

CHAPTER 1255
RULES OF CIVIL PROCEDURE

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF CHANGES
IN THE IOWA RULES OF CIVIL
PROCEDURE

}

REPORT OF THE
SUPREME COURT

TO: MR. DONOVAN PEETERS, SECRETARY OF THE LEGISLATIVE COUNCIL OF
THE STATE OF IOWA:

Pursuant to Iowa Code section 602.4201 (1985) and section 602.4202 (Supp. 1985), the Supreme Court of Iowa has prescribed and hereby reports to the Secretary of the Legislative Council concerning the attached exhibits reflecting the amendments to the corresponding Iowa Rules of Civil Procedure, which are issued this date:

Exhibit "A"	Rule 59(a)
Exhibit "B"	Rule 117(d)
Exhibit "C"	Rule 121
Exhibit "D"	Rule 122(e)
Exhibit "E"	Rule 127
Exhibit "F"	Rule 128
Exhibit "G"	Rule 140(d)
Exhibit "H"	Rule 182.

Pursuant to Iowa Code section 602.4202(2) (Supp. 1985) these changes are to take effect July 1, 1986.

Respectfully submitted,

THE SUPREME COURT OF IOWA

/s/ W. W. Reynoldson
W. W. REYNOLDSON, Chief Justice

Des Moines, Iowa
February 13, 1986

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Legislative Council of the State of Iowa, hereby acknowledge delivery to me on the twenty-sixth day of February, 1986, the Report of the Supreme Court pertaining to the Iowa Rules of Civil Procedure.

/s/ Donovan Peeters
Secretary of the Legislative Council

EXHIBIT "A"

59. Returns of service.

(a) Signature—fees. Iowa officers may make unsworn returns of original notices served by them, as follows: Any sheriff or deputy sheriff, as to service in ~~his~~ the sheriff's or deputy sheriff's own or a contiguous county; any other peace officer, ~~or~~ bailiff, or marshal, as to service in his or her own territorial jurisdiction. The court shall take judicial notice of such signatures. All other returns, except those specified in R.C.P. 56.1~~"(d)"~~ and 56.1~~"(e)"~~, shall be proved by the affidavit of the person making the service. If served in the state of Iowa by a person other than such peace officer acting within the territories above defined or in another state by a person other than a sheriff or other peace officer, ~~no reasonable fees or mileage shall be allowed therefor, not to exceed those allowed to a sheriff under Iowa Code section 331.655, shall be taxed as costs.~~

EXHIBIT "B"

117. Motion days - disposition of motions.

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(d) A "motion" within this rule is any paper denominated as such, or any other matter requiring attention or order of court before the trial of the issues on their merits, including a special appearance and ~~objections to interrogatories.~~

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EXHIBIT "C"

121. Discovery methods.

(a) Parties may obtain discovery by one or more of the following methods: ~~D~~depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) The rules providing for discovery and inspection shall be liberally construed and shall be enforced to provide the parties with access to all relevant facts. Discovery shall be conducted in good faith, and responses to discovery requests, however made, shall fairly address and meet the substance of the request.

(c) Unless the court orders otherwise under R.C.P. 123, the frequency of use of these methods is not limited. The court shall order otherwise if it determines that: (1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (3) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

EXHIBIT "D"

122. Scope of discovery.

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(e) Motions relating to discovery. 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. If said motion relates to an interrogatory, a request for admission, or a request for production, the disputed interrogatory or request with the answer or response, if any, shall be attached to the motion.

EXHIBIT "E"

127. Requests for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of R.C.P. 122 set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original notice upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may on motion allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by ~~his~~ the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of sixty days after service of the original notice upon ~~him~~ defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify ~~his~~ the party's answer or deny only a part of the matter of which an admission is requested, ~~he~~ the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless ~~he~~ the party states that ~~he~~ the party has made reasonable inquiry and that the information known or readily obtainable by ~~him~~ the party is insufficient to enable ~~him~~ the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; ~~he~~ the party may, subject to the provisions of R.C.P. 134^(c), deny the matter or set forth reasons why ~~he~~ the party cannot admit or deny it.

The party who has requested the admission may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of R.C.P. 134^(a)(4) apply to the award of expenses incurred in relation to the motion.

A party shall not serve more than thirty requests for admission 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 requests for admission must be in writing and shall set forth the proposed requests and the reasons establishing good cause for their use.

EXHIBIT "F"

128. Effect of admission.

Any matter admitted under this rule R.C.P. 127 is conclusively established in the pending action unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of R.C.P. 138 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice ~~him~~ that party in maintaining ~~his~~ that party's action or defense on the merits. Any admission made by a party under this rule R.C.P. 127 may be used as an evidentiary admission only in any other proceeding.

EXHIBIT "G"

140. Depositions upon oral examination.

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[NEW]

(d) Depositions by telephone.

Any deposition permitted by these rules may be taken by telephonic means.

A party desiring to take the deposition of any person upon oral examination by telephonic means shall give reasonable notice thereof in writing to every other party to the action. Such notice shall contain all other information required by paragraph (b)(1) herein and shall state that the telephone conference will be arranged and paid for by the initiating party. No part of the expense for telephone service shall be taxed as costs.

The person reporting the testimony shall be in the presence of the witness unless otherwise agreed by all parties.

If any examining party desires to present exhibits to the witness during the deposition, copies shall be sent to the deponent and the parties prior to the taking of the deposition.

Nothing in this rule shall prohibit a party or counsel from being in the presence of the deponent when the deposition is taken.

EXHIBIT "H"

182. Motions for continuance.

(a) Motions for continuance shall be filed without delay after the grounds therefor become known to the party or ~~his~~ the party's counsel. Such a motion may be amended only to correct a clerical error.

(b) A case shall not lose its place on the calendar when a party applies for time to seek a continuance, unless it is then continued at the option of the other party at applicant's costs, whereupon the clerk shall forthwith enter judgment for costs unless otherwise ordered by the court or agreed by the parties. No case assigned for trial shall be continued ex parte. All motions for continuance in a case set for trial shall be signed by counsel, if any, and approved in writing by the party represented, unless such approval is waived by court order.