PUBLIC MATTER

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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of: RICHARD CLAY MENDEZ, No. 199927, A Member of the State Bar	Case No. 14-O-04026; 14-O-04815; 14-O-05386; 14-O-05959; 14-O-06202; 14-J-05673. SUPPLEMENT TO NOTICE OF DISCIPLINARY CHARGES

The State Bar of California, by and through Deputy Trial Counsel R. KEVIN BUCHER, presents this Supplement to Notice of Disciplinary Charges to correct errata in the previously filed Notice of Disciplinary Charges (NDC) in the present matter.

The NDC was filed June 19, 2015, and included 14 counts, including one count in case no. 14-J-05673, alleging professional misconduct in a foreign jurisdiction. Through mistake and inadvertence, the certified order of the foreign jurisdiction and a copy of the rules of the foreign jurisdiction, though referenced in the count, were not attached. Those documents are attached hereto as Exhibits 1 and 2, respectively, in support of count 14 of the NDC.

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Count 14 of the NDC alleges as follows:

COUNT FOURTEEN

Case No. 14-J-05673
Bus. & Prof. Code, § 6049.1; Rules Proc. Of State Bar, rules 5.350 to 5.354
[Professional Misconduct in a Foreign Jurisdiction]

1. On or about September 5, 2014, the Iowa Supreme Court Attorney Disciplinary Board ordered that respondent be disciplined upon findings that respondent had committed professional misconduct in that jurisdiction as set forth in the Order of the Iowa Supreme Court. Thereafter, the decision of the foreign jurisdiction became final.

2. A certified copy of the final order of disciplinary action of the foreign jurisdiction is attached, as Exhibit 1, and incorporated by reference.

3. A copy of the statutes, rules or court orders of the foreign jurisdiction found to have been violated by respondent is attached, as Exhibit 2, and incorporated by reference.

4. Respondent's culpability as determined by the foreign jurisdiction indicates that the following equivalent California statutes or rules have been violated or warrant the filing of this Notice of Disciplinary Charges:

Rules of Professional Conduct, rule 2-200(A);

Rules of Professional Conduct, rule 3-110(A);

Rules of Professional Conduct, rule 3-310(B);

Rules of Professional Conduct, rule 3-700(D)(1);

Rules of Professional Conduct, rule 3-700(D)(2);

Rules of Professional Conduct, rule 4-200(A);

Business and Professions Code, section 6068(a);

Business and Professions Code, section 6068(m).

ISSUES FOR DISCIPLINARY PROCEEDINGS

5. The attached findings and final order are conclusive evidence that respondent is culpable of professional misconduct in this state subject only to the following issues:

a. The degree of discipline to impose;

b. Whether, as a matter of law, respondent's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of California under the laws or rules binding upon members of the State Bar at the time the member committed misconduct in such other jurisdiction; and

c. Whether the proceedings of the other jurisdiction lacked fundamental constitutional protection.

6. Respondent shall bear the burden of proof with regard to the issues set forth in subparagraphs B and C of the preceding paragraph.

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: 6/24 2015

By: _____
R. KEVIN BUCHER
Deputy Trial Counsel

IN THE SUPREME COURT OF IOWA

No. 14–0426

Filed September 5, 2014

IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD,

Complainant,

vs.

RICHARD CLAY MENDEZ,

Respondent.

On review of the report of the Grievance Commission of the Supreme Court of Iowa.

Grievance commission recommends attorney be ordered to cease and desist practicing law in Iowa for sixty days. **ATTORNEY ORDERED TO CEASE AND DESIST FROM THE PRACTICE OF LAW IN IOWA FOR SIXTY DAYS.**

Charles L. Harrington and Nicholas Tré Critelli, Des Moines, for complainant.

Jeffrey David Norris of Law Office of Richard Mendez, Des Moines, and Valerie Lynn Hanna of Law Office of Valerie Lynn Hanna, Glendale, California, for respondent.

WATERMAN, Justice.

The Iowa Supreme Court Attorney Disciplinary Board brought a complaint against Richard Clay Mendez, charging numerous violations of Iowa's disciplinary rules. Mendez is not licensed to practice law in Iowa but acquired a Des Moines-based immigration practice and represented Iowa residents in federal immigration proceedings. A division of the Grievance Commission of the Supreme Court of Iowa determined Mendez violated certain rules governing trust accounts, fees, referrals, conflicts of interest, and neglect. The commission, with one member not participating in its deliberations, recommended we order Mendez to cease and desist from the practice of law in Iowa for a period of not less than sixty days, the period recommended by the Board. On our de novo review, we find Mendez violated our rules and order him to cease and desist from practicing law in Iowa for sixty days.

I. Background Facts and Proceedings.

Mendez has been licensed to practice law in California since 1998, but is not admitted to the Iowa bar. He practices chiefly in California, most recently from an office in Burbank. His practice is primarily immigration law, with some criminal defense work. Mendez began practicing in Iowa in July 2011, when he took over two branches of an immigration practice, ASESAL Immigration Services. One branch of ASESAL was located in Des Moines and the other in Grand Island, Nebraska. Mendez assumed representation of ASESAL's clients and retained the majority of ASESAL's staff. He renamed both branches "Law Office of Richard Mendez."

Mendez stated that his Iowa practice is limited to providing legal services to Iowa residents on federal immigration matters, which is permitted by the Iowa Rules of Professional Conduct. *See* Iowa R. Prof'l

Conduct 32:5.5(d)(2) ("A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that . . . are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction."). Federal law allows a member in good standing of any state's bar to practice before the federal immigration court. *See* 8 C.F.R. §§ 1001.1(f), 1292.1(a)(1) (2011).

Mendez's handling of his Iowa immigration practice resulted in ethics complaints by clients, successor counsel, and ultimately the Board, arising out of the following matters.

A. Trust Account Practices. Shortly after purchasing the ASESAL offices, Mendez opened a client trust account, as required by the Iowa Court Rules and the Iowa Rules of Professional Conduct. *See* Iowa Ct. R. 45.10(2) ("Funds a lawyer receives from clients or third persons for matters arising out of the practice of law in Iowa shall be deposited in one or more identifiable interest-bearing trust accounts located in Iowa."); *see also, e.g.*, Iowa R. Prof'l Conduct 32:1.15(c). On August 31, Mendez and his Iowa counsel met with the director of the Office of Professional Regulation, the assistant director for boards and commissions for the Office of Professional Regulation, and the client security auditor. One of the purposes of the meeting was to discuss the need for Mendez to comply with Iowa's rules governing client trust accounts. Mendez was provided with a copy of the trust account rules. Those rules included requirements that an attorney provide notice and an accounting to clients upon withdrawing funds. Mendez concedes he failed to provide notices and accountings to forty-three clients upon withdrawal of funds.

B. Nonrefundable Fees. Mendez's written contracts with two clients, Rigoberto Flores and Miguel Angel Arechiga Cuellar, provided that Mendez could charge a $300 minimum fee merely for opening the file, regardless of whether any legal services were provided. The contracts stated: "ATTORNEY reserves the right to charge the minimum fee of $300 by opening the file, if that customer decides to end the contract before accumulating legal fees."

C. Rigoberto Flores Representation. In September 2011, Rigoberto Flores was charged with fraudulent practices in the third degree, in violation of Iowa Code section 714.11, and identity theft, in violation of Iowa Code section 715A.8. These offenses are aggravated misdemeanors. On September 16, Flores engaged Mendez to represent him and paid Mendez $1000 of their agreed $1500 flat fee for the criminal representation.

Mendez engaged an Iowa-licensed criminal attorney, John D. Hedgecoth, to enter an appearance on Flores's behalf. Mendez stated, "[I]t would have been easier to just refer him, but I facilitated the agreement for Mr. Hedgecoth to represent Mr. Flores in the criminal matter." Mendez and Hedgecoth orally agreed that Hedgecoth would be paid an hourly rate for his services from the $1000 Flores advanced to Mendez. When asked if he could give legal advice on criminal matters, Mendez responded, "Not on criminal matters as pertains to Iowa, but if it was criminal matters relating to immigration consequences, then yes, I believe so." Mendez testified he never told Flores that he was an Iowa-licensed attorney.

Mendez admits that he did not seek or receive Flores's written approval of the fee-splitting arrangement with Hedgecoth. He likewise failed to give Flores written notice of the withdrawal of any fees paid to

his firm or to Hedgecoth's firm. Hedgecoth's billing records show that he ultimately provided Flores with $558 of legal services, but Mendez's records reflect that he paid Hedgecoth $808 out of Flores's account. On top of the $558 paid to Hedgecoth, Mendez billed Flores $1370 for "administrative support." Flores paid Mendez a total of $1250, making Mendez's net on the case $442 after payments to Hedgecoth.

Flores ultimately entered guilty pleas on both charges. The Board asserts Mendez never personally spoke with Flores or Hedgecoth about the immigration implications of Flores's criminal case, and that Mendez did not advise Flores of the immigration consequences of entering a guilty plea to the charged offenses. Mendez asserts the disposition of Flores's case was unavoidable and denies the allegations that he never personally spoke with Flores and Hedgecoth about the immigration consequences of Flores's guilty pleas. A postconviction court later granted Flores relief, finding that his guilty pleas were not intelligent, knowing, and voluntary because Flores was not informed in Spanish of each guilty plea's potential impact on his immigration status.

When asked if he could explain his fee for administrative support, Mendez stated, "Mr. Flores came to the . . . office on, almost on a daily basis asking about his case . . . . I think we even sent interpreters to interpret for him . . . . And there was a lot of assistance there." These services were not itemized or noted in Flores's file. However, the postconviction relief ruling found that a legal assistant from Mendez's office attended Flores's initial meeting with Hedgecoth at the jail to act as a translator.

D. Sergio Guaillas Representation. Sergio Guaillas is a non-United States citizen who was initially represented by another attorney on a visa petition. Guaillas's petition was denied on September 8, 2011.

His letter of denial informed him that he had thirty-three days from the date of the letter, or until October 8, to file his notice of appeal.

On September 21, after terminating his first attorney's services, Guaillas spoke with a member of Mendez's staff and engaged Mendez to handle his appeal. That same day, someone in Mendez's office researched Guaillas's appeal.

Mendez failed to file the requisite notice of appeal by the October 8 deadline. Mendez testified he was unable to file the appeal because his office could not get the proper documents from Guaillas's previous attorney. Mendez further testified he orally informed Guaillas of his failure to file the notice of appeal and that this failure could constitute grounds for ineffective assistance of counsel and support a basis to reopen the matter. Nevertheless, Mendez could provide no documentation substantiating this assertion.

On February 16, 2012, Guaillas retained the services of yet another immigration attorney, James Benzoni. The same day, Benzoni provided Mendez with a formal request to transfer Guaillas's file. Mendez testified that he immediately mailed the file, but has no documentation of doing so. Benzoni did not receive the file. In late March, Benzoni again contacted Mendez asking for Guaillas's file. On April 24, Benzoni filed a disciplinary complaint against Mendez. On June 14, Mendez provided Benzoni with Guaillas's immigration file.

Guaillas filed his own disciplinary complaint against Mendez. In his response to this complaint, Mendez stated that he had met with Guaillas on September 21, 2011, and that "[a]fter consultation, Mr. Guaillas agreed to retain [him] as his attorney." Mendez's paralegal also submitted a declaration stating Guaillas signed a retainer agreement

with Mendez on September 21. Mendez testified at the hearing before the commission that he had met with Guaillas *before* November.

But, Mendez's internal billing and time records contradict his testimony. His records show the first time he personally met with Guaillas was well after the October 8 appeal deadline. The September 21 notation in the file states that Guaillas "spoke with RF," a staff member in the office. The first file notation indicating Mendez met with Guaillas is dated November 18, and Mendez's invoice to Guaillas includes a November 18 entry stating, "Attorney Richard Mendez met with Mr. Guaillas."

E. Miguel Angel Arechiga Cuellar Representation. On August 30, 2011, Immigration and Customs Enforcement apprehended Miguel Angel Arechiga Cuellar and detained him in the Polk County jail. On September 1, Arechiga's fiancée, Sandra Melendez, hired Mendez to represent Arechiga in a bond reduction hearing. According to the terms of the engagement agreement, Mendez charged a flat fee of $1500 for the bond reduction hearing.

That day, Mendez paid the $1500 flat fee on Arechiga's behalf. Mendez did not deposit the advance payment into his client trust account. In his written response to the Board's request for his trust account ledger for Arechiga and in his hearing testimony, Mendez attempted to justify his failure to do so by explaining that he did not think he needed to deposit the fee into his trust account "because part of the services w[ere] performed before and on the next two days after [he] was retained." Mendez also failed to notify Arechiga for any withdrawal of fees.

Arechiga was incarcerated at the time of Mendez's retention and wanted a bond reduction hearing as soon as possible so that he could be

released from custody. One of Mendez's staff visited Arechiga at the Polk County jail on September 1, and a paralegal and attorney followed up with Arechiga to complete some paperwork. A paralegal twice contacted the deportation office, apparently to no avail. Mendez's billing records for September 11 refer to a call regarding paperwork for Arechiga. But, Mendez did not file any documents requesting the bond reduction hearing. Mendez testified, "[I]f immigration doesn't process the person, then there's nothing I can—I can do, it's out of my control. I can only respond once they are in the system."

A month later, on September 30, Arechiga was released from custody after posting the full amount of his original bail. On October 1, Arechiga and Melendez went to Mendez seeking a refund. Not until May 19, 2012—after Arechiga filed a disciplinary complaint—did Mendez issue any refund. During the interim, Mendez did not retain the funds in his client trust account. Mendez ultimately returned $1200 of the $1500 Melendez had paid.

F. Roberto Macedo-Davila Representation. In April of 2011, Roberto Macedo-Davila engaged the services of ASESAL to represent him in immigration matters. The contract provided that Macedo-Davila was to pay a total of $4000, with $1000 paid in advance on April 21 and the remaining money to be paid in increments of $150 monthly commencing May 30. In July, Mendez "took over" ASESAL and incorporated it into his own law firm. Macedo-Davila continued to make monthly cash payments of $150 after this transition, and Mendez accepted these payments. Mendez did not, however, deposit these payments into his client trust account.

An itemization of services provided by Mendez to Macedo-Davila indicates that, during the months of July through December, Mendez

"reviewed [the] case, updated files and made calls" for one and one-half hours each month. Mendez charged $150 for each of these instances—the exact amount paid by Macedo-Davila each month. Mendez admitted that he did not know exactly what services had been provided for these funds.

G. Orlando Ramirez Barragan Representation. In April 2011, Orlando Ramirez Barragan retained ASESAL to represent him in immigration matters. Barragan was to pay a total of $4000, with $1000 paid in advance on April 9 and the remaining money paid in monthly increments of $200 commencing May 15. Barragan continued to make monthly payments of $200 after July, when Mendez took over ASESAL. Mendez failed to deposit these payments into his client trust account.

On August 31, Barragan was scheduled for a 9 a.m. immigration hearing in Omaha, Nebraska. Mendez was in California that day. Natalia Lazareva, an attorney in Mendez's office, prepared for the hearing and met Barragan in Omaha. Upon arriving at the location of the hearing, Lazareva was informed that the scheduled judge was absent due to illness and Barragan's hearing was rescheduled to 1 p.m. that afternoon. Lazareva informed Barragan of this change, and Barragan left the building. Upon returning shortly before 1 p.m., Barragan discovered that the hearing had not been rescheduled, but had been held that morning without Barragan or Lazareva present, and the judge had ordered Barragan removed in absentia. Barragan was in fact removed. Mendez billed Barragan $625 for Lazareva's legal services that day.

One remedy for an order of removal in absentia is the filing of a motion to reopen based on ineffective assistance of counsel. *See Matter of Lozada*, 19 I.&N. Dec. 637, 639 (BIA 1988). One of the prerequisites for obtaining relief on that basis is that the motion to reopen states

whether a complaint has been filed with appropriate disciplinary authorities with respect to an ethical or legal violation, and if not, why not. *Id.* Mendez failed to advise Barragan to seek alternate counsel to file such a disciplinary complaint.

Instead, Lazareva, with Mendez's approval, continued to represent Barragan and filed a motion to reopen. Mendez testified that filing a complaint and pursuing relief based on ineffective assistance of counsel was "just one of several options." Lazareva's motion to reopen asked for relief because of "rescheduling confusion." On October 27, the immigration court denied Lazareva's motion, finding "the respondent has not advanced either credible or persuasive evidence to support his assertion that his failure to appear at his removal hearing was due to exceptional circumstances beyond his control."

Without Barragan's knowledge or consent, Mendez then hired a California immigration attorney, Tina Malek, to prepare a second motion to reopen. Malek did not file a complaint against Mendez before filing this second motion to reopen. The court, in ruling on Malek's motion, noted that it was based upon the alleged ineffective assistance of former counsel,[1] which requires:

> (1) that the motion be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not.

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[1]A copy of Malek's motion to reopen is not in the record.

Because Malek had not filed a complaint against Mendez, the immigration court denied the second motion to reopen on January 9, 2012.

Mendez then had Malek file an appeal of the denial with the Board of Immigration Appeals (BIA). The BIA denied Barragan's appeal on September 19, again due to lack of a disciplinary complaint and other necessary evidence. Mendez paid Malek $910 from Barragan's funds for filing the second motion to reopen and appealing the denial of that motion. Mendez billed Barragan an additional $700 for services relating to the motions to reopen.

On September 23, 2013, the Board filed a six-count complaint against Mendez, alleging violations of our disciplinary rules in the foregoing matters. A five-member division of the commission conducted a two-day evidentiary hearing on January 6–7, 2014. Mendez testified, and documentary evidence was submitted by the Board. Posthearing briefs were then submitted. On March 14, the commission filed its "Findings of Fact, Conclusions of Law, and Sanction Recommendation." The commission, by a four-to-zero vote, found multiple violations by Mendez and recommended that he be barred from practicing law in Iowa for sixty days. A footnote stated, "One panel member was unable to participate in the deliberations concerning the recommendation in this matter." No further information is provided to explain why one panelist did not participate in the recommendation.

II. Scope of Review.

We review attorney disciplinary proceedings de novo. *See* Iowa Ct. R. 35.12(4). "We give deference to the commission's credibility findings because the commission hears live testimony and observes the demeanor of witnesses." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ouderkirk*, 845

N.W.2d 31, 33 (Iowa 2014). The Board has the burden to prove attorney misconduct by a convincing preponderance of the evidence. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Thomas*, 844 N.W.2d 111, 113 (Iowa 2014). "This standard is more demanding than proof by preponderance of the evidence, but less demanding than proof beyond a reasonable doubt." *Ouderkirk*, 845 N.W.2d at 33.

> If we conclude there has been a rule violation,
>
> > our determination of the appropriate sanction "is guided by the nature of the alleged violations, the need for deterrence, protection of the public, maintenance of the reputation of the bar as a whole, and [the attorney's] fitness to continue in the practice of law."

Iowa Supreme Ct. Att'y Disciplinary Bd. v. Laing, 832 N.W.2d 366, 367–68 (Iowa 2013) (alteration in original) (quoting *Comm. on Prof'l Ethics & Conduct v. Kaufman*, 515 N.W.2d 28, 30 (Iowa 1994)). "We respectfully consider the commission's findings of fact and recommended sanction, but we are not bound by them." *Ouderkirk*, 845 N.W.2d at 33.

III. Ethical Violations.

The commission found the Board proved over sixty violations, but did not meet its burden to prove five other alleged violations. In his challenge to the commission's recommendation, Mendez makes three general arguments: (1) "there has been no legal criteria advanced to define who or what constitutes an Iowa client when there is obvious cross jurisdictional practice going on with Nebraska"; (2) "Nebraska holds a different position than Iowa on how flat fees for Nebraska immigration clients should be handled and it is permissible to deposit them into the attorney's general account upon receipt"; and (3) he has "been deprived of a properly constituted panel wherein the original 5 selected to consider all evidence and testimony, was without warning or consultation,

diminished to 4 in deliberations depriving [him] of yet another voice in final deliberations."

None of these arguments excuses Mendez's violations of our state's disciplinary rules. We will address each argument in turn. First, the clients at issue were living in Iowa and retained Mendez through his Des Moines office. A commissioner stated at the hearing:

> I think we have the right to assume, not seeing any notations to the contrary in your itemizations of services, that the work that you performed for the various named clients did occur here in Iowa. I don't see why somebody who is domiciled in Des Moines would hire someone that would require them to travel to Nebraska to get an answer on a particular legal question.

Mendez agreed with this statement. We find that Mendez has provided legal services in Iowa on the matters at issue. We hold that jurisdiction therefore exists pursuant to Iowa Rule of Professional Conduct 32:8.5(a). That rule states:

> Disciplinary Authority. . . . A lawyer not admitted in Iowa is . . . subject to the disciplinary authority of Iowa *if the lawyer provides or offers to provide any legal services in Iowa.* A lawyer may be subject to the disciplinary authority of both Iowa and another jurisdiction for the same conduct.

Iowa R. Prof'l Conduct 32:8.5(a) (emphasis added). "Our jurisdiction to discipline attorneys practicing in Iowa under rule 32:5.5(d)(2) rests on our responsibility to protect the citizens of our state from unethical conduct of attorneys *who provide services in Iowa.*" *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Carpenter*, 781 N.W.2d 263, 267 (Iowa 2010) (emphasis added); *see also Iowa Supreme Ct. Att'y Disciplinary Bd. v. Olson*, 807 N.W.2d 268, 270, 276 n.7 (Iowa 2011) (finding jurisdiction over Minnesota counsel based on the conduct of communicating with an Iowa resident located in Iowa).

Second, the fact that Nebraska's ethical rules differ from Iowa's does not excuse a violation of Iowa's ethical rules for legal services provided in Iowa. Mendez operated an office in Iowa, and it was incumbent on him to learn and follow Iowa's rules when assisting clients here.

Mendez's third argument about the loss of a panel member also lacks merit. The Iowa Court Rules generally require the grievance commission panel to consist of at least five members. *See* Iowa Ct. R. 35.1(1) ("The grievance commission shall also consist of no fewer than 5 nor more than 35 laypersons appointed by the court."); *id.* r. 36.2 ("The commissioners may act as a body or in such divisions as the chair may direct. Each division shall consist of five members."). Iowa Court Rule 36.17, however, states that "[a]n omission, irregularity, or other defect in procedure shall not render void or ineffective any act of the commission or a division or any member thereof unless substantial prejudice is shown to have resulted."

We find Mendez was not prejudiced by the fact one panel member did not deliberate. Rule 35.10 provides that "[a]ny determination or report of the commission need only be concurred in by a majority of the commissioners sitting." *Id.* r. 35.10; *see also In re Paulson*, 216 P.3d 859, 876 (Or. 2009) (noting a third disciplinary panel member's failure to sign a disciplinary opinion did not prejudice attorney because the decision only required two concurring members), *opinion adhered to as modified on reconsideration*, 225 P.3d 41, 42 (Or. 2010). Even if the fifth panel member had participated in deliberations and *dissented*, the commission's four other voting members constituted the requisite majority. *See* Iowa Ct. R. 35.10 (noting also that "[a]ny commissioner has the right to file with the supreme court a dissent from the majority

determination or report"); *cf. Paulson*, 216 P.3d at 876 (concluding missing panel member was "effectively . . . in the position of an abstaining panel member" that "did not join in the opinion and . . . did [not] dissent").

Mendez's argument that he was "depriv[ed] of yet another voice in final deliberations" does not require a new hearing. *See Comm. on Prof'l Ethics & Conduct v. Michelson*, 345 N.W.2d 112, 117 (Iowa 1984) ("He was afforded a full-blown hearing and there is no indication that the outcome of the hearing was affected."); *Paulson*, 216 P.3d at 876 ("We might reach a different conclusion if the irregularity were shown to have prejudiced the accused. But here, there is no prejudice."). Mendez has not shown participation of the fifth panelist likely would have changed the recommendation. In any event, our court has examined the record de novo and we are not bound by the commission's recommendations. *Ouderkirk*, 845 N.W.2d at 33. Accordingly, Mendez is not entitled to relief on this ground.

A. Trust Account Violations Involving Forty-Three Clients. The Board charged Mendez with violating Iowa Court Rule 45.7(4) with regard to forty-three clients. Rule 45.7(4) provides:

> A lawyer accepting advance fee or expense payments must notify the client in writing of the time, amount, and purpose of any withdrawal of the fee or expense, together with a complete accounting. The attorney must transmit such notice no later than the date of the withdrawal.

Iowa Ct. R. 45.7(4). Mendez admitted he did not comply with rule 45.7(4), and the commission found he violated that rule as to those forty-three clients. We agree with the commission and find Mendez violated rule 45.7(4) with regard to those forty-three clients.

The Board also charged Mendez with several trust-account-related violations involving the clients specifically discussed above. Iowa Rule of Professional Conduct 32:1.15(c) provides: "A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred." Iowa Court Rule 45.10(2) provides: "If the client makes an advance payment of a flat fee prior to performance of the services, the lawyer must deposit the fee into the trust account." Those allegations are summarized as follows:

> (1) Mendez violated rules 32:1.15(c) and 45.10(2) by failing to deposit Flores's $1000 payment into his trust account and rule 45.7(4) by failing to provide the requisite notices to Flores when he withdrew fees;
>
> (2) Mendez violated rules 32:1.15(c) and 45.10(2) by failing to deposit Arechiga's $1500 payment into his trust account and rule 45.7(4) by failing to provide the requisite notices to Arechiga when he withdrew fees;
>
> (3) Mendez violated rules 32:1.15(c) and 45.10(2) by failing to deposit Macedo-Davila's monthly payments into his trust account;
>
> (4) Mendez violated rules 32:1.15(c) and 45.10(2) by failing to deposit Barragan's monthly payments into his trust account.

The commission found Mendez committed each of these rule violations. On our de novo review, we agree that Mendez violated each of these rules as charged by the Board.

B. Nonrefundable Fees in Flores and Arechiga Representations. The Board alleged, and the commission found, Mendez violated Iowa Rule of Professional Conduct 32:1.15(c) and Iowa Court Rule 45.7(5) by representing in his fee agreement with Flores and Arechiga that he was entitled to a nonrefundable fee of $300 for "opening the file," even if he did not provide any legal services. Rule 45.7(5) states, "Notwithstanding any contrary agreement between the lawyer and client,

advance fee and expense payments are refundable to the client if the fee is not earned or the expense is not incurred." Iowa Ct. R. 45.7(5). Mendez admitted that his contracts with Flores and Arechiga contained impermissible, nonrefundable fees.

We find Mendez violated rules 32:1.15(c) and 45.7(5). *See Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Frerichs*, 671 N.W.2d 470, 475 (Iowa 2003) ("[C]ontracts providing for nonrefundable special retainers and nonrefundable 'flat' fees are void as well as unethical."). As we have long recognized, nonrefundable fees undermine the client's right to discharge an attorney. *Id.* at 476. "[C]lients would be reluctant to exercise the right if an advance fee was nonrefundable" and nonrefundable fees "also undermine the fiduciary nature of an attorney–client relationship." *Id.*

C. Rigoberto Flores Representation.

1. *Unauthorized practice of law.* While Mendez is allowed to practice immigration law in Iowa, he is not authorized to defend criminal charges in our state courts. The Board alleged that Mendez engaged in the unauthorized practice of law by representing Flores in his state criminal case. Iowa Rule of Professional Conduct 32:5.5(a) states, "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction . . . ." The commission highlighted that "the amount of fees in question is de minimus" and concluded that, "given the way the criminal case played out," the Board did not meet its burden to prove Mendez violated rule 32:5.5(a).

Mendez contends his representation of Flores was proper because he only "facilitated" an Iowa-licensed attorney's representation and because the fees he charged were for "administrative support." The

record reflects that Mendez provided translation services for Flores on at least one occasion, and Mendez is authorized to advise clients as to the immigration consequences of criminal proceedings. We agree with the commission that the Board failed to prove by a convincing preponderance of the evidence that Mendez violated rule 32:5.5(a) through his involvement with the Flores case.

2. *Unreasonable fee.* The Board next asserts Mendez collected an unreasonable fee in violation of rule 32:1.5. Iowa Rule of Professional Conduct 32:1.5(a) prohibits a lawyer from "mak[ing] an agreement for, charg[ing], or collect[ing] an unreasonable fee or an unreasonable amount for expenses." The Board presents two rationales for finding Mendez violated this rule. First, based on its belief that Mendez's representation of Flores was outside the scope of his permissible practice, the Board charged Mendez with collecting an unreasonable fee. Because we find the Board failed to prove Mendez engaged in the unauthorized practice of law, we find his fee was not unreasonable on this basis.

However, we agree with the Board's second argument. The Board asserts that Mendez collected an unreasonable fee by paying Hedgecoth $808 from Flores for his services while Hedgecoth's billing records show that he provided Flores with only $558 of legal services. The commission found Mendez violated Iowa Rule of Professional Conduct 32:1.5(a) and (e) by using Flores's money to pay Hedgecoth more than was earned. Rule 32:1.5(e)(3) provides "[a] division of a fee between lawyers who are not in the same firm may be made only if . . . the total fee is reasonable." Iowa R. Prof'l Conduct 32:1.5(e)(3). Because Mendez collected from Flores and paid Hedgecoth more than he had earned, we agree Mendez violated rule 32:1.5(a) and (e)(3).

3. *Improper division of fees.* The Board charged Mendez with the improper division of fees based on his arrangement with Hedgecoth. Iowa Rule of Professional Conduct 32:1.5(e)(2) states that a lawyer may divide fees with a lawyer in a different firm only upon receiving the client's written agreement to the fee division. Mendez did not receive written approval from Flores for the fee-splitting agreement. The commission found Mendez violated this rule, and we agree.

4. *Failure to communicate.* Finally, the Board alleged Mendez violated Iowa Rule of Professional Conduct 32:1.4 by failing to properly advise Flores of the immigration consequences of entering a guilty plea. Rule 32:1.4 requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Iowa R. Prof'l Conduct 32:1.4(b). The commission found the Board failed to prove this allegation by a convincing preponderance of the evidence. We agree with the commission. We are not persuaded on this record that Mendez failed to discuss with Flores the immigration consequences of his pleas. The postconviction court ruling that granted Flores relief from his guilty plea only mentioned Mendez in passing. The ruling focused on the guilty plea proceedings handled by Hedgecoth and the fact that the plea colloquy was not translated into Spanish to ensure Flores understood the consequences. Mendez testified that he did indeed discuss the immigration consequences with Flores, and the Board has failed to rebut Mendez's testimony on that point.

D. Sergio Guaillas Representation.

1. *False statement of material fact.* The Board charged Mendez with making a false statement of material fact in connection with a disciplinary matter, in violation of Iowa Rule of Professional Conduct

32:8.1(a). Rule 32:8.1 provides, "[A] lawyer . . . [,] in connection with a disciplinary matter, shall not . . . knowingly make a false statement of material fact[.]" Iowa R. Prof'l Conduct 32:8.1(a). Mendez asserts that he met with Guaillas on September 21, but the Board contends this is untrue and Mendez did not meet with Guaillas until November 18. The commission found a violation of this rule. As the commission summarized,

> Mendez's written and oral recollections are the only evidence presented in support of his position on this point. His time and billing records tell a different story. In fact, Mendez's own billing records show that Mendez did not meet with [Guaillas] until November 18, 2011 . . . .

The commission found Mendez's version of events not credible. "We give deference to the commission's credibility determination because the commission heard [Mendez]'s live testimony and observed his demeanor." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Clarity*, 838 N.W.2d 648, 659 (Iowa 2013). Nevertheless, we give less weight to the documentary evidence in this context. Mendez had a high volume immigration practice. It is not uncommon for attorneys to meet a new client in person and hand him off to a paralegal to conduct the initial interview, with the attorney not billing for an attorney–client conference on the day of the client's initial office visit. We find the Board failed to prove by a convincing preponderance of the evidence that Mendez violated rule 32:8.1(a) by misrepresenting the date that he first met with Guaillas.

2. *Neglect.* The Board charged Mendez with a violation of Iowa Rule of Professional Conduct 32:1.3 for failing to file Guaillas's notice of appeal by the deadline, and the commission found Mendez violated that rule. Rule 32:1.3 states, "A lawyer shall act with reasonable diligence

and promptness in representing a client." Iowa R. Prof'l Conduct 32:1.3. A comment to rule 32:1.3 emphasizes the importance of diligence:

> Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed.

Id. r. 32:1.3 cmt. 3. The commission did not credit Mendez's excuse that he was unable to file the appeal because he could not get some necessary documents from Guaillas's former counsel. Giving deference to the commission's credibility determination, we likewise find his excuse unconvincing. We find Mendez violated rule 32:1.3 by neglecting Guaillas's appeal.

3. *Failure to communicate.* The Board alleged that Mendez neglected to tell Guaillas that he had failed to file the notice of appeal and that this failure could serve as grounds for ineffective assistance of counsel and support a basis to reopen the matter. The Board charged Mendez with violating Iowa Rule of Professional Conduct 32:1.4, which requires attorneys to "keep the client reasonably informed about the status of the matter" and to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." *Id.* r. 32:1.4(a)(3), (b). The commission found Mendez violated rule 32:1.4. Again, giving deference to the commission's determination, we agree Mendez violated this rule.

4. *Failure to turn over file.* The Board charged Mendez with violating Iowa Rules of Professional Conduct 32:1.15(d) and 32:1.16(d) for failing to promptly turn over Guaillas's file to Benzoni, and the commission found a violation of these rules. Rule 32:1.15(d) states "a lawyer shall promptly deliver to the client or third person any funds or

other property that the client or third person is entitled to receive." *Id.* r. 32:1.15(d). Rule 32:1.16(d) states that, "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled." *Id.* r. 32:1.16(d). Benzoni received Guaillas's file only after he filed a disciplinary complaint against Mendez—four months after the initial request. Mendez testified that he immediately sent the file but could provide no documentation supporting his testimony. The commission found Mendez's testimony not credible on this point. So do we. We find Mendez violated rules 32:1.15(d) and 32:1.16(d) by failing to promptly deliver Guaillas's file.

E. Miguel Angel Arechiga Cuellar Representation.

1. *Neglect.* The Board alleges, and the commission found, Mendez violated Iowa Rule of Professional Conduct 32:1.3 by failing to file any documents requesting a bond reduction hearing for Arechiga. As discussed above, rule 32:1.3 requires reasonable diligence and promptness. *See id.* r. 32:1.3.

A member of Mendez's staff visited Arechiga at the jail on the day the firm was retained, an attorney and paralegal followed up with Arechiga to complete paperwork, a paralegal twice contacted "the Deportation Office," and someone in the firm took a call regarding Arechiga's paperwork. Mendez testified he could not request a bond reduction hearing because Arechiga had not been processed by the immigration court. The Board did not present any expert testimony or other evidence to rebut Mendez's assertion. We conclude the Board has failed to prove by a convincing preponderance of the evidence that Mendez's representation of Arechiga violated rule 32:1.3.

2. *Failure to refund fees and retain disputed fees in trust.* The Board charged Mendez with a violation of rule 32:1.15(d) for failing to promptly return Arechiga's funds along with an accounting of services rendered and with a violation of rule 32:1.15(e) for failing to retain disputed funds in trust. The commission found Mendez violated both of these rules. We agree. Iowa Rule of Professional Conduct 32:1.15(d) requires an attorney to

> promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Rule 32:1.15(e) states:

> When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Id. r. 32:1.15(e). Mendez did not refund Arechiga's payment until seven months after Arechiga first requested the refund. During this time, Mendez did not retain Arechiga's payment in his client trust account.

F. Roberto Macedo-Davila Representation. The Board alleges Mendez violated rules 45.7 and 45.10(3) by taking an unearned fee from Macedo-Davila. Rule 45.10(3) states, "In no event may the lawyer withdraw unearned fees." Iowa Ct. R. 45.10(3). The commission concluded "[w]hile certain inferences adverse to Mendez could be drawn from the evidence presented, the preponderance standard does not permit such an inquiry." Accordingly, the commission found the Board did not prove Mendez violated rules 45.7 and 45.10(3). We agree. The Board did not present any evidence to rebut Mendez's billing records,

which indicate someone in Mendez's office "reviewed [Macedo-Davila's] case, updated files and made calls" each month.

G. Orlando Ramirez Barragan Representation.

1. *Unreasonable fee.* The Board charged Mendez with collecting an unreasonable fee from Barragan, in violation of Iowa Rule of Professional Conduct 32:1.5(a). The Board takes issue with the fact that Mendez billed Barragan $625 for the Omaha hearing, despite the fact that Lazareva missed the hearing. The commission found the Board did not carry its burden to prove Mendez violated rule 32:1.5(a). The commission stated:

> While it is true that Ms. [Lazareva] missed the hearing, she prepared for it and traveled to and from Omaha to attend it. We think Mendez's firm is reasonably entitled to compensation for her efforts even though she missed the hearing.

The Board did not assert that Lazareva or Mendez was to blame for missing the hearing. On this record, we agree with the commission and find the Board failed to prove by a convincing preponderance of the evidence that Mendez violated rule 32:1.5(a) by charging Barragan for the time Lazareva spent in Omaha.

2. *Failure to communicate and conflict of interest.* The Board alleges Mendez violated Iowa Rules of Professional Conduct 32:1.4(b) and 32:1.7(a)(2) by failing to inform Barragan that he should retain alternate counsel and file a disciplinary complaint against Mendez's firm in order to reopen his immigration matter. Again, rule 32:1.4 governs communication and requires an attorney to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Iowa R. Prof'l Conduct 32:1.4(b). Rule 32:1.7(a)(2) instructs a lawyer to withdraw from representation if

"there is a significant risk that the representation of [the client] will be materially limited by . . . a personal interest of the lawyer." *Id.* r. 32:1.7(a)(2). The commission found Mendez violated both of these rules.

We too find Mendez violated rules 32:1.4(b) and 32:1.7(a)(2) by failing to withdraw from representation and inform Barragan that he should file a disciplinary complaint. When faced with nearly identical facts in *Iowa Supreme Court Attorney Disciplinary Board v. Yang*, we found a violation of rule 32:1.4(b) because "Yang owed his client an explanation of the alternative course of action because it was reasonably necessary to permit [the client] to make an informed decision on the matter." 821 N.W.2d 425, 430 (Iowa 2012). We also found the failure to withdraw under these circumstances violates rule 32:1.7(a)(2) because, "[i]n continuing the representation . . . without disclosure of the apparent conflict of interest, Yang ignored a significant risk that the representation would be materially limited by Yang's personal interest in avoiding a potential ethical complaint." *Id.*

Lazareva did not file a disciplinary complaint against herself or arrange for anyone else to file such a complaint against her on Barragan's behalf before she filed the first motion to reopen Barragan's case. Accordingly, the court denied Lazareva's motion to reopen. The outside counsel retained by Mendez similarly failed to file a disciplinary complaint, as made clear in the rulings denying both the second motion to reopen and the appeal of that motion. Had Mendez informed Barragan of the need to retain independent counsel, rather than pursuing these ineffective appeals, Barragan may have successfully reopened his case and avoided removal. "Although this may be speculative, the fact remains that [the attorney's conflict of interest] denied [the client] the

opportunity to make an informed choice." *See Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Wagner*, 599 N.W.2d 721, 730 (Iowa 1999).

3. *Improper referral, improper division of fees, and unreasonable fee.* Also in connection with the futile motions to reopen, the Board charged Mendez with (1) billing an unreasonable fee, in violation of rule 32:1.5(a); (2) improperly dividing fees with outside counsel, in violation of rule 32:1.5(e); and (3) improperly referring Barragan to outside counsel, in violation of rule 32:1.6. The commission found Mendez violated each of these rules. Mendez did not receive Barragan's written agreement to the fee division between Mendez and outside counsel. *See id.* r. 32:1.5(e)(2). Nor did he not obtain Barragan's consent to retain outside counsel to pursue Barragan's motion to reopen. *See* Iowa R. Prof'l Conduct 32:1.6(a) (setting forth general rule that a lawyer "shall not reveal information relating to the representation of a client unless the client gives informed consent"). Mendez conceded as much, testifying, "I guess I was in such a rush to try to get this reopened, I may have cut some corners there. . . . I should have had that all in writing." In total, Mendez billed Barragan $1610 for unproductive attempts to reopen his case. We find Mendez violated rules 32:1.5(a), 32:1.5(e)(2), and 32:1.6(a).

IV. Sanction.

Although we consider prior cases when imposing a sanction, "[t]here is no standard sanction for particular types of misconduct." *Clarity*, 838 N.W.2d at 660. We consider the unique circumstances of each case, weighing several factors, such as

> "the nature of the violations, the attorney's fitness to continue in the practice of law, the protection of society from those unfit to practice law, the need to uphold public confidence in the justice system, deterrence, maintenance of the reputation of the bar as a whole, and any aggravating or mitigating circumstances."

Id. (quoting *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Rhinehart*, 827 N.W.2d 169, 182 (Iowa 2013)).

The commission recommended we order Mendez to cease and desist from the practice of law in Iowa for a period no shorter than sixty days.[2] We give respectful consideration to this recommendation. *See Ouderkirk*, 845 N.W.2d at 33. The Board urged the same sixty-day sanction in its posthearing brief. Mendez argues a public reprimand is an appropriate sanction. He argues, "I have spent my entire career serving the disenfranchised seeking asylum and immigration status in this country and it is my desire to continue to follow this path."

We conclude the numerous violations committed by Mendez require more than a public reprimand. His violations span a wide variety of rules. He disregarded our trust account rules, impermissibly contracted for nonrefundable fees, charged an unreasonable fee, improperly divided fees, neglected a client's appeal, failed to promptly turn over a client's file, failed to return funds promptly, failed to keep disputed funds in trust, failed to communicate with a client, and failed to disclose a conflict of interest.

The commission accurately recited the mitigating circumstances in this case: "Cooperating with the Board is generally considered a mitigating factor, and Mendez did. Mendez also serves a vulnerable population, many of whom do not speak English and are unfamiliar with

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[2]"[W]hen a non-Iowa licensed attorney commits misconduct that typically warrants a sanction directly affecting licensure, such as suspension or revocation, such sanctions are not feasible because there is no Iowa law license to suspend or revoke. Nevertheless, like our sister courts, we conclude our authority to discipline non-Iowa licensed attorneys includes the ability to fashion practice limitations through our injunctive and equitable powers that are equivalent to license suspension, disbarment, or other sanctions related to an attorney's license."

Carpenter, 781 N.W.2d at 269–70.

the American legal system." We agree these are mitigating factors here. *See Yang*, 821 N.W.2d at 431 (noting as mitigating factors the attorney's "substantial service to the immigrant community and his complete cooperation with the Board's investigation").

Several aggravating factors are also present. First, several officials from the Office of Professional Regulation met with Mendez when he was new to Iowa to explain our trust account requirements to him. Nevertheless, he proceeded to flout those requirements. The commission appropriately faulted Mendez for his "total lack of appreciation for the Iowa trust account rules and how they apply to his practice." Indeed, when asked at the end of the hearing if he had read the Iowa Rules of Professional Conduct, Mendez responded:

> I haven't actually sat down and read them. I've consulted with counsel. . . . It's no excuse, but perhaps sometimes, you know, you get bogged down in day-to-day serv[ing] your clients, your cases, personal life, you know those things. So I haven't sat down and really opened it up and read the different sections.

We find it remarkable that even by the late date of his disciplinary hearing, Mendez still had not yet read the Iowa rules he was charged with violating.

Second, the harm Mendez caused several clients is an aggravating factor. *See Clarity*, 838 N.W.2d at 660 (finding it significant an attorney's actions caused harm to clients, both in terms of cost and delay). The commission correctly discounted Mendez's argument that no clients were harmed by his conduct:

> First, [Guaillas] was harmed in some aspects because he was denied the opportunity for relief by Mendez's failure to file his appeal. Second, Barragan suffered serious harm as a result of a member of Mendez's firm missing his immigration hearing. Finally, we are also mindful that while Mendez's other clients may not be aware that they were harmed by his

> billing tactics, this does not mean that they received all of the services he billed them for.

We also note that Barragan suffered harm due to Mendez's failure to inform him that he needed to file a complaint against the firm in order to proceed with his motion to reopen.

Finally, at the hearing, Mendez blamed other attorneys for the client complaints against him. *See Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Herrera*, 560 N.W.2d 592, 595 (Iowa 1997) ("[W]e have a strong negative reaction to a lawyer's attempt to blame professional shortcomings on [another]."); *Comm. on Prof'l Ethics & Conduct v. Postma*, 430 N.W.2d 387, 389 (Iowa 1988) (noting that blaming others for failings is a "timeworn excuse" that is viewed with "unbounded skepticism, and never with admiration"). Mendez portrays himself as the victim of a confusing set of ethical rules imposed as a result of his voluntary purchase of a federal immigration practice located in Iowa and his service to clients residing in Iowa. We are unimpressed by his failure to take responsibility for his ethical breaches. As the commission accurately observed, "Mendez does not fully appreciate the seriousness of his transgressions or his obligations to follow the Iowa Rules of Professional Conduct when representing Iowa residents in any legal matter."

We also find Mendez's violation of our conflict-of-interest rules in the Barragan matter significant in light of his other violations. In *Yang*, we merely imposed a public reprimand as recommended by the commission for the same conduct—failing to advise the client of the option to retain new counsel to file a complaint alleging ineffective assistance of counsel as a ground to reopen the immigration hearing. 821 N.W.2d at 430–31. But, *Yang* involved an isolated violation, not the

array of violations committed by Mendez involving numerous clients. *See id.* at 429. Suspensions in other cases for conflict-of-interest violations in combination with other ethical breaches typically fall in the two-to-four-month range. *See Iowa Supreme Ct. Att'y Disciplinary Bd. v. Qualley*, 828 N.W.2d 282, 293–94 (Iowa 2013) (sixty-day suspension for attorney who, among other things, violated conflict of interest rules); *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Zenor*, 707 N.W.2d 176, 182, 187 (Iowa 2005) (imposing a four-month suspension when attorney represented opposing entities, among other violations); *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Howe*, 706 N.W.2d 360, 378, 382 (Iowa 2005) (same); *Wagner*, 599 N.W.2d at 723–24 (imposing a three-month suspension when attorney failed to inform the client of the attorney's financial interest in a transaction); *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Sikma*, 533 N.W.2d 532, 537–38 (Iowa 1995) (imposing a three-month suspension on attorney who engaged in undisclosed business transactions with a client). *But see Iowa Supreme Ct. Att'y Disciplinary Bd. v. Netti*, 797 N.W.2d 591, 600–02, 607 (Iowa 2011) (imposing a two-year suspension when attorney engaged in a conflict of interest with his client, among other violations).

Mendez has also flouted our trust account rules, which in combination with his other ethical breaches warrants a suspension. *See Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Kennedy*, 684 N.W.2d 256, 261 (Iowa 2004) (sixty-day suspension for neglect, trust account and accounting violations, and failure to cooperate, in light of mitigating factors); *Frerichs*, 671 N.W.2d at 477–78 (four-month suspension for neglect, an illegal fee accompanied by a trust account violation, failure to provide an accounting, and failure to cooperate); *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Kallsen*, 670 N.W.2d 161, 166–68 (Iowa 2003)

(three-month suspension for neglect, failure to make accounting, and failure to cooperate); *Iowa Supreme Ct. Bd. of Prof'l Ethics and Conduct v. Adams*, 623 N.W.2d 815, 818–19 (Iowa 2001) (three-month suspension for neglect, failure to deposit a fee into a trust account, failure to account for client property, and misrepresentation to the client in an effort to cover up the neglect).

Considering all these factors, and giving weight to the commission's recommendation, we determine that a sixty-day suspension is appropriate.

V. Disposition.

We order Mendez to cease and desist from all legal practice in Iowa indefinitely with no possibility that the order will be lifted for a period of sixty days. Mendez shall provide all notifications specified in Iowa Court Rule 35.23. In addition, costs are taxed to Mendez pursuant to Iowa Court Rule 35.27(1).

For purposes of having the cease-and-desist order lifted, as well as for all other purposes, Mendez shall be treated as though he has been suspended. *See* Iowa Ct. R. 35.13. This sanction shall be conveyed to the California state disciplinary authority, the Executive Office for Immigration Review, and other disciplinary authorities as appropriate for their consideration.

ATTORNEY ORDERED TO CEASE AND DESIST FROM THE PRACTICE OF LAW IN IOWA FOR SIXTY DAYS.

Source: **Legal > States Legal - U.S. > Iowa > Find Statutes, Regulations & Administrative Materials > IA - Iowa Local, State & Federal Court Rules**

TOC: Iowa Court Rules > CHAPTER 45 CLIENT TRUST ACCOUNT RULES > **RULE 45.7. ADVANCE FEE AND EXPENSE PAYMENTS.**

Iowa Ct. R. 45.7

IOWA COURT RULES

Current through the April 2014 Supplement

CHAPTER 45 CLIENT TRUST ACCOUNT RULES

Iowa Ct. R. 45.7 (2014)

Review Court Orders which may amend this rule.

RULE 45.7. ADVANCE FEE AND EXPENSE PAYMENTS.

45.7(1) *Definition of advance fee payments.* Advance fee payments are payments for contemplated services that are made to the lawyer prior to the lawyer's having earned the fee.

45.7(2) *Definition of advance expense payments.* Advance expense payments are payments for contemplated expenses in connection with the lawyer's services that are made to the lawyer prior to the incurrence of the expense.

45.7(3) *Deposit and withdrawal.* A lawyer must deposit advance fee and expense payments from a client into the trust account and may withdraw such payments only as the fee is earned or the expense is incurred.

45.7(4) *Notification upon withdrawal of fee or expense.* A lawyer accepting advance fee or expense payments must notify the client in writing of the time, amount, and purpose of any withdrawal of the fee or expense, together with a complete accounting. The attorney must transmit such notice no later than the date of the withdrawal.

45.7(5) *When refundable.* Notwithstanding any contrary agreement between the lawyer and client, advance fee and expense payments are refundable to the client if the fee is not earned or the expense is not incurred.

History:

[Court Order April 20, 2005, effective July 1, 2005]

Source: **Legal > States Legal - U.S. > Iowa > Find Statutes, Regulations & Administrative Materials > IA - Iowa Local, State & Federal Court Rules**

TOC: Iowa Court Rules > CHAPTER 45 CLIENT TRUST ACCOUNT RULES > **RULE 45.7. ADVANCE FEE AND EXPENSE PAYMENTS.**
View: Full
Date/Time: Tuesday, October 21, 2014 - 3:38 PM EDT

Source: **Legal > States Legal - U.S. > Iowa > Find Statutes, Regulations & Administrative Materials > IA - Iowa Local, State & Federal Court Rules**

TOC: Iowa Court Rules > CHAPTER 45 CLIENT TRUST ACCOUNT RULES > **RULE 45.10. FLAT FEE.**

Iowa Ct. R. 45.10

IOWA COURT RULES

Current through the April 2014 Supplement

CHAPTER 45 CLIENT TRUST ACCOUNT RULES

Iowa Ct. R. 45.10 (2014)

Review Court Orders which may amend this rule.

RULE 45.10. FLAT FEE.

45.10(1) *Definition.* A flat fee is one that embraces all services that a lawyer is to perform, whether the work be relatively simple or complex.

45.10(2) *When deposit required.* If the client makes an advance payment of a flat fee prior to performance of the services, the lawyer must deposit the fee into the trust account.

45.10(3) *Withdrawal of flat fee.* A lawyer and client may agree as to when, how, and in what proportion the lawyer may withdraw funds from an advance fee payment of a flat fee. The agreement, however, must reasonably protect the client's right to a refund of unearned fees if the lawyer fails to complete the services or the client discharges the lawyer. In no event may the lawyer withdraw unearned fees.

History:

[Court Order April 20, 2005, effective July 1, 2005]

Source: **Legal > States Legal - U.S. > Iowa > Find Statutes, Regulations & Administrative Materials > IA - Iowa Local, State & Federal Court Rules**

TOC: Iowa Court Rules > CHAPTER 45 CLIENT TRUST ACCOUNT RULES > **RULE 45.10. FLAT FEE.**

View: Full

Date/Time: Tuesday, October 21, 2014 - 3:42 PM EDT

Source: **Legal > States Legal - U.S. > Iowa > Find Statutes, Regulations & Administrative Materials > IA - Iowa Local, State & Federal Court Rules**
TOC: Iowa Court Rules > CHAPTER 45 CLIENT TRUST ACCOUNT RULES > **RULE 45.10. FLAT FEE.**

Iowa Ct. R. 45.10

IOWA COURT RULES

Current through the April 2014 Supplement

CHAPTER 45 CLIENT TRUST ACCOUNT RULES

Iowa Ct. R. 45.10 (2014)

Review Court Orders which may amend this rule.

RULE 45.10. FLAT FEE.

45.10(1) *Definition.* A flat fee is one that embraces all services that a lawyer is to perform, whether the work be relatively simple or complex.

45.10(2) *When deposit required.* If the client makes an advance payment of a flat fee prior to performance of the services, the lawyer must deposit the fee into the trust account.

45.10(3) *Withdrawal of flat fee.* A lawyer and client may agree as to when, how, and in what proportion the lawyer may withdraw funds from an advance fee payment of a flat fee. The agreement, however, must reasonably protect the client's right to a refund of unearned fees if the lawyer fails to complete the services or the client discharges the lawyer. In no event may the lawyer withdraw unearned fees.

History:

[Court Order April 20, 2005, effective July 1, 2005]

Source: **Legal > States Legal - U.S. > Iowa > Find Statutes, Regulations & Administrative Materials > IA - Iowa Local, State & Federal Court Rules**
TOC: Iowa Court Rules > CHAPTER 45 CLIENT TRUST ACCOUNT RULES > **RULE 45.10. FLAT FEE.**
View: Full
Date/Time: Tuesday, October 21, 2014 - 3:42 PM EDT

Iowa R. of Prof'l Conduct 32:1.3

IOWA COURT RULES

Current through the April 2014 Supplement

CHAPTER 32 IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R. of Prof'l Conduct 32:1.3 (2014)

Review Court Orders which may amend this rule.

RULE 32:1.3. DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. *See* rule 32:1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect. *See* Iowa Ct. R. ch. 33.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in rule 32:1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to

a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. *See* rule 32:1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client or other applicable law. *See* rule 32:1.2. *See, e.g.,* Iowa R. Crim. P. 2.29(6); Iowa Rs. App. P. 6.102(1)(*b*) and 6.201, 6.109(4) and 6.109(5).

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. *See* Iowa Ct. R. 35.17(6) and 35.18 (where reasonable necessity exists, the local chief judge shall appoint a lawyer to serve as trustee to inventory files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons of a deceased, suspended, or disabled lawyer).

History:

[Court Order April 20, 2005, effective July 1, 2005; February 20, 2012]

Iowa R. of Prof'l Conduct 32:1.15

IOWA COURT RULES

CHAPTER 32 IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R. of Prof'l Conduct 32:1.15 (2014)

Review Court Orders which may amend this rule.

RULE 32:1.15. SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not

in dispute.

(f) All client trust accounts shall be governed by chapter 45 of the Iowa Court Rules.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. *See,* Iowa Ct. R. ch 45.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party; but when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.

[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Such a fund has been established in Iowa, and lawyer participation is mandatory to the extent required by chapter 39 of the Iowa Court Rules.

History:

[Court Order April 20, 2005, effective July 1, 2005]

Iowa R. of Prof'l Conduct 32:1.4

IOWA COURT RULES

Current through the April 2014 Supplement

CHAPTER 32 IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R. of Prof'l Conduct 32:1.4 (2014)

Review Court Orders which may amend this rule.

RULE 32:1.4. COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in rule 32:1.0(e), is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Iowa Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these rules require that a particular decision about the representation be made by the

client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See* rule 32:1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. The lawyer should also discuss relevant provisions of the Standards for Professional Conduct and indicate the lawyer's intent to follow those Standards whenever possible. *See* Iowa Ct. R. ch. 33. In some situations-depending on both the importance of the action under consideration and the feasibility of consulting with the client-this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in rule 32:1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. *See* rule 32:1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. *See* rule 32:1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information

Iowa R. of Prof'l Conduct 32:1.16

IOWA COURT RULES

Current through the April 2014 Supplement

CHAPTER 32 IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R. of Prof'l Conduct 32:1.16 (2014)

Review Court Orders which may amend this rule.

RULE 32:1.16. DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Iowa Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the

lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by law.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. *See* rules 32:1.2(c) and 32:6.5. *See also* rule 32:1.3, comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Iowa Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. *See also* rule 32:6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under rules 32:1.6 and 32:3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to

Iowa R. of Prof'l Conduct 32:1.7

IOWA COURT RULES

CHAPTER 32 IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R. of Prof'l Conduct 32:1.7 (2014)

Review Court Orders which may amend this rule.

RULE 32:1.7. CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

(c) In no event shall a lawyer represent both parties in dissolution of marriage proceedings.

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. For specific rules regarding certain concurrent conflicts of interest, see rule 32:1.8. For former client conflicts of interest, see rule 32:1.9. For conflicts of interest involving prospective clients, see rule 32:1.18. For definitions of "informed consent" and "confirmed in writing," see rule 32:1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. *See also* comment to rule 32:5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see comment to rule 32:1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). *See* rule 32:1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. *See* rule 32:1.9. *See also* comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. *See* rule 32:1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. *See* rule 32:1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will

Iowa R. of Prof'l Conduct 32:1.5

IOWA COURT RULES

Current through the April 2014 Supplement

CHAPTER 32 IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R. of Prof'l Conduct 32:1.5 (2014)

Review Court Orders which may amend this rule.

RULE 32:1.5. FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses, or violate any restrictions imposed by law. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation,

except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

Comment

Reasonableness and Legality of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer. A fee that is otherwise reasonable may be subject to legal limitations, of which the lawyer should be aware. For example, a lawyer must comply with restrictions imposed by statute or court rule on the timing and amount of fees in probate.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at

Iowa R. of Prof'l Conduct 32:1.6

IOWA COURT RULES

CHAPTER 32 IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R. of Prof'l Conduct 32:1.6 (2014)

Review Court Orders which may amend this rule.

RULE 32:1.6. CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent imminent death or substantial bodily harm.

Comment

[1] This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See rule 32:1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, rule 32:1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules 32:1.8(b) and 32:1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See rule 32:1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Iowa Rules of Professional Conduct or other law. *See also* Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Permissive Disclosure Adverse to Client

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **14-O-04026; 14-O-04815; 14-O-05386; 14-O-05959; 14-O-06202; 14-J-05673**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

SUPPLEMENT TO NOTICE OF DISCIPLINARY CHARGES

☐ **By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

☒ **By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County
- of Los Angeles.

☐ **By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

☐ **By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐ **By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ *(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

☒ *(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: 9414 7266 9904 2010 0880 97 at Los Angeles, addressed to: *(see below)*

☐ *(for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: _____ addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
PAUL JEAN VIRGO	9909 Topanga Blvd #282 Chatsworth CA 91311	Electronic Address	

☐ **via inter-office mail regularly processed and maintained by the State Bar of California addressed to:**

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: June 24, 2015

SIGNED: Genelle De Luca-Suarez
Genelle De Luca-Suarez
Declarant