

CHAPTER 35
IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD
RULES OF PROCEDURE

Rule 35.1 Complaints. Complaints alleging that an attorney has committed a disciplinary infraction must be accepted from any person, firm, or other entity. The Iowa Supreme Court Attorney Disciplinary Board (disciplinary board) may, upon its own motion, initiate any investigation or disciplinary action.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 35.1 substantially appeared as former Iowa Court Rule 34.1. [Court Order January 26, 2016, effective April 1, 2016]

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. [Court Order January 26, 2016, effective April 1, 2016]

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. [Court Order January 26, 2016, effective April 1, 2016]

Rule 35.3 Filing. Complaints must be filed, without charge, with the disciplinary board. [Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 35.3 formerly appeared as Iowa Court Rule 34.3. [Court Order January 26, 2016, effective April 1, 2016]

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.

35.4(3) The disciplinary board must keep all files confidential, unless the board chair or the chair's designee otherwise provides or directs in writing for disciplinary purposes or pursuant to a specific supreme court rule. All files must be available for examination and reproduction by the designated officer or agent of the Client Security Commission, pursuant to proceedings under chapter 39 of the Iowa Court Rules.

35.4(4) Any such files, except for the work product of staff counsel, investigators, or assistant directors of the disciplinary board, must be provided to the respondent within a reasonable time upon the respondent's request. For purposes of this rule, "work product" does not include a

written statement signed or otherwise adopted or approved by the person making it or a contemporaneous and substantially verbatim transcript or recording of a person's oral statement.

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.

[Court Order January 26, 2016, effective April 1, 2016]

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. [Court Order January 26, 2016, effective April 1, 2016]

Rule 35.5 Notification of complainant. Upon receipt of any complaint, the disciplinary board must notify the complainant in writing that the board has received the complaint and will act upon it or that pursuant to rule 35.4(1) the board will take no action on the complaint.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 35.5 formerly appeared as Iowa Court Rule 34.5. It is amended to conform an internal rule reference to the new rule numbers, and the rule title is changed to more accurately describe this step in disciplinary board procedure. [Court Order January 26, 2016, effective April 1, 2016]

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.

35.6(2) The disciplinary board may forward the complaint to the respondent by restricted certified mail, marked "Confidential," to the respondent's last address as shown by records accessible to the supreme court, or the board may serve the complaint by personal service in the manner of an original notice in civil suits.

35.6(3) If service cannot be obtained pursuant to rule 35.6(2), the disciplinary board may serve the complaint on the supreme court clerk, who is appointed to receive service on behalf of attorneys subject to Iowa's disciplinary authority. Iowa R. Prof'l Conduct 32:8.5 cmt. [1]. Service upon the supreme court clerk is deemed to be receipt of the complaint by the respondent. Simultaneously with serving a complaint on the supreme court clerk, the disciplinary board must forward the complaint to the respondent by restricted certified mail, marked "Confidential," to the respondent's last address as shown by records accessible to the supreme court, and the board must file with the supreme court clerk an affidavit attesting that it has done so.

35.6(4) The respondent must provide a written response within 20 days of receipt of the complaint. [Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 35.6 formerly appeared as Iowa Court Rule 34.6. It is amended to conform internal references to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

Rule 35.7 Failure to respond; notice; effect.

1 **35.7(1) Failure to respond—separate ethical violation.** If after 20 days no response has been
2 received, the respondent must be notified by restricted certified mail that unless a response is
3 made within 10 days from receipt of notice, the disciplinary board may file a complaint with the
4 Grievance Commission of the Supreme Court of Iowa (grievance commission) for failure to
5 respond and concerning all or any portion of the matter about which the original complaint was
6 made. If service cannot be obtained by restricted certified mail, the disciplinary board may serve
7 the notice on the supreme court clerk, who is appointed to receive service on behalf of attorneys
8 subject to Iowa’s disciplinary authority. Iowa R. of Prof’l Conduct 32:8.5 cmt. [1]. Service upon
9 the supreme court clerk is deemed to be receipt of the notice by the respondent.

10 **35.7(2) Enlargement of time to respond.** The disciplinary board may grant an enlargement of
11 time to respond under rule 35.6 or 35.7(1) for good cause shown.

12 **35.7(3) Failure to respond—temporary suspension.** If a response is not provided within 10
13 days of receipt of the notice issued pursuant to rule 35.7(1) or within the time allowed under rule
14 35.7(2), the disciplinary board must certify the respondent’s failure to respond to the supreme
15 court clerk.

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

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

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

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

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

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

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

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

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

43 [Court Order January 26, 2016, effective April 1, 2016]

44 **COMMENT:** Rule 35.7 formerly appeared as Iowa Court Rule 34.7. It is amended to conform internal
45 references to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]
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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.

35.8(4) The district court for the county in which the investigation is being conducted has jurisdiction over any objection or motion relating to a subpoena, and it has authority to punish disobedience of a subpoena in a contempt proceeding.

35.8(5) The board's counsel or any other person authorized to administer oaths has authority to administer an oath or affirmation to a witness.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 35.8 formerly appeared as Iowa Court Rule 34.8. [Court Order January 26, 2016, effective April 1, 2016]

Rule 35.9 Disciplinary board action upon report and recommendation of investigator.

When the report and recommendation of the investigator is returned to the disciplinary board, the board must do one of the following:

35.9(1) Dismiss the complaint and notify the complainant and the respondent of the dismissal.

35.9(2) Cause the case to be docketed for consideration at its next hearing-meeting.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 35.9 formerly appeared as Iowa Court Rule 34.9. [Court Order January 26, 2016, effective April 1, 2016]

Rule 35.10 Prior notice of witnesses. If any witness or party is required to give testimony before the disciplinary board, the witness or party must be given at least seven days' written notice in advance of the hearing-meeting at which the witness or party is required to attend and testify.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 35.10 formerly appeared as Iowa Court Rule 34.10. [Court Order January 26, 2016, effective April 1, 2016]

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.

35.11(4) Reprimand the respondent and file the reprimand as provided in Iowa Court Rule 35.12. **35.11(5)** File a complaint before the grievance commission and prosecute the complaint to final determination.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 35.11 formerly appeared as Iowa Court Rule 34.11. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

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.

35.12(1) If the attorney fails to file an exception to the reprimand, the failure constitutes a waiver of any further proceedings and a consent that the reprimand be made final and public. In that event, the grievance commission clerk must cause a copy of the reprimand to be forwarded to the supreme court clerk, together with proof of service of the reprimand upon the attorney and a statement that the attorney did not file an exception within the time prescribed. The supreme court will then include the reprimand in the records of the court as a public document unless the court remands the matter to the disciplinary board for consideration of another disposition.

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.

35.12(3) The board may proceed further by filing a complaint against the attorney before the grievance commission. When an exception to a reprimand is filed, the reprimand is not admissible in evidence in any hearing before the grievance commission.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 35.12 formerly appeared as Iowa Court Rule 35.3. [Court Order January 26, 2016, effective April 1, 2016]

Rule 35.13 Order for mental or physical examination or treatment.

1 **35.13(1) Order requiring examination or treatment.** An attorney who is licensed to practice
2 law in the State of Iowa is, as a condition of licensure, under a duty to submit to a mental or
3 physical examination or subsequent treatment as the disciplinary board may order. The
4 disciplinary board may order the examination or treatment based upon a showing of probable
5 cause to believe the attorney is suffering from a condition that impairs the attorney's ability to
6 discharge professional duties. The disciplinary board may order that the examination or
7 treatment be at the attorney's expense.

8 **35.13(2) Show cause hearing.** Before the disciplinary board may order an attorney to submit to
9 examination or treatment, it must schedule a hearing to permit the attorney to show cause why
10 the board should not enter the order. At least three members of the disciplinary board must
11 participate in the hearing. At the hearing, the disciplinary board's staff counsel must first present
12 evidence of probable cause supporting the need for examination or treatment. The attorney may
13 then respond to the staff counsel's showing and rebut the claim that the examination or treatment
14 is necessary. The hearing will be informal and the strict rules of evidence will not apply.
15 Following the hearing, the disciplinary board, by majority vote, must either dismiss the matter or
16 enter an order requiring examination or treatment.

17 **35.13(3) Content of order.** The disciplinary board's order for mental or physical examination
18 or treatment must include the following:

- 19 a. A description of the type of examination or treatment to which the attorney must submit.
- 20 b. The name and address of the examiner or treatment facility that the disciplinary board has
21 identified to perform the examination or provide the treatment.
- 22 c. The time period in which the attorney must schedule the examination or enter treatment.
- 23 d. The amount of time in which the attorney is required to complete the examination or
24 treatment.
- 25 e. A requirement that the attorney provide a report or reports of the examination or treatment
26 results to the disciplinary board within a specified period of time.
- 27 f. A requirement that the attorney communicate with the disciplinary board regarding the
28 status of the examination or treatment.
- 29 g. A provision allowing the attorney to request additional time to schedule the examination or
30 complete the treatment or to request that the disciplinary board approve an alternative examiner or
31 treatment facility. The disciplinary board has sole discretion to determine whether to grant the
32 request.

33 **35.13(4) Review.** An attorney who disagrees with the disciplinary board's order may seek
34 review from the supreme court by filing ~~nine copies of~~ a petition for review with the supreme
35 court clerk and serving one copy of the petition on the disciplinary board within seven days after
36 receipt of the board's order. The disciplinary board may file ~~nine copies of~~ a response to the
37 petition with the supreme court clerk and serve one copy of the response on the attorney within
38 seven days after service of the petition. The matter will be promptly set for hearing before one or
39 more justices of the supreme court. The disciplinary board's order is stayed upon the filing of the
40 petition for review.

41 **35.13(5) Hearing.** At the hearing on the petition, the disciplinary board must present evidence
42 of probable cause supporting its order and the necessity for the examination or treatment. The
43 attorney may then respond to the disciplinary board's showing and rebut the board's claim that
44 the examination or treatment is necessary. The hearing will be informal and the strict rules of

evidence will not apply. Following the hearing, the supreme court may affirm, vacate, or modify the disciplinary board's order or may enter such order as the circumstances warrant.

35.13(6) *Failure to submit.* An attorney's failure to submit to the examination or treatment the disciplinary board orders under this rule may be grounds for discipline through the normal disciplinary process.

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~~ a substance related disorder.

35.13(8) *Confidentiality.* All records, papers, proceedings, meetings, and hearings filed or conducted under this rule are confidential unless the supreme court orders otherwise.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 35.13 formerly appeared as Iowa Court Rule 34.12. [Court Order January 26, 2016, effective April 1, 2016]

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.

1 k. Fee arbitration.

2 **35.14(3) Affidavit.** Prior to the disciplinary board's deferral of further proceedings, the
3 attorney

4 must execute an affidavit setting forth all of the following:

5 a. The attorney's admission of the conduct under the disciplinary board's investigation.

6 b. The conditions the disciplinary board will impose for supervision of the attorney, including
7 the period of supervision.

8 c. The attorney's agreement to the conditions to be imposed.

9 d. An acknowledgement that the attorney understands that if the attorney fails to comply with
10 the conditions the disciplinary board has imposed, a formal complaint may be filed with the
11 grievance commission, both for the matters raised in the original complaint to the board and for
12 the attorney's failure to comply with the conditions of supervision.

13 e. A statement that, if the attorney fails to comply with the conditions of supervision, the
14 attorney's admissions with respect to the attorney's conduct may be introduced as evidence in
15 any subsequent proceedings before the disciplinary board or the grievance commission.

16 f. An acknowledgement that the attorney joins in the disciplinary board's deferral
17 determination freely and voluntarily and understands the nature and consequences of the board's
18 action.

19 **35.14(4) Supervision.** The diversion coordinator, who may be the assistant director for
20 attorney discipline, is responsible for supervising the attorney's compliance with the conditions
21 the disciplinary board imposes. Where appropriate, the diversion coordinator may recommend to
22 the disciplinary board modifications of the conditions and must report to the board the attorney's
23 failure to comply with the conditions or to cooperate with the diversion coordinator.

24 **35.14(5) Compliance.** Upon the attorney's successful compliance with the conditions the
25 disciplinary board imposed, the board must dismiss or close the investigations pending before it
26 at the time it determined to defer further proceedings. The attorney will not be considered to
27 have been disciplined, but the attorney's admission of misconduct may be considered in
28 imposing sanctions in a subsequent disciplinary matter not arising out of the same conduct.
29 [Court Order January 26, 2016, effective April 1, 2016]

30 **COMMENT:** Rule 35.14 formerly appeared as Iowa Court Rule 34.13. [Court Order January 26, 2016, effective
31 April 1, 2016]