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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Michael J. Glass Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1254 Bar # 102700	Case Number(s): 11-J-12149	For Court use only FILED SEP 21 2011 <i>KJC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES PUBLIC MATTER
In Pro Per Respondent Jean M. Curtis 202 N. Meridian Road, Lot 88 Apache Junction, AZ 85120 (480) 258-2950 Bar # 124211	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: JEAN MARIE CURTIS Bar # 124211 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 11, 1986.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 14 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: February 1 in three billing cycles following the effective date of discipline. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case Iowa Supreme Court Board of Professional Ethics and Conduct Case Nos. 0102-262; 0203-15 (Iowa Supreme Court CaseNo. 04-0325).
 - (b) Date prior discipline effective April 2, 2004.
 - (c) Rules of Professional Conduct/ State Bar Act violations: DR 5-105(A)(Representation of Adverse Interests) and (B), DR 2-106(A)(Illegal Fee), and DR 7-104(A)(1)(Communication with Adverse Party Represented By Counsel) of the Iowa Code of Professional Responsibility for Lawyers.
 - (d) Degree of prior discipline Public Reprimand
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. Respondent engaged in multiple acts of misconduct as described in Attachment Pages 8 and 9.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities. See Attachment Page 10.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

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- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

From April 25, 2009, to April 24, 2010, Respondent served as a full time Volunteer in Service to America ("VISTA") under the Domestic Volunteer Service Act, in Tucson, Arizona. In this regard, Respondent served as a volunteer coordinator for a program in which released prisoners received aid and guidance in re-entering society in Tucson, Arizona. Respondent wrote the policy manual and also assisted released prisoners as part of this program.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of two (2) years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.

- (2) **Probation:**

Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of ninety (90) days.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

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- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
 No Ethics School recommended. Reason: As Respondent resides in Arizona, in lieu of State Bar Ethics School, within one (1) year of the effective date of discipline, Respondent must provide the Office of Probation with satisfactory proof of completion of six (6) hours of MCLE Courses in General Legal Ethics.
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
 Substance Abuse Conditions Law Office Management Conditions

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Medical Conditions

Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:	JEAN MARIE CURTIS
CASE NUMBER(S):	11-J-12149

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 11-J-12149 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. On or about May 23, 2008, in the matter of *Iowa Supreme Court Attorney Disciplinary Board vs. Jean M. Curtis*, Iowa Supreme Court Case No. 60/07-2059, the Iowa Supreme Court issued its Decision in which Respondent Jean M. Curtis's ("Respondent") license to practice law in Iowa was suspended indefinitely with no possibility of reinstatement for one year.

FACTS:

2. On June 26, 2007, the Iowa Supreme Court Board of Professional Ethics and Conduct ("The Board") filed a five count Complaint against Respondent with the Iowa Supreme Court Grievance Commission ("The Commission") alleging that Respondent committed various violations of the Iowa Code of Professional Responsibility for Lawyers and the Iowa Rules of Professional Conduct.¹

3. In Count 1 of the Complaint, the Board alleged that Respondent misapplied a client fee. In this regard, Respondent represented Jeffrey Reinhardt ("Reinhardt") in a domestic relations matter. At some point Reinhardt asked Curtis whether she could represent him in his Chapter 7 Bankruptcy Proceeding. In April 2004, Reinhardt issued Respondent a check for \$209, which the Board alleged was earmarked for the bankruptcy petition. Respondent produced a letter which stated that Respondent could not represent Reinhardt in the bankruptcy matter and that Respondent was going to apply the \$209 to Respondent's outstanding bill in the domestic relations matter. The Commission found that the Board had not sustained its burden of proving culpability by a convincing preponderance of the evidence. In the Decision, the Iowa Supreme Court agreed with the Commission's findings and Respondent was found not culpable on Count 1.

¹ The Iowa Rules of Professional Conduct became effective July 1, 2005, replacing the Iowa Code of Professional Responsibility for Lawyers. The Iowa Rules of Professional Conduct govern all conduct occurring after its effective date.

4. In Count 2 of the Complaint, the Board alleged that Respondent disclosed confidential information about a client. Respondent represented the father of children who had been removed from the father's home by the state. The Board alleged that Respondent told a representative of the Department of Human Services ("DHS") that Respondent was going to call witnesses to testify negatively about her client in court. The Board also alleged that Respondent told a DHS representative that her client was drunk many times when Respondent called and that DHS should have the client submit to urine tests. Respondent denied these allegations and presented evidence showing personal animus between Respondent and DHS representatives. The Commission found that the Board had not sustained its burden of proof by a convincing preponderance of the evidence. The Iowa Supreme Court agreed and Respondent was found not culpable on Count 2.

5. In Count 3 of the Complaint, the Board alleged that Respondent did not act with reasonable diligence and promptness when representing a client in an appeal. Respondent was appointed to represent a client on an appeal in a post-conviction relief action on July 20, 2005. Between August 19, 2005, and June 12, 2007, Respondent received various notices from the clerk of the Supreme Court dismissing the appeal due to Respondent's failure to timely comply with various procedural rules such as failing to file and serve a combined certificate, failure to pay or request a waiver of the docketing fee, failure to file and serve appellant's proof brief, failure to file and serve the deferred appendix. Upon receipt of the notice of from the clerk dismissing the appeal, Respondent would invariably file a motion to reinstate the appeal which would be granted by the court. The Board alleged that Respondent's conduct violated various rules of the Iowa Rules of Professional Conduct. The Commission found that the Board failed to sustain its burden of proof on Count 3. The Iowa Supreme Court disagreed with the Commission and found that Respondent violated Iowa Rules of Professional Conduct 32:1.1 (failing to provide competent representation), 32:1.3 (failing to act with reasonable diligence and promptness), 32:3.2 (failing to make reasonable efforts to expedite litigation consistent with the interests of her client), and 32:8.4(d) (engaging in conduct prejudicial to the administration of justice).

6. In Count 4 of the Complaint, the Board alleged that Respondent did not provide competent representation in an estate matter and failed to deposit an unearned fee into her trust account. Respondent acted as the attorney for the Estate of David J. Wilson. Respondent opened the estate on October 8, 2003. On June 2, 2005, Respondent filed an unsigned inventory. On July 26, 2005, Respondent filed an inventory signed only by Respondent. Based on the later inventory, Respondent filed an application for her fees and for those of the executor. The executor was the sole beneficiary of the estate and questioned Respondent as to why Respondent needed a fee. Respondent told the executor that Respondent would only take half the attorney fee and deposit the remainder in her trust account. The court approved fee of \$11,841.51 for Respondent and a fee of \$11,841.51 for the executor. Respondent did not deposit the fee in her trust account and took the entire fee. In the spring of 2006 Respondent was not returning the executor's phone calls. The executor then sent a letter to Respondent terminating Respondent's employment, informing Respondent that another attorney would handle the estate from that point forward, and instructing Respondent to forward the estate file and all fees to the new attorney. The attorney who took over the file discovered that the estate was quite simple to probate. Respondent also sent a letter to the new attorney advising that Respondent did not have the \$11,841.51 due the estate in Respondent's trust account. Respondent eventually refunded the fees to the estate with checks which were not drawn on Respondent's trust account. The new attorney also discovered that the inventory filed by Respondent had improper valuation of assets and that Respondent never filed tax returns for the estate. The Iowa Supreme Court found that the manner in which Respondent probated the

estate prior to July 1, 2005, violated the Iowa Code of Professional Responsibility for Lawyers, specifically DR 1-102(A)(5) (engaging in conduct that is prejudicial to the administration of justice), DR 6-101(A)(1) (handling a legal matter which the lawyer knows or should know the lawyer is not competent to handle without associating in a lawyer who is competent to handle the matter), and DR 6-101(A)(3) (neglecting a client's matter). Additionally, Respondent's conduct after July 1, 2005, violated Iowa Rules of Professional Conduct, specifically, rules 32:1.1 (failing to provide competent legal representation to a client), 32:1.3 (failing to act with reasonable diligence and promptness in representing a client), 32:1.4(a)(3) (failing to keep a client reasonable informed about the status of a legal matter), 32:1.4(a)(4) (failing to promptly comply with reasonable requests for information), and 32.8.4(d) (engaging in conduct that is prejudicial to the administration of justice). Further, Respondent conduct regarding her fee occurred after July 1, 2005, and violated rule 32:8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), rule 32:1.15(c) (requiring an attorney to deposit unearned fees in trust account). Further still, Respondent's conduct also violated rule 32:8.4(d) (conduct prejudicial to the administration of justice).

7. In Count 5 of the Complaint, the Board alleged that Respondent failed to file a proper objection in a bankruptcy proceeding and misrepresented the status of the matter to the client. Respondent represented Shelley LeGrand ("LeGrand") with respect to LeGrand and LeGrand's daughter's claim against Kevin Harbaugh ("Harbaugh"). On December 19, 2002, Harbaugh filed for bankruptcy. On December 20, 2002, LeGrand and LeGrand's daughter obtained a \$25,000 judgment against Harbaugh for an intentional tort. The bankruptcy attorney for Harbaugh listed LeGrand, in care of Respondent, as a creditor and the court sent Respondent notice of the bankruptcy. Respondent denied she received the notice of the bankruptcy when it was filed, but obtained it sometime after Respondent contacted the bankruptcy attorney's office on April 1, 2003. Objections to the discharge of bankruptcy were due on April 11, 2003. Respondent prepared an objection to the discharge of the debt on grounds that it was an intentional tort. Instead of filing an original of the objection with the clerk, Respondent faxed the objection to the clerk's office. That same day the clerk advised Respondent that the rules did not allow Respondent to fax a pleading. The clerk told Respondent she could either get permission of the court to file via fax or arrange to have a hard copy delivered that same day. Respondent did neither. Respondent claimed she did not get the clerk's message until after the bankruptcy office closed because the Respondent was in a mediation or in court all day. Respondent subsequently filed a request for an extension of time to file an objection which was denied. Respondent also filed an appeal to the Eighth Circuit Court of Appeal which was denied. The appeals court left open the option for Respondent to file a complaint objecting to the discharge based on her claim that she did not receive proper notice of the bankruptcy proceedings. Respondent told LeGrand Respondent had filed such a complaint when she had not. The Iowa Supreme Court found that Respondent violated DR 6-101(A)(2) (handling a legal matter without preparation adequate in the circumstances), DR 6-101(A)(3) (neglecting a client's matter), DR 1-102(A)(5) (engaging in conduct that is prejudicial to the administration of justice), and DR 1-102(A)(6) (engaging in other conduct that adversely reflects on the fitness to practice law). Additionally, Respondent's conduct violated DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), DR 1-102(A)(5) (engaging in conduct that his prejudicial to the administration of justice), DR 1-102(A)(6) (engaging in other conduct which adversely reflects on the fitness to practice law), DR 7-101(A)(2) (intentionally failing to carry out a contract of employment), and DR 7-101(A)(3) (intentionally prejudicing or damaging a client during the course of the professional relationship).

8. In aggravation, the Iowa Supreme Court found that Respondent had a prior record of discipline consisting of a public reprimand in 2004. Respondent was admitted to practice law in Iowa in 2000. Additionally, in aggravation, Respondent was found to have engaged in multiple acts of misconduct.

9. In mitigation, the Iowa Supreme Court found that Respondent blamed some of her misconduct on depression, for which Respondent had undergone treatment and treated with medication. Additionally, Respondent blamed some of her misconduct on attention deficit disorder which she also treated with medication.

10. A true and correct copy of the Decision, filed May 23, 2008, by the Iowa Supreme Court, in the matter of *Iowa Supreme Court Attorney Disciplinary Board vs. Jean M. Curtis*, Iowa Supreme Court Case No. 60/07-2059 is attached hereto as Exhibit 1.

11. True and correct copies of the Iowa Code of Professional Responsibility rules found to have been violated by Respondent are attached hereto as Exhibit 2 and incorporated by reference.

12. True and correct copies of the Iowa Rules of Professional Conduct found to have been violated by Respondent are attached hereto as Exhibit 3 and incorporated by reference.

CONCLUSIONS OF LAW:

13. The disciplinary proceeding in the other jurisdiction provided Respondent with fundamental constitutional protection.

14. Respondent's conduct in the other jurisdiction as set forth above would warrant the imposition of discipline in California as violation(s) of the following: rules 3-110(A) and 4-100(A) of the California Rules of Professional Conduct, and California Business and Professions Code section 6068(m) and 6106.

15. By failing to timely file and serve the combined certificate, pay or request a waiver of the docketing fee, file and serve appellant's proof brief, and file and serve the deferred appendix in the prosecution of the appeal in the post-conviction relief action, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of California Rules of Professional Conduct, rule 3-110(A).

16. By failing to file a proper inventory and file estate tax returns for the Estate of David J. Wilson, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of California Rules of Professional Conduct, rule 3-110(A).

17. By failing to return the executor's phone calls or otherwise keep the executor informed of significant events with regard to the probate of the Estate of David J. Wilson, Respondent willfully failed to promptly respond to reasonable status inquiries of the client and keep the client reasonably informed of significant developments in a matter with regard to which Respondent had agreed to provide legal services in willful violation of California Business and Professions Code section 6068(m).

18. By failing to maintain and deposit the executor's fee of \$11,841.51 in an identifiable account labeled "Trust Account," "Client Funds Account," or words of similar import, in the matter of the Estate of David J. Wilson, Respondent intentionally failed to maintain and deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client Funds Account," or words of similar import in willfull violation of California Rules of Professional Conduct, rule 4-100(A).

19. By failing to properly file an objection to the discharge of the debt, on behalf of LeGrand and LeGrand's daughter, in the bankruptcy of Harbaugh, and by failing to properly file a complaint objecting to the discharge of the debt, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of California Rules of Professional Conduct, rule 3-110(A).

20. By informing LeGrand that Respondent had filed a complaint objecting to the discharge of the debt in the bankruptcy of Harbaugh when Respondent knew that Respondent had not filed a complaint objecting to the discharge of the debt in the bankruptcy of Harbaugh, Respondent committed an act involving moral turpitude, dishonesty, or corruption, in violation of California Business and Professions Code section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was August 25, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.2(b) provides, that "Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances."

Standard 2.3 provides that, "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act or misconduct and the degree to which it relates to the member's acts within the practice of law."

Standard 2.4(b) provides that, "Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client."

In *King v. State Bar* (1990) 52 Cal. 3d 507, in two separate matters, Respondent failed to perform services over many years, failed to communicate with the clients, made misrepresentations to one client and failed to promptly return files to the clients despite numerous requests that he do so. The court

imposed discipline consisting of a four year stayed suspension, four years probation with conditions, including a three month actual suspension. In mitigation, Respondent had no prior record of discipline over 24 years of practice, suffered from depression due to his divorce during the period of misconduct, and experienced financial difficulties. In aggravation, one of Respondent's clients suffered a serious financial loss as a result of Respondent's failure to perform. Although Respondent allowed an \$84,000 default judgment to be entered by the client against him, Respondent made no effort to make any payment on the judgment and had a callous attitude toward the need for restitution. The other client suffered emotional distress caused by Respondent's delay.

In *Innis v. State Bar* (1978) 20 Cal. 3d 552, Respondent stipulated to seven separate instances of misconduct consisting of failing to render or finish legal services after receiving the retainer, failing to respond to client inquiries, failing to deposit client funds in a trust account, misrepresentations regarding refund of legal fees, withholding legal fees from client funds without prior agreement, and showing disrespect to a court. The court imposed discipline consisting of a three year stayed suspension, three years probation with conditions, including a four month actual suspension. In aggravation, Respondent had received a prior public reproof for similar matters. However, the court noted that the misconduct in that matter occurred after the misconduct in the present matter. In mitigation, Respondent showed his good faith, the chaos of his practice, and his impecuniousness. Further, he had taken steps to correct the conditions which led to the misconduct. In addition, Respondent was cooperative with the State Bar and displayed candor by stipulating to the facts and admitting his transgressions.

In *Gallagher v. State Bar* (1981) 28 Cal. 3d 832, in a dissolution matter, Respondent failed to perform and failed to communicate. In a real estate matter, Respondent sold an interest in real property without disclosing his interest in the property or the fact that there were several outstanding liens clouding title. The court imposed discipline consisting of a one year stayed suspension, three years probation with conditions, including a 3 month actual suspension.

In the instant case, based on the facts, aggravating and mitigating circumstances, standards, and case law cited above, discipline consisting of a two year stayed suspension, two years probation with conditions, including a 90 day actual suspension, is appropriate.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 25, 2011, the prosecution costs in this matter are \$2,287.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

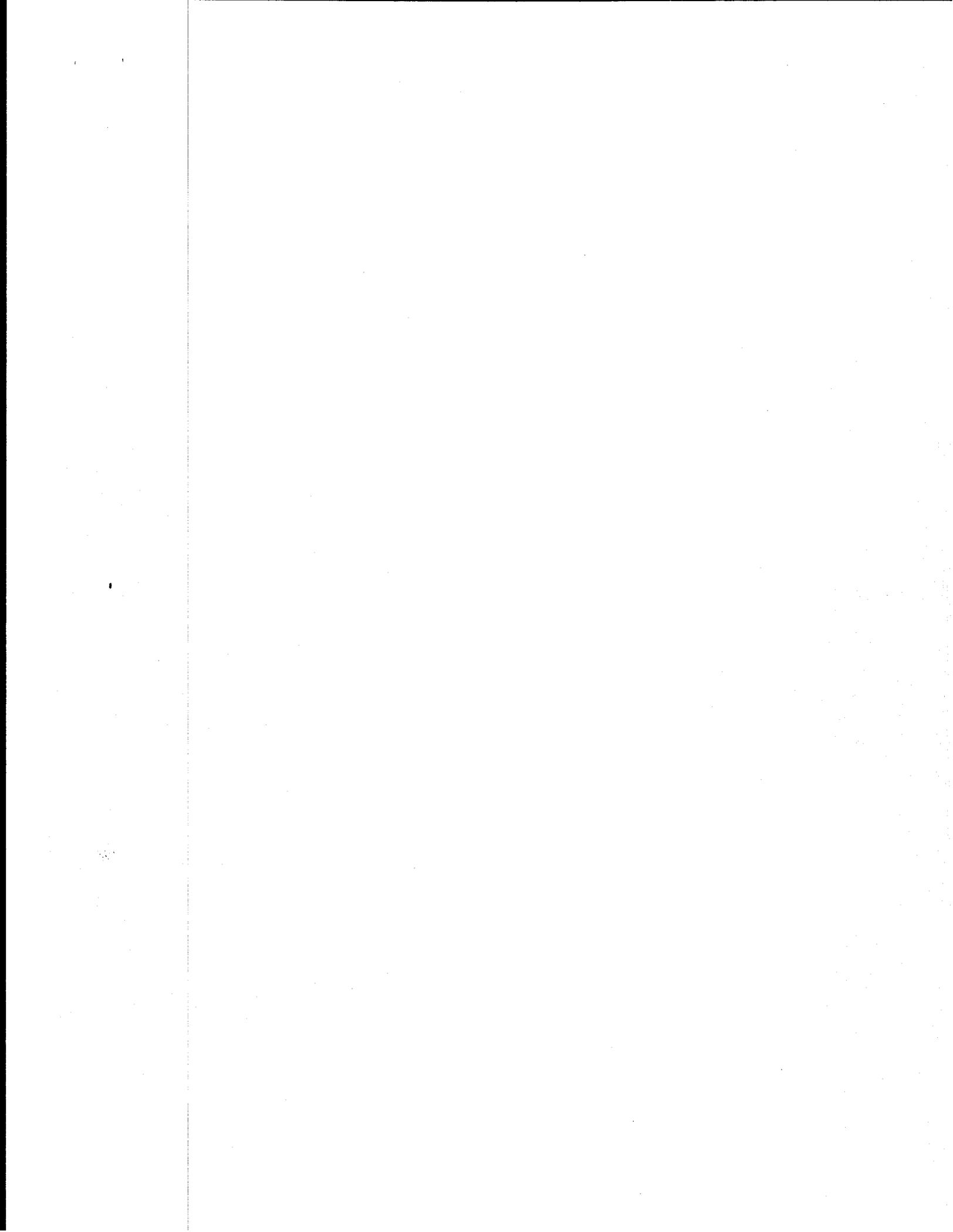
MITIGATING CIRCUMSTANCES

FACTS SUPPORTING MITIGATING CIRCUMSTANCES

Under standard 1.2(e)(iv) at the time of the misconduct, Respondent suffered from Depression. In this regard, on July 3, 2003, Respondent was seen for an initial appointment by D. Elaine Nicola of Northeast Iowa Behavioral Health, Inc. Respondent's symptoms included withdrawing, difficulty focusing, being more emotional, feeling hopeless, sad, and a feeling of emptiness. Respondent was diagnosed with Depressive Disorder NOS. Respondent began to take medication to assist in symptom management. There was no evidence of delusional thinking, obsessive rituals or suicidal ideation. Events contributing to the emotional concerns included an employee embezzling money, recent relocation to Iowa, the stress of starting a law practice, adjusting to rural life in Iowa, and issues from her childhood.

During the course of her treatment, Respondent worked closely with this therapist and the psychiatrist to monitor medication and develop a treatment plan. Her plan included medication compliance and follow through, individual therapy with a focus on relaxation, CBT, and therapy concerning past trauma.

Respondent was last seen on October 20, 2008. Her symptoms were managed and she was excited about moving to Arizona. She felt in control of her life and reported feeling positive about a new chapter in her life starting. Her depression was under control and she was able to go about all her normal activities which included planning the move and transitioning out of all her personal and professional responsibilities in Iowa.



IN THE SUPREME COURT OF IOWA

No. 60 / 07-2059

Filed May 23, 2008

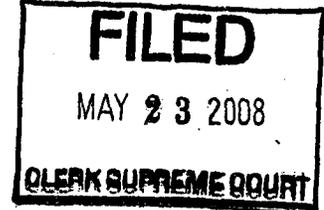
IOWA SUPREME COURT ATTORNEY
DISCIPLINARY BOARD,

Complainant,

vs.

JEAN M. CURTIS,

Respondent.



On review from the Grievance Commission.

The Iowa Supreme Court Grievance Commission recommends a one-year suspension of respondent's license to practice law in this state.

LICENSE SUSPENDED.

Charles L. Harrington and David J. Grace, Des Moines, for complainant.

Jean M. Curtis, Guttenberg, respondent, pro se.

I hereby certify that the foregoing is a full, true and complete copy of the opinion made by said Court in the above entitled cause, as full, true and complete as the same remains on file and record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Des Moines, this 28th day of April A.D. 2011

By [Signature] CLERK

WIGGINS, Justice.

The Iowa Supreme Court Attorney Disciplinary Board filed a complaint against Jean Curtis with the Grievance Commission of the Iowa Supreme Court alleging Curtis committed various violations of the Iowa Code of Professional Responsibility for Lawyers and the Iowa Rules of Professional Conduct.¹ The Commission found Curtis's conduct violated numerous provisions of the Iowa Code of Professional Responsibility for Lawyers and the Iowa Rules of Professional Conduct. The Commission recommended we suspend Curtis's license to practice law indefinitely with no possibility of reinstatement for a period of one year.

Because we find Curtis's conduct violated numerous provisions of the Iowa Code of Professional Responsibility for Lawyers and the Iowa Rules of Professional Conduct, we suspend Curtis's license to practice law indefinitely with no possibility of reinstatement for a period of one year.

I. Prior Proceedings.

In February 2000 we admitted Curtis to practice law in Iowa by motion. She practices law in Guttenberg. She has one prior disciplinary action. In February 2004 we publicly reprimanded Curtis for her failure to recognize the inherent conflict in attempting to represent both parties in matters relating to a marriage dissolution and for communicating with a party who was represented by counsel when she did not have permission to speak directly to the represented party.

¹The Iowa Rules of Professional Conduct became effective July 1, 2005, replacing the Iowa Code of Professional Responsibility for Lawyers. The Iowa Rules of Professional Conduct govern all conduct occurring after its effective date.

On June 26, 2007, the Board filed a five-count complaint with the Commission alleging numerous violations of the Iowa Code of Professional Responsibility for Lawyers and the Iowa Rules of Professional Conduct. Count I alleged Curtis misapplied a client's fee. Count II alleged Curtis disclosed confidential information about a client. Count III alleged Curtis did not act with reasonable diligence and promptness when representing a client. Count IV alleged Curtis did not provide competent representation in an estate matter and failed to deposit an unearned fee into her trust account. Count V alleged Curtis failed to file a proper objection in a bankruptcy proceeding and then misrepresented the status of the matter to a client.

The Commission found the Board failed to prove the allegations contained in counts I, II, and III, but that the Board proved the violations alleged in counts IV and V. The Commission also found Curtis suffers from depression and attention deficit disorder. Both conditions are being treated with medication.

Based on her prior disciplinary action and her medical condition the Commission recommended: (1) Curtis's license to practice law in the state of Iowa be suspended indefinitely with no possibility of reinstatement for one year; (2) as a condition of reinstatement, Curtis present evidence from her treating healthcare provider that she is not suffering from any illness that would interfere with her ability to be attentive to her clients' legal needs and to competently handle the matters entrusted to her; (3) as a condition of reinstatement, Curtis be required to pass the Iowa Bar Exam; and (4) as a condition of reinstatement, Curtis be barred from practicing in probate or bankruptcy matters unless and until she associates with a practitioner having experience in those areas.

II. Scope of Review.

Our review of a report filed by the Commission is de novo. See Iowa Ct. R. 35.10(1). "Under this standard of review, we give weight to the factual findings of the Commission, especially with respect to witness credibility, but we find the facts anew." *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Beckman*, 674 N.W.2d 129, 131 (Iowa 2004). Although we consider the discipline recommended by the Commission, we have the final decision regarding the appropriate sanction. *Id.* Therefore, the court can impose a greater or lesser sanction than what the Commission recommends.

The Board bears the burden of proving misconduct by a convincing preponderance of the evidence. *Id.* "This burden of proof is greater than that in a civil case but less than that in a criminal case." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Zenor*, 707 N.W.2d 176, 178 (Iowa 2005) (citation omitted).

III. Analysis.

On our de novo review of the record, we find the following as to each count.

A. Count I. Curtis represented Jeffrey Reinhardt in domestic relations matters. At some point during the representation, Reinhardt asked Curtis whether she could represent him in his Chapter 7 bankruptcy proceedings. Then, in April 2004 Reinhardt issued Curtis a check for \$209. The Board claimed this money was earmarked for filing Reinhardt's bankruptcy petition. Curtis produced a letter she wrote to Reinhardt in which she stated she could not represent him in his bankruptcy proceeding and that she was going to apply the \$209 check to his outstanding bill on the domestic relations matters. Reinhardt did

not testify. The Board claimed Curtis committed numerous ethical violations by not earmarking these funds for a bankruptcy proceeding.

The Commission determined the evidence presented by the Board did not meet its burden to prove by a convincing preponderance of the evidence that the check was earmarked for a bankruptcy proceeding. Factually, Curtis's letter refutes this allegation. Accordingly we agree with the Commission's findings on count I and find the Board has failed to prove its allegations of misconduct.

B. Count II. Curtis represented the father of children who had been removed from the father's home by the state. The Board alleged Curtis told a department of human services (DHS) representative that the next time they went to court Curtis was going to put witnesses on the stand to testify negatively about her client. The Board also alleged Curtis told a DHS representative that her client was drunk many times when Curtis called, and she felt DHS should have her client submit to urine tests. If the Board's allegations are true, Curtis may have violated the confidences of her client. Curtis not only denied these allegations, but presented evidence showing personal animus between herself and DHS representatives.

The Commission determined the evidence presented by the Board did not meet its burden to prove by a convincing preponderance of the evidence that the conversations as alleged took place. We agree. Accordingly, we find the Board has failed to prove its allegations of misconduct as alleged in count II.

C. Count III. Curtis was appointed to represent a client on an appeal in a postconviction relief action on July 20, 2005. On August 19 she received a delinquency notice from the clerk of the supreme court for failing to file and serve a combined certificate. On November 21 she

received another delinquency notice from the clerk for failing to pay or request a waiver of the docketing fee. On December 20 she received a notice from the court that unless a docket fee was paid or waived within eighteen days after service of the notice, the appeal would be dismissed. The clerk eventually dismissed the appeal.

On January 9, 2006, Curtis filed an application to reinstate the appeal. On February 2 we reinstated the appeal. On May 15 the clerk issued another notice of default for failure to file and serve the appellant's proof brief. Curtis requested additional time to file the brief, which we granted.

On September 8 the clerk issued another default notice for Curtis's failure to file and serve the appellant's proof brief. On October 6 the clerk dismissed the appeal due to Curtis's failure to file the proof brief. Curtis filed a motion to enlarge time for filing the proof brief. On December 11 we treated her motion as a motion to reinstate the appeal and reinstated the appeal.

On March 16, 2007, the clerk issued another notice of default for Curtis's failure to file and serve the deferred appendix. Curtis eventually filed the appendix. The State moved to strike the appendix. On June 12 we entered an order striking the appendix and requiring Curtis to file an amended appendix along with eighteen copies of an amended brief.

The Board alleged Curtis's conduct in handling the appeal violated various rules of the Iowa Rules of Professional Conduct. The Commission found the evidence presented by the Board was insufficient to carry the Board's complaint because all the required filings are current and the matter is yet pending. We disagree.

The result obtained by an attorney for a client is not a defense to a violation of an ethical rule. An attorney's failure to meet appellate

deadlines constitutes a violation of rules 32:1.1 (failing to provide competent legal representation to a client), 32:1.3 (failing to act with reasonable diligence and promptness in representing a client), and 32:8.4(d) (engaging in conduct that is prejudicial to the administration of justice). *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Tompkins*, 733 N.W.2d 661, 668-69 (Iowa 2007). Additionally, rule 32:3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client.

Curtis's conduct in this appeal was deplorable. Instead of meeting the deadlines required by our court rules, she used the clerk's office as her private tickler system. We have previously stated, using the clerk's office as a private tickler system violates rules DR 6-101(A)(3) (a lawyer shall not neglect a client's legal matter), DR 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice), and DR 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on the fitness to practice law) of the Iowa Code of Professional Responsibility for Lawyers. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Moonen*, 706 N.W.2d 391, 399 (Iowa 2005). Under the Iowa Rules of Professional Conduct, this very same conduct violates rules 32:1.1 (failing to provide competent representation), 32:1.3 (failing to act with reasonable diligence and promptness), 32:3.2 (failing to make reasonable efforts to expedite litigation consistent with the interests of her client), and 32:8.4(d) (engaging in conduct that is prejudicial to the administration of justice).

D. Count IV. Curtis acted as the attorney for the Estate of David J. Wilson. She opened the estate on October 8, 2003. On June 2, 2005, Curtis filed an unsigned inventory. On July 26 she filed an inventory signed only by her. Based on the later inventory, Curtis filed an

application for her fees and for those of the executor. The executor was the sole beneficiary of the estate and questioned Curtis as to why she needed to take a fee. Curtis did not give a reason. Curtis told the executor she would only take half the attorney fee and deposit the rest in her trust account. The court approved a fee of \$11,841.51 for Curtis and a fee of \$11,841.51 for the executor. Curtis did not deposit the fee in her trust account and took the entire fee.

In spring 2006 Curtis was not returning the executor's phone calls. The executor became concerned that Curtis was not handling the estate properly. The executor contacted another attorney to take over the legal matters of the estate. The executor sent a letter to Curtis that terminated her employment as the estate's attorney and informed Curtis another attorney would handle the estate from that point forward. The executor instructed Curtis to forward the estate file and all fees to the new attorney.

The attorney who took over the estate reviewed the file and discovered the estate was relatively simple to probate. Curtis did not send the fees with the file. The new attorney sent Curtis several letters trying to ascertain where the funds were located. After several unanswered letters, Curtis met with the new attorney and offered the explanation that her office secretary had embezzled money from her trust account so Curtis did not put the fees in that account because the secretary had access to that account. Instead, Curtis explained, she put the fees in a savings account. After more requests by the new attorney for the money, Curtis responded by letter stating:

The money is no longer in the account. I'm in the process of tracking the money. From the time I became aware of the totality of the money taken from the business, the Firm's accounts were transferred to John McGrand and then back

to my office. We are still in the process of investigating this matter. I do not have \$11,841.51 and I am seeking a loan to repay the estate.

Curtis eventually refunded the fees; however, the checks she issued to the new attorney were not drawn from a trust account. Curtis admitted she did not promptly refund the fees as ordered by the court. An audit of her trust account by a client security auditor for this court did not produce any evidence that money had been taken from Curtis's trust account through embezzlement.

Further problems with Curtis's handling of the estate were revealed when the new attorney began to work on the estate file. The inventory filed by Curtis had improper valuations of the assets, causing the court to award excessive fees. Additionally, the inheritance tax return was not filed as of spring 2006, when it should have been filed in July 2004. Curtis never filed tax returns for the estate.

To remedy the problems created by Curtis, the new attorney obtained an order from the court rescinding the prior court order allowing attorney and executor fees. This action was important because if the executor waived her fee and took as a beneficiary, the amount she would receive would not be subject to personal income tax. After obtaining the order rescinding the prior court order allowing fees, the new attorney had to probate the estate as if nothing was done on the estate.

The Board confronted Curtis with these deficiencies in probating the estate at the hearing. Curtis acknowledged she knew little about probating an estate and even less about taxes.

The manner in which Curtis probated the estate prior to July 1, 2005, violated the Iowa Code of Professional Responsibility for Lawyers, specifically, DR 1-102(A)(5) (engaging in conduct that is prejudicial to the

administration of justice), DR 6-101(A)(1) (handling a legal matter which the lawyer knows or should know that the lawyer is not competent to handle without associating with a lawyer who is competent to handle it), DR 6-101(A)(2) (handling a legal matter without adequate preparation under the circumstances), and DR 6-101(A)(3) (neglecting a client's matter). Additionally, her conduct after July 1, 2005, violated the Iowa Rules of Professional Conduct, specifically, rules 32:1.1 (failing to provide competent legal representation to a client), 32:1.3 (failing to act with reasonable diligence and promptness in representing a client), 32:1.4(a)(3) (failing to keep a client reasonably informed about the status of a legal matter), 32:1.4(a)(4) (failing to promptly comply with reasonable requests for information), and 32:8.4(d) (engaging in conduct that is prejudicial to the administration of justice).

Under the Iowa Code of Professional Responsibility for Lawyers a lawyer should not represent a client when the lawyer knows that she is not competent to handle the matter. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ireland*, 723 N.W.2d 439, 441 (Iowa 2006). Under the Iowa Code of Professional Responsibility for Lawyers and the Iowa Rules of Professional Conduct, when an attorney agrees to represent a client, the attorney is required to act competently with reasonable diligence and promptness in representing her client. Curtis's conduct in probating the estate was more than mere negligence. It appears that her incompetence, procrastination, and failure to communicate with her client in every aspect of the representation stemmed from her indifference to advance the interests of her client when action was required. *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Moorman*, 683 N.W.2d 549, 552 (Iowa 2004).

Curtis's conduct regarding the taking of her fee occurred after July 1, 2005, and is governed by the Iowa Rules of Professional Conduct. Curtis's misrepresentation to her client that she would only take one-half of the fee, when she in fact took the entire fee, violated rule 32:8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Moreover, Curtis's failure to deposit the fee award in the trust account violated rule 32:1.15(c) (requiring an attorney to deposit unearned fees into the trust account). Under the probate rules in effect at the time the court awarded her fees, Curtis could only take one-half of the fees when the estate filed the inheritance tax return and the other half at the time of closing the estate. While she represented the estate, the estate never filed the return; therefore, she was not entitled to any fee.

Additionally, Curtis inflated the value of the estate's assets on the inventory. We do not believe she purposefully inflated the value, but did so due to her lack of knowledge regarding the probating of estates. Because Curtis inflated the values, the court ordered fees in excess of those allowed by law. *See* Iowa Code § 633.197 (limiting fees for all sums in an estate over five thousand dollars to two percent of the gross assets). Accordingly, she violated rule 32:1.5(a) by taking an excessive fee.

Finally, we believe Curtis's handling of the estate by leaving it open for a protracted period of time, together with the numerous violations in doing so, constituted conduct prejudicial to the administration of justice and violated rule 32:8.4(d).

E. Count V. Curtis represented Shelley LeGrand with respect to her and her daughter's claim against Kevin Harbaugh. On December 19, 2002, Harbaugh filed for bankruptcy. On December 20 LeGrand and her daughter obtained a \$25,000 judgment against Harbaugh for an

intentional tort. The bankruptcy attorney for Harbaugh listed LeGrand, in care of Curtis, as a creditor and the court sent Curtis notice of the bankruptcy. Curtis denied she received this notice when it was filed, but obtained it sometime after she contacted the bankruptcy attorney's office on April 1, 2003. Curtis offered the problems with the mail delivery in her small town as an explanation for why she did not receive the notice earlier.

Objections to the discharge of debt in bankruptcy were due on April 11. Curtis prepared an objection on the grounds the debt was not dischargeable because it arose from an intentional tort. Instead of filing an original with the clerk, Curtis faxed the objection to the clerk's office. That same day, the clerk notified Curtis that the rules did not allow her to fax a pleading. The clerk told Curtis she could either get court permission to file via fax or arrange to have a hard copy delivered that day. Curtis did neither. Curtis claimed she did not get the clerk's message until after the bankruptcy office closed because she was either in mediation or in court all day.

On April 16, after the time had expired to file an objection, Curtis filed a request for an extension of time to file an objection. The bankruptcy court denied the request. Curtis appealed the court's decision to the Bankruptcy Panel of the Eighth Circuit Court of Appeals. The appeals court held the clerk properly declined to accept the faxed pleading, and the bankruptcy court properly denied the extension. The appeals court left open the option for Curtis to file a complaint objecting to the discharge based on her claim she did not receive proper notice of the bankruptcy proceedings. Curtis told LeGrand she filed such a complaint when in fact she had not. Curtis admits she made a mistake by not properly filing the original objection to the discharge of the

LeGrand judgment, and that mistake is what led to all of the problems with the representation.

At some point during the representation, LeGrand sent a letter to Curtis requesting she refund LeGrand's money and return her entire file. LeGrand testified Curtis failed to return the file despite Curtis's statements to LeGrand that the entire file had been returned to her. LeGrand allowed Curtis to continue representing her after Curtis told her the complaint to the bankruptcy court had been filed and everything was under control. Curtis sent LeGrand documents purporting to be a complaint objecting to the discharge of the proceedings due to a lack of proper notice.

Due to her own dissolution, LeGrand filed for bankruptcy. While working with her bankruptcy attorney, they discussed the judgment against Harbaugh. There was a concern as to whether the judgment would have to be listed as an asset in LeGrand's bankruptcy proceeding. The bankruptcy attorney checked the docket of Harbaugh's bankruptcy proceeding and informed LeGrand that Curtis did not file the complaint based on her improper notice claim. The docket also indicated LeGrand's judgment against Harbaugh had been discharged in bankruptcy, and the proceeding was closed. The bankruptcy attorney notified Curtis of these facts on June 16, 2005.

Curtis's failure to file the objections and pursue the improper notice complaint violates DR 6-101(A)(2) (handling a legal matter without preparation adequate in the circumstances), DR 6-101(A)(3) (neglecting a client's matter), DR 1-102(A)(5) (engaging in conduct that is prejudicial to the administration of justice), and DR 1-102(A)(6) (engaging in other conduct that adversely reflects on the fitness to practice law).

We also find Curtis intentionally misrepresented to LeGrand that she filed the improper notice complaint. This conduct violated DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), DR 1-102(A)(5) (engaging in conduct that is prejudicial to the administration of justice), DR 1-102(A)(6) (engaging in other conduct that adversely reflects on the fitness to practice law), DR 7-101(A)(2) (intentionally failing to carry out a contract of employment), DR 7-101(A)(3) (intentionally prejudicing or damaging a client during the course of the professional relationship).

The Board also alleged, and the Commission found, Curtis violated DR 6-101(A)(1) (handling a legal matter which the lawyer knows or should know the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it), and rules 32:8.1 (dishonesty in regard to application to the bar), 32:8.4(a) (violating an ethical rule), 32:8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 32:8.4(d) (engaging in conduct that is prejudicial to the administration of justice).

Although Curtis failed to properly file the objection to discharge a debt and failed to file the complaint based on improper notice, the Board failed to produce sufficient evidence to sustain a violation of DR 6-101(A)(1). Curtis understood what needed to be done under the bankruptcy laws to protect her client's interest. Her failure to properly file the required documents may constitute neglect, but does not prove she handled a legal matter which she knew or should have known she was not competent to handle without associating with a lawyer who was.

We also find the Board failed to prove Curtis violated rules 32:8.1, 32:8.4(a), (c), and (d). All of Curtis's conduct took place prior to July 1,

2005. In order to violate these rules the Board must prove Curtis's conduct took place after July 1, 2005.

IV. Sanction.

In determining the appropriate sanction a lawyer must face as a result of his or her misconduct, we have stated:

The goal of the Code of Professional Responsibility is "to maintain public confidence in the legal profession as well as to provide a policing mechanism for poor lawyering." When deciding on an appropriate sanction for an attorney's misconduct, we consider "the nature of the violations, protection of the public, deterrence of similar misconduct by others, the lawyer's fitness to practice, and [the court's] duty to uphold the integrity of the profession in the eyes of the public." We also consider aggravating and mitigating circumstances present in the disciplinary action.

Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Honken, 688 N.W.2d 812, 820 (Iowa 2004) (alteration in original) (citations omitted).

Mitigating factors include Curtis's personal illnesses. Curtis has been treated for depression. She blames some of her misconduct on her depression. She feels that she can control her depression with medication. Curtis has attention deficit disorder, which she also treats with medication. Personal illnesses, such as depression or attention deficit disorder, do not excuse a lawyer's misconduct but can be mitigating factors and influence our approach to discipline. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Frerichs*, 718 N.W.2d 763, 768 (Iowa 2006).

The aggravating factors we must consider include multiple incidents of neglect. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Walker*, 712 N.W.2d 683, 686 (Iowa 2006). Curtis's various actions throughout her handling of the three separate legal matters demonstrate that her neglect was not isolated in nature. Moreover, it is significant that Curtis's actions caused harm to others in terms of cost and delay to her

clients. *Id.* Another aggravating factor is Curtis's prior disciplinary sanction. *Frerichs*, 718 N.W.2d at 768. The final aggravating factor is her misrepresentation of the status of the bankruptcy proceeding to her client. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. McCann*, 712 N.W.2d 89, 97 (Iowa 2006).

While neglect alone ordinarily deserves a sanction ranging from a public reprimand to a six-month suspension, neglect compounded by other misconduct requires a more severe sanction. *Walker*, 712 N.W.2d at 686. Curtis's conduct is more than mere neglect. Her neglect not only caused a significant delay in processing her clients' matters, but also caused actual harm to her clients' interests. These factors and her misrepresentations to her clients make Curtis's violations serious.

A major concern we have with Curtis's conduct is her premature taking of a probate fee and her failure to deposit the fee into a trust account. Because the funds were not available when Curtis was asked to produce them, it is evident she converted the unearned fees for her personal use. Usually we revoke an attorney's license to practice law when that attorney deliberately converts a client's funds. *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Williams*, 675 N.W.2d 530, 533 (Iowa 2004); *Comm. on Prof'l Ethics & Conduct v. Ottesen*, 525 N.W.2d 865, 866 (Iowa 1994). However, we have stated when an attorney has "a colorable future claim to the funds, we will impose a lesser penalty." *McCann*, 712 N.W.2d at 97. The facts indicate Curtis had a colorable future claim to the funds she converted because they were to compensate her for services she was to perform for the estate. Therefore, we will not revoke Curtis's license to practice law.

In light of the multiple violations, the protection of the public, deterrence of similar misconduct by others, our duty to uphold the

integrity of the profession in the eyes of the public, the mitigating factors, and the aggravating factors, we conclude an indefinite suspension with no possibility of reinstatement for one year, as recommended by the Commission, is warranted in this case.

As an additional sanction, we require Curtis to pass the Multistate Professional Responsibility Examination as a condition of reinstatement. Iowa Ct. R. 35.12(1). The panoply of violations committed in this case and her prior disciplinary proceeding causes us to impose this additional sanction. Curtis's violations include taking on matters she is not competent to handle, neglecting client matters, lacking diligence in handling client matters, taking excessive fees, making misrepresentations to clients, committing trust account violations, accepting employment that constitutes a conflict of interest, and communicating with a represented party. We believe this array of conduct shows Curtis has a basic lack of understanding of our ethical rules.

Finally, as a further condition of reinstatement Curtis is required to undergo a comprehensive mental examination, which evaluates her fitness to practice law.

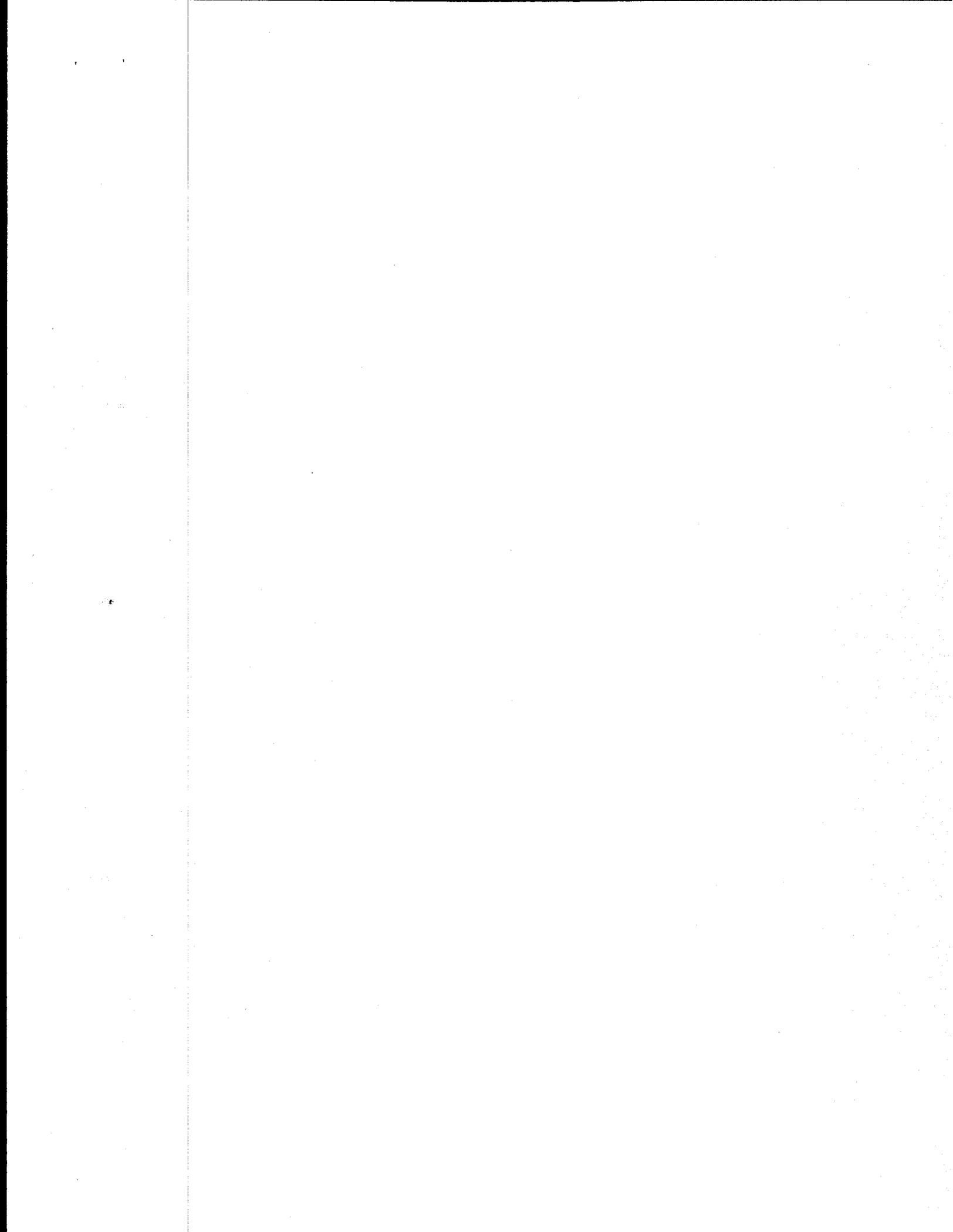
V. Disposition.

We suspend Curtis's license to practice law in this state indefinitely with no possibility of reinstatement for one year. The suspension applies to all facets of the practice of law. See Iowa Ct. R. 35.12. Upon any application for reinstatement, Curtis must establish that she has not practiced law during the suspension period, she has in all ways complied with the requirements of Iowa Court Rule 35.13, and she has passed the Multistate Professional Responsibility Examination. In her application for reinstatement, Curtis must provide this court with

an evaluation by a licensed health care professional verifying her fitness to practice law. Before obtaining this evaluation, Curtis shall submit the name of the proposed evaluator and the nature of the evaluation to the Board for its approval. Curtis shall also comply with the notification requirements of Iowa Court Rule 35.21. We tax the costs of this action to Curtis pursuant to Iowa Court Rule 35.25.

LICENSE SUSPENDED.

All justices concur except Baker, J., who takes no part.



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IOWA COURT RULES

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CHAPTER 32. IOWA CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS
 CANON 1. A LAWYER SHOULD ASSIST IN MAINTAINING THE INTEGRITY AND COMPETENCE OF
 THE LEGAL PROFESSION
 DISCIPLINARY RULES

Iowa Code of Prof'l Responsibility DR **1-102** (2003)

Review Court Orders which may amend this Rule

DR **1-102** Misconduct.

(A) A lawyer shall not:

- (1) Violate a disciplinary rule.
- (2) Circumvent a disciplinary rule through actions of another.
- (3) Engage in illegal conduct involving moral turpitude.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (5) Engage in conduct that is prejudicial to the administration of justice.
- (6) Engage in any other conduct that adversely reflects on the fitness to practice law.
- (7) Engage in sexual harassment or other unlawful discrimination on the basis of sex, race, national origin, or ethnicity in the practice of law or knowingly permit staff and agents subject to the lawyer's direction and control to do so.

History:

[Court Order November 9, 2001, effective February 15, 2002]

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Iowa Code of Prof'l Responsibility DR 6-101

IOWA COURT RULES

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CHAPTER 32. IOWA CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS
CANON 6. A LAWYER SHOULD REPRESENT A CLIENT COMPETENTLY
DISCIPLINARY RULES

Iowa Code of Prof'l Responsibility DR 6-101 (2003)

Review Court Orders which may amend this Rule

DR 6-101 Failing to Act Competently.

(A) A lawyer shall not:

- (1) Handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.
- (2) Handle a legal matter without preparation adequate in the circumstances.
- (3) Neglect a client's legal matter.

History:

[Court Order November 9, 2001, effective February 15, 2002]

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Iowa Code of Prof'l Responsibility DR 7-101

IOWA COURT RULES

Practitioner's Toolbox



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CHAPTER 32. IOWA CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS
 CANON 7. A LAWYER SHOULD REPRESENT A CLIENT ZEALOUSLY WITHIN THE BOUNDS OF THE
 LAW
 DISCIPLINARY RULES

Iowa Code of Prof'l Responsibility DR **7-101** (2003)

Review Court Orders which may amend this Rule

DR **7-101** Representing a Client Zealously.

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules, except as provided by DR **7-101(B)**. A lawyer does not violate this disciplinary rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of a client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but a lawyer may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage a client during the course of the professional relationship, except as required under DR 7-102(B).

(B) In the representation of a client, a lawyer may:

(1) Where permissible, exercise professional judgment to waive or fail to assert a right or position of a client.

(2) Refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

History:

[Court Order November 9, 2001, effective February 15, 2002]

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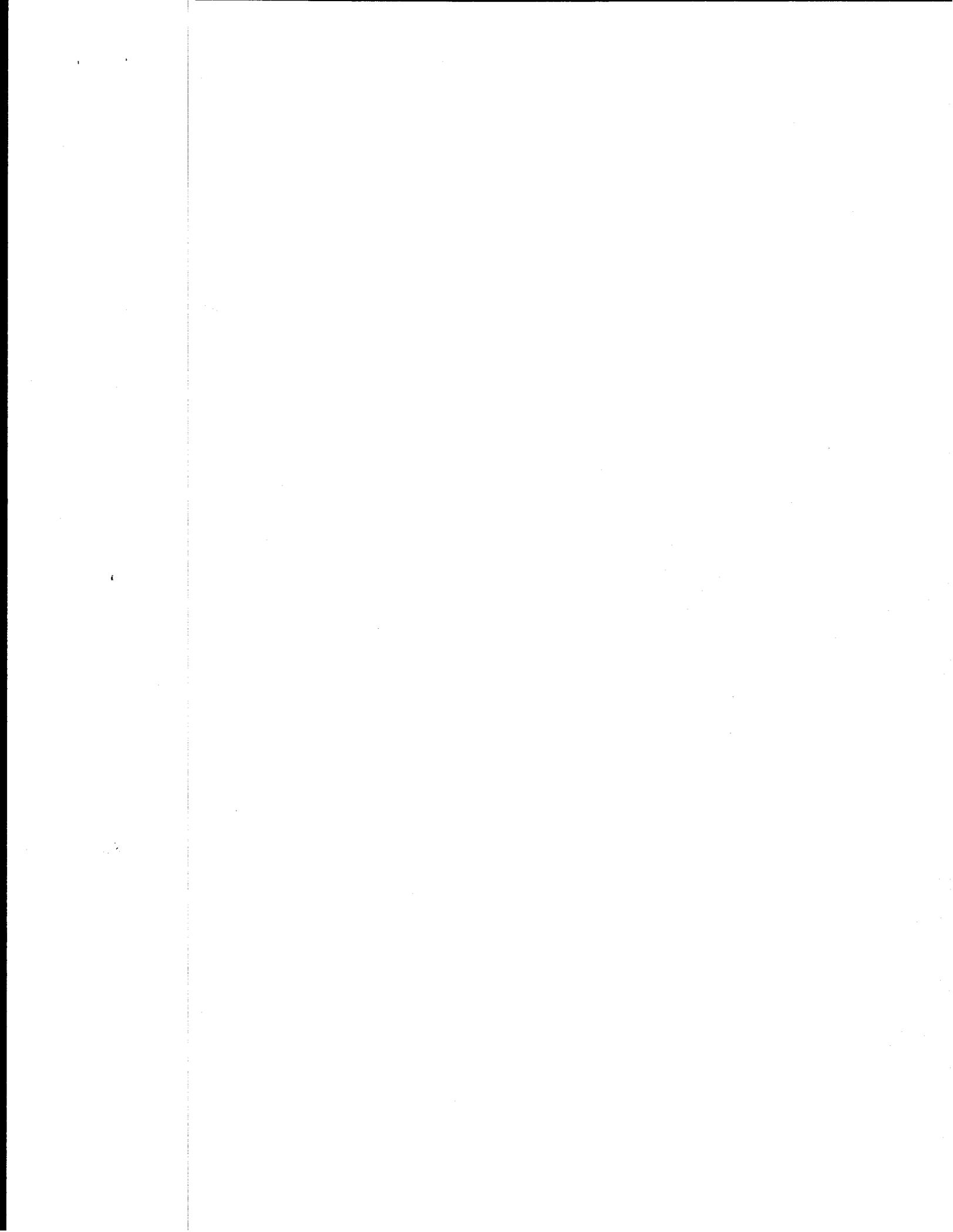
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CHAPTER 32. IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R of Prof'l Conduct 32:1.1 (2011)

Review Court Orders which may amend this rule.

32:1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence, and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be

limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also rule 32:6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedure meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See rule 32:1.2(c).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

History:

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

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Iowa R of Prof'l Conduct 32:1.3

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CHAPTER 32. IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R of Prof'l Conduct 32:1.3 (2011)

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. 6.6(4), 6.32.

[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. Rs. 35.16(5), 35.17 (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]

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CHAPTER 32. IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R of Prof'l Conduct 32:1.4 (2011)

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 reconsultation 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 when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 32:3.4(c) directs compliance with such rules or orders.

History:

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

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CHAPTER 32. IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R of Prof'l Conduct 32:1.5 (2011)

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 least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate, or total amount of the fee, and whether and to what extent the client will be responsible for any costs, expenses, or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See rule 32:1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to rule 32:1.8(i). However, a fee paid in property instead of money may be subject to the requirements of rule 32:1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony, or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See rule 32:1.1.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

↕ **History:**

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

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CHAPTER 32. IOWA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Iowa R of Prof'l Conduct 32:1.15 (2011)

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]

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IOWA COURT RULES

Practitioner's Toolbox



CURRENT THROUGH THE FEBRUARY 2011 SUPPLEMENT

History

CHAPTER 32. IOWA RULES OF PROFESSIONAL CONDUCT
ADVOCATE

Iowa R of Prof'l Conduct 32:3.2 (2011)

Review Court Orders which may amend this rule.

RULE 32:3.2 Expediting litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

History:

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

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TOC: [Iowa Court Rules > CHAPTER 32. IOWA RULES OF PROFESSIONAL CONDUCT > MAINTAINING THE INTEGRITY OF THE PROFESSION > RULE 32:8.1 Bar admission and disciplinary matters](#)

Iowa R of Prof'l Conduct 32:8.1

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CHAPTER 32. IOWA RULES OF PROFESSIONAL CONDUCT
MAINTAINING THE INTEGRITY OF THE PROFESSION

Iowa R of Prof'l Conduct 32:8.1 (2011)

Review Court Orders which may amend this rule.

RULE 32:8.1 Bar admission and disciplinary matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by rule 32:1.6 or Iowa Code section 622.10.

Comment

[1] The duty imposed by this rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this rule applies to a lawyer's own admission or disciplinary matter as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is

the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including rule 32:1.6, Iowa Code section 622.10, and, in some cases, rule 32:3.3.

History:

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

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Bar Admission & Continuing Legal Education

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Iowa R of Prof'l Conduct 32:8.4

IOWA COURT RULES

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CURRENT THROUGH THE FEBRUARY 2011 SUPPLEMENT

History

CHAPTER 32. IOWA RULES OF PROFESSIONAL CONDUCT
MAINTAINING THE INTEGRITY OF THE PROFESSION

Iowa R of Prof'l Conduct 32:8.4 (2011)

Review Court Orders which may amend this rule.

RULE 32:8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Iowa Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Iowa Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) engage in sexual harassment or other unlawful discrimination in the practice of law or knowingly permit staff or agents subject to the lawyer's direction and control to do so.

Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Iowa Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Illegal conduct can reflect adversely on fitness to practice law. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. For another reference to discrimination as professional misconduct, see paragraph (g).

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of rule 32:1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of a lawyer. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent, and officer, director, or manager of a corporation or other organization.

[6] It is not professional misconduct for a lawyer to advise clients or others about or to supervise or participate in lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights or in lawful intelligence-gathering activity, provided the lawyer's conduct is otherwise in compliance with these rules. "Covert activity" means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. Covert activity may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place, or will take place in the foreseeable future. Likewise, a government lawyer who supervises or participates in a lawful covert operation which involves misrepresentation or deceit for the purpose of gathering relevant information, such as law enforcement investigation of suspected illegal activity or an intelligence-gathering activity, does not, without more, violate this rule.

History:

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In the Matter of JEAN MARIE CURTIS Member # 124211	Case number(s): 11-J-12149
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ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

9/20/11 _____
Date Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 21, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JEAN M. CURTIS
202 N MERIDIAN RD LOT 88
APACHE JUNCTION, AZ 85120**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MICHAEL GLASS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 21, 2011.



Tammy Cleaver
Case Administrator
State Bar Court