

RULES OF CIVIL PROCEDURE

CHAPTER 1207 RULES OF CIVIL PROCEDURE

IN THE MATTER OF THE
RULES OF CIVIL PROCEDURE

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REPORT OF THE
SUPREME COURT

TO THE 1980 REGULAR SESSION OF THE SIXTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF IOWA:

Pursuant to sections 684.18(1) and 684.19, The Code, the Supreme Court of Iowa has prescribed and hereby reports to the General Assembly changes in existing Rules of Civil Procedure as follows:

Rule 42.

That rule 42 be stricken and the following new rules 42.1 through 42.20 be substituted:

"42.1. COMMENCEMENT OF A CLASS ACTION.

One or more members of a class may sue or be sued as representative parties on behalf of all in a class action if:

- (1) the class is so numerous or so constituted that joinder of all members, whether or not otherwise required or permitted, is impracticable; and
- (2) there is a question of law or fact common to the class.

"42.2. CERTIFICATION OF CLASS ACTION.

(a) Unless deferred by the court, as soon as practicable after the commencement of a class action the court shall hold a hearing and determine whether or not the action is to be maintained as a class action and by order certify or refuse to certify it as a class action.

(b) The court may certify an action as a class action, if it finds that (1) the requirements of rule 42.1 have been satisfied, (2) a class action should be permitted for the fair and efficient adjudication of the controversy, and (3) the representative parties fairly and adequately will protect the interests of the class.

(c) If appropriate, the court may (1) certify an action as a class action with respect to a particular claim or issue, (2) certify an action as a class action to obtain one or more forms of relief, equitable, declaratory, or monetary, or (3) divide a class into subclasses and treat each subclass as a class.

"42.3. CRITERIA CONSIDERED.

(a) In determining whether the class action should be permitted for the fair and efficient adjudication of the controversy, as appropriately limited under rule 42.2(c), the court shall consider, and give appropriate weight to, the following and other relevant factors:

- (1) whether a joint or common interest exists among members of the class;
- (2) whether the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for a party opposing the class;
- (3) whether adjudications with respect to individual members of the class as a practical matter would be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- (4) whether a party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole;
- (5) whether common questions of law or fact predominate over any questions affecting only individual members;
- (6) whether other means of adjudicating the claims and defenses are impracticable or inefficient;
- (7) whether a class action offers the most appropriate means of adjudicating the claims and defenses;
- (8) whether members not representative parties have a substantial interest in individually controlling the prosecution or defense of separate actions;
- (9) whether the class action involves a claim that is or has been the subject of a class action, a government action, or other proceeding;
- (10) whether it is desirable to bring the class action in another forum;
- (11) whether management of the class action poses unusual difficulties;
- (12) whether any conflict of laws issues involved pose unusual difficulties; and
- (13) whether the claims of individual class members are insufficient in the amounts or interests involved, in view of the complexities of the issues and the expenses of the litigation, to afford significant relief to the members of the class.

(b) In determining under rule 42.2(b) that the representative parties fairly and adequately will protect the interests of the class, the court must find that:

- (1) the attorney for the representative parties will adequately represent the interests of the class;

(2) the representative parties do not have a conflict of interest in the maintenance of the class action; and

(3) the representative parties have or can acquire adequate financial resources, considering rule 42.17, to assure that the interests of the class will not be harmed.

"42.4. ORDER ON CERTIFICATION.

(a) The order of certification shall describe the class and state: (1) the relief sought, (2) whether the action is maintained with respect to particular claims or issues, and (3) whether subclasses have been created.

(b) The order certifying or refusing to certify a class action shall state the reasons for the court's ruling and its findings on the facts listed in rule 42.3(a).

(c) An order certifying or refusing to certify an action as a class action is appealable.

(d) Refusal of certification does not terminate the action, but does preclude it from being maintained as a class action.

"42.5. AMENDMENT OF CERTIFICATION ORDER.

(a) The court may amend the certification* order at any time before entry of judgment on the merits. The amendment may (1) establish subclasses, (2) eliminate from the class any class member who was included in the class as certified, (3) provide for an adjudication limited to certain claims or issues, (4) change the relief sought, or (5) make any other appropriate change in the order.

(b) If notice of certification has been given pursuant to rule 42.7, the court may order notice of the amendment of the certification order to be given in terms and to any members of the class the court directs.

(c) The reasons for the court's ruling shall be set forth in the amendment of the certification order.

(d) An order amending the certification order is appealable. An order denying the motion of a member of a defendant class, not a representative party, to amend the certification order is appealable if the court certifies it for immediate appeal.

"42.6. JURISDICTION OVER MULTI-STATE CLASSES.

(a) A court of this state may exercise jurisdiction over any person who is a member of the class suing or being sued if:

(1) a basis for jurisdiction exists or would exist in a suit against the person under the law of this state; or

(2) the state of residence of the class member, by class action law similar to subdivision (b), has made its residents subject to the jurisdiction of the courts of this state.

(b) A resident of this state who is a member of a class suing or being sued in another state is subject to the jurisdiction of that state if by similar class action law it extends reciprocal jurisdiction to this state.

*According to enrolled copy

"42.7. NOTICE OF ACTION.

(a) Following certification, the court by order, after hearing, shall direct the giving of notice to the class.

(b) The notice, based on the certification order and any amendment of the order, shall include:

(1) a general description of the action, including the relief sought, and the names and addresses of the representative parties;

(2) a statement of the right of a member of the class under rule 42.8 to be excluded from the action by filing an election to be excluded, in the manner specified, by a certain date;

(3) a description of possible financial consequences on the class;

(4) a general description of any counterclaim being asserted by or against the class, including the relief sought;

(5) a statement that the judgment, whether favorable or not, will bind all members of the class who are not excluded from the action;

(6) a statement that any member of the class may enter an appearance either personally or through counsel;

(7) an address to which inquiries may be directed; and

(8) other information the court deems appropriate.

(c) The order shall prescribe the manner of notification to be used and specify the members of the class to be notified. In determining the manner and form of the notice to be given, the court shall consider the interests of the class, the relief requested, the cost of notifying the members of the class, and the possible prejudice to members who do not receive notice.

(d) Each member of the class, not a representative party, whose potential monetary recovery or liability is estimated to exceed \$100 shall be given personal or mailed notice if his identity and whereabouts can be ascertained by the exercise of reasonable diligence.

(e) For members of the class not given personal or mailed notice under subdivision (d), the court shall provide, as a minimum, a means of notice reasonably calculated to apprise the members of the class of the pendency of the action. Techniques calculated to assure effective communication of information concerning commencement of the action shall be used. The techniques may include personal or mailed notice, notification by means of newspaper, television, radio, posting in public or other places, and distribution through trade, union, public interest, or other appropriate groups.

(f) The plaintiff shall advance the expense of notice under this rule if there is no counterclaim asserted. If a counterclaim is asserted the expense of notice shall be allocated as the court orders in the interest of justice.

(g) The court may order that steps be taken to minimize the expense of notice.

"42.8. EXCLUSION.

(a) A member of a plaintiff class may elect to be excluded from the action unless (1) he is a representative party, (2) the certification order contains an affirmative finding under paragraph (1), (2), or (3) of rule 42.3(a), or (3) a counterclaim under rule 42.11 is pending against the member or his class or subclass.

(b) Any member of a plaintiff class entitled to be excluded under subdivision (a) who files an election to be excluded, in the manner and in the time specified in the notice, is excluded from and not bound by the judgment in the class action.

(c) The elections shall be made a part of the record in the action.

(d) A member of a defendant class may not elect to be excluded.

"42.9. CONDUCT OF ACTION.

(a) The court on motion of a party or its own motion may make or amend any appropriate order dealing with the conduct of the action including, but not limited to, the following: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given as the court directs, of (i) any step in the action, (ii) the proposed extent of the judgment, or (iii) the opportunity of members to signify whether they consider the representation fair and adequate, to enter an appearance and present claims or defenses, or otherwise participate in the action; (3) imposing conditions on the representative parties or on intervenors; (4) inviting the attorney general to participate with respect to the question of adequacy of class representation; (5) making any other order to assure that the class action proceeds only with adequate class representation; and (6) making any order to assure that the class action proceeds only with competent representation by the attorney for the class.

(b) A class member not a representative party may appear and be represented by separate counsel.

"42.10. DISCOVERY BY OR AGAINST CLASS MEMBERS.

(a) Discovery may be used only on order of the court against a member of the class who is not a representative party or who has not appeared. In deciding whether discovery should be allowed the court shall consider, among other relevant factors, the timing of the request, the subject matter to be covered, whether representatives of the class are seeking discovery on the subject to be covered, and whether the discovery will result in annoyance, oppression, or undue burden or expense for the member of the class.

(b) Discovery by or against representative parties or those appearing is governed by the rules dealing with discovery by or against a party to a civil action.

"42.11. COUNTERCLAIMS.

(a) A defendant in an action brought by a class may plead as a counterclaim any claim the court certifies as a class action against the plaintiff class. On leave of court, the defendant may plead as a counterclaim a claim against a member of the class or a claim the court certifies as a class action against a subclass.

(b) Any counterclaim in an action brought by a plaintiff class must be asserted before notice is given under rule 42.7.

(c) If a judgment for money is recovered against a party on behalf of a class, the court rendering judgment may stay distribution of any award or execution of any portion of a judgment allocated to a member of the class against whom the losing party has pending an action in or out of state for a judgment for money, and continue the stay so long as the losing party in the class action pursues the pending action with reasonable diligence.

(d) A defendant class may plead as a counterclaim any claim on behalf of the class that the court certifies as a class action against the plaintiff. The court may certify as a class action a counterclaim against the plaintiff on behalf of a subclass or permit a counterclaim by a member of the class. The court shall order that notice of the counterclaim by the class, subclass, or member of the class be given to the members of the class as the court directs, in the interest of justice.

(e) A member of a class or subclass asserting a counterclaim shall be treated as a member of a plaintiff class for the purpose of exclusion under rule 42.8.

(f) The court's refusal to allow, or the defendant's failure to plead, a claim as a counterclaim in a class action does not bar the defendant from asserting the claim in a subsequent action.

"42.12. DISMISSAL OR COMPROMISE.

(a) Unless certification has been refused under rule 42.2, a class action, without the approval of the court after hearing, may not be (1) dismissed voluntarily, (2) dismissed involuntarily without an adjudication on the merits, or (3) compromised.

(b) If the court has certified the action under rule 42.2, notice of hearing on the proposed dismissal or compromise shall be given to all members of the class in a manner the court directs. If the court has not ruled on certification, notice of hearing on the proposed dismissal or compromise may be ordered by the court which shall specify the persons to be notified and the manner in which notice is to be given.

(c) Notice given under subdivision (b) shall include a full disclosure of the reasons for the dismissal or compromise including, but not limited to, (1) any payments made or to be made in connection with the dismissal or compromise, (2) the anticipated effect of the dismissal or compromise on the class members, (3) any agreement made in connection with the dismissal or compromise, (4) a description and evaluation of alternatives considered by the representative parties and (5) an explanation of any other circumstances giving rise to the proposal. The notice also shall include a description of the procedure available for modification of the dismissal or compromise.

(d) On the hearing of the dismissal or compromise, the court may:

(1) as to the representative parties or a class certified under rule 42.2, permit dismissal with or without prejudice or approve the compromise;

(2) as to a class not certified, permit dismissal without prejudice;

(3) deny the dismissal;

(4) disapprove the compromise; or

(5) take other appropriate action for the protection of the class and in the interest of justice.

(e) The cost of notice given under subdivision (b) shall be paid by the party seeking dismissal, or as agreed in case of a compromise, unless the court after hearing orders otherwise.

"42.13. EFFECT OF JUDGMENT ON CLASS.

In a class action certified under rule 42.2 in which notice has been given under rule 42.7 or 42.12, a judgment as to the claim or particular claim or issue certified is binding, according to its terms, on any member of the class who has not filed an election of exclusion under rule 42.8. The judgment shall name or describe the members of the class who are bound by its terms.

"42.14. COSTS.

(a) Only the representative parties and those members of the class who have appeared individually are liable for costs assessed against a plaintiff class.

(b) The court shall apportion the liability for costs assessed against a defendant class.

(c) Expenses of notice advanced under rule 42.7 are taxable as costs in favor of the prevailing party.

"42.15. RELIEF AFFORDED.

(a) The court may award any form of relief consistent with the certification order to which the party in whose favor it is rendered is entitled including equitable, declaratory, monetary, or other relief to individual members of the class or the class in a lump sum or installments.

(b) Damages fixed by a minimum measure of recovery provided by any statute may not be recovered in a class action.

(c) If a class is awarded a judgment for money, the distribution shall be determined as follows:

(1) The parties shall list as expeditiously as possible all members of the class whose identity can be determined without expending a disproportionate share of the recovery.

(2) The reasonable expense of identification and distribution shall be paid, with the court's approval, from the funds to be distributed.

(3) The court may order steps taken to minimize the expense of identification.

(4) The court shall supervise, and may grant or stay the whole or any portion of, the execution of the judgment and the collection and distribution of funds to the members of the class as their interests warrant.

(5) The court shall determine what amount of the funds available for the payment of the judgment cannot be distributed to members of the class individually because they could not be identified or located or because they did not claim or prove the right to money apportioned to them. The court after hearing shall distribute that amount, in whole or in part, to one or more states as unclaimed property or to the defendant.

(6) In determining the amount, if any, to be distributed to a state or to the defendant, the court shall consider the following criteria: (i) any

unjust enrichment of the defendant; (ii) the willfulness or lack of willfulness on the part of the defendant; (iii) the impact on the defendant of the relief granted; (iv) the pendency of other claims against the defendant; (v) any criminal sanction imposed on the defendant; and (vi) the loss suffered by the plaintiff class.

(7) The court, in order to remedy or alleviate any harm done, may impose conditions on the defendant respecting the use of the money distributed to him.

(8) Any amount to be distributed to a state shall be distributed as unclaimed property to any state in which are located the last known addresses of the members of the class to whom distribution could not be made. If the last known addresses cannot be ascertained with reasonable diligence, the court may determine by other means what portion of the unidentified or unlocated members of the class were residents of a state. A state shall receive that portion of the distribution that its residents would have received had they been identified and located. Before entering an order distributing any part of the amount to a state, the court shall give written notice of its intention to make distribution to the attorney general of the state of the residence of any person given notice under rule 42.7 or 42.12 and shall afford the attorney general an opportunity to move for an order requiring payment to the state.

"42.16. ATTORNEY'S FEES.

(a) Attorney's fees for representing a class are subject to control of the court.

(b) If under an applicable provision of law a defendant or defendant class is entitled to attorney's fees from a plaintiff class, only representative parties and those members of the class who have appeared individually are liable for those fees. If a plaintiff is entitled to attorney's fees from a defendant class, the court may apportion the fees among the members of the class.

(c) If a prevailing class recovers a judgment for money or other award that can be divided for the purpose, the court may order reasonable attorney's fees and litigation expenses of the class to be paid from the recovery.

(d) If the prevailing class is entitled to declaratory or equitable relief, the court may order the adverse party to pay to the class its reasonable attorney's fees and litigation expenses if permitted by law in similar cases not involving a class or the court finds that the judgment has vindicated an important public interest. However, if any monetary award is also recovered, the court may allow reasonable attorney's fees and litigation expenses only to the extent that a reasonable proportion of that award is insufficient to defray the fees and expenses.

(e) In determining the amount of attorney's fees for a prevailing class the court shall consider the following factors:

(1) the time and effort expended by the attorney in the litigation, including the nature, extent, and quality of the services rendered;

- (2) results achieved and benefits conferred upon the class;
- (3) the magnitude, complexity, and uniqueness of the litigation;
- (4) the contingent nature of success;
- (5) in cases awarding attorney's fees and litigation expenses under subdivision (d) because of the vindication of an important public interest, the economic impact on the party against whom the award is made; and
- (6) appropriate criteria in the Iowa Code of Professional Responsibility for Lawyers.

"42.17. ARRANGEMENTS FOR ATTORNEY'S FEES AND EXPENSES.

(a) Before a hearing under rule 42.2(a) or at any other time the court directs, the representative parties and the attorney for the representative parties shall file with the court, jointly or separately: (1) a statement showing any amount paid or promised them by any person for the services rendered or to be rendered in connection with the action or for the costs and expenses of the litigation and the source of all of the amounts; (2) a copy of any written agreement, or a summary of any oral agreement, between the representative parties and their attorney concerning financial arrangements or fees and (3) a copy of any written agreement, or a summary of any oral agreement, by the representative parties or the attorney to share these amounts with any person other than a member, regular associate, or an attorney regularly of counsel with his law firm. This statement shall be supplemented promptly if additional arrangements are made.

(b) Upon a determination that the costs and litigation expenses of the action cannot reasonably and fairly be defrayed by the representative parties or by other available sources, the court by order may authorize and control the solicitation and expenditure of voluntary contributions for this purpose from members of the class, advances by the attorneys or others, or both, subject to reimbursement from any recovery obtained for the class. The court may order any available funds so contributed or advanced to be applied to the payment of any costs taxed in favor of a party opposing the class.

"42.18. STATUTE OF LIMITATIONS.

The statute of limitations is tolled for all class members upon the commencement of an action asserting a class action. The statute of limitations resumes running against a member of a class:

- (1) upon his filing an election of exclusion;
- (2) upon entry of an order of certification, or of an amendment thereof, eliminating him from the class;
- (3) except as to representative parties, upon entry of an order under rule 42.2 refusing to certify an action as a class action; and
- (4) upon dismissal of the action without an adjudication on the merits.

"42.19. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

Rules 42.1 through 42.20 shall be construed and applied to effectuate their general purpose to make uniform the law with respect to the subject of these rules among states enacting them.

"42.20. SHORT TITLE.

Rules 42.1 through 42.20 may be cited as the Uniform Class Actions Rules."

Rules 45, 46, and 47.

That rules 45, 46, and 47 be stricken.

Rule 84.

That rule 84 be stricken.

Rule 122(e).

That rule 122 be amended by adding the following new subdivision "e."

"(e) No motion relating to depositions or discovery shall be filed by the clerk or considered by the court unless the motion alleges that counsel for the moving party has made a good faith but unsuccessful attempt to resolve the issues raised by the motion with opposing counsel without intervention of the court."

Rule 126.

That rule 126 be amended as follows:

"126. INTERROGATORIES TO PARTIES.

(a) Availability - procedures for use. Except in small claims, any party may ~~file~~ serve written interrogatories to be answered by another party served or, if the other party is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Copies of interrogatories and answers shall be ~~filed-for~~ served on each adverse party. Interrogatories may, without leave of court, be directed to the plaintiff after commencement of the action and upon any other party with or after service of the original notice upon that party.

Each interrogatory shall be followed by a reasonable space for insertion of the answer. An interrogatory which does not comply with this requirement shall be subject to objection.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. A party answering interrogatories must answer in the space provided or must set out ~~the~~ each interrogatory immediately preceding the answer ~~thereto~~ to it. A failure to comply with this rule shall be deemed a failure to answer and shall be subject to sanctions as provided in rule 134. The answers are to be signed by the person making them. The party to whom the interrogatories are directed shall file the answers, and objections if any, within thirty days after they are ~~filed~~ served, except that a defendant may file answers or objections within forty-five days after service of the original notice upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under rule 134(a) with respect to any objection to or other failure to answer an interrogatory. Copies of answers shall be delivered as provided in rule 82.

A party shall not serve more than thirty interrogatories on any other party except upon agreement of the parties or leave of court granted upon a showing of good cause. A motion for leave of court to serve more than thirty interrogatories must be in writing and shall set forth the proposed interrogatories and the reasons establishing good cause for their use.

(b) Scope - use at trial. Interrogatories may relate to any matters which can be inquired into under rule 122, and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

(d) Notwithstanding the provisions of rule 82(d), copies of the interrogatories which are served need not be filed with the clerk. Parties who serve interrogatories shall serve and file a notice of serving interrogatories stating the parties upon whom interrogatories were served, the numbers of the interrogatories, and the date of service."

Rule 147(d).

That rule 147(d) be amended as follows:

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

Rule 152.

That rule 152 be amended as follows:

"152. CERTIFICATION AND RETURN - COPIES.

(a) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. ~~He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.~~ When the deposition is transcribed the officer shall

file in the action a certificate showing the name of the witness deposed, the cost of reporting and transcribing the deposition, and to whom the original and copies were delivered. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that:

(1) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and

(2) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(b) ~~The clerk shall immediately give notice of the filing of all depositions to all parties who have appeared in the action.~~ Depositions may be filed, but filing is not required unless requested by the court. If requested by the court, the party who ordered the original of the deposition shall promptly file the original. Any party may file a deposition, which may be a copy.

(c) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent."

Rule 183(b).

That rule 183(b) be amended as follows:

"(b) All such motions based on absence of evidence must be supported by affidavit of the party, his agent or attorney, and must show: (1) the name and residence of the absent witness, or, if unknown, that affiant has used diligence to ascertain them; (2) what efforts, constituting due diligence, have been made to obtain such witness or his testimony, and facts showing reasonable grounds to believe the testimony will be procured by ~~the next term~~ a certain, specified date; (3) what particular facts, distinct from legal conclusions, affiant believes the witness will prove, and that he believes them to be true and knows of no other witness by whom they can be fully proved. If the court finds such motion sufficient, the adverse party may avoid the continuance by admitting that the witness if present, would testify to the facts therein stated, as the evidence of such witness."

Rule 187.

That rule 187 be amended as follows:

"187. IMPANELING JURY.

(a) Selection. The clerk shall prepare and deposit in a box separate ballots containing the names of all persons returned or added as jurors. At each jury trial he shall select sixteen jurors by closing and shaking the box to intermingle the ballots, and drawing them from the box without seeing the names. He shall list all jurors so drawn. Before drawing begins, either

party may require that the name of all jurors be called, and have an attachment for those absent who are not engaged in other trials; but the court may wait for its return or not, in its discretion.

(b) Oath or examination. The prospective jurors shall be sworn. The parties may then examine those drawn. The court may conduct such examination as it deems proper. It may on its own motion exclude any juror.

(c) Challenges. Challenges are objections to trial jurors for cause, and may be either to the panel or to an individual juror. ~~Coparties-at-the-trial cannot sever their peremptory challenges, but must join in them--unless--the court--otherwise-order~~ The court shall determine the law and fact as to all challenges, and must either allow or deny them.

(d) To panel. Before any juror is sworn, either party may challenge the panel, in writing, distinctly specifying the grounds, which can be founded only on a material departure from the statutory requirements for drawing or returning the jury. On trial thereof, any officer, judicial or ministerial, whose irregularity is complained of, and any other persons, may be examined concerning the facts specified. If the court sustains the challenge it shall discharge the jury, no member of which can serve at that trial.

(e) To juror. Challenge to an individual juror, ~~peremptory or for cause~~, must be made before the jury is sworn to try the case. ~~A juror peremptorily challenged must be excused without reasons being given.~~ On demand of either party to a challenge ~~for--cause~~, the juror shall answer every question pertinent to the inquiry, and other evidence may be taken.

(f) For cause. A juror may be challenged by either party for any of the following causes: (1) Conviction of a felony; (2) want of any statutory qualification required to make him a competent juror; (3) physical or mental defects rendering him incapable of performing the duties of a juror; (4) consanguinity or affinity within the ninth degree to the adverse party; (5) being guardian, ward, master, servant, landlord or tenant of the adverse party, or a member of his family or in his employ; or being a client of any attorney engaged in the cause; (6) being a party adverse to the challenging party in any civil action; or having complained of or been accused by him in a criminal prosecution; (7) having already sat upon a trial of the same issues; (8) having served as a grand or trial juror in a criminal case based on the same transaction; (9) when it appears the juror has formed or expressed an unqualified opinion on the merits of the controversy, or shows a state of mind which will prevent him from rendering a just verdict*; (10) being interested in a question like the issue to be tried; (11) having requested, directly, or indirectly, that his name be returned as a juror for the regular biennial period; (12) having served in the district court as a grand or petit juror during the last preceding calendar year.

Exemption from jury service is not a ground of challenge, but the privilege of the person exempt.

(g) Number - striking. Each side ~~may peremptorily challenge three jurors~~ and must strike ~~off two~~ four jurors. ~~but before the examination of--the--jury commences--the--court--may--in-its-discretion-authorize-and-fix-the-number-of additional--peremptory--challenges~~ Where there are two or more parties represented by different counsel, the court in its discretion may authorize

*According to enrolled copy

~~and fix an additional number of jurors to be impaneled and strikes to be exercised. After all challenges for-cause are completed, plaintiff and defendant shall alternately make-or-waive-their-peremptory-challenges-by appropriate-notations-on-the-jury-list exercise their strikes. Thereafter each-side-in-like-manner-shall-strike-off-two-jurors-from-the-list.~~

(h) Vacancies. After a ~~peremptory~~ challenge is ~~exercised-or-a-challenge for-cause~~ sustained, another juror shall be called and examined ~~before further-challenges-are-made~~, and shall be subject to being challenged or stricken as are other jurors.

(i) Jury sworn. The clerk shall read the names of the ~~twelve~~ eight jurors who remain on the list after all others have been ~~challenged-or~~ stricken. These shall constitute the jury and shall be sworn substantially as follows:

'You and each of you do solemnly swear (or affirm) that you will well and truly try the issues wherein.....is plaintiff and.....is defendant, and a true verdict render; and that you will do so solely on the evidence introduced and in accordance with the instructions of the court; so help you God.'

Rule 189.

That rule 189 be stricken and the following new rule 189 be substituted:

"189. JUROR INCAPACITY - MINIMUM NUMBER OF JURORS.

(a) Juror incapacity. In the event any juror becomes unable to act, or is disqualified, before the jury retires the remaining jurors shall continue to try the case.

(b) Minimum of six jurors required. In the event more than two jurors become unable to act, or are disqualified, before the jury retires and renders a verdict, the court shall declare a mistrial."

Rule 203(a).

That rule 203(a) be amended as follows:

"(a) Number. Before a general verdict, special verdicts, or answers to interrogatories are returned, the parties may stipulate that the finding may be rendered by a stated majority of the jurors. In the absence of such stipulation, a general verdict, special verdicts, or answers to interrogatories may must be rendered ~~by-five-sixths-of-the-jurors unanimously~~. However, ~~no~~ a general verdict, special verdict, or answers to interrogatories may be rendered by ~~five-sixths~~ all jurors excepting one of the jurors ~~or-less-until~~ if the jurors have deliberated for a period of not less than six hours after the issues to be decided have been submitted to them."

Rule 237(c).

That rule 237(c) be amended as follows:

"(c) Motion and proceedings thereon. The motion shall be filed at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may file opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. If summary judgment is rendered on the entire case, rule 179(b) shall apply."

Division XVI.

That a new division XVI consisting of the following new rules 331, 332, and 333 be added:

"DIVISION XVI
PROCEEDINGS FOR JUDICIAL REVIEW
OF AGENCY ACTION

"331. APPLICABILITY OF RULES. Except to the extent that they are inconsistent with any provision of the Iowa Administrative Procedures*Act, chapter 17A, The Code, or with the rules specifically set forth in this division, the rules of civil procedure shall be applicable to proceedings for judicial review of agency action brought under that Act.

"332. TIME FOR SPECIAL APPEARANCE, MOTION OR ANSWER. Respondent shall, within twenty days from the date of mailing of a petition for judicial review under section 17A.19(2), The Code, serve upon petitioner and all others upon whom the petition is required to be served, and within a reasonable time thereafter file, a written special appearance, motion, or answer.

"333. CONTESTED CASE PROCEEDINGS - INTERVENTION, SCHEDULE, APPLICABILITY OF RULE 179(b). In proceedings for judicial review of agency action in a contested case pursuant to section 17A.19, The Code:

(a) An intervenor may join with petitioner or respondent or claim adversely to both.

(b) Upon request of any party the reviewing court shall, or upon its own motion may, establish a schedule for the conduct of the proceeding.

(c) The provisions of rule 179(b) shall apply."

Respectfully submitted,
THE SUPREME COURT OF IOWA

/s/ W. W. Reynoldson
W. W. REYNOLDSON, CHIEF JUSTICE

Des Moines, Iowa
January 28, 1980

*According to enrolled copy

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Senate of the State of Iowa, hereby acknowledge delivery to me on the twenty-eighth day of January, 1980, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Civil Procedure.

/s/ Frank Stork

Secretary of the Senate, 1980
Regular Session of the Sixty-
Eighth General Assembly of the
State of Iowa

ACKNOWLEDGMENT

I, the undersigned, Chief Clerk of the House of Representatives of the State of Iowa, hereby acknowledge delivery to me on the twenty-eighth day of January, 1980, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Civil Procedure.

/s/ David L. Wray

Chief Clerk of the House of
Representatives, 1980 Regular
Session of the Sixty-eighth
General Assembly of the State
of Iowa

CERTIFICATE

I, Terry E. Branstad, do hereby certify that I am the President of the Senate of the 1980 Regular Session of the Sixty-eighth General Assembly of the State of Iowa; and I, Frank J. Stork, do hereby certify that I am the Secretary of the Senate of the 1980 Regular Session of the Sixty-eighth General Assembly of the State of Iowa, and we do hereby jointly certify that as such President and Secretary that on the twenty-eighth day of January, 1980, the Supreme Court of the State of Iowa reported to said Senate, and filed with it, the attached and foregoing Rules of Civil Procedure;

THAT the date of making said report to the 1980 Regular Session of the Sixty-eighth General Assembly was within the twenty days subsequent to the convening of the 1980 Regular Session of the Sixty-eighth 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 no changes, modifications, amendments, revisions or additions to the Rules of Civil Procedure were made or enacted at such 1980 Regular Session of said Sixty-eighth General Assembly.

Signed this 26th day of April, 1980, being the sine die adjournment of the 1980 Regular Session of the Sixty-eighth General Assembly.

/s/ Terry E. Branstad

TERRY E. BRANSTAD

President of the Senate

/s/ Frank J. Stork

FRANK J. STORK

Secretary of the Senate, 1980
Regular Session of the Sixty-
eighth General Assembly of the
State of Iowa.

CERTIFICATE

I, William H. Harbor, do hereby certify that I am the Speaker of the House of Representatives of the 1980 Regular Session of the Sixty-eighth General Assembly of the State of Iowa; and I, Bruce Graham, do hereby certify that I am the Assistant Chief Clerk of the House of Representatives of the 1980 Regular Session of the Sixty-eighth General Assembly of the State of Iowa, and we do hereby jointly certify that as such Speaker and Assistant Chief Clerk that on the twenty-eighth day of January, 1980, the Supreme Court of the State of Iowa reported to said House of Representatives, and filed with it, the attached and foregoing Rules of Civil Procedure;

THAT the date of making said report to the 1980 Regular Session of the Sixty-eighth General Assembly was within the twenty days subsequent to the convening of the 1980 Regular Session of the Sixty-eighth 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 no changes, modifications, amendments, revisions or additions to the Rules of Civil Procedure were made or enacted at such 1980 Regular Session of said Sixty-eighth General Assembly.

Signed this 26th day of April, 1980, being the sine die adjournment of the 1980 Regular Session of the Sixty-eighth General Assembly.

/s/ William H. Harbor

WILLIAM H. HARBOR

Speaker of the House

/s/ Bruce Graham

BRUCE GRAHAM

Assistant Chief Clerk of the House of Representatives, 1980 Regular Session of the Sixty-eighth General Assembly of the State of Iowa.