

CHAPTER 1265

RULES OF CIVIL PROCEDURE

IN THE MATTER OF
THE
RULES OF CIVIL PROCEDURE

}

REPORT OF THE
SUPREME COURT

To the 1976 Regular Session of the Sixty-sixth General Assembly of the State of Iowa:

Pursuant to section 684.18 and 684.19, Code 1975, the Supreme Court of Iowa has prescribed and hereby reports to the General Assembly changes in the existing Rules of Civil Procedure as follows:

Rule 33. Cross-petitions.

That Rule 33 be stricken and the following substituted:

"33. **Cross-claim against co-party.** A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or a counter-claim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant."

Rule 65. General appearance.

That Rule 65 be stricken and the following substituted:

"65. **Appearances.** An attorney making an appearance shall, either by filing written appearance or by signature to the first pleading or motion filed by the attorney, clearly indicate the attorney or attorneys in charge of the case and shall not sign in the name of the firm only."

Rule 66. Special appearance.

That Rule 66 be stricken and the following substituted:

"66. **Special appearance.** A defendant may appear specially for the sole purpose of attacking the jurisdiction of the court, but only before taking any part in a hearing or trial of the case, personally or by attorney, or filing a motion, written appearance, or pleading. The special appearance shall be in writing, filed with the clerk and shall state the grounds thereof. If the special appearance is erroneously overruled, defendant may plead to the merits or proceed to trial without waiving such error."

Rule 69. Pleadings defined.

That Rule 69 be stricken and the following substituted:

"69. **General rules of pleading.**

(a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third party claim, shall contain (1) a short and plain statement of any matter needed to justify venue or jurisdiction, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) **Pleading to be Concise and Direct; Consistency.** (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required. (2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense

or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. 'Pleadings' as used in these rules do not include motions."

Rule 70. Petition.

That Rule 70 be stricken and the following substituted:

"70. **Petition.** The petition shall state whether it is at law or in equity."

Rule 74. Cross-petition – judgment.

That Rule 74 be stricken and the following substituted:

"74. **Cross-claim, cross-petition – judgment.** Any cross-claim under Rule 33 or cross-petition under Rule 34, and the answer and reply to it, shall be governed by these rules. Where judgment in the original case can be entered without prejudice to the rights in issue under a cross-petition, cross-claim or counterclaim, it shall not be delayed thereby."

Rule 79. Numbered divisions and paragraphs.

That Rule 79 be stricken and the following substituted:

"79. **Paragraphs; separate statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth."

Rule 85(a). Motions.

That Rule 85(a) be stricken and the following substituted:

"85(a). **Motions.** Motions attacking a pleading must be served before responding to a pleading or, if no responsive pleading is required by these rules, upon motion made by a party within 20 days after the service of the pleading on such party."

Rule 85(b). Pleading.

That Rule 85(b) be stricken and the following substituted:

"85(b). **Pleading.** Answer to a petition must be served on or before the appearance date prescribed in accordance with Rule 53. A party served with a pleading stating a cross-claim against the party shall serve an answer thereto within 20 days after the service of the pleading upon the party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs."

Rule 85(c). Reply.

That Rule 85(c) be stricken and the following substituted:

"85(c). **Time after filing motions.** The service of a motion permitted under these rules alters these periods of time as follows, unless a different time is fixed by order of the court:

- (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action;

- (2) If the court grants a motion for a more specific statement, the responsive pleading shall be served within ten days after the service of the more specific statement; provided, however, unless the parties stipulate in writing otherwise, the filing of a motion for additional time shall delay the responsive pleading for a period of ten days after the service of the motion unless within such time the court orders otherwise."

Rule 85(d). *Answer or reply to amendments.*

That Rule 85(d) be stricken and the following substituted:

"85(d). *Response to amendments.* A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders."

Rule 88. **Amendments.**

That Rule 88 be stricken and the following substituted:

"88. **Amendments.** A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

Rule 89. **Making and construing amendments.**

That the second sentence of Rule 89 be stricken and the following substituted:

"Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him."

Rule 90. **Supplemental pleading.**

That Rule 90 be stricken and the following substituted:

"90. **Supplemental pleadings.** By leave of court, upon reasonable notice and upon such terms as are just, or by written consent of the adverse party, a party may serve and file a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Leave may be granted even though the original pleading is defective in its statement of a claim for relief or defense. No responsive pleading to the supplemental pleading is required unless the court, upon its own motion or the motion of a party, so orders, specifying the time therefor."

Rule 124.1. **Stipulations regarding discovery procedure.**

That the phrase "may be made only with the approval of the court" be stricken from the last portion of Rule 124.1 and the following substituted:

"must be filed with the court and may be superseded by court order, in

which event the time shall be extended to 20 days after notice of the court's action".

Rule 126. Interrogatories to parties.

That the second paragraph of Rule 126 (a) be stricken.

Rule 336. How taken.

That the following words be stricken from Rule 336(c):

"; but no delay in so doing shall affect the validity of the appeal if the copy is filed before the abstract on such appeal is filed under rule 340(a)".

Rule 381. Forms.

That the following Rule 381 be adopted:

"381. **Forms.** The forms contained in the Appendix of Forms following this rule are for use and are sufficient under the Iowa Rules of Civil Procedure, excluding the rules appearing in division XVI. The Supreme Court shall have the power to prescribe forms for use under the rules appearing in division XVI."

APPENDIX OF FORMS

1. FORM OF ORIGINAL NOTICE FOR PERSONAL SERVICE.

IN THE IOWA DISTRICT COURT FOR COUNTY

	Plaintiff(s),	No.
vs.		(Insert "LAW" or "EQUITY".)
	Defendant(s).	ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified that there is now on file in the office of the clerk of the above court, a petition in the above-entitled action, a copy of which petition is attached hereto. The plaintiff's attorney is, whose address is, Iowa

You are further notified that unless you appear thereto and defend in the Iowa District Court for County, at the county courthouse in, Iowa, within 20 days after the service of this original notice upon you, judgment by default will be rendered against you for the relief demanded in the petition.

(SEAL)

CLERK OF THE ABOVE COURT

.....County Courthouse

....., Iowa

NOTE:

Persons named as defendants are told to "appear thereto and defend." These words are not always understood. The required appearance may be made either by the defendant or by defendant's attorney. IT IS NECESSARY TO SERVE AND FILE A SPECIAL APPEARANCE, MOTION OR PLEADING TO PREVENT A DEFAULT (RULE 87). The attorney who is expected to appear for the defendant should be promptly advised by defendant of the service of this notice.

2. FORM OF ORIGINAL NOTICE AGAINST A NONRESIDENT MOTOR VEHICLE OWNER OR OPERATOR UNDER §321.500, THE CODE.

IN THE IOWA DISTRICT COURT FOR COUNTY

Plaintiff(s), No.
vs. (Insert "LAW" or "EQUITY.")
Defendant(s). ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified that there is now on file in the office of the clerk of the above court, a petition in the above-entitled action, a copy of which petition is attached hereto. The plaintiff's attorney is, whose address is, Iowa

You are further notified that unless you appear thereto and defend in the Iowa District Court for County, at the courthouse in, Iowa, before noon of the sixtieth day following the filing of this notice with the director of transportation of this state, default will be entered and judgment rendered against you by the court.

(SEAL)

.....
CLERK OF THE ABOVE COURT
.....County Courthouse
....., Iowa

NOTE:

Persons named as defendants are told to "appear thereto and defend." These words are not always understood. The required appearance may be made either by the defendant or by defendant's attorney. IT IS NECESSARY TO SERVE AND FILE A SPECIAL APPEARANCE, MOTION OR PLEADING TO PREVENT A DEFAULT (RULE 87). The attorney who is expected to appear for the defendant should be promptly advised by defendant of the service of this notice.

3. FORM OF ORIGINAL NOTICE AGAINST FOREIGN CORPORATION OR NONRESIDENT UNDER §617.3, THE CODE.

IN THE IOWA DISTRICT COURT FOR COUNTY

Plaintiff(s), No.
vs. (Insert "LAW" or "EQUITY".)
Defendant(s), ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified that there is now on file in the office of the clerk of the above court, a petition in the above-entitled action, a copy of which petition is attached hereto.

The plaintiff's attorney is, whose address is, Iowa

You are further notified that unless you appear thereto and defend in the Iowa District Court for County, at the Courthouse in, Iowa, within 60 days following the filing of

this notice with the secretary of state of the state of Iowa, default will be entered and judgment rendered against you by the court.

(SEAL)

.....
CLERK OF THE ABOVE COURT
.....County Courthouse
....., Iowa

NOTE:

Persons named as defendants are told to "appear thereto and defend." These words are not always understood. The required appearance may be made either by the defendant or by defendant's attorney. IT IS NECESSARY TO SERVE AND FILE A SPECIAL APPEARANCE, MOTION OR PLEADING TO PREVENT A DEFAULT (RULE 87). The attorney who is expected to appear for the defendant should be promptly advised by defendant of the service of this notice.

4. FORM OF ORIGINAL NOTICE FOR PUBLICATION.

IN THE IOWA DISTRICT COURT FOR COUNTY

Plaintiff(s), No.

vs.

(Insert "LAW"
or "EQUITY".)

Defendant(s).

ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified that there is now on file in the office of the clerk of the above court, a petition in the above-entitled action, which petition prays(1) The plaintiff's attorney is, whose address is , Iowa

You are further notified that unless you appear thereto and defend in the Iowa District Court for County, at the courthouse in, Iowa, on or before the (2) day of, 19....., judgment by default will be rendered against you for the relief demanded in the petition.

(SEAL)

.....
CLERK OF THE ABOVE COURT
.....County Courthouse
....., Iowa

NOTE:

Persons named as defendants are told to "appear thereto and defend." These words are not always understood. The required appearance may be made either by the defendant or by defendant's attorney. IT IS NECESSARY TO SERVE AND FILE A SPECIAL APPEARANCE, MOTION OR PLEADING TO PREVENT A DEFAULT (RULE 87). The attorney who is expected to appear for the defendant should be promptly advised by defendant of the service of this notice.

(1)Here make a general statement of the cause or causes of action and the relief demanded, and, if for money, the amount thereof (Rule 50).

(2)Date inserted here must not be less than 20 days after the day of the last publication of the original notice (Rule 53).]

5. DIRECTIONS FOR SERVICE OF ORIGINAL NOTICE

COMPLETE ONE OF THESE DIRECTIONS FOR EACH INDIVIDUAL, COMPANY, CORPORATION, ETC. TO BE SERVED.

DIRECTIONS FOR SERVICE OF ORIGINAL NOTICE

TO: Sheriff County OR, TO:
..... Court House
....., Iowa

Serve:

At:

ON COMPLETION OF SERVICE NOTIFY:

Special Instructions or Information Relating to Service:

NAME AND SIGNATURE OF ATTORNEY

OR OTHER ORIGINATOR:

BY:

DATE: TELEPHONE NO.

DEPOSIT FOR COST OF SERVICE

Deposit Waived

Deposit for \$..... required and receipt thereof acknowledged.

.....
Clerk of Court

Respectfully submitted,
THE SUPREME COURT OF IOWA

/s/ C. EDWIN MOORE
Chief Justice

Des Moines, Iowa
January 30, 1976

ACKNOWLEDGEMENT

I, Steven C. Cross, Secretary of the Senate of the State of Iowa, hereby acknowledge delivery to me on the thirtieth day of January, 1976 of the foregoing report of the Supreme Court of Iowa pertaining to Rules of Civil Procedure.

/s/ STEVEN C. CROSS
Secretary of the Senate
1976 Regular Session of the
Sixty-Sixth General Assembly
of the State of Iowa.

ACKNOWLEDGEMENT

I, David L. Wray, Chief Clerk of the House of Representatives of the State of Iowa, hereby acknowledge delivery to me on this thirtieth day of January, 1976 of the foregoing report of the Supreme Court of Iowa pertaining to Rules of Civil Procedure.

/s/ DAVID L. WRAY
Chief Clerk of the
House of Representatives
1976 Regular Session of the
Sixty-Sixth General Assembly
of the State of Iowa.

CERTIFICATE

I, Arthur A. Neu, do hereby certify that I am the President of the Senate of the 1976 Regular Session of the Sixty-sixth General Assembly of the State of Iowa; and I, Steven C. Cross, do hereby certify that I am the Secretary of the Senate of the 1976 Regular Session of the Sixty-sixth General Assembly of the State of Iowa, and we do hereby jointly certify that as such President and Secretary that on the thirtieth day of January, 1976, 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 1976 Regular Session of the Sixty-sixth General Assembly was within the twenty days subsequent to the convening of the 1976 Regular Session of the Sixty-sixth 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-sixth General Assembly an Act known as Senate File 1340 wherein an amendment to new rule 69, paragraph a, was enacted;

THAT no other or different changes, modifications, amendments, revisions or additions to the Rules of Civil Procedure were made or enacted at such 1976 Regular Session of said Sixty-sixth General Assembly.

Signed this twenty-ninth day of May, 1976, being the last legislative day of the 1976 Regular Session of the Sixty-sixth General Assembly.

/s/ ARTHUR A. NEU
President of the Senate

/s/ STEVEN C. CROSS
Secretary of the Senate
1976 Regular Session of the
Sixty-sixth General Assembly
of the State of Iowa

CERTIFICATE

I, Dale M. Cochran, do hereby certify that I am the Speaker of the House of Representatives of the 1976 Regular Session of the Sixty-sixth General Assembly of the State of Iowa; and I, David L. Wray, do hereby certify that I am the Chief Clerk of the House of Representatives of the 1976 Regular Session of the Sixty-sixth General Assembly of the State of Iowa, and we do hereby jointly certify that as such Speaker and Chief Clerk that on the thirtieth

day of January, 1976, 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 1976 Regular Session of the Sixty-sixth General Assembly was within the twenty days subsequent to the convening of the 1976 Regular Session of the Sixty-sixth 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-sixth General Assembly an Act known as Senate File 1340 wherein an amendment to new rule 69, paragraph "a", was enacted.

THAT no other or different changes, modifications, amendments, revisions or additions to the Rules of Civil Procedure were made or enacted at such 1976 Regular Session of said Sixty-sixth General Assembly.

Signed this twenty-ninth day of May, 1976, being the last legislative day of the 1976 Regular Session of the Sixty-sixth General Assembly.

/s/ DALE M. COCHRAN
Speaker of the House

/s/ DAVID L. WRAY
Chief Clerk of the
House of Representatives
1976 Regular Session of the
Sixty-sixth General Assembly
of the State of Iowa