

CHAPTER 276

**PRODUCTION OF DOCUMENTS; DEPOSITIONS; VOLUNTARY DISMISSAL;
PARTITION; TRIAL COURT RULES**

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF A CHANGE }
IN THE IOWA RULES OF CIVIL }
PROCEDURE }

**REPORT OF THE
SUPREME COURT**

**TO: MS. DIANE BOLENDER, SECRETARY OF THE LEGISLATIVE COUNCIL OF
THE STATE OF IOWA:**

Pursuant to Iowa Code sections 602.4201 and 602.4202, the Supreme Court of Iowa has prescribed and hereby reports on this date to the Secretary of the Legislative Council concerning amendments to the following Iowa Rules of Civil Procedure as shown in the corresponding attached Exhibits:

Exhibit "A"	Rule 130
Exhibit "B"	Rule 140
Exhibit "C"	Rule 147(a)
Exhibit "D"	Rule 215
Exhibit "E"	Rule 270
Exhibit "F"	Rule 372.

Pursuant to Iowa Code section 602.4202(2), these changes are to take effect July 2, 1990.

Respectfully submitted,

THE SUPREME COURT OF IOWA

/s/ Arthur A. McGiverin
ARTHUR A. MCGIVERIN, Chief Justice

Des Moines, Iowa
December 28, 1989

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Legislative Council hereby acknowledge delivery to me on the fourth day of January, 1991, the Report of the Supreme Court pertaining to the Iowa Rules of Civil Procedure.

/s/ Diane Bolender
Secretary of the Legislative Council

EXHIBIT "A"

130. Procedure under R.C.P. 129. 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. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within thirty days after the service of the request, except that a defendant may serve a response within sixty days after service of the original notice upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. Notwithstanding the provisions of R.C.P. 82 "d," copies of the documents produced shall not be filed with the clerk. The party submitting the request may move for an order under R.C.P. 134 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

EXHIBIT "B"

140. Depositions upon oral examination.

a. When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of ten days after the date for ~~special appearance~~, motion or answer for any defendant, except that leave is not required:

(1) If a defendant has served a notice of taking deposition or otherwise sought discovery, or
(2) If special notice is given as provided in subdivision "b"(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in R.C.P. 155. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

b. Notice of examination — general requirements — special notice — nonstenographic recording — production of documents and things — deposition of organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice:

(A) States that the person to be examined is about to go out of the state and will be unavailable for examination unless the person's deposition is taken before the expiration of the thirty-day period ten days after the date for motion or answer for any defendant, and

(B) Sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true.

If a party shows that upon being served with notice under this subdivision "b"(2) the party was unable through the exercise of diligence to obtain counsel to represent him or her at the taking of the deposition, the deposition may not be used against that party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at that party's own expense. Leave of court is not required to record testimony by nonstenographic means if the deposition is also to be recorded stenographically.

(5) The notice to a party deponent may be accompanied by a request made in compliance with R.C.P. 129 and 130 for the production of documents and tangible things at the taking of the deposition. The procedure of R.C.P. 130 shall apply to the request.

c. Failure to attend or to serve subpoena — expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by the other party and the other party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness does not attend because of such failure, and if another party attends in person or by attorney because such other party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by the other party and the other party's attorney attending, including reasonable attorney's fees.

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 "C"

147. Oral examination — notice.

a. Oral depositions may be taken only in this state, or outside it at a place within one hundred miles from the nearest Iowa point. But, on hearing, on notice, of a motion of a party desiring it, the court may order it orally taken at any other specified place, if the issue is sufficiently important and the testimony cannot reasonably be obtained ~~on~~ by written interrogatories or deposition by telephone.

EXHIBIT "D"

215. Voluntary dismissal. A party may, without order of court, dismiss that party's own petition, counterclaim, cross-petition or petition of intervention, at any time ~~before the trial~~

has begun, subject to the provisions of R.C.P. 181.4 up until ten days before the trial is scheduled to begin. Thereafter a party may dismiss an action or that party's claim therein only by consent of the court which may impose such terms or conditions as it deems proper; and it shall require the consent of any other party asserting a counterclaim against the movant, unless that will still remain for an independent adjudication. A dismissal under this rule shall be without prejudice, unless otherwise stated; but if made by any party who has previously dismissed an action against the same defendant, in any court of any state or of the United States, including or based on the same cause, such dismissal shall operate as an adjudication against that party on the merits, unless otherwise ordered by the court, in the interests of justice.

EXHIBIT "E"

270. The action — pending probate. Real or personal property may be partitioned by equitable proceedings. Where the entire interest in real estate is owned by a decedent on whose estate administration or probate is pending, the action cannot be begun until ~~six~~ four months after the second publication of the notice of the appointment of the personal representative, nor at any time while an application for authority to sell such real estate is pending in the probate proceeding.

EXHIBIT "F"

372. Rules by trial courts. Each district court, by action of a majority of its district judges, may from time to time make and amend rules governing its practice and administration not inconsistent with these rules. A copy of all rules in effect July 4, 1961, and any amendments thereafter made by any such court shall be transmitted to the clerk of the supreme court. In all cases not provided for by rule, courts may regulate their practice in any manner not inconsistent with these rules. All such rules or changes shall be subject to prior approval of the supreme court.