

CHAPTER 311

RULES OF CIVIL PROCEDURE

IN THE MATTER OF
THE
RULES OF CIVIL PROCEDURE

REPORT OF
THE SUPREME COURT
OF
THE STATE OF IOWA

To the Fifty-seventh General Assembly of the State of Iowa:

1 In accordance with sections 684.18 and 684.19, Code of Iowa, 1954,
2 the Supreme Court of Iowa has prescribed and herewith reports to
3 you rules of practice and procedure in the nature of amendments to
4 the following designated Rules of Civil Procedure.

5 Rule 121 is revised to read:

6 **121. Interrogatories—time—nature.** In actions other than actions
7 in justice court or class "B" actions in municipal court a party may,
8 after the general appearance of an adversary or before such appear-
9 ance with leave of court, file in duplicate not over thirty numbered
10 interrogatories to be answered by such adversary. Interrogatories
11 may relate to any matters which can be inquired into under rule 143
12 and the answers may be used to the same extent as provided in rules
13 144 and 145 for the use of the deposition of a party.

14 **124. Answers.**

15 (a) No change in present Iowa rule.

16 Rule 124 (b) is revised to read:

17 (b) Answers for a party not a natural person shall be made by
18 any officer, partner or managing agent, who shall furnish such in-
19 formation as is available to the party.

20 Rule 125, now in effect, is superseded by the following:

21 **125. Protective orders.**

22 (a) The restrictions of rule 141(a) and (d) are applicable for
23 the protection of the parties from whom answers to interrogatories
24 are sought under these rules.

25 (b) Interrogatories may be filed after a deposition has been taken,
26 and a deposition may be sought after interrogatories have been
27 answered, but the court, on motion of the deponent or the party in-
28 terrogated, may make such protective order as justice may require.

29 Rule 126, now in effect, is superseded by the following:

30 **126. Delivery of answers.** Copies of the answers shall be delivered
31 as provided in rule 82.

32 Rule 127, now in effect, is superseded by the following:

33 **127. Admission of facts and of genuineness of documents.** After the
34 general appearance of an adverse party, any party may file in dupli-
35 cate a written request for the admission by any other party of the
36 genuineness of any relevant documents described in and exhibited
37 with the request or of the truth of any relevant matters of fact set
38 forth in the request. Copies of the documents shall be filed with the
39 request unless copies have already been furnished. Within ten (10)

40 days after the filing thereof, or within such shorter or longer time
41 as the court may allow on motion and notice, the party to whom the
42 request is directed shall file in duplicate either (a) a sworn state-
43 ment specifically admitting or denying the matters of which an ad-
44 mission is requested or setting forth in detail the reasons why he
45 cannot truthfully admit or deny those matters, or (b) written ob-
46 jections on the ground that some or all of the requested admissions
47 are privileged or irrelevant or that the request is otherwise improper
48 in whole or in part. If written objections are filed to any of the
49 requests, the time for answering all the requests shall be suspended
50 until the objections are ruled on. At the hearing upon the objections,
51 if it is determined that any of the requests shall be answered, the
52 court shall fix the time within which answers shall be made. A denial
53 shall fairly meet the substance of the requested admission, and when
54 good faith requires that a party qualify his answer or deny only a
55 part of the matter of which an admission is requested, he shall
56 specify so much of it as is true and deny only the remainder. If the
57 adverse party is an individual, he need only furnish information
58 which is within his personal knowledge. If the adverse party is a
59 public or private corporation or a partnership or association, the
60 sworn statement shall be by an officer, partner or managing agent
61 thereof on the basis of such information as is available to the party.
62 The Clerk shall deliver all copies filed hereunder as provided in rule
63 82.

64 Rule 128, now in effect, is superseded by the following:

65 **128. Effect of admission.** Any admission made by a party pur-
66 suant to such request is for the purpose of the pending action only
67 and neither constitutes an admission by him for any other purpose
68 nor may be used against him in any other proceeding.

69 Rule 131 is amended by striking "as in rules 126 and 129" and
70 substituting therefor "as in rule 129."

71 Rule 132 is amended by striking therefrom "as in rules 126 and
72 129" and substituting in lieu thereof "as in rule 129."

73 Rule 134, now in effect, is superseded by the following:

74 **134. Refusal to make discovery—consequences.**

75 (a) *Refusal to answer.* If a party or other deponent refuses to
76 answer any question propounded upon oral examination, the exami-
77 nation shall be completed on other matters or adjourned, as the
78 proponent of the question may prefer. Thereafter, on reasonable
79 notice to all persons affected thereby, he may apply to the court in
80 which the action is pending or to a court of record in the district
81 where the deposition is taken for an order compelling an answer.
82 Upon the refusal of a deponent to answer any interrogatory sub-
83 mitted under rule 150 or upon the refusal of a party to answer any
84 interrogatory submitted under rule 121, the proponent of the ques-
85 tion may on like notice make like application for such an order. If
86 the motion is granted, and if the court finds that the refusal was
87 without substantial justification, the court shall require the refusing
88 party or deponent or the party advising the refusal, or any of them,
89 to pay the examining party the amount of the reasonable expenses
90 incurred in obtaining the order, including reasonable attorney fees.

91 If the motion is denied, and if the court finds that the motion was
92 made without substantial justification, the court shall require the
93 examining party advising the motion to pay to the refusing party or
94 witness the amount of the reasonable expenses incurred in opposing
95 the motion, including reasonable attorney fees.

96 (b) *Failure to comply with order.*

97 (1) *Contempt.* If a party or other witness refuses to be sworn or
98 refuses to answer any question after being directed to do so by the
99 court, the refusal may be considered a contempt of that court.

100 (2) *Other consequences.* If any party or an officer, partner or
101 managing agent of a party refuses to obey an order made under sub-
102 division (a) of this rule requiring him to answer designated ques-
103 tions, or an order made under rules 129, 130 and 131, to produce any
104 document or other thing for inspection, copying or photographing,
105 or to permit it to be done, or to permit entry upon land or other
106 property, or an order made under rules 132 and 133 requiring him
107 to submit to a physical or mental examination, the court may make
108 such orders in regard to the refusal as are just, and among others
109 the following:

110 An order that the matters regarding which the questions were
111 asked, or the character or description of the thing or land, or the
112 contents of the paper, or the physical or mental condition of the
113 party, or any other designated facts, shall be taken to be established
114 for the purposes of the action in accordance with the claim of the
115 party obtaining the order;

116 An order refusing to allow the disobedient party to support or
117 oppose designated claims or defenses, or prohibiting him from intro-
118 ducing in evidence designated documents or things or items of testi-
119 mony, or from introducing evidence of physical or mental condition;

120 An order striking out pleadings or parts thereof, or staying fur-
121 ther proceedings until the order is obeyed, or dismissing the action
122 or proceeding or any part thereof, or rendering a judgment by de-
123 fault against the disobedient party.

124 (c) *Expenses on refusal to admit.* If a party, after being served
125 with a request under rules 127 and 128 to admit the genuineness of
126 any documents or the truth of any matters of fact, serves a sworn
127 denial thereof, and if the party requesting the admissions thereafter
128 proves the genuineness of any such document or the truth of any such
129 matter of fact, he may apply to the court for an order requiring the
130 other party to pay him the reasonable expenses incurred in making
131 such proof, including reasonable attorney fees. No expenses as afore-
132 said shall be allowed unless the court finds that the admissions sought
133 were of substantial importance and the denial was not made in good
134 faith.

135 (d) *Failure of party to attend or file answers.* If a party or an
136 officer, partner or managing agent of a party wilfully fails to appear
137 before the officer who is to take his deposition or submit to the tak-
138 ing thereof after being served with a proper notice, or wilfully fails
139 to continue the taking of his deposition after the commencement
140 thereof, or fails to file answers to interrogatories submitted under
141 rule 121, the court on motion and notice may strike out all or any
142 part of any pleading of that party, or dismiss the action or proceed-
143 ing or any part thereof, or enter a judgment by default against such
144 party.

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DIVISION VI

146

PRETRIAL PROCEDURE

147

Rule 138, now in effect, is superseded by the following:

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138. **Orders.** The court shall make an order reciting any action taken at the conference which will control the subsequent course of the action relative to matters it includes, unless modified to prevent manifest injustice.

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Rule 139, now in effect, is superseded by the following:

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139. **Restriction on orders.** The court shall not, under any pretrial procedure or other rules, require a party to list or name the witnesses he expects to call to testify at the trial.

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DIVISION VII

157

Rule 140, now in effect, is superseded by the following:

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140. **Depositions generally—stipulation.** Depositions shall be governed wholly by these rules, but may be differently taken in any respect if that be in accord with the written stipulation of the parties. Subject to the restrictions in rule 141, a party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action, or for both purposes.

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Rule 141, now in effect, is superseded by the following:

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141. **Restrictions.**

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(a) The deponent shall not be required and the court shall not order a deponent or party to produce or submit for inspection any writing obtained or prepared by the adverse party, his attorney, surety, indemnitor or agent, in anticipation of litigation or preparation for trial unless satisfied that the denial of production or inspection will result in an injustice or undue hardship; nor shall the deponent be required or the court order a deponent or party to produce or submit for inspection any part of a writing which reflects an attorney's mental impressions, conclusions, opinions or legal theories, or, except as provided in rule 133, the conclusions of an expert. The deponent shall not be examined on nor shall the court order the production or inspection of any liability insurance policy or indemnity agreement unless such liability insurance policy or indemnity agreement would be admissible in evidence at the trial of the action.

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(b) Depositions before answers are all filed, or of a person in prison, may be taken only by leave of court, on such terms as the court prescribes.

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(c) Except where the action involves an interest in real estate, depositions for discovery may not be taken where the amount in controversy as shown by the pleadings is less than \$1,000.00, unless leave of court is first obtained, on notice and a showing of just cause therefor, upon such terms as justice may require.

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(d) After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person

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192 to be examined and upon notice and for good cause shown, the court
193 in which the action is pending may make an order that the deposi-
194 tion shall not be taken, or that it may be taken only at some desig-
195 nated place other than that stated in the notice, or that it may be
196 taken only on written interrogatories, or that certain matters shall
197 not be inquired into, or that the scope of the examination shall be
198 limited to certain matters, or that the examination shall be held with
199 no one present except the parties to the action and their officers or
200 counsel, or that after being sealed the deposition shall be opened only
201 by order of the court, or that secret processes, developments or re-
202 search need not be disclosed, or that the parties shall simultaneously
203 file specified documents or information enclosed in sealed envelopes
204 to be opened as directed by the court, or the court may make any
205 other order which justice requires to protect the party or witness
206 from annoyance, expense, embarrassment or oppression.

207 (e) At any time during the taking of the deposition, on motion of
208 any party or of the deponent and upon a showing that the examina-
209 tion is being conducted in bad faith or in such manner as unreason-
210 ably to annoy, embarrass or oppress the deponent or party, the court
211 in which the action is pending or a court of record in the district
212 where the deposition is being taken, may order the officer conducting
213 the examination to cease forthwith from taking the deposition, or
214 may limit the scope and manner of the taking of the deposition as
215 provided in subdivision (d). If the order made terminates the
216 examination, it shall be resumed thereafter only upon the order of
217 the court in which the action is pending. Upon demand of the ob-
218 jecting party or deponent, the taking of the deposition shall be sus-
219 pended for the time necessary to make a motion for an order. In
220 granting or refusing such order, the court may impose upon either
221 party or upon the witness the requirement to pay such costs or
222 expenses as the court may deem reasonable.

223 Rule 143, now in effect, is superseded by the following:

224 **143. Scope of examination.** Subject to the provisions of rule 141,
225 the deponent may be examined regarding any matter, not privileged,
226 which is relevant to the subject matter involved in the pending
227 action, whether it relates to the claim or defense of the examining
228 party or to the claim or defense of any other party, including the
229 existence, description, nature, custody, condition and location of any
230 books, documents or other tangible things and the identity and loca-
231 tion of persons having knowledge of the relevant facts; provided
232 that a party shall not be required to list the witnesses he expects to
233 call at the trial. It is not ground for objection that the testimony
234 will be inadmissible at the trial if the testimony sought appears
235 reasonably calculated to lead to the discovery of admissible evidence.

236 Rule 144 is amended by substituting the word "partner" for the
237 word "director" in subdivision (b) thereof.

238 Rule 147 is amended by adding thereto the following:

239 (c) No subpoena is necessary to require the appearance of a party
240 for a deposition. Service on the party or his attorney of record of
241 notice of the taking of the deposition of the party or of an officer,
242 partner or managing agent of any party who is not a natural person,

243 as provided in (b) hereof, is sufficient to require the appearance of
244 a deponent for the deposition.

245 (d) If the deponent is a party or the officer, partner or managing
246 agent of a party which is not a natural person, the deponent shall be
247 required to submit to examination in the county where the action is
248 pending, unless otherwise ordered by the court, as provided in rule
249 141 (d).

250 Rule 148 is amended as follows:

251 The present Iowa rule 148 shall be subdivision (a) thereof, and
252 there shall be added thereto the following:

253 (b) At any time after notice has been given of the taking of a
254 deposition, the court, on its motion or on the motion of any party
255 upon cause shown, may order the deposition to be taken before the
256 court or before a master appointed by the court to preside over the
257 taking of the deposition and rule on any matters which may arise in
258 connection with the taking thereof. The appointment of a master
259 shall be made only upon a showing that some exceptional condition
260 requires such appointment. The master shall exercise the powers
261 permitted by rules 209 and 210 and his rulings or orders shall be
262 subject to review by the court upon notice and hearing. The reason-
263 able fees and expenses of the master shall be allowed as provided in
264 rule 208 and be taxed as costs in the action.

265 Rule 155 (a) is revised to read as follows:

266 155. Subpoena.

267 (a) On application of any party, or proof of service of a notice to
268 take depositions under rule 147 or rule 150, the clerk of court where
269 the action is pending shall issue subpoenas for persons named or de-
270 scribed in said notice or application. Subpoenas may also be issued
271 as provided in section 622.84 of the Code of Iowa. No subpoena shall
272 call for production of documents unless the court on notice and hear-
273 ing so orders.

274

CERTIFICATE

275 I, (S) T. G. Garfield, do hereby certify that the foregoing amend-
276 ments to the Rules of Civil Procedure were adopted and approved by
277 the Supreme Court of Iowa, and were reported to the Fifty-Seventh
278 General Assembly on January 1957, pursuant to sections 684.18 and
279 684.19 of the 1954 Code of Iowa, by delivering the same to the Sec-
280 retary of the Senate and to the Chief Clerk of the House of Repre-
281 sentatives on said date.

282

THE SUPREME COURT OF IOWA

283

By (S) T. G. Garfield

284

Assistant Chief Justice

285 ATTEST:

286

(Seal)

287

(S) Helen M. Lyman

288

Clerk of the Supreme Court of Iowa

289

ACKNOWLEDGMENT

290 I, Richard W. Berglund, Secretary of the Senate of the State of
291 Iowa, hereby acknowledge delivery to me on the 24th day of Janu-

292 ary, 1957, of the foregoing report of the Supreme Court of Iowa
293 pertaining to the amendments to the Rules of Civil Procedure.

294 (S) RICHARD W. BERGLUND
295 Secretary of the Senate
296 Fifty-Seventh General Assembly
297 of the State of Iowa

298 ACKNOWLEDGEMENT

299 I, A. C. Gustafson, Chief Clerk of the House of Representatives of
300 the State of Iowa, hereby acknowledge delivery to me on January
301 24th, 1957, of the foregoing report of the Supreme Court of the
302 State of Iowa pertaining to the amendments to the Rules of Civil
303 Procedure.

304 (S) A. C. GUSTAFSON
305 Chief Clerk, House of Representatives
306 of the Fifty-seventh General Assembly
307 of the State of Iowa.

308 CERTIFICATE

309 I, William H. Nicholas, do hereby certify that I am the President
310 of the Senate of the Fifty-seventh General Assembly of the State of
311 Iowa; and I, Richard W. Berglund, do hereby certify that I am the
312 Secretary of the Senate of the Fifty-seventh General Assembly of
313 the State of Iowa, and we do hereby jointly certify that as such
314 President and Secretary that on the 24th day of January, 1957, the
315 Supreme Court of the State of Iowa reported to said Senate, and
316 filed with it, the attached and foregoing modifications, amendments,
317 revisions and additions to the Rules of Civil Procedure, heretofore
318 reported by said Supreme Court to the Fiftieth General Assembly of
319 the State of Iowa;

320 THAT the date of making said report to the Fifty-seventh General
321 Assembly was within the twenty days subsequent to the convening
322 of the regular session of the Fifty-seventh General Assembly;

323 THAT no other report pertaining to the Rules of Civil Procedure
324 was made or filed by said Supreme Court with said Senate;

325 THAT no other or different changes, modifications, amendments,
326 revisions or additions to the Rules of Civil Procedure were made or
327 enacted at such regular session of said Fifty-seventh General As-
328 sembly.

329 Signed this 3rd day of May, 1957, being the last legislative day of
330 the Fifty-seventh General Assembly.

331 (S) WILLIAM H. NICHOLAS,
332 William H. Nicholas, President
333 (S) RICHARD W. BERGLUND
334 Richard W. Berglund, Secretary
335 SENATE
336 Fifty-seventh General Assembly
337 of the State of Iowa

338

CERTIFICATE

339 I, W. L. Mooty, do hereby certify that I am the Speaker of the
340 House of Representatives of the Fifty-seventh General Assembly of
341 the State of Iowa; and I, William R. Kendrick, do hereby certify
342 that I am the Chief Clerk of the House of Representatives of the
343 Fifty-seventh General Assembly of the State of Iowa, and we do
344 hereby jointly certify that as such Speaker and Chief Clerk that on
345 the 24th day of January, 1957, the Supreme Court of the State of
346 Iowa reported to said House of Representatives, and filed with it, the
347 attached and foregoing modifications, amendments, revisions and
348 additions to the Rules of Civil Procedure, heretofore reported by said
349 Supreme Court to the Fiftieth General Assembly of the State of
350 Iowa;

351 THAT the date of making said report to the Fifty-seventh General
352 Assembly was within the twenty days subsequent to the convening
353 of the regular session of the Fifty-seventh General Assembly;

354 THAT no other report pertaining to the Rules of Civil Procedure
355 was made or filed by said Supreme Court with said House of Repre-
356 sentatives;

357 THAT no other or different changes, modifications, amendments,
358 revisions or additions to the Rules of Civil Procedure were made or
359 enacted at such regular session of said Fifty-seventh General As-
360 sembly.

361 Signed this 3rd day of May, 1957, being the last legislative day of
362 the Fifty-seventh General Assembly.

363 (S) W. L. MOOTY

364 W. L. Mooty, Speaker

365 (S) WILLIAM R. KENDRICK

366 William R. Kendrick, Chief Clerk

367 HOUSE OF REPRESENTATIVES

368 Fifty-seventh General Assembly of
369 the State of Iowa