

Chapter 39
Client Security Commission

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Rule 39.18 Requirement for death or disability designation and authorization.

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

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

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

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

d. The authority of the attorney or entity designated under this rule takes effect upon the death or disability of the designated attorney. The designated attorney or entity may apply to the chief judge of the judicial district in which

the designating attorney practiced for an order confirming the death or disability of the designating attorney.

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

39.18(3) *Supplemental plan.* An attorney in private practice may prepare a written plan that is supplemental to the designation and authority in the annual client security questionnaire. The supplemental written plan may designate an attorney or entity to collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administration tasks. The supplemental written plan also may nominate an attorney or entity to serve as trustee if proceedings are commenced under the provisions of rule 34.17 or 34.18.

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

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

39.18(6) Availability of trustee provisions. A designated attorney or entity may petition the court, at any time, for appointment as the trustee or appointment of an independent trustee under the provisions of rule 34.17 or 34.18, as applicable.

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

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

b. A "law firm" is a minimum of two attorneys in a law partnership, professional corporation, or other association authorized to practice law.

c. An "attorney in private practice" includes an active Iowa attorney who resides outside Iowa but engages in the private practice of law in Iowa.