian and a person with knowledge of~~ the location of the client list, ~~the custodian and a person~~
29 with knowledge of the location of electronic and paper files and records, and a person with knowledge of
30 the ~~custodian and~~ location of passwords and other security protocols required to access the electronic
31 files and records. The attorney or entity designated under this rule is authorized to access electronic and
32 paper files and records as necessary to perform duties as a designated attorney, and is authorized to
33 access passwords and other security protocols required to access those electronic files and records.

34 **39.18(3)** *Supplemental plan.* An attorney in private practice may prepare a written plan that is
35 supplemental to the designation and authority in the annual client security questionnaire. The

1 supplemental written plan may designate an attorney or entity to collect fees, pay firm expenses and
2 client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm
3 administration tasks. The supplemental written plan also may nominate an attorney or entity to serve as
4 trustee if proceedings are commenced under the provisions of Iowa Court Rule 34.17 or 34.18.

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

8 **39.18(5) *Conflicts of interest.*** A designated attorney or entity must not examine any documents or
9 acquire any information containing real or potential conflicts with the designated attorney’s clients.
10 Should any such information be acquired inadvertently, the designated attorney or entity must, as to such
11 matters, protect the privacy interests of the planning attorney’s clients by prompt recusal or refusal of
12 employment.

13 **39.18(6) *Availability of trustee provisions.*** A designated attorney or entity may petition the court, at
14 any time, for appointment as the trustee or appointment of an independent trustee under the provisions
15 of Iowa Court Rule 34.17 or 34.18, as applicable.

16 **39.18(7) *Definitions.*** For purposes of this rule, the following definitions apply:

17 *a.* A “*qualified attorney-servicing association*” is a bar association, all or part of whose members are
18 admitted to practice law in the State of Iowa, a company authorized to sell attorneys professional liability
19 insurance in Iowa, or an Iowa bank with trust powers issued by the Iowa Division of Banking.

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

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

24

1 *a.* The provisions of rule 41.13(1) regarding a separate fully ~~retired~~relinquished status and the
2 provisions of rules 41.7 and 42.6 regarding concurrent applications for exempt status are effective January
3 1, 2018.

4 *b.* On or before December 31, 2017, attorneys in active status may apply for and be granted exempt
5 status under rules 41.7 and 42.6 or emeritus status under rule 31.19.

6 *c.* On or after January 1, 2018, attorneys in active status may apply for and be granted exempt status
7 under rules 41.7 and 42.6, emeritus status under rule 31.19, or ~~retired~~relinquished status under rule
8 41.13(1).

9 *d.* Attorneys in active status under rules 41.7 and 42.6 but exempt status under rule 39.7 as of
10 December 31, 2017, will be administratively transferred to exempt status under rules 41.7 and 42.6 as of
11 January 1, 2018. Attorneys administratively transferred to exempt status under this provision nonetheless
12 will be allowed to record their continuing legal education attendance on their attorney account pages
13 while in exempt status.

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