

CHAPTER 34

ADMINISTRATIVE AND GENERAL PROVISIONS
IOWA SUPREME COURT
GRIEVANCE COMMISSION AND ATTORNEY DISCIPLINARY BOARD

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Rule 34.16 Suspension or disbarment on consent.

34.16(1) An attorney subject to investigation by the attorney disciplinary board or the client security commission or subject to a pending grievance proceeding involving allegations of misconduct subject to disciplinary action may acquiesce to suspension or disbarment but only by filing with the grievance commission an affidavit stating that the attorney consents to suspension of not more than a specific duration or to disbarment, and indicating If a grievance proceeding is already scheduled for hearing, any such affidavit must be filed at least 15 days before the scheduled hearing date unless the 15-day limit is waived by the panel president. All affidavits filed under this rule must indicate the following:

a. The consent is freely and voluntarily given without any coercion or duress and with full recognition of all implications of the consent.

b. The attorney is aware of a pending investigation or proceeding involving allegations that there exist grounds for discipline, the nature of which will be specifically set forth.

c. The attorney acknowledges the material facts of the alleged misconduct are true.

d. In the event proceedings were instituted upon the matters under investigation, or if existing proceedings were pursued, the attorney could not successfully defend against the allegations.

e. The facts admitted in the affidavit would likely result in the suspension or revocation of the attorney's license to practice law.

f. Any matters in mitigation or aggravation of the alleged misconduct.

g. Consent to any alternative or additional sanctions as provided in Iowa Court Rule 36.19.

34.16(2) The disciplinary board or client security commission must file a response to the affidavit, indicating whether ~~the board~~ it believes the misconduct admitted in the affidavit would likely result in suspension or revocation of the attorney's license to practice law and citing any legal authorities supporting its conclusion.

34.16(3) Upon receipt of the affidavit and response, the grievance commission

must file the affidavit and response with the supreme court clerk. The supreme court may enter an order suspending the attorney's license to practice law for a period no greater than the stipulated duration or disbarring the attorney on consent, unless the court determines the misconduct admitted in the affidavit is insufficient to support the discipline to which the attorney has consented. The supreme court may also order any of the alternative or additional sanctions to which the respondent has consented. If the supreme court determines the affidavit does not set forth facts that support imposition of the discipline to which the attorney has consented, it may either enter an order allowing the parties to supplement the affidavit or an order declining to accept the affidavit. An order declining to accept the affidavit does not bar further disciplinary proceedings against the attorney, and does not preclude the supreme court from imposing any sanction the attorney's conduct warrants upon review of a grievance commission determination.

34.16(4) Any order suspending or disbarring an attorney on consent is a matter of public record. If the supreme court enters an order of suspension or disbarment, the affidavit and response will be made available to the public upon request.

COMMENT: Rule 34.16 formerly appeared as Iowa Court Rule 35.16.

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

34.18(1) Upon a sworn application on behalf of a local bar association, an attorney or entity designated or nominated on a standby basis as described in Iowa Court Rule 39.18, the client security commission, or the disciplinary board showing that a practicing attorney has died or has been suspended or disbarred from the practice of law and that a reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced may appoint an attorney to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. In appointing a trustee, the chief judge will give due regard to any designation or standby nomination made under the provisions of rule 39.18 and the recommendation of the office of professional regulation. Trusteeships are specially assigned to the appointing chief judge, who will hear and rule upon all matters therein. The appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the Client Security Commission for the purposes of the appointment.

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Rule 34.23 Suspension generally.

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34.23(2) An attorney whose license has been suspended for a period not exceeding 60 days is not required to file an application for reinstatement, and the court will order reinstatement of the attorney's license on the day after the suspension period expires, subject to the following exceptions:

a. The disciplinary board or client security commission may file and serve within the suspension period an objection to the automatic reinstatement of the attorney. The filing of an objection stays the automatic reinstatement until the supreme court orders otherwise. If the disciplinary board or client security commission files an objection, the supreme court will set the matter for hearing and the supreme court clerk must enter written notice in conformance with rule 34.25, except that the court may waive the requirement of a 60-day waiting period prior to the hearing date.

b. Automatic reinstatement will not be ordered until all costs assessed under Iowa Court Rule 36.24 are paid and the reporting and fee payment requirements of rules 39.14(2), 39.17, and 41.10(2) are completed.

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CHAPTER 36
GRIEVANCE COMMISSION RULES OF PROCEDURE

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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~~ with the clerk of the grievance commission. The grievance commission clerk must ~~prepare and mail~~ send copies to the parties 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 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 of the filing and file a copy with the grievance commission clerk.~~ If the parties are participating in the electronic filing option, then all filings and mailings under this chapter may be done electronically using that system.

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 36.10 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 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 the date the answer is due. A respondent who waives this requirement must file a written application for waiver of speedy hearing with the grievance clerk at least three days prior to the rule 36.10(1) scheduling conference. Hearings may only be set outside of this period if the division president finds that good cause exists and the respondent does not object. At least 10 days before the date set for the hearing, the grievance commission clerk must mail to all parties and 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.

36.10(3) The division president must file a scheduling order regarding discovery and other pretrial matters after the telephone conference. The scheduling order must specify deadlines for disclosure of expert witnesses, service of discovery requests, service of responses to discovery, exchange of witness and exhibit lists, exchange of exhibits, amendment of pleadings, objections to witnesses or exhibits, motions to resolve discovery issues, and any other pretrial matters the division president deems appropriate.

COMMENT: Rule 36.10 formerly appeared as Iowa Court Rule 35.7. It is amended to conform an internal reference to the new rule numbers and eliminate duplication with rule 36.11. In addition, provisions for a mandatory pretrial conference and a scheduling order regarding discovery and other pretrial matters are added, reflecting actual grievance commission pretrial practice.

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CHAPTER 47
COURT INTERPRETER AND TRANSLATOR RULES

[Prior to April 1, 2008, see Chapter 14]

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Rule 47.7 ~~Reserved.~~ **Mandatory continuing education.** Interpreters on the Iowa statewide roster of court interpreters must satisfy continuing education requirements to remain on the roster and to maintain a certified status.

47.7(1) ~~Annual report deadline; fee; hours required.~~

a. Annual report deadline. Beginning in 2017, by May 15 of each year, interpreters on the Iowa roster of court interpreters must report to the OPR continuing education hours for the previous calendar year, using a form the OPR provides.

b. Annual report fee. Upon the filing of the annual continuing education report, interpreters on the statewide roster must pay a fee of \$10 to the OPR.

c. Required hours of continuing education. Beginning in 2016, during each calendar year interpreters on the Iowa roster of court interpreters must attend at least six hours of continuing education that contributes directly to the professionalism and competency of the court interpreter. At least one of the six hours must address court interpreter ethics. Court interpreters on the Iowa roster of court interpreters do not have to meet these continuing education requirements during the first calendar year the interpreters are on the roster, but they must file the annual continuing education report and pay the annual continuing education fee by May 15 of the following calendar year.

47.7(2) ~~Education program requirements.~~ Either live on site or live interactive computer based education may be used to fulfill the continuing education requirements. Up to three hours of the continuing education requirements may be fulfilled by unmoderated activity. "Unmoderated activity" means continuing education activity presented by delayed or on-demand transmission or broadcast, in pre-recorded media such as audiotape, videotape, CD, podcast, CD-ROM, DVD, self-paced computer-based instruction, or another format, which has an interactive component and is approved by the OPR. The Language Access in the Courts Advisory Committee will develop guidelines governing approved unmoderated activity. The OPR may request additional information on a program for which continuing education credit is sought, and may refer the program to a panel of the Language Access in the Courts Advisory Committee for a decision as to whether the program should be approved.

~~**47.7(3)** *Carryover of continuing education hours.* Up to six hours of continuing education may be carried over from one reporting period into the next reporting period. There will be no carryover of hours beyond one reporting period, and ethics credits may not be carried over except as regular credit hours.~~

~~**47.7(4)** *Late filing of report; penalty and suspension.* Interpreters who miss the May 15 deadline may file their annual reports on or before August 15, but they must assert good cause for failing to meet the deadline and pay the annual report fee in rule 47.7(1)(b) plus a late fee of \$35. Court interpreters who fail to file their reports on or before August 15 will have their names removed from the Iowa roster of court interpreters and their certified status, if any, suspended.~~

~~**47.7(5)** *Agreement on extension; suspension.* Court interpreters who file a report on or before August 15 but cannot report sufficient continuing education hours may apply to the OPR for permission to complete the missing continuing education hours on or before November 15. Court interpreters who do not report sufficient continuing education hours under this rule and do not complete any required continuing education under an agreement with the OPR will have their names removed from the Iowa roster of court interpreters and their certified status, if any, suspended.~~

~~**47.7(6)** *Application for reinstatement.* An interpreter who has been suspended for failure to comply with the reporting requirements of rule 47.7(1) may file an application for reinstatement of the interpreter's name to the Iowa roster of court interpreters and of the interpreter's certified status, if applicable. The application must be filed with the OPR and include payment of a \$100 reinstatement fee. The interpreter must file all missing reports, show that all required continuing education hours have been obtained, and pay any unpaid filing fees. The interpreter must also swear or affirm that the interpreter did not provide interpreting services in any legal or court proceeding during the suspension period. The OPR may determine whether any additional conditions for reinstatement are necessary.~~

~~**47.7(7)** *Certificate of exemption.* An interpreter may request a certificate of exemption from the continuing education requirements of this rule. When a certificate of exemption is issued, the interpreter's name will be removed from the Iowa roster of court interpreters. The interpreter may seek reinstatement following exemption under the provisions of rule 47.7(6). If the exemption period exceeds five years, the interpreter may be required to retake the interpreter orientation program and any testing the OPR determines is necessary for~~

reinstatement.

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Rule 47.10 Complaint and disciplinary process.

47.10(1) Purpose. ~~These rules establish a complaint and disciplinary process that ensures due process for court interpreters and translators formally accused of misconduct under rule 47.10(5) the procedure whereby an oral or sign language interpreter or translator may be removed or suspended from the roster described in rule 47.6.~~

47.10(2) Applicability. These rules apply to the delivery of services by oral and sign language interpreters or translators in any legal proceeding, court-ordered program, or office of the Iowa Judicial Branch. ~~These rules also apply to real-time reporters when providing language access to court users.~~

47.10(3) Procedures for complaints against oral language court interpreters or translators.

a. Complaints. A complaint against a court interpreter or a translator must be filed with the OPR on a form available from that office or through the Iowa Judicial Branch website. A complaint must be signed by the complainant, provide the complainant's full address, telephone number, and email address, if any, and contain substantiating evidence supporting the complaint. The OPR or the state court administrator may also initiate a complaint.

b. Review of complaints. The OPR will review all complaints and may seek additional information from the complainant as well as a response from the court interpreter or translator if the OPR deems necessary. If the OPR determines that the allegations made within the complaint are serious enough to warrant the suspension or removal of the court interpreter or translator from the roster, then the OPR will forward the complaint, response, and any investigative materials ~~The OPR will refer the complaint to the chair of the advisory committee.~~ The chair will appoint a panel of at least three advisory committee members to consider the complaint.

c. Dismissal of complaints. The advisory committee panel may dismiss the complaint without further action if it appears the complaint wholly lacks merit, alleges conduct that does not constitute misconduct or rise to the level of a disciplinary violation under the Code of Professional Conduct for Court Interpreters and Translators, or does not comply with the requirements for a complaint or is not supplemented as requested. In such instances, the OPR will notify the complainant of the advisory committee panel's decision. The advisory

committee panel's summary dismissal is not subject to review.

d. Responses to complaints. If the advisory committee panel does not dismiss the complaint, ~~it the OPR will notify the interpreter or translator of the complaint in writing. The notice should state that the interpreter or translator may provide a written response to the complaint, request a hearing, or both, within 30 days from the date of the notice. If a written response has previously been provided, the advisory committee panel may, at its discretion, request a supplemental response. and direct the interpreter or translator to provide a written response to the complaint within 21 days after notice of the complaint is issued. A failure to file a timely response or obtain an extension of time in which to do so will be deemed an admission of the interpreter or translator to the facts alleged in the complaint. The OPR may forward the interpreter's or translator's response to the complainant and allow the complainant to file a reply within 14 days after service of the response. After all responses have been received, or the time for filing responses has expired, the advisory committee panel may summarily dismiss the complaint pursuant to rule 47.10(3)(e) or assign the matter for further investigation. If the complaint is dismissed, the OPR will notify the complainant and the interpreter or translator of the advisory committee panel's decision.~~

e. Advisory committee action. If the advisory committee panel does not dismiss the complaint, the panel will review the complaint upon the papers filed unless the interpreter or translator requests a hearing or the panel determines that a hearing is necessary.

f. Hearing and decision.

(1) *Time and format of hearing.* A hearing will be scheduled to occur within 60 days after the complaint is assigned to the advisory committee panel. The hearing will be informal and strict rules of evidence will not apply. During the hearing, the interpreter or translator has the right to be represented by counsel at the interpreter's or translator's expense, to confront and cross-examine witnesses, and to present evidence. ~~The attorney general or the attorney general's designee may present evidence in support of the complaint at the hearing, except to the extent that facts have been deemed admitted under rule 47.10(3)(d).~~

(2) *Location; subpoenas; recording.* The hearing will be held at the Judicial Branch Building in the county where the interpreter or translator resides or where the alleged violation occurred unless the OPR and the interpreter or translator agree otherwise. An advisory committee panel member, the interpreter or translator, the director of the OPR, or the director's designee, ~~or the attorney~~

~~general or the attorney general's designee~~ may request the clerk of the district court of the county in which the disciplinary hearing is to be held to issue subpoenas in connection with the matter, and the clerk will issue the subpoenas. Any member of the advisory committee panel is empowered to administer oaths or affirmations to all witnesses. The hearing will be recorded electronically, unless the interpreter or translator pays for a court reporter and the subsequent transcript, if necessary.

(3) *Burden of proof.* Any grounds for discipline under rule 47.10(5) must be shown by a convincing preponderance of the evidence.

(4) *Advisory committee panel actions.* The advisory committee panel may:

1. Dismiss the complaint.
2. Impose a private admonition.
- ~~3. Enter into a stipulated disposition with the interpreter.~~
- ~~4. Impose a public reprimand.~~
- ~~53.~~ Require the interpreter to refund fees to a client for court interpreter services by a specified date to remain on the roster.
- ~~64.~~ Require that the interpreter take specified education courses by a specified date to remain on the roster.
5. Require that the interpreter retake and pass the written, oral certification, and/or ethics examinations by a specified date to remain on the roster.
- ~~76.~~ Suspend or revoke the interpreter's roster status or certification, if any.
- ~~87.~~ Suspend or bar the interpreter from interpreting in legal proceedings or court-ordered programs, or both.

(5) *Advisory committee panel decision.* ~~Within 60 days after the hearing, the~~ The advisory committee panel will file a written decision with the chair of the advisory committee, with a copy sent to the OPR. The OPR will promptly serve forward a copy of the decision on to the interpreter or translator by restricted certified mail email and ordinary post to the address on record with the OPR. If the determination of the advisory committee panel was a suspension or revocation of the interpreter or translator's roster status or certification, the OPR will immediately remove the interpreter or translator from the roster unless otherwise instructed in writing by the chair of the advisory committee.

g. Petition for review. The interpreter or translator may file a petition for review of the advisory committee panel's decision with the ~~Iowa Supreme Court~~ state court administrator. The petition for review must be ~~filed with the clerk of the supreme court~~ received by the state court administrator within 30 days after the

~~OPR serves mails the decision on to the interpreter or translator. The interpreter or translator must serve a copy of the petition and any attachments on the OPR and any attorneys appearing in the disciplinary proceeding. The petition must state all claims of error that were raised before the panel and the reasons for challenging the panel's determination before the supreme court. The petition must be accompanied by a \$150 filing fee. The OPR will transmit the complete record in the case to the clerk of the supreme court~~state court administrator.

h. Submission and decision on review. ~~Unless the supreme court orders~~state court administrator requests otherwise, the petition will be submitted based upon the record previously made and without ~~oral arguments~~supplementation or hearing. After considering the record, the ~~court~~state court administrator or the state court administrator's designee may sustain or deny the petition or enter such other appropriate order. The ~~court's~~state court administrator's order is conclusive, and no petition for rehearing is permitted.

i. Costs. Costs of the disciplinary proceeding will be assessed against the interpreter or translator for any private admonition, public sanction, or any agreed disposition that taxes costs against the interpreter or translator. For purposes of this rule, costs include those expenses normally taxed as costs in state civil actions pursuant to Iowa Code chapter 625, including but not limited to expert witness fees and translation, transcription, and interpreter fees. The interpreter or translator must pay the costs as a condition for reinstatement.

j. Application for reinstatement. An interpreter or translator may file an application for reinstatement from an order suspending or revoking a certification, roster status, or privilege of interpreting or translating in court. The application must be filed with the OPR and include payment of a \$100 reinstatement fee. ~~The application must be served upon the clerk of the supreme court, all attorneys appearing in the underlying disciplinary proceeding, the state court administrator, and the chief judge of the judicial district in which the interpreter or translator resides.~~ The application must show that all conditions for reinstatement imposed in the panel's decision or any resulting ~~supreme court~~state court administrator decision have been satisfied, the interpreter or translator is currently fit to interpret or translate in court, and all costs have been paid. The interpreter or translator must also swear or affirm that the interpreter or translator did not provide interpreting or translating services in any legal or court proceeding during the suspension period.

k. Reinstatement decision. The OPR will ~~forward~~review the application for

~~reinstatement to the full advisory committee. The committee may direct that reinstatement be granted, set the matter for hearing, or enter such other disposition or order as the matter requires and, if the requirements have been fulfilled, may reinstate the interpreter or translator on the roster. If any requirement has not been fulfilled, the OPR will inform the interpreter or translator of what remains to be completed before reinstatement on the roster can occur.~~

1. Confidentiality.

(1) All records, papers, proceedings, meetings, and hearings of the advisory committee panel are confidential, unless the panel imposes the following: a public reprimand; a suspension or revocation of a certification, roster status, or privilege to interpret or translate before the courts; a requirement that fees be refunded to a client for court services; or a form of discipline that the panel and the interpreter or translator agree should be made public.

(2) If the advisory committee panel imposes public discipline, the decision and the complaint will become public upon filed filing with the OPR ~~will become public documents upon filing with the clerk of the supreme court.~~

(3) ~~Any other records and papers concerning any complaint against an interpreter or translator will remain privileged and confidential and are not~~ If the advisory committee panel does not impose public discipline and the records do not become public documents, the records and papers will remain confidential unless they are ordered released by a judge in a related court case. The party or attorney requesting the confidential records must sufficiently demonstrate to the judge the relatedness of the records to the court case in question. The records are not otherwise subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the interpreter or translator, the attorneys, or the attorneys' agents involved in the disciplinary proceeding before the advisory committee panel. ~~The interpreter or translator, the attorneys, or the attorneys' agents involved in the disciplinary proceeding before the panel may not disclose to any third parties any records and papers of the advisory committee or advisory committee panel concerning any complaint unless disclosure is required in the prosecution or defense of disciplinary charges. The confidential records and papers concerning any complaint are not admissible as evidence in a judicial or administrative proceeding other than the formal interpreter or translator disciplinary proceeding under this rule.~~

(4) Every witness in every disciplinary proceeding under rule 47.10 must

swear or affirm to tell the truth and not to disclose the existence of the disciplinary proceedings or the identity of the interpreter or translator until the disciplinary proceeding is no longer confidential under these rules.

(5) Any communications, papers, and materials concerning any complaint that may come into the possession of a committee member are confidential, and the member must keep such confidential material in a safe and secure place.

(6) Nothing in this rule prohibits the advisory committee or an advisory committee panel from releasing any information regarding possible criminal violations to appropriate law enforcement authorities, wherever located, or to interpreter or translator disciplinary and admission authorities in other jurisdictions.

m. Temporary suspension. Notwithstanding the provisions of this rule, the state court administrator may temporarily remove an interpreter or translator from the roster and suspend the interpreter's right ~~suspend the right of any interpreter or translator~~ to interpret or translate in legal proceedings, court-ordered programs, and offices of the Iowa Judicial Branch upon a showing of a clear violation of the Iowa Code of Professional Conduct for Court Interpreters and Translators ~~and~~ for exigent circumstances demonstrating that the interpreter or translator currently lacks the capacity to interpret court proceedings or translate court documents. Any ~~order suspending~~ suspension of an interpreter's or translator's right to interpret or translate in Iowa courts must provide the interpreter or translator with an opportunity to ~~appear before the supreme court and show cause~~ file a petition for review with the state court administrator explaining why the temporary suspension order should be lifted.

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