

10 bers of each House, the General Assembly shall convene in special ses-  
 11 sion. The Governor of the state may convene the General Assembly  
 12 by proclamation in the interim.

1 SEC. 2. The foregoing proposed amendment, having been adopted  
 2 and agreed to by the Sixty-fourth General Assembly, Second Session,  
 3 thereafter duly published, and now adopted and agreed to by the Sixty-  
 4 fifth General Assembly in this Joint Resolution, shall be submitted to  
 5 the people of the State of Iowa at the general election in November of  
 6 the year nineteen hundred seventy-four in the manner required by the  
 7 Constitution of the State of Iowa and the laws of the State of Iowa.

CHAPTER 1284

RULES OF CIVIL PROCEDURE

IN THE MATTER OF  
 THE  
 RULES OF CIVIL PROCEDURE

REPORT OF THE  
 SUPREME COURT

*To the 1974 Regular Session of the Sixty-fifth General Assembly of the State of Iowa:*

1 Pursuant to Sections 684.18 and 684.19, Code 1973, the Supreme  
 2 Court of Iowa has prescribed and hereby reports to the General  
 3 Assembly changes in the existing Rules of Civil Procedure as follows:

4 **Rule 9. Actions by and against the state.**

5 That Rule 9 be amended by striking the following sentence:

6 "It may be sued as provided by any statutes in force at the time."

7 **Rule 49. Tolling limitations.**

8 That Rule 49 be stricken and the following substituted:

9 "49. **Tolling limitations.** For the purpose of determining whether  
 10 an action has been commenced within the time allowed by statutes  
 11 for limitation of actions, whether the limitation inheres in the stat-  
 12 utes creating the remedy or not, the following shall be deemed a  
 13 commencement of the action, to-wit:

14 (a) The delivery of the original notice to the sheriff of the proper  
 15 county with the intent that it be served immediately (which intent  
 16 shall be presumed unless the contrary appears).

17 (b) The filing of the original notice with the Secretary of State  
 18 as provided in Section 617.3 provided that service is completed as  
 19 required by said section.

20 (c) The filing of the original notice with the commissioner of  
 21 public safety as provided by Section 321.498 provided that service is  
 22 completed as provided in said section."

23 **Rule 56. Personal service.**

24 That Rule 56 be amended by adding the following:

25 "(n) If service cannot be made by any of the methods provided by  
 26 this rule, any defendant may be served as provided by Court Order,  
 27 consistent with due process of law."

28 **Rule 68. Allowable pleadings.**

29 That Rule 68 be stricken and the following substituted:

30 "68. **Allowable pleadings.** There shall be a petition and an answer;  
31 a reply to a counterclaim denominated as such; an answer to a cross-  
32 claim, if the answer contains a cross-claim; a third-party petition, if  
33 a person who was not an original party is summoned under the provi-  
34 sions of Rule 34; and a third-party answer, if a third-party petition  
35 is served."

36 **Rule 73. Reply.**

37 That Rule 73 be stricken and the following substituted:

38 "73. **Reply.** The court may order a reply to an answer or a third-  
39 party answer."

40 **Rule 82. Filing, copies, delivery.**

41 That Rule 82 be stricken and the following substituted:

42 "82. **Service and filing of pleadings and other papers.**

43 (a) When service required. Everything required by these rules to  
44 be filed, every order required by its terms to be served, every pleading  
45 subsequent to the original petition unless the court otherwise orders  
46 because of numerous defendants, every paper relating to discovery  
47 required to be served upon a party unless the court otherwise orders,  
48 every written motion other than one which may be heard ex parte,  
49 and every written notice, appearance, demand, offer of judgment,  
50 designation of record on appeal, and similar paper shall be served  
51 upon each of the parties. No service need be made on parties in  
52 default for failure to appear except that pleadings asserting new or  
53 additional claims for relief against them shall be served upon them  
54 in the manner provided for service of original notice in Rule 56.

55 In an action begun by seizure of property, in which no person need  
56 be or is named as defendant, any service required to be made prior to  
57 the filing of an answer, claim, or appearance shall be made upon the  
58 person having custody or possession of the property at the time of  
59 its seizure.

60 (b) Same: how made. Service upon a party represented by an  
61 attorney shall be made upon the attorney unless service upon the  
62 party himself is ordered by the court. Service upon the attorney or  
63 upon a party shall be made by delivering a copy to him or by mailing  
64 it to him at his last known address or, if no address is known, by  
65 leaving it with the clerk of court. Delivery of a copy within this rule  
66 means: handing it to the attorney or to the party; or leaving it at  
67 his office with his clerk or other person in charge thereof; or, if there  
68 is no one in charge, leaving it in a conspicuous place therein; or, if  
69 the office is closed or the person to be served has no office, leaving it  
70 at his dwelling house or usual place of abode with some person of  
71 suitable age and discretion then residing therein. Service by mail is  
72 complete upon mailing.

73 (c) Same: numerous defendants. In any action in which there  
74 are unusually large numbers of defendants, the court, upon motion  
75 or of its own initiative, may order that service of the pleadings of the  
76 defendants and replies thereto need not be made as between the  
77 defendants and that any cross-claim, counterclaim, or matter con-  
78 stituting an avoidance or affirmative defense contained therein shall  
79 be deemed to be denied or avoided by all other parties and that the  
80 filing of any such pleading and service thereof upon the plaintiff con-

81 stitutes due notice of it to the parties. A copy of every such order  
82 shall be served upon the parties in such manner and form as the court  
83 directs.

84 (d) Filing. All papers after the petition required to be served  
85 upon a party shall be filed with the court either before service or  
86 within a reasonable time thereafter. Whenever these rules require a  
87 filing within a certain time said filing shall be deemed timely if service  
88 is made within said time and filing is completed within a reasonable  
89 time thereafter.

90 (e) Filing with the court defined. The filing of pleadings and  
91 other papers with the court as required by these rules shall be made  
92 by filing them with the clerk of the court, except that the judge may  
93 permit the papers to be filed with him, in which event he shall note  
94 thereon the filing date and forthwith transmit them to the office of  
95 the clerk.

96 (f) Notice of orders or judgments. Immediately upon the entry  
97 of an order or judgment the clerk shall serve a notice of the entry by  
98 mail in the manner provided for in Rule 82 upon each party who is not  
99 in default for failure to appear, and shall make a note in the docket  
100 of the mailing. Such mailing is sufficient notice for all purposes for  
101 which notice of the entry of an order is required by these rules; but  
102 any party may in addition serve a notice of such entry in the manner  
103 provided in Rule 82 for the service of papers. Lack of notice of the  
104 entry by the clerk does not affect the time to appeal or relieve or  
105 authorize the court to relieve a party for failure to appeal within the  
106 time allowed, except as permitted in Rule 335(a).

107 (g) Proof of service. Proof of service of all papers required or  
108 permitted to be served, shall be filed in the Clerk's office promptly,  
109 and, in any event, before action is to be taken thereon by the court or  
110 the parties. The proof shall show the time and manner of service and  
111 may be by written acknowledgement of service, by certification of a  
112 member of the bar of this state, by affidavit of the person who served  
113 the papers, or by any other proof satisfactory to the court."

114 **Rule 83. Failure to file copies.**

115 That Rule 83 be stricken and the following substituted:

116 **"83. Enlargement; additional time after service by mail.**

117 (a) Enlargement. When by these rules or by a notice given there-  
118 under or by order of court an act is required or allowed to be done at  
119 or within a specified time, the court for cause shown may at any time  
120 in its discretion (1) with or without motion or notice order the period  
121 enlarged if request therefor is made before the expiration of the  
122 period originally prescribed or as extended by a previous order, or (2)  
123 upon motion made after the expiration of the specified period permit  
124 the act to be done where the failure to act was the result of excusable  
125 neglect; but it may not extend the time for taking any action under  
126 Rules 241, 243 and 244, except to the extent and under the conditions  
127 stated in them.

128 (b) Additional time after service by mail. Whenever a party has  
129 the right or is required to do some act or take some proceedings  
130 within a prescribed period after the service of a notice or other paper  
131 upon him and the notice or paper is served upon him by mail, 3 days  
132 shall be added to the prescribed period."

133 Rule 84. **Copy fees.**

134 That Rule 84 be stricken and the following substituted:

135 "84. **Copy fees.** A fee of 10 cents per hundred words for each copy  
136 shall be taxed with the costs, to be the property of the attorney filing  
137 or serving the copy."

138 Rule 102. **What admitted.**

139 That Rule 102 be amended by striking subdivision (2) and substi-  
140 tuting the following:

141 "(2) averments in a pleading to which no responsive pleading is  
142 required or permitted."

143 Rule 114. **Notice of motion unnecessary.**

144 That Rule 114 be stricken and the following substituted:

145 "114. **Notice of motion days unnecessary.** A party who has been  
146 served with original notice or has appeared, shall take notice of the  
147 regular motion day on which motions will be heard."

148 Rule 156. **Notice—service.**

149 That Rule 156 be stricken.

150 Rule 335. **Time for appeal.**

151 That Rule 335(b) be amended by striking "Appellant's proposed  
152 abstract on such appeal" and substituting "The Appendix to the  
153 briefs."\*

Respectfully submitted,

THE SUPREME COURT OF IOWA

s/ C. EDWIN MOORE,  
CHIEF JUSTICE

158 Des Moines, Iowa

159 January 25, 1974

ACKNOWLEDGEMENT

160 I, Ralph R. Brown, Secretary of the Senate of the State of Iowa,  
161 hereby acknowledge delivery to me on the 25th day of January, 1974  
162 of the foregoing report of the Supreme Court of Iowa pertaining to  
163 Rules of Civil Procedure.

s/ RALPH R. BROWN  
Secretary of the Senate  
1974 Regular Session  
Sixty-fifth General Assembly  
of the State of Iowa

ACKNOWLEDGEMENT

170 I, William H. Harbor, Chief Clerk of the House of Representatives  
171 of the State of Iowa, hereby acknowledge delivery to me on this 25th  
172 day of January, 1974 of the foregoing report of the Supreme Court  
173 of Iowa pertaining to Rules of Civil Procedure.

s/ WILLIAM H. HARBOR  
Chief Clerk of the  
House of Representatives  
1974 Regular Session  
Sixty-fifth General Assembly  
of the State of Iowa

\*According to enrolled copy

181

## CERTIFICATE

182 I, Arthur A. Neu, do hereby certify that I am the President of the  
 183 Senate of the 1974 Regular Session of the Sixty-fifth General Assem-  
 184 bly of the State of Iowa; and I, Ralph R. Brown, do hereby certify  
 185 that I am the Secretary of the Senate of the 1974 Regular Session of  
 186 the Sixty-fifth General Assembly of the State of Iowa, and we do  
 187 hereby jointly certify that as such President and Secretary that on  
 188 the twenty-fifth day of January, 1974, the Supreme Court of the  
 189 State of Iowa reported to said Senate, and filed with it, the attached  
 190 and foregoing modifications, amendments, revisions and additions to  
 191 the Rules of Civil Procedure, heretofore reported by said Supreme  
 192 Court to the Fiftieth General Assembly of the State of Iowa;

193 THAT the date of making said report to the 1974 Regular Session  
 194 of the Sixty-fifth General Assembly was within the twenty days sub-  
 195 sequent to the convening of the 1974 Regular Session of the Sixty-  
 196 fifth General Assembly;

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

199 THAT no other or different changes, modifications, amendments,  
 200 revisions or additions to the Rules of Civil Procedure were made or  
 201 enacted at such 1974 Regular Session of said Sixty-fifth General  
 202 Assembly.

203 Signed this fourth day of May, 1974, being the last legislative day  
 204 of the 1974 Regular Session of the Sixty-fifth General Assembly.

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s/ ARTHUR A. NEU

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President of the Senate

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s/ RALPH R. BROWN

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Secretary of the Senate

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1974 Regular Session of the Sixty-

210

fifth General Assembly of the State

211

of Iowa

212

## CERTIFICATE

213 I, Andrew Varley, do hereby certify that I am the Speaker of the  
 214 House of Representatives of the 1974 Regular Session of the Sixty-  
 215 fifth General Assembly of the State of Iowa; and I, William H.  
 216 Harbor, do hereby certify that I am the Chief Clerk of the House of  
 217 Representatives of the 1974 Regular Session of the Sixty-fifth Gen-  
 218 eral Assembly of the State of Iowa, and we do hereby jointly certify  
 219 that as such Speaker and Chief Clerk that on the twenty-fifth day of  
 220 January, 1974, the Supreme Court of the State of Iowa reported to  
 221 said House of Representatives, and filed with it, the attached and  
 222 foregoing modifications, amendments, revisions and additions to the  
 223 Rules of Civil Procedure, heretofore reported by said Supreme Court  
 224 to the Fiftieth General Assembly of the State of Iowa;

225 THAT the date of making said report to the 1974 Regular Session  
 226 of the Sixty-fifth General Assembly was within the twenty days sub-  
 227 sequent to the convening of the 1974 Regular Session of the Sixty-  
 228 fifth General Assembly;

229 THAT no other or different changes, modifications, amendments,  
 230 revisions or additions to the Rules of Civil Procedure were made or

231 enacted at such 1973\* Regular Session of said Sixty-fifth General  
 232 Assembly.  
 233 Signed this fourth day of May, 1974, being the last legislative day  
 234 of the 1974 Regular Session of the Sixty-fifth General Assembly.  
 235 s/ ANDREW VARLEY  
 236 Speaker of the House  
 237 s/ WILLIAM H. HARBOR  
 238 Chief Clerk of the  
 239 House of Representatives  
 240 1974 Regular Session of the Sixty-  
 241 fifth General Assembly of the State  
 242 of Iowa

\*See substitute certificate below

**SUBSTITUTE CERTIFICATE TO BE FILED WITH THE RULES  
 OF CIVIL PROCEDURE IN THE OFFICE OF SECRETARY OF STATE**

I, Andrew Varley, do hereby certify that I am the Speaker of the House of Representatives of the 1974 Regular Session of the Sixty-fifth General Assembly of the State of Iowa; and I, William H. Harbor, do hereby certify that I am the Chief Clerk of the House of Representatives of the 1974 Regular Session of the Sixty-fifth General Assembly of the State of Iowa, and we do hereby jointly certify that as such Speaker and Chief Clerk that on the twenty-fifth day of January, 1974, 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 1974 Regular Session of the Sixty-fifth General Assembly was within the twenty days subsequent to the convening of the 1974 Regular Session of the Sixty-fifth General Assembly;

THAT no other or different changes, modifications, amendments, revisions or additions to the Rules of Civil Procedure were made or enacted at such 1974 Regular Session of said Sixty-fifth General Assembly.

Signed this fourth day of May, 1974, being the last legislative day of the 1974 Regular Session of the Sixty-fifth General Assembly.

s/ ANDREW VARLEY  
 Speaker of the House

s/ WILLIAM H. HARBOR  
 Chief Clerk of the  
 House of Representatives  
 1974 Regular Session of the Sixty-fifth  
 General Assembly of the State of Iowa