

## CHAPTER 259

## R.C.P. AMENDMENT

S. F. 583

AN ACT to amend the rules of civil procedure proposed by the supreme court.

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

1 SECTION 1. Amend the proposed rules of civil procedure found in  
2 Senate Journal, January 15, 1975, pages 120 and 121, New Rule one  
3 hundred twenty-four point one (124.1) to read as follows:

4 **124.1 Stipulations regarding discovery procedure.** Unless the  
5 court orders otherwise, the parties may by written stipulation (1) pro-  
6 vide that depositions may be taken before any *qualified* person at any  
7 time or place, upon any notice, and in any manner and when so taken  
8 may be used like other depositions, and (2) modify the procedures pro-  
9 vided by these rules for other methods of discovery, except that stipu-  
10 lations extending the time provided in Rules ~~125~~ 126, 127 and 130 for  
11 responses to discovery may be made only with the approval of the  
12 court.

Approved July 3, 1975

This Act was passed by the G.A. prior to July 1, 1975; see §3.7 of the Code

## CHAPTER 260

## RULES OF CIVIL PROCEDURE

IN THE MATTER OF  
THE  
RULES OF CIVIL PROCEDURE }

REPORT OF THE  
SUPREME COURT

*To the 1975 Regular Session of the Sixty-sixth General Assembly of the State of Iowa:*

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

4 Rule 48. **Commencing actions.**

5 That Rule 48 be stricken and the following substituted:

6 "48. **Commencement of actions.** A civil action is commenced by  
7 filing a petition with the court."

8 Rule 49. **Tolling limitations.**

9 That Rule 49 be stricken and the following substituted:

10 "49. **Original notice: Issuance and form.**

11 (a) Written directions for the service of the original notice and copy  
12 of petition shall be delivered to the clerk with the petition. There shall  
13 also be delivered to the clerk with the petition the original notice to be  
14 served and sufficient copies of both. The original notice shall contain  
15 the name of the court and the names of the parties, be directed to the  
16 defendant, state the name and address of the plaintiff's attorney, if  
17 any, otherwise the plaintiff's address, and the time within which these  
18 rules require the defendant to appear and defend, and shall notify de-

19 fendant that in case of defendant's failure to do so judgment by de-  
20 fault will be rendered against the defendant for the relief demanded in  
21 the petition.

22 (b) Upon the filing of the petition the clerk shall forthwith deliver  
23 for service the original notice and copies, copies of the petition, and  
24 the directions for service to the sheriff, to a person specially appointed  
25 to serve it, or other appropriate person. Upon request of the plaintiff,  
26 separate or additional original notices shall issue against any defen-  
27 dants.

28 (c) The original notice shall be signed by the clerk and be under the  
29 seal of the court. The clerk may require the party delivering the origi-  
30 nal notice to the clerk to advance reasonable costs of service."

31 **Rule 50. Contents of original notice.**

32 That Rule 50 be stricken and the following substituted:

33 "50. **Serving copies of original notice and petition.** The origi-  
34 nal notice and copy of petition shall be served together except when  
35 service is by publication. If service is by publication the original notice  
36 alone shall be published and shall also contain a general statement of  
37 the cause or causes of action and the relief demanded, and, if for  
38 money, the amount thereof."

39 **Rule 53. Time for appearance.**

40 That Rule 53 be stricken and the following substituted:

41 "53. **Time for appearance.** A defendant served as provided in  
42 these rules by publication or by publication and mailing must appear  
43 on or before the date fixed in the notice as published, which date shall  
44 not be less than 20 days after the date of last publication.

45 A defendant served in a manner prescribed by a statute or order of  
46 court shall appear on or before the date fixed as provided by said stat-  
47 ute or order of court.

48 In the event service of process is made by mail under Rule 56.2 the  
49 appearance date shall be on the date fixed in the original notice which  
50 shall not be less than 60 days following the date of mailing.

51 In all other cases the defendant shall appear within 20 days after the  
52 service of the original notice and petition upon such defendant."

53 **Rule 55. Failure to file petition.**

54 That Rule 55 be stricken and the following substituted:

55 "55. **Tolling limitations.** For the purpose of determining whether  
56 an action has been commenced within the time allowed by statutes for  
57 limitation of actions, whether the limitation inheres in the statutes  
58 creating the remedy or not, the filing of a petition shall be deemed a  
59 commencement of the action."

60 **Rule 56. Personal service.**

61 That Rule 56 be designated Rule 56.1 and the following rule be  
62 adopted:

63 "56.2. **Alternate method of service.** Every corporation, individu-  
64 al, personal representative, partnership or association that shall have  
65 the necessary minimum contact with the State of Iowa shall be subject  
66 to the jurisdiction of the courts of this state, and the courts of this  
67 state shall hold such corporation, individual, personal representative,  
68 partnership or association amenable to suit in Iowa in every case not  
69 contrary to the provisions of the constitution of the United States.

70 Service may be made on any such corporation, individual, personal  
71 representative, partnership or association (1) as provided in Rule 56.1  
72 within or without the state, or (2) if such service cannot be so made, in

73 any manner consistent with due process of law prescribed by order of  
74 the court in which the action is brought.

75 Nothing herein shall limit or affect the right to serve an original notice upon any corporation, individual, personal representative, partnership or association within or without this state in any manner now or  
76 hereafter permitted by statute or rule.”

79 **Rule 59. Returns of service.**

80 That Rule 59 be amended by adding the following:

81 “(d) The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during  
82 which the person served must respond to the process. Failure to make  
83 proof of service does not affect the validity of the service.

84 (e) Where service includes notice by mail, proof of such mailing shall  
85 be by affidavit. The affidavit, with a duplicate copy of the papers referred to in the affidavit attached thereto, shall be forthwith filed with  
86 the court.”

89 **NEW RULE.**

90 That the following rule be adopted:

91 “59.1. **Amendment of process or proof of service.** At any time  
92 in its discretion and upon such terms as it deems just, the court may  
93 allow any process or proof of service thereof to be amended, unless it  
94 clearly appears that material prejudice would result to the substantial  
95 rights of the party against whom the process issued.

96 **Rule 82. Service and filing of pleadings and other papers.**

97 That the first sentence of Rule 82(a) be stricken and the following  
98 substituted:

99 “Everything required by these rules to be filed, every order required  
100 by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be  
101 served upon each of the parties.”

107 **Rule 82. Service and filing of pleadings and other papers.**

108 That the following be added after the first sentence in Rule 82 (f):

109 “In the event a case involves an appeal or review relating to an administrative agency, officer, commissioner, board, administrator, or  
110 judge, the clerk shall mail without cost to the applicable administrative agency, officer, commissioner, board, administrator, or judge a  
111 copy of any remand order, final judgment or decision in the case and a  
112 copy of any procedendo from the Supreme Court.”

115 **Rule 83. Enlargement; additional time after service by mail.**

116 That the following be added to Rule 83(b):

117 “Such additional time shall not be applicable where a court has prescribed the method of service of notice and the number of days to be  
118 given.”

120 **Rule 117. Motion days—disposition of motions.**

121 That Rule 117(a) be amended by striking the word “five” in the fifth  
122 line thereof and substituting in lieu thereof the word “ten”.

## 123 NEW RULE.

124 That the following rule be adopted:

125 "124.1. **Stipulations regarding discovery procedure.** Unless the  
 126 court orders otherwise, the parties may by written stipulation (1) pro-  
 127 vide that depositions may be taken before any person\*, at any time or  
 128 place, upon any notice, and in any manner and when so taken may be  
 129 used like other depositions, and (2) modify the procedures provided by  
 130 these rules for other methods of discovery, except that stipulations ex-  
 131 tending the time provided in Rules 125\*, 127 and 130 for responses to  
 132 discovery may be made only with the approval of the court."

133 Rule 126. **Interrogatories to parties.**134 That Rule 126 be amended by adding after the first sentence in the  
135 third paragraph of subdivision (a), the following:

136 "A party answering interrogatories must set out the interrogatory im-  
 137 mediately preceding the answer thereto. A failure to comply with this  
 138 rule shall be deemed a failure to answer and shall be subject to sanc-  
 139 tions as provided in Rule 134."

140 Rule 215.1. **Uniform rule for dismissal for want of prosecution.**

141 That Rule 215.1 be amended by striking the phrase "(d) which have  
 142 been filed but in which the plaintiff has been unable by due diligence  
 143 to obtain service of original notice," by changing the designations of  
 144 subparagraphs (e) and (f) to (d) and (e) respectively and by adding the  
 145 following to the second paragraph of said rule: "The case shall not be  
 146 dismissed if there is a timely showing that the original notice and peti-  
 147 tion have not been served and that the party resisting dismissal has  
 148 used due diligence in attempting to cause process to be served."

149 Rule 237. **On what claims.**

150 That Rule 237 be amended by adding the following:

151 "(h) Supporting statement and memorandum. Upon any motion for  
 152 summary judgment pursuant to Rule 237, there shall be annexed to the  
 153 motion a separate, short and concise statement of the material facts as  
 154 to which the moving party contends there is no genuine issue to be  
 155 tried, including specific reference to those parts of the pleadings, depo-  
 156 sitions, answers to interrogatories, admissions on file and affidavits  
 157 which support such contentions and a memorandum of authorities."

158 Rule 260. **Levy on personalty.**159 That Rule 260(b) be amended by striking the words "equipment used  
160 in farming operations or farm products or".161 Rule 335. **Time for appeal.**

162 That Rule 335(b) be amended by striking the words "before the Ap-  
 163 pendix to the briefs is filed with said clerk.", and substituting the fol-  
 164 lowing in lieu thereof: "prior to ten days after the date on which the  
 165 appeal is docketed."

166 Rule 336. **How taken.**

167 That Rule 336(a) be stricken and the following substituted:

168 "(a) Appeal other than those allowed by order under rule 332 or rule  
 169 335 is taken and perfected by filing a notice with the clerk of the court  
 170 where the order, judgment or decree was entered, signed by the appel-  
 171 lant or his attorney. It shall specify the parties taking the appeal, and  
 172 the decree, judgment, order or part thereof appealed from. The appel-  
 173 lant shall serve a copy of the notice on each other party or his counsel  
 174 in the manner prescribed in rule 82(b). The notice presented to the  
 175 clerk of the trial court for filing shall be accompanied by a proof of ser-

\*See 66GA, ch 259, §1

176 vice in the form prescribed in rule 82(g). Promptly after filing the no-  
 177 tice of appeal with the clerk of the trial court the appellant shall mail  
 178 or deliver to the clerk of the supreme court an informational copy of  
 179 such notice.”

180 Respectfully submitted,  
 181 THE SUPREME COURT OF IOWA  
 182 s/ C. EDWIN MOORE  
 183 CHIEF JUSTICE

184 Des Moines, Iowa  
 185 January 15, 1975

186 ACKNOWLEDGMENT

187 I, Clark R. Rasmussen, Secretary of the Senate of the State of Iowa,  
 188 hereby acknowledge delivery to me on the fifteenth day of January,  
 189 1975 of the foregoing report of the Supreme Court of Iowa pertaining  
 190 to Rules of Civil Procedure.

191 s/ CLARK R. RASMUSSEN  
 192 Secretary of the Senate  
 193 1975 Regular Session of the  
 194 Sixty-sixth General Assembly  
 195 of the State of Iowa

196 ACKNOWLEDGEMENT

197 I, David L. Wray, Chief Clerk of the House of Representatives of  
 198 the State of Iowa, hereby acknowledge delivery to me on this fifteenth  
 199 day of January, 1975 of the foregoing report of the Supreme Court of  
 200 Iowa pertaining to Rules of Civil Procedure.

201 s/ DAVID L. WRAY  
 202 Chief Clerk of the  
 203 House of Representatives  
 204 1975 Regular Session of the  
 205 Sixty-sixth General Assembly  
 206 of the State of Iowa

207 CERTIFICATE

208 I, Arthur A. Neu, do hereby certify that I am the President of the  
 209 Senate of the 1975 Regular Session of the Sixty-sixth General Assem-  
 210 bly of the State of Iowa; and I, Clark R. Rasmussen, do hereby certify  
 211 that I am the Secretary of the Senate of the 1975 Regular Session of  
 212 the Sixty-sixth General Assembly of the State of Iowa, and we do here-  
 213 by jointly certify that as such President and Secretary that on the fif-  
 214 teenth day of January, 1975, the Supreme Court of the State of Iowa  
 215 reported to said Senate, and filed with it, the attached and foregoing  
 216 modifications, amendments, revisions and additions to the Rules of  
 217 Civil Procedure, heretofore reported by said Supreme Court to the Fif-  
 218 tieth General Assembly of the State of Iowa;

219 THAT the date of making said report to the 1975 Regular Session of  
 220 the Sixty-sixth General Assembly was within the twenty days subse-  
 221 quent to the convening of the 1975 Regular Session of the Sixty-sixth  
 222 General Assembly;

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

225 THAT there was enacted at such regular session of the Sixty-sixth  
 226 General Assembly an Act known as Senate File 583 wherein an amend-  
 227 ment to new rule 124.1 was enacted;

228 THAT no other or different changes, modifications, amendments, re-  
 229 visions or additions to the Rules of Civil Procedure were made or en-  
 230 acted at such 1975 Regular Session of said Sixty-sixth General  
 231 Assembly.

232 Signed this twentieth day of June, 1975, being the last legislative  
 233 day of the 1975 Regular Session of the Sixty-sixth General Assembly.

234 s/ ARTHUR A. NEU  
 235 President of the Senate

236 s/ CLARK R. RASMUSSEN  
 237 Secretary of the Senate  
 238 1975 Regular Session of the  
 239 Sixty-sixth General Assembly  
 240 of the State of Iowa

241 CERTIFICATE

242 I, Dale M. Cochran, do hereby certify that I am the Speaker of the  
 243 House of Representatives of the 1975 Regular Session of the Sixty-  
 244 sixth General Assembly of the State of Iowa; and I, David L. Wray,  
 245 do hereby certify that I am the Chief Clerk of the House of Represent-  
 246 atives of the 1975 Regular Session of the Sixty-sixth General Assembly  
 247 of the State of Iowa, and we do hereby jointly certify that as such  
 248 Speaker and Chief Clerk that on the fifteenth day of January, 1975,  
 249 the Supreme Court of the State of Iowa reported to said House of Rep-  
 250 resentatives, and filed with it, the attached and foregoing modifica-  
 251 tions, amendments, revisions and additions to the Rules of Civil  
 252 Procedure, heretofore reported by said Supreme Court to the Fiftieth  
 253 General Assembly of the State of Iowa;

254 THAT the date of making said report to the 1975 Regular Session of  
 255 the Sixty-sixth General Assembly was within the twenty days subse-  
 256 quent to the convening of the 1975 Regular Session of the Sixty-sixth  
 257 General Assembly;

258 THAT no other report pertaining to the Rules of Civil Procedure was  
 259 made or filed by said Supreme Court with said House of Representa-  
 260 tives;

261 THAT there was enacted at such regular session of the Sixty-sixth  
 262 General Assembly an Act known as Senate File 583\* wherein an amend-  
 263 ment to new rule 124.1 was enacted.

264 THAT no other or different changes, modifications, amendments, re-  
 265 visions or additions to the Rules of Civil Procedure were made or en-  
 266 acted at such 1975 Regular Session of said Sixty-sixth General  
 267 Assembly.

268 Signed this twentieth day of June, 1975, being the last legislative  
 269 day of the 1975 Regular Session of the Sixty-sixth General Assembly.

270 s/ DALE M. COCHRAN  
 271 Speaker of the House

272 s/ DAVID L. WRAY  
 273 Chief Clerk of the  
 274 House of Representatives  
 275 1975 Regular Session of the  
 276 Sixty-sixth General Assembly  
 of the State of Iowa

\*See 66GA, ch 259, §1