

TRENDING ETHICAL ISSUES FOR LAWYERS

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I. THE ATTORNEY DISCIPLINARY PROCESS.

A. The Board and Commission:

a. Iowa Supreme Court Attorney Disciplinary Board

- i. Created by Iowa Ct. R. 34.6(1) and consists of nine lawyers and three laypersons appointed by the supreme court, with one of the lawyers designated annually as chair. Members shall serve no more than two three-year terms.
- ii. The board members are appointed commissioners of the supreme court to initiate or receive and process complaints against any attorney. Upon completion of any such investigation, the board shall either dismiss the complaint, admonish or reprimand the attorney, or file and prosecute the complaint before the grievance commission or any division thereof. Iowa Ct. R. 34.6(1).
- iii. Current Members: See attached list

B. The Grievance Commission of the Supreme Court of Iowa

- a. Clerk- The director of the office of professional regulation must designate a clerk and an assistant clerk for the grievance commission.
Iowa Ct. R. 34.2

b. Divisions- Each division shall consist of five members selected and designated by the chair. The chair designates one of the five as president of said division. Iowa Ct. R. 36.4.

c. Current Members: See attached list.

C. Complaints: Iowa Court Rule 35.1.

a. Filing

- i. Once a complaint has been received, 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. Iowa Ct. R. 35.4(1).
- ii. The board will notify the complainant in writing that the complaint has been received and will be acted upon. Iowa Ct. R. 35.6(1).
- iii. The board will serve the attorney through certified mail, marked confidential. If the attorney does not respond within 20 days, the board will send another notice, and if a response to the second notice is not made within 10 days the board may file a complaint with the Grievance Commission as an additional, separate violation. Iowa Ct. R. 35.6, 35.7.

b. Investigation

- i. Iowa Ct. R. 35.8(1): Upon receipt of a response the board shall do one of the following:
 1. Dismiss the complaint and so notify the complainant and the respondent in writing.
 2. Cause the case to be docketed for consideration by the board at its next hearing-meeting.

3. Arrange for investigation of the complaint either by the board's counsel or a local bar association as the chair deems appropriate.
 - a. The board shall have subpoena power during any investigation conducted on its behalf to compel the appearance of witness or the production of documents. Iowa Ct. R. 35.8(2).
 - b. The district court for the county in which the investigation is being conducted shall have jurisdiction over any objection or motion relating to a subpoena and authority to punish disobedience of a subpoena in a contempt proceeding. Iowa Ct. R. 35.8(4).

c. Discovery

- i. The attorney is not required to answer any interrogatory, request for admission, or a question upon oral examination, if the answer would be self-incriminatory. Iowa Ct. R. 36.13
- ii. The commission may permit amendments to the complaint to conform to the proof or to raise new matters so long as the respondent has notice and a reasonable time to prepare a defense prior to the hearing. Iowa Ct. R. 36.10(3), 36.13.
- iii. All records, papers, proceedings, meetings and hearings of the commission shall be confidential unless the commission recommends that the supreme court reprimand the respondent or suspend or revoke the respondent's license. Iowa Ct. R. 34.4(1).

d. Trials

- i. Generally, under the speedy trial rule a trial will be held not less than 60 days and no more than 90 days after the service of the complaint. However, this requirement may be waived by the Respondent. The clerk of the grievance commission will arrange a telephone conference with members of the division

and the parties to schedule the hearing. The commission may grant reasonable continuances if requested. Iowa Ct. R. 36.10(2).

- ii. Iowa Ct. R. 36.17 governs the conduct at the hearing.
 - 1. The hearing shall not be open to the public. Iowa Ct. R. 36.17(1).
 - 2. The respondent may present character evidence by sworn affidavit which shall be filed as part of the respondent's exhibits. 36.17(2).
 - 3. The respondent may defend and shall have the right to participate in the hearing in person and by counsel, to cross-examine, to be confronted by witness, and to present evidence.36.17(5).
 - 4. The presentation of evidence shall conform to the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence. All questions of procedure, including objections to evidence, shall be determined by the chair of the commission or president of the division. Iowa Ct. R. 36.17(6).

e. Appeals

- i. The respondent may appeal the report or recommendation filed by the grievance commission to the supreme court. The Notice of appeal must be filed within **10 days** to the clerk of the grievance commission with a copy to the complainant and the clerk of the supreme court. Iowa Ct. R. 36.22(1).
- ii. The complainant may apply to the supreme court for permission to appeal from a determination, ruling, report, or recommendation of the grievance commission. The application must be filed within **10 days** after service of the determination, ruling, report, or recommendation on the complainant. Iowa Ct. R. 36.22(1).

1. Case will be dismissed in the Board does not comply with the 10 days requirement. *Iowa S. Ct. Atty. Disc. Bd. v. Atty. Doe No. 639*, 748 N.W.2d 208 (Iowa 2008)
- iii. An appeal of the grievance commission’s dismissal of a complaint, or of the grievance commission’s decision to issue a private admonition shall remain private and any application and subsequent filing shall refer to the Respondent as “Attorney Doe No.” (insert grievance commission number). Iowa Ct. R. 36.22(3)

II. TRENDING ETHICAL ISSUES.

a. Respondent’s Right to Confront Witnesses in a Grievance Commission hearing

- i. Grievance Commission Rules of Procedure 36.17(5) states:

The respondent may defend and has the right to participate in the hearing in person and by counsel to cross-examine, to be confronted by witnesses, and to present evidence.

- ii. *Iowa S. Ct. Atty. Disc. Bd. v. Akpan*, 20-0187, 2020 WL 6811365 (Iowa Nov. 20, 2020).
 1. Commission received video-conference testimony of complaining witness over Akpan’s objection.
 2. Applying the Grievance Commission rule, Supreme Court held the Commission abused its discretion in admitting videoconference testimony from the complaining witness over the responding attorney's objection.

b. Effect of prior discipline under *Noel* and *Tindal*

- i. *Iowa S. Ct. Atty. Disc. Bd. v. Noel*, 933 N.W.2d 190 (Iowa 2019); *Iowa S. Ct. Atty. Disc. Bd. v. Tindal*, 949 N.W.2d 637 (Iowa 2020)

1. Attorneys cannot be “double-sanctioned” for conduct that occurred *prior* to previously issued attorney discipline
2. “Had we been aware of the conduct that is the subject of this disciplinary proceeding at the time of our previous decision, it is unlikely this conduct would have caused us to suspend [Respondent]'s license for longer than two years. Because [Respondent's license is presently under suspension, we see no purpose served by ordering another suspension insofar as a deterrence or protection of the public is concerned.” *Iowa S. Ct. Atty. Disc. Bd. v. Noel*, 933 N.W.2d 190, 206 (Iowa 2019) (citing *Iowa S. Ct. Atty. Disc. Bd. v. Moorman*, 729 N.W.2d 801, 80 (Iowa 2007).
3. “We must determine the sanction for Tindal's conduct resulting in default notices in thirteen appeals during 2018–19, mindful that nine of those preceded his October 2018 public reprimand for default notices in sixteen appeals during 2016–17. The commission recommended a thirty-day suspension premised on its belief that our court would have suspended Tindal in 2018 had the Board charged him with another nine default notices. We disagree with that premise. In our view, given Tindal's nearly unblemished disciplinary history in 2018 (he had one prior private admonishment), he still would have received a public reprimand for the series of default notices with no client harm, whether in sixteen or twenty-five appeals. . . .

Sequence matters. (“We believe the timing of the present violations has bearing on the sanction.”). In *Iowa Supreme Court Attorney Disciplinary Board v. Noel*, we imposed a public reprimand instead of the suspension recommended by the board and commission because the conduct at issue preceded the discipline imposed for earlier misconduct. We concluded the prior sanction, a public reprimand, would have remained the same had we been aware then of the additional misconduct, and we

therefore declined “to enhance Noel's sanction in the present case.” We reach the same conclusion here. *Iowa S. Ct. Atty. Disc. Bd. v. Tindal*, 949 N.W.2d 637, 644 (Iowa 2020). (emphasis added, internal citations omitted).

c. Grievance Commission Hearings in the age of COVID-19

- i. Pursuant to Iowa Supreme Court Supervisory Order, Respondents in a Grievance Commission proceeding are entitled to an “in-person” hearing.

- ii. March 26, 2020, Supervisory Order signed by Chief Justice Christensen:

The Court strives to protect the public and the due process rights of individuals over whom the boards and commissions have oversight. . . . Hearings set forth in Chapters 31, 34, 35, 26, 42, 46, and 47, shall be held telephonically or via video conference. This includes hearings that are currently scheduled. However, upon request of the respondent, Chapter 36 [Grievance Commission Rules of Procedure] hearings shall be postponed until such time as they can be held in person. (emphasis added).

- iii. Grievance Commission hearings have been conducted with protections in place to prevent potential exposure to COVID-19 including social distancing requirements for all parties, witnesses, and panel member in addition to mask/shield requirements.

 - iv. It is good practice to file a “Written Request for an In-Person Hearing” with the Grievance Commission to preserve the rights of the Respondent.
- d. See attached brief synopses of recent Iowa Supreme Court attorney disciplinary cases.

III. CONCLUSION AND PREDICTIONS

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Tara van Brederode, Assistant Director for Attorney Discipline
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(http://www.iowacourtsonline.org/Advisory_Committees/Attorney_Disciplinary_Board/)

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SNAPSHOT OF 2020 ATTORNEY DISCIPLINARY CASES

Iowa S. Ct. Atty. Disc. Bd. v. Said, 20-0797 (Iowa Jan. 8, 2020)

- Board alleged Said failed to competently handle matters in immigration law.
- Commission and Supreme Court noted the difficulties present in navigating criminal and immigration law.
- Attorney had prior discipline and received a thirty-day suspension.

Iowa S. Ct. Atty. Disc. Bd. v. Rhinehart, 20-0824 (Iowa Jan. 8, 2020)

- Attorney “personalized” the role of the district court in pleadings.
- Allegations related to incivility in proceedings. Grievance Commission recommended a suspension.
- Supreme Court reversed and dismissed the complaint, finding that the conduct did not amount to an ethical violation.
- However, the special concurrence stated, “our dismissal of the disciplinary complaint against Rhinehart should not be interpreted as condoning his behavior. In addition to demanding that attorneys maintain ethical behavior as outlined in our rules of professional conduct, we also expect attorneys to behave with civility and professionalism.”

Iowa S. Ct. Atty. Disc. Bd. v. Akpan, 20-0187, 2020 WL 6811365 (Iowa Nov. 20, 2020)

- Iowa licensed attorney practicing immigration law in Texas received a public reprimand for mishandling flat fee payments.
- Iowa Supreme Court rules for the first time that video-conference testimony of complaining witness is impermissible under Grievance Commission rules granting Respondent right to counsel, to cross-examine, to be confronted by witnesses, and to present evidence. 36.17(5).

Iowa S. Ct. Atty. Disc. Bd. v. Kieffer-Garrison, 951 N.W.2d 29 (Iowa 2020)

- Attorney failed to adequately consult with her client prior to signing their signature on court documents in a criminal defense matter.
- Attorney had previous history of discipline including prior suspension.
- License was suspended for one year.

Iowa S. Ct. Atty. Disc. Bd. v. Tindal, 949 N.W.2d 637 (Iowa 2020)

- Tindal received default notices in sixteen different appeals.

- The Supreme Court held, “Lawyers shouldn’t use default notices from the supreme court clerk as a tickler system for appellate briefing deadlines.”
- Tindal cured the default from each and every notice.
- Most of the default notices occurred *prior* to previous attorney discipline.
- The Court held that if these matters had been presented previously, Tindal still would not have received a greater sanction than the public reprimand that was issued.
- Based on this reasoning, Tindal was received a public reprimand.

Iowa S. Ct. Atty. Disc. Bd. v. Marzen, 949 N.W.2d 229 (Iowa 2020)

- Marzen knowingly provided clients with inaccurate tax returns.
- Marzen also transferred the representation of an estate to another attorney without the client’s consent.
- Attorney suspended for 30 days.

Iowa S. Ct. Atty. Disc. Bd. v. Beauvais, 948 N.W.2d 505 (Iowa 2020)

- Beauvis represented a Plaintiff in a personal injury action.
- Beauvis informed opposing counsel and the Court that his client had accepted a settlement offer, when his client had in fact rejected the offer.
- Beauvis then pressured his client into accepting the offer using inaccurate information.
- Attorney suspended for three-months.

Iowa S. Ct. Atty. Disc. Bd. v. Watkins, 944 N.W.2d 881 (Iowa 2020)

- Watkins was elected as Van Buren County Attorney.
- Ethical complaint was filed against Watkins related to sexual harassment allegations.
- The Supreme Court found Watkins had engaged in sexual harassment in violation rule 8.4(g) and suspended his license for six months.

Iowa S. Ct. Atty. Disc. Bd. v. Kozlik, 943 N.W.2d 589 (Iowa 2020)

- Kozlik is an Omaha attorney that was licensed and practiced in both Iowa and Nebraska.
- Kozlik was appointed administrator of an estate. Kozlik wrote a total of 12 checks on the estate’s account made payable to himself without any prior court authorization. The checks totaled \$39,350.
- Iowa Supreme Court held that Kozlik converted funds for which he had no colorable future claim. His license was revoked.

Iowa S. Ct. Atty. Disc. Bd. v. Meyer, 944 N.W.2d 61 (Iowa 2020)

- Attorney worked as a contract attorney with the Iowa State Public Defender's office.
- Meyer entered into an *Alford* plea regarding criminal charges for billing practices. Meyer self-reported to the Iowa Attorney Disciplinary Board.
- Meyer's license to practice law was suspended for one year for violating ethical rules related to dishonesty and collecting unreasonable fees.

Iowa S. Ct. Atty. Disc. Bd. v. Goedken, 939 N.W.2d 97 (Iowa 2020)

- Ethical complaint was filed against attorney after several delinquencies in a probate matter.
- Attorney was in violation of ethical rules related to neglect of client matters.
- A 90-day suspension was issued.

Iowa S. Ct. Atty. Disc. Bd. v. Bergmann, 938 N.W.2d 16 (Iowa 2020)

- Attorney was charged with neglecting several client matters.
- Grievance Commission recommended a public reprimand and 12-months of probation with several requirements for the attorney during probation.
- The Supreme Court upheld the public reprimand but rejected the probation as there are no rules or other authority that would permit probation for an attorney.

Iowa S. Ct. Atty. Disc. Bd. v. Hier, 937 N.W.2d 309 (Iowa 2020)

- The Supreme Court noted that the matter was "hotly contested, emotional family law matter." The Supreme Court further noted "We approach with caution ethics complaints initiated by a litigation adversary."
- Attorney placed a check into her operating account that should have been placed in trust after a controversy between opposing parties arose regarding the funds.
- Sanctions are increased if the attorney has a history of prior discipline. Attorney was suspended for thirty days.