CHAPTER 487

RULES OF CIVIL PROCEDURE

S. F. 355

AN ACT relating to the Rules of Civil Procedure to changes therein reported by the Supreme Court of Iowa and amending rule two hundred fifteen point one (215.1) thereof.

Be It Enacted by the General Assembly of the State of Iowa:

- SECTION 1. The changes in rules of civil procedure reported to the 61st General Assembly by the supreme court on January 28, 1965 and printed in the journals of the house of representatives and senate of said assembly on that date are hereby disapproved in each and every item, except the revision of rule one hundred twenty-three (123) and the proposed new rule two hundred fifty-three point one (253.1) which rules are approved.
- SEC. 2. Rule of Civil Procedure number two hundred fifteen point one (215.1) is amended by adding at the end thereof the following:

 "The trial court may, in its discretion, and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, reinstate the action or actions so dismissed. Application for such reinstatement, setting forth the grounds therefor, shall be filed within six months from the date of dismissal."

Approved April 12, 1965.

CHAPTER 488

RULES OF CIVIL PROCEDURE

[See also amendment to Rule 215.1 by chapter 487]

IN THE MATTER OF

REPORT OF THE SUPREME COURT

RULES OF CIVIL PROCEDURE

THE STATE OF IOWA

To the Sixty-first General Assembly of the State of Iowa:

- The Supreme Court, on recommendation of its Advisory Committee on Rules of Civil Procedure, has prescribed and, pursuant to Section 684.19, Code of Iowa 1962, reports to you rules and amendments to existing rules as follows:
- 6 Rule 199. Separation and deliberation of jury.

[This rule was rejected, see ch. 487]

Rule 199 (b) is revised to read:

8 (b) On final submission, the jury shall retire for deliberation, and 9 be kept together in charge of an officer until they agree on a verdict 10 or are discharged by the court, unless the court permits the jurors to

11 separate temporarily overnight, on weekends or holidays, or in emer-

gencies. During their deliberations, the officer in charge must not suffer any communication to be made to them, nor make any himself,

except to ask them if they have agreed on a verdict, unless by order of court: nor communicate to any person the state of their delibera-

of court; nor communicate to any person the state of their deliberations, or the verdict agreed upon before it is rendered.

Rule 187. Impaneling jury.

[This rule was rejected, see ch. 487]

Rule 187 (b) is revised to read:

(b) Oath and examination. The prospective jurors shall be sworn. The court shall initiate the voir dire examination by identifying the parties and their respective counsel and briefly outlining the nature of the case. The court shall then put to the jurors any questions it thinks necessary as to their qualifications to serve as jurors in the case on trial. The parties shall be allowed a reasonable opportunity to supplement such examination. The court may on its own motion exclude any juror.

Rule 123 is revised to read:

123. **Objections—time to answer.** The clerk shall deliver the copy of the interrogatories as provided in rule 82. The party to whom the interrogatories are directed shall file either answers thereto or objections to their propriety within seven days after they are filed, unless the court for good cause, but not ex parte, shall enlarge the time. If objections are filed to any of the interrogatories, any required answer to those to which objections are made shall be deferred until seven days after the objections are ruled upon unless otherwise ordered by the court. This rule shall not limit the right to object to the answers if offered in evidence.

[This rule was approved, see ch. 487]

Rule 253.1 reading as follows is prescribed:

253.1. **Disposition of Exhibits.** One year after the final determination of a case, the clerk may destroy all exhibits filed with him provided that he shall notify all counsel of record in writing that the exhibits will be destroyed unless receipted for within sixty days thereafter.

[This rule was approved, see ch. 487]

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II.

[All rules under this division were rejected, see ch. 487]

The Supreme Court, on recommendation of the Court Study Commission created by the Sixtieth General Assembly, has prescribed and, pursuant to Section 684.19, Code of Iowa 1962, reports to you rules and amendments to existing rules as follows:

Rules 373 through 377 reading as follows are prescribed:

373. Administration in state. The chief justice shall exercise a continuing supervision for the supreme court over all courts within this state and the officers and employees thereof, including judges, justices of the peace, magistrates and other court personnel so that all courts throughout the state shall administer justice effectively, speedily, efficiently, economically and in accordance with the highest standards of justice and service. The chief justice shall have author-

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- ity to make orders to achieve such ends, including authority to temporarily transfer judges and judicial personnel from one judicial district to another and superior authority to make any order which a chief judge may make. All judges, court officials and personnel shall comply accordingly.
- 62 374. Chief judges. For administrative purposes, the chief justice 63 shall appoint one of the district judges in each judicial district as 64 chief judge in and for such district, who shall hold said office at the 65 pleasure of the chief justice.
 - 375. Administration in districts. Chief judges, in addition to their duties as district court judges, shall exercise continuing supervision within their respective districts over all judicial officers of the district court and officers and employees of such court to achieve the end stated in Rule 373, including the power to fix and designate times and places of holding court sessions, the judicial officers to preside thereat, to prescribe the work of such judicial officers, and to direct and supervise all other judicial business of every kind of such court within said district. They shall conduct judicial conferences within their respective districts and make such orders as necessary for the administration of said court. All such court personnel shall comply accordingly.
 - 376. Court and trial sessions. Chief judges shall order court sessions in each county as follows:
 - (a) Court sessions by district judges in each county at regular intervals, weekly or semi-monthly, stated in advance and for such duration as needed to achieve the ends stated in Rule 373.
 - (b) Trial sessions by district judges in each county needed to achieve such ends and to promptly and efficiently dispose of pending cases which are ready for trial.
 - 377. Judicial Council. There is hereby created a judicial council composed of the chief judge in each district in this state and the chief justice, or a member of the supreme court designated by him, who shall be chairman. The council shall convene not less than twice annually, at such time as the chairman shall designate and at such other times as he shall order. It shall advise and consult with reference to administrative rules, regulations, directives and all other matters required to bring about and achieve the ends stated in Rule 373; and consider and propose to the supreme court such administrative rules and adopt such directives as shall be appropriate to promote the effective administration of justice within this state.

Rule 117. Motion day—disposition of motions.

Rule 117 (a) is amended as follows:

- 1. Strike the word "judges" from line one (1) and insert in lieu thereof the words "chief judge".
- 2. Strike the word "rule" from line two (2) and insert in lieu thereof the word "order".
- 103 3. Strike the word "one" from line two (2) and insert the word 104 "two".
- 105 4. Strike the word "day" from line two (2) and insert in lieu there-106 of the word "days".

$107 \\ 108 \\ 109$	5. Strike the words "on file ten days or more" from line five (5) . Rule 117 (d) is amended by inserting at the end thereof the following "and including 'motions' as defined by Rule 109."
110 111 112 113 114 115 116 117 118 119 120 121 122 123 124	Rule 181.2 Trial assignments. Rule 181.2 (a) is amended as follows: 1. Strike the words "District and superior courts" from line one (1) and insert in lieu thereof the words "The chief judge". 2. Strike the word "rule" from line two (2) and insert in lieu thereof the word "order". 3. Following the word "day" in line two (2) insert the words "in each county". Rule 181.2 (b) is amended as follows: 1. Strike the word "courts" from line two (2) and insert in lieu thereof the words "the chief judge". 2. Strike the words "adopt local rules" from line two (2) and insert in lieu thereof the words "make orders". Rule 181.2 (c) is amended by striking the words "except when the court orders a change to a day other than prescribed by local rule"
125	from lines three (3), four (4) and five (5).
126	III.
127 128 129 130 131 132 133 134 135 136 137 138 140 141 142 143 144 145	The Legislative Court Study Commission in Part I of its report dealing with Court Structure has recommended the creation of a unified trial court. The report recommends, as an essential adjunct to such unification, a simplified procedure for the enforcement of small claims. The legislature must act on certain recommended bills before a unified court can be established. However, the rules of procedure for a small claims action are the proper subjects of the rule making authority of the supreme court. The commission has set out, commencing on page 15 in Part I of its report, the small claims rules and has submitted them to the supreme court for action. Section 684.19 of the 1962 Code of Iowa requires the supreme court to report any rules or forms which it may prescribe to the General Assembly within 20 days after the commencement of the regular session. It is highly unlikely that the legislature will have completed action on this important proposition within that time, but it is essential that the small claims rules be effective if the legislature does act favorably on the proposition of the unified court during this session. Therefore, the supreme court on recommendation of the Court Study Commission, has prescribed rules for the enforcement of small claims
146 147 148 149 150	to be effective only in the event the Sixty-first General Assembly in regular session adopts legislation creating a unified trial court system. Pursuant to Section 684.19 Code of Iowa 1962, these rules, intended to constitute an additional division to the existing Rules of Civil Procedure, are reported to you as follows:

DIVISION XX

SMALL CLAIMS

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[All rules under this division were rejected, see ch. 487]

Rule 378. Commencement, Docket. Civil actions in which the

amount in controversy in money or value is less than \$300, exclusive 154 of interest and costs, shall be known as small claims. All such actions 155 shall be commenced by the filing of an original notice with the clerk 156 and by the mailing by the clerk of a copy of same to each defendant at his last known address, as stated in the original notice, by restricted, certified mail, return receipt to the clerk requested. Instead 157 158 159 of such mailing, the plaintiff may, after filing the original notice with the clerk, cause a copy of same to be served on all or some defendants in the manner provided in Division III of these rules, whereupon Rules 48 and 49 shall be applicable as to the defendants to be so served. The clerk shall maintain a book known as the small claims 160 161 162 163 164 165 docket, which shall contain as to small claims the matters contained 166 in the combination docket as to regular civil actions. 167 Rule 379. Original Notice. The original notice must be mailed 168 or otherwise served not less than 10 days prior to the hearing date. The original notice and copies shall be signed by the plaintiff, either 169 in person or by attorney, and shall be in substantially the following 170 171 form: IN THE DISTRICT COURT OF IOWA 172 IN AND FOR COUNTY 173 174 -----175 Address of each plaintiff Small Claim No. 176 177 Defendant(s) 178 ------Address of each defendant ORIGINAL NOTICE 179 180 To the above named defendant(s): YOU ARE HEREBY NOTIFIED that the above named plaintiff (s) 181 182 demands of you (1. If demand is for money, state amount; 2. If demand is for 183 something else, state briefly what is demanded and its value in money; 3. If both 184 based on money and something else are demanded, state both 1 and 2) (State 185 briefly the basis for the demand) 186 ______ and that unless you appear and defend before the above named court 187 188 (Place) (City or Town)
....M. on the day of 189, 19....., judgment will be rendered against you for the relief demanded, together with 190 191 interest and court costs. 192 Plaintiff(s) 193 Rule 380. Function of Clerk. The clerk shall furnish forms of original notice and shall assist in their preparation if requested to 194

do so. At the time of filing, the clerk shall enter on the original notice and the copies to be served the file number and the time and place of hearing, which shall be a time when small claims are scheduled to be heard not less than 10 nor more than 20 days after the date on which the notice will be mailed or otherwise served. The clerk shall mail a copy of the original notice to each defendant by restricted, certified mail, return receipt to the clerk requested, except for defendants whom the plaintiff wishes to serve under Division III of these rules.

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Rule 381. Fees. Before filing the original notice, the clerk shall collect a fee of \$1 and the cost of mailing the notice, when it is to be mailed. If the plaintiff wishes to serve the notice under Division III of these rules, the person serving or publishing the same may require advance payment of his fee and mileage.

Rule 382. **Pleadings.** Except as provided in rules 379 and 383, there shall be no written pleadings or motions unless the court in the interest of justice requires them, in which event they shall be similar in form to the original notice.

Rule 383. Joinder, Counterclaim, Cross Claim, Intervention.

(a) Division II of these rules and rule 75 shall be applicable to small claims actions.

(b) In small claims actions, if a party joins a small claim with one which is not a small claim, the court shall (1) order the small claim to be heard under this division and dismiss the other claim without prejudice, or (2) as to parties who have appeared or are existing parties, either (a) order the small claim to be heard under this division and the other claim to be tried by regular procedure or (b) order both claims to be tried by regular procedure.

(c) In small claims actions, a counterclaim, cross claim, or intervention in the amount of a small claim shall be in writing and similar in form to the original notice, and shall be entitled Original Notice of Counterclaim, of Cross Claim, or of Intervention, as the case may be. A copy shall be filed for each existing party. New parties may be brought in without order and shall be served with notice as provided in rules 378 and 379; and if notice is to be served by mail the clerk shall collect the cost of mailing before filing the pleading. The clerk shall furnish forms of such pleadings and shall assist in their preparation if requested to do so. No counterclaim is necessary to assert an offset arising out of the subject of the plaintiff's claim.

(d) In small claims actions, a counterclaim, cross claim, or intervention not in the amount of a small claim shall be in the form of a regular pleading. A copy shall be filed for each existing party. New parties, when permitted by order, may be brought in under rule 34 and shall be given notice under Division III of these rules. The court shall either (1) order such counterclaim, cross claim, or intervention to be tried by regular procedure and the other claims to be heard under this division, or (2) order the entire action to be tried by regular procedure.

(e) In regular actions, when a party joins a small claim with one which is not a small claim, regular procedure shall apply to both unless the court transfers the small claim to the small claims docket for hearing under this division.

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(f) In regular actions, a counterclaim, cross claim, or intervention in the amount of a small claim shall be pleaded, tried, and determined by regular procedure, unless the court transfers such small claim to the small claims docket for hearing under this division.

(g) Pleadings which are not in correct form under this rule shall be ordered amended so as to be in correct form; but a small claim which is proceeding under this division need not be amended although

in the form of a regular pleading.

(h) Copies of any papers filed by the parties, which are not required to be served, shall be mailed or delivered by the clerk as provided in rule 82.

Rule 384. **Proof of Service.** At the time for hearing, the court or clerk shall first determine that proper notice has been given a party before proceeding further as to him, unless he has appeared or is an existing party, and also that the action is properly brought as a small claim.

Rule 385. **Default.** Unless good cause to the contrary appears, (1) if the parties fail to appear at the time of hearing, the claim shall be dismissed without prejudice by the court or clerk; (2) if the plaintiff fails to appear but the defendant appears, the claim shall be dismissed with prejudice by the court or clerk; and (3) if the plaintiff appears but the defendant fails to appear, judgment shall be rendered against the defendant by the court, or by the clerk if the relief to be granted is readily ascertainable.

Rule 386. Hearing. The time for appearance shall be the time for hearing. The hearing shall be to the court, shall be simple and informal, and shall be conducted by the court itself, without regard to technicalities of procedure; but the decision must be based on substantial evidence. The court shall swear the parties and their witnesses, and examine them in such way as to bring out the truth. The parties may participate, either personally or by attorney. The court may continue the hearing from time to time if justice requires. The proceedings shall not be reported unless a party provides a reporter at his own expense or the parties by agreement cause the proceedings to be electronically reported, but there shall be no delay for such purpose.

Rule 387. Judgment, Minutes.

(a) The judgment shall be entered in a space on the original notice first filed, and the clerk shall immediately enter the judgment in the small claims docket and district court lien book. Such relief shall be granted as is appropriate. The court may enter judgment for installment payments; and in such event execution shall be suspended as long as such payments are made, but execution shall issue for the full unpaid balance of the judgment upon the filing of an affidavit of default as to any part of an installment. When entered on the small claims docket and district court lien book, a small claims judgment shall constitute a lien to the same extent as regular judgments entered on the district court judgment docket and lien book; but if a small claims judgment requires installment payments, it shall not constitute a lien for any amount until an affidavit of default is filed,

whereupon it shall constitute a lien for the full unpaid balance of the judgment.

(b) Unless the hearing is reported, minutes of the testimony of each witness and of any stipulations of the parties shall likewise be entered on the original notice first filed; and the exhibits or copies thereof shall be attached to such original notice or be filed, until released by the court.

Rule 388. Costs. The actual expense of the prevailing party for filing fee, mailing or otherwise serving original notice, and witness fees and mileage, shall be taxed as costs. No other costs shall be taxed except on order of court for good cause.

Rule 389. Other Statutes and Rules. Small claims shall be commenced, heard, and determined in accordance with this division. Other statutes and rules relating to civil proceedings shall apply, but only insofar as not inconsistent with this division. Service of original notice according to rule 56 or 378 supersedes the need of its publication, whether the party served is or resides within or without Iowa. Small claims on file for 90 days and not determined shall be dismissed without prejudice unless prior thereto a party secures an order of continuance to a date certain after notice and hearing, upon a ground stated in rule 215.1. Actions in probate involving the amount of a small claim shall be heard and determined under this division and may be commenced hereunder; if commenced as a regular civil action or under the statutes relating to probate proceedings, they shall be transferred to the small claims docket and proceed accordingly. Civil actions coming within this division but commenced in the regular way shall not be dismissed but shall be transferred to the small claims docket and proceed accordingly. Civil and probate actions not coming within this division but commenced hereunder shall be dismissed without prejudice except for defendants who have appeared, as to whom such actions shall be transferred to the combination or probate docket, as the case may be, and proceed accordingly.

If the Sixty-first General Assembly fails to create a unified trial court system, the "small claims" rules appearing in this part III of the report to you shall be void and of no effect.

the report to you shall be void and of no effect.

Respectfully submitted,

THE SUPREME COURT OF IOWA s/ T. G. Garfield CHIEF JUSTICE

Des Moines, Iowa January 28, 1965

ACKNOWLEDGEMENTS

I, Robert G. Moore, Secretary of the Senate of the State of Iowa, hereby acknowledge delivery to me on the 28th day of January, 1965, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Civil Procedure.

s/ ROBERT G. MOORE Secretary of the Senate Sixty-first General Assembly of the State of Iowa

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346 347 348 349	tives of the State of Iowa, hereby acknowledge delivery to me on the 28th day of January, 1965, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Civil Procedure.
350 351 352 353 354	s/ WILLIAM R. KENDRICK Chief Clerk of the House of Representatives, Sixty-first General Assembly of the State of Iowa
355	CERTIFICATE
356 357 358 359 360 361 362 363 364 365 366 367 368 371 372 373 374 375 377 377	I, Robert D. Fulton, do hereby certify that I am the President of the Senate of the Sixty-first General Assembly of the State of Iowa; and I, Robert G. Moore, do hereby certify that I am the Secretary of the Senate of the Sixty-first General Assembly of the State of Iowa, and we do hereby jointly certify that as such President and Secretary that on the 28th day of January, 1965, the Supreme Court of the State of Iowa reported to said Senate, and filed with it, the attached and foregoing modifications, amendments, revisions and additions to the Rules of Civil Procedure, heretofore reported by said Supreme Court to the Fiftieth General Assembly of the State of Iowa; That the date of making said report to the Sixty-first General Assembly was within the twenty days subsequent to the convening of the regular session of the Sixty-first General Assembly; That no other report pertaining to the Rules of Civil Procedure was made or filed by said Supreme Court with said Senate; That there was enacted at such regular session of the Sixty-first General Assembly an Act known as Senate File 355, wherein all of said rules were rejected by the General Assembly with the exception, the revision of rule one hundred twenty-three (123) and the proposed new rule two hundred fifty-three point one (253.1) were approved. Also at said regular session by said Act an amendment to existing rule number two hundred fifteen point one (215.1) was enacted.
379 380 381 382 383	That no other or different changes, modifications, amendments, revisions or additions to the Rules of Civil Procedure were made or enacted at such regular session of said Sixty-first General Assembly. Signed this 4th day of June, 1965, being the last legislative day of the Sixty-first General Assembly.
$\frac{384}{385}$	s/ ROBERT D. FULTON President of the Senate
386 387	s/ ROBERT G. MOORE Secretary of the Senate
388 389 390	SENATE Sixty-first General Assembly of the State of Iowa

391	CERTIFICATE
392 393 394 395 396 397 398 400 401 402 403 404 405 407 411 411 411 411 411 411	I, Vincent B. Steffen, do hereby certify that I am the Speaker of the House of Representatives of the Sixty-first General Assembly of the State of Iowa; and I, William R. Kendrick, do hereby certify that I am the Chief Clerk of the House of Representatives of the Sixty-first General Assembly of the State of Iowa, and we do hereby jointly certify that as such Speaker and Chief Clerk that on the 28th day of January, 1965, the Supreme Court of the State of Iowa reported to said House of Representatives, and filed with it, the attached and foregoing modifications, amendments, revisions and additions to the Rules of Civil Procedure, heretofore reported by said Supreme Court to the Fiftieth General Assembly of the State of Iowa; That the date of making said report to the Sixty-first General Assembly was within the twenty days subsequent to the convening of the regular session of the Sixty-first General Assembly; That no other report pertaining to the Rules of Civil Procedure was made or filed by said Supreme Court with said House of Representatives; That there was enacted at such regular session of the Sixty-first General Assembly an Act known as Senate File 355, wherein all of said rules were rejected by the General Assembly with the exception, the revision of rule one hundred twenty-three (123) and the proposed new rule two hundred fifty-three point one (253.1) were approved. Also at said regular session by said Act an amendment to existing rule number two hundred fifteen point one (215.1) was enacted. That no other or different changes, modifications, amendments,
418 419	revisions or additions to the Rules of Civil Procedure were made or enacted at such regular session of said Sixty-first General Assembly.
$\frac{420}{421}$	Signed this 4th day of June, 1965, being the last legislative day of the Sixty-first General Assembly.
$\begin{array}{c} 422 \\ 423 \end{array}$	s/ VINCENT B. STEFFEN Speaker of the House
$\begin{array}{c} 424 \\ 425 \end{array}$	s/ W. R. KENDRICK Chief Clerk of the House
426 427 428	HOUSE OF REPRESENTATIVES Sixty-first General Assembly of the State of Iowa