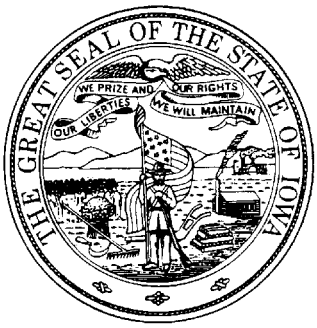
# IOWA
# COURT RULES

**FOURTH EDITION**




Published under the authority of Iowa Code section 2B.5(2).

KATHLEEN K. BATES
ADMINISTRATIVE CODE EDITOR

# PREFACE

The Fourth Edition of the Iowa Court Rules, adopted by the supreme court November 9, 2001, effective February 15, 2002, is published pursuant to Iowa Code section 2B.5(2). Supplements to the loose-leaf compilation will be prepared and distributed as the rules are amended by the court. The date at the top of each page reflects the date the page was published.

The rules shall be cited as follows:

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| Chapter 1 | Iowa R. Civ. P. |
| Chapter 2 | Iowa R. Crim. P. |
| Chapter 5 | Iowa R. Evid. |
| Chapter 6 | Iowa R. App. P. |
| Chapter 32 | Iowa Code of Prof'l Responsibility |
| Chapter 51 | Iowa Code of Judicial Conduct |

All other rules shall be cited as "Iowa Ct. R."

The Iowa Court Rules are priced in accordance with Iowa Code section 7A.22. Subscription inquiries and orders should be directed to:

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**Supplements:** Supplements to the Fourth Edition of the Iowa Court Rules have been issued as follows:

March 2002
May 2002
June 2002

## June 2002 Supplement

### Changes in this supplement:

| | |
|---|---|
| Form 3.10 | Amended |
| Rule 5.104 | Corrected |
| Rule 5.106 | Corrected |
| Rule 5.410 | Corrected |
| Rule 5.412 | Corrected |
| Rule 5.613 | Corrected |
| Rule 5.806 | Corrected |
| Rule 5.1101 | Corrected |
| Rule 6.13 | Amended |
| Rule 6.22(3) | Amended |
| Rule 22.37 | Corrected |
| Rule 22.38 | Corrected |
| Rule 24.8 | Corrected |
| Rule 31.5 | Corrected |
| Rule 31.9 | Corrected |
| Rule 35.21 | Corrected |
| Rule 37.3 | Corrected |
| Rule 37.4 | Amended |
| Rule 39.1 | Corrected |
| Rule 39.2 | Corrected |
| Rule 39.3 | Corrected |
| Rule 39.8 | Corrected |
| Rule 39.12 | Corrected |
| Rule 39.13 | Corrected |

# INSTRUCTIONS FOR UPDATING THE IOWA COURT RULES

| Remove Old Pages | Insert New Pages |
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| Ch 3, p. 9—Ch 3, p. 12 | Ch 3, p. 9—Ch 3, p. 12 |
| Ch 5, p. 1—Ch 5, p. 6 | Ch 5, p. 1—Ch 5, p. 6 |
| Ch 5, p. 9—Ch 5, p. 12 | Ch 5, p. 9—Ch 5, p. 12 |
| Ch 6, p. 5—Ch 6, p. 8 | Ch 6, p. 5—Ch 6, p. 8 |
| Ch 6, p. 11—Ch 6, p. 14 | Ch 6, p. 11—Ch 6, p. 14 |
| Ch 22, p. 11—Ch 22, p. 14 | Ch 22, p. 11—Ch 22, p. 14 |
| Ch 24, p. 1, 2 | Ch 24, p. 1, 2 |
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Form 14: Discharge and Termination of Proceedings Pursuant to Iowa Code Section 125.82(4)
Form 15: Findings of Fact and Order Pursuant to Iowa Code Section 125.83
Form 16: Application for Order for Extension of Time for Evaluation Pursuant to Iowa Code Section 125.83
Form 17: Order for Extension of Time Pursuant to Iowa Code Section 125.83
Form 18: Report of the Chief Medical Officer's Substance Abuse Evaluation Pursuant to Iowa Code Section 125.84
Form 19: Periodic Report Pursuant to Iowa Code Section 125.86(1)
Form 20: Periodic Report Pursuant to Iowa Code Section 125.86(2)
Form 21: Notice of Facility Administrator's Request for Extension of Time Pursuant to Iowa Code Section 125.83
Form 22: Order After Evaluation Pursuant to Iowa Code Section 125.84
Form 23: Report of Respondent's Discharge Pursuant to Iowa Code Section 125.85(4)
Form 24: Order Confirming Respondent's Discharge and Terminating Proceedings Pursuant to Iowa Code Section 125.85(4)
Form 25: Notice of Appeal From the Findings of the Judicial Hospitalization Referee
Form 26: Claim, Order and Certificate for Attorney or Physician's Fees
Form 27: Authorization of Detention Pursuant to Iowa Code Section 125.91(2)
Form 28: Magistrate's Report Pursuant to Iowa Code Section 125.91(2)(b)
Form 29: Magistrate's Order of Detention Pursuant to Iowa Code Section 125.91(3)

# CHAPTER 14
# RULES ON THE QUALIFICATIONS AND COMPENSATION OF INTERPRETERS FOR HEARING-IMPAIRED PERSONS


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| Rule 14.1 | Appointment and qualifications of interpreters |
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# CHAPTER 1
# RULES OF CIVIL PROCEDURE

## DIVISION I

OPERATION OF RULES

**Rule 1.101 Applicability; statutes affected.** The rules in this chapter shall govern the practice and procedure in all courts of the state, except where they expressly provide otherwise or statutes not affected hereby provide different procedure in particular courts or cases. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rules 1.102** to **1.200** Reserved.

## DIVISION II

ACTIONS, JOINDER OF ACTIONS AND PARTIES

A. PARTIES GENERALLY; CAPACITY

**Rule 1.201 Real party in interest.** Every action must be prosecuted in the name of the real party in interest. But an executor, administrator, conservator, guardian, trustee of an express trust, or a party with whom or in whose name a contract is made for another's benefit, or a party specially authorized by statute may sue in that person's own name without joining the party for whose benefit the action is prosecuted. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.202 Public bond.** When a bond or other instrument given to the state, county, school or other municipal corporation, or to any officer or person, is intended for the security of the public generally, or of particular individuals, action may be brought thereon, in the name of any person intended to be thus secured, who has sustained an injury in consequence of a breach thereof, except when otherwise provided. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.203 Partnerships.** Actions may be brought by or against partnerships as such; or, where permitted by law, against any or all partners with or without joining the firm. Judgment against a partnership may be enforced against partnership property and that of any partner served or appearing in the suit. A new action will lie on the original cause against any partner not so served or appearing. The court may order absent partners brought in. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.204 Foreign corporations.** Foreign corporations may sue and be sued in their corporate name, except as prohibited by statute. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.205 Assignees; exception.** In cases not governed by the uniform commercial code the assignment of a thing in action shall be without prejudice to any defense, counterclaim or claim matured or not, if matured when pleaded, existing against the assignor in favor of the party pleading it. [Report 1943; amendment 1967; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.206 Injury or death of a minor.** A parent, or the parents, may sue for the expense and actual loss of services, companionship and society resulting from injury to or death of a minor child. [Report 1943; amendment 1973; November 9, 2001, effective February 15, 2002]

**Rule 1.207 Actions by and against state.** The state may sue in the same way as an individual. No security shall be required of it. [Report 1943; amendment 1974; November 9, 2001, effective February 15, 2002]

**Rule 1.208 Married persons.** A married person may sue or be sued without joining the person's spouse. If both are sued, each may defend; and if one fails to defend, the other may defend for both. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.209 Desertion of family.** When a husband or wife deserts the family, the other may prosecute or defend any action which either might have prosecuted or defended, and shall have the same powers and rights therein as either might have had. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.210 Minors; incompetents.** An action of a minor or any person adjudged incompetent shall be brought by the person's conservator if there is one or, if not, by the person's guardian if there is one; otherwise the minor may sue by a next friend, and the incompetent by a conservator or guardian appointed by the court for that purpose. If it is in the person's best interest, the court may dismiss such action or substitute another conservator, guardian or next friend. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.211 Defense by incompetent, prisoner, etc.** No judgment without a defense shall be entered against a party then a minor, or confined in a penitentiary, reforma-

tory or any state hospital for the mentally ill, or one adjudged incompetent, or whose physician certifies to the court that the party appears to be mentally incapable of conducting a defense. Such defense shall be by guardian ad litem; but the conservator (and if there is no conservator, the guardian) of a ward or the attorney appearing for a competent party may defend unless the proceeding was brought by or on behalf of such fiduciary or unless the court supersedes such fiduciary by a guardian ad litem appointed in the ward's interest. [Report 1943; amended by 58GA, ch 152, §199; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.212 Guardian ad litem.** If a party served with original notice appears to be subject to rule 1.211, the court may appoint a guardian ad litem for the party, or substitute another, in the ward's interest. Application for such appointment or substitution may be by the ward, if competent, or a minor over 14 years old; otherwise by the party's conservator or guardian or, if none, by any friend or any party to the action. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.213** to **1.220** Reserved.

B. SUBSTITUTION OF PARTIES

**Rule 1.221 Substitution at death; limitation.** Any substitution of legal representatives or successors in interest of a deceased party, permitted by statute, must be ordered within two years after the death of the original party. If the decedent's right survives entirely to those already parties, the action shall continue among the surviving parties without substitution. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.222 Transfer of interest.** Transfer of an interest in a pending action shall not abate it, but may be the occasion for bringing in new parties. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.223 Incapacity pending action.** If, during pendency of an action, a party is adjudged incompetent or confined in any state hospital for the mentally ill or if the party's physician certifies to the court that the party appears to be mentally incapable of acting in the party's own behalf, the conservator or guardian shall be joined or if there is none, the court shall appoint a guardian ad litem for the party. [Report 1943; amended by 58GA, ch 152, §200; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.224 Nonabatement in case of guardianship.** When a conservatorship or guardianship ceases for any reason, any action or proceeding then pending shall not abate. The conservator's or guardian's successor, the former ward, or the personal representative of the ward's estate shall be substituted or joined as a party. If no application is made for substitution, the court on its own motion may appoint a personal representative to represent the deceased party in the action. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.225 Majority of minor.** A minor party who attains legal majority shall continue as a party in that person's own right. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.226 Officers; representatives.** When any public official or other person in a representative capacity ceases to be such while a party to a suit, the court may order that party's successor brought in and substituted. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.227 Notice to substituted party.** The order for substitution shall fix the time for the substituted party to appear, and the notice to be given. In case of substitution of a legal representative of a deceased party, notice shall be given in the same manner as an original notice. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.228** to **1.230** Reserved.

C. JOINDER; MISJOINDER AND NONJOINDER

**Rule 1.231 Actions joined.** A single plaintiff may join in the same petition as many causes of action, legal or equitable, independent or alternative, as there are against a single defendant. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.232 Multiple plaintiffs.** Any number of persons who claim any relief, jointly, severally or alternatively, arising out of or respecting the same transaction, occurrence or series of transactions or occurrences, may join as plaintiffs in a single action, when it presents or involves any question of law or fact common to all of them. They may join any causes of action, legal or equitable, independent or alternative, held by any one or more of them which arise out of such transaction, occurrence or series, and which present or involve any common question of law or fact. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.233 Permissive joinder of defendants.** Any number of defendants may be joined in one action which asserts against them, jointly, severally or in the alternative, any right to relief in respect of, or arising out of the same transaction, occurrence, or series of transactions or occurrences, when any question of law or fact common to

all of them is presented or involved. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.234 Necessary parties; joinder.**

**1.234(1)** *Remedy for nonjoinder as plaintiff.* Except as provided in this rule, all persons having a joint interest in any action shall be joined on the same side, but such persons failing to join as plaintiffs may be made defendants. This rule does not apply to class actions under rules 1.261 to 1.279, nor affect the options permitted by Iowa Code sections 613.1 and 613.2.

**1.234(2)** *Definition of indispensable party.* A party is indispensable if the party's interest is not severable, and the party's absence will prevent the court from rendering any judgment between the parties before it; or if notwithstanding the party's absence the party's interest would necessarily be inequitably affected by a judgment rendered between those before the court.

**1.234(3)** *Indispensable party not before court.* If an indispensable party is not before the court, it shall order the party brought in. When persons are not before the court who, although not indispensable, ought to be parties if complete relief is to be accorded between those already parties, and when necessary jurisdiction can be obtained by service of original notice in any manner provided by the rules in this chapter or by statute, the court shall order their names added as parties and original notice served upon them. If such jurisdiction cannot be had except by their consent or voluntary appearance, the court may proceed with the hearing and determination of the cause, but the judgment rendered therein shall not affect their rights or liabilities. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.235 Parties partly interested.** A party need not be interested in obtaining or defending against all the relief demanded. Judgment may be given respecting one or more parties according to their respective rights or liabilities. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.236 Remedy for misjoinder.**

**1.236(1)** *Parties.* Misjoinder of parties is no ground for dismissal of the action, but parties may be dropped, or aligned according to their true interests in the action, by order of the court on its own motion or that of any party at any stage of the action, on such terms as are just; or any claim against a party improperly joined may be severed and proceeded with separately.

**COMMENT:** Rule 1.236(1) is very similar to Fed. R. Civ. P. 21. While neither rule provides expressly for realignment of parties, and no case law exists in Iowa on the authority of a court to realign parties, federal courts have interpreted Fed. R. Civ. P. 21 to allow realignment of parties according to their true interests. *See First National Bank of Shawnee Mission v. Roland Park State Bank,* 357 F. Supp. 708, 711 (D. Kan. 1973); Wright, Miller & Kain, *Federal Practice and Procedure,* Civil 2d, § 1683, at 448 (1986); 3A *Moore's Federal Practice,* ¶ 21.02, at 21-23 (1993).

**1.236(2)** *Actions.* The only remedy for improper joinder of actions shall be by motion. On such motion the court shall either order the causes docketed separately or strike those causes which should be stricken, always retaining at least one cause docketed in the original case. Before ruling on such motion, the party whose pleading is attacked may withdraw any of the causes claimed to be misjoined. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.237 Dependent remedies joined.** An action heretofore cognizable only after another has been prosecuted to conclusion may be joined with the latter; and the court shall grant relief according to the substantive rights of the parties. But there shall be no joinder of an action against an indemnitor or insurer with one against the indemnified party, unless a statute so provides. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rules 1.238** to **1.240** Reserved.

D. COUNTERCLAIMS AND CROSS-CLAIMS

**Rule 1.241 Compulsory counterclaims.** A pleading must contain a counterclaim for every claim then matured, and not the subject of a pending action, held by the pleader against any opposing party and arising out of the transaction or occurrence that is the basis of such opposing party's claim, unless its adjudication would require the presence of indispensable parties of whom jurisdiction cannot be acquired. A final judgment on the merits shall bar such a counterclaim, although not pleaded. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.242 Permissive counterclaims.** Unless prohibited by rule or statute, a party may counterclaim against an opposing party on any claim held by the party when the action was originally commenced and matured when pleaded. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.243 Joinder of counterclaims.** A party pleading a counterclaim shall have the same right to join more than one claim as a plaintiff is granted under rules 1.231 and 1.232. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.244 Counterclaim not limited.** A counterclaim may, but need not, diminish or defeat recovery sought by the opposing party. It may claim relief in excess of, or different from, that sought in the opponent's pleadings. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.245 Cross-claim against coparty.** A pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or a counterclaim 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. [Report 1943; amendment 1973; amendment 1976; November 9, 2001, effective February 15, 2002]

**Rule 1.246 Third-party practice.**

**1.246(1)** *When defendant may bring in third party.* At any time after commencement of the action a defending party, as a third-party plaintiff, may file a cross-petition and cause an original notice to be served upon a person not a party to the action who is or may be liable for all or part of the plaintiff's claim. The third-party plaintiff need not obtain leave to file the cross-petition if it is filed not later than ten days after the filing of the original answer. Otherwise leave may be obtained by motion upon notice to all parties to the action.

The third-party defendant shall assert defenses to the third-party plaintiff's claim as provided in rule 1.441 and counterclaims against the third-party plaintiff as provided in rule 1.241 and cross-claims against other third-party defendants as provided in rule 1.245.

The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the plaintiff shall assert defenses as provided in rule 1.441 and counterclaims under rule 1.241.

The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert defenses as provided in rule 1.441, counterclaims as provided in rule 1.241, and cross-claims as provided in rule 1.245. Any party may move to strike the third-party claim or for its severance or for separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable for all or part of the claim made in the action against the third-party defendant.

**1.246(2)** *When plaintiff may bring in third party.* When a counterclaim is asserted against a plaintiff, that plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so. [Report 1943; amendment 1973; amended by 65GA, ch 315, §1; May 27, 1987, effective August 3, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.247** to **1.250** Reserved.

E. INTERPLEADER

**Rule 1.251 Right of interpleader.** A person who is or may be exposed to multiple liability or vexatious litigation because of several claims against the person for the same thing, may bring an equitable action of interpleader against all such claimants. Their claims or titles need not have a common origin, nor be identical, and may be adverse to, or independent of each other. Such person may dispute liability, wholly or in part. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.252 By defendants.** A defendant to an action exposed to similar liability or litigation may obtain interpleader by counterclaim or cross-petition. Any claimant not already before the court may be brought in to maintain or relinquish that claim to the subject of the action, and on default after due service, the court may decree such claim barred. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.253 Deposit; discharge.** If a party initiating interpleader admits liability for, or nonownership of, any property or amount involved, the court may order it deposited in court or otherwise preserved or secured by bond. After such deposit the court, on hearing all parties, may absolve the depositor from obligation to such parties as to the property or amount deposited, before determining the rights of the adverse claimants. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.254 Substitution of claimant.** If a defendant seeks an interpleader involving a third person, the latter may appear and be substituted for the original defendant, who may then be discharged upon complying with rule 1.253. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.255 Injunction.** After petition and returns of the original notices are filed in an interpleader, the court may enjoin all parties before it from beginning or prosecuting any other suit as to the subject of the interpleader until its further order. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.256 Costs.** Costs may be taxed against the unsuccessful claimant in favor of the successful claimant and the party initiating the interpleader. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.257 Sheriff or officer; creditor.** When a sheriff or other officer is sued for taking personal property under a writ, or for the property so taken, such writ may be filed with the court, with an attached affidavit from the sheriff or other officer that the property involved was taken under the writ. The plaintiff shall then join the attaching or execution creditor as a defendant, or such creditor may join on application. Any judgment against the officer and creditor shall provide that the creditor's property be first exhausted to satisfy the judgment. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.258** to **1.260** Reserved.

F. CLASS ACTIONS

**Rule 1.261 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 both of the following occur:

**1.261(1)** The class is so numerous or so constituted that joinder of all members, whether or not otherwise required or permitted, is impracticable.

**1.261(2)** There is a question of law or fact common to the class. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.262 Certification of class action.**

**1.262(1)** 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.

**1.262(2)** The court may certify an action as a class action if it finds all of the following:

*a.* The requirements of rule 1.261 have been satisfied.

*b.* A class action should be permitted for the fair and efficient adjudication of the controversy.

*c.* The representative parties fairly and adequately will protect the interests of the class.

**1.262(3)** If appropriate, the court may do any of the following:

*a.* Certify an action as a class action with respect to a particular claim or issue.

*b.* Certify an action as a class action to obtain one or more forms of relief, equitable, declaratory, or monetary.

*c.* Divide a class into subclasses and treat each subclass as a class. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.263 Criteria considered.**

**1.263(1)** In determining whether the class action should be permitted for the fair and efficient adjudication of the controversy, as appropriately limited under rule 1.262(3), the court shall consider and give appropriate weight to the following and other relevant factors:

*a.* Whether a joint or common interest exists among members of the class.

*b.* 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.

*c.* 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.

*d.* 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.

*e.* Whether common questions of law or fact predominate over any questions affecting only individual members.

*f.* Whether other means of adjudicating the claims and defenses are impracticable or inefficient.

*g.* Whether a class action offers the most appropriate means of adjudicating the claims and defenses.

*h.* Whether members who are not representative parties have a substantial interest in individually controlling the prosecution or defense of separate actions.

*i.* Whether the class action involves a claim that is or has been the subject of a class action, a government action, or other proceeding.

*j.* Whether it is desirable to bring the class action in another forum.

*k.* Whether management of the class action poses unusual difficulties.

*l.* Whether any conflict of laws issues involved pose unusual difficulties.

*m.* 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.

**1.263(2)** In determining under rule 1.262(2) that the representative parties fairly and adequately will protect the interests of the class, the court must find all of the following:

*a.* The attorney for the representative parties will adequately represent the interests of the class.

*b.* The representative parties do not have a conflict of interest in the maintenance of the class action.

*c.* The representative parties have or can acquire adequate financial resources, considering rule 1.276, to ensure that the interests of the class will not be harmed. [Report 1980; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.264 Order on certification.**

**1.264(1)** The order of certification shall describe the class and state the following:

*a.* The relief sought.

*b.* Whether the action is maintained with respect to particular claims or issues.

*c.* Whether subclasses have been created.

**1.264(2)** 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 1.263(1).

**1.264(3)** An order certifying or refusing to certify an action as a class action is appealable.

**1.264(4)** Refusal of certification does not terminate the action, but does preclude it from being maintained as a class action. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.265 Amendment of certification order.**

**1.265(1)** The court may amend the certification order at any time before entry of judgment on the merits. The amendment may do the following:

*a.* Establish subclasses.

*b.* Eliminate from the class any member who was included in the class as certified.

*c.* Provide for an adjudication limited to certain claims or issues.

*d.* Change the relief sought.

*e.* Make any other appropriate change in the order.

**1.265(2)** If notice of certification has been given pursuant to rule 1.266, 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.

**1.265(3)** The reasons for the court's ruling shall be set forth in the amendment of the certification order.

**1.265(4)** 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. [Report 1980; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.266 Notice of action.**

**1.266(1)** Following certification the court, by order after hearing, shall direct the giving of notice to the class.

**1.266(2)** The notice, based on the certification order and any amendment of the order, shall include all of the following:

*a.* A general description of the action, including the relief sought, and the names and addresses of the representative parties.

*b.* A statement of the right of a member of the class under rule 1.267 to be excluded from the action by filing an election to be excluded, in the manner specified, by a certain date.

*c.* A description of possible financial consequences on the class.

*d.* A general description of any counterclaim being asserted by or against the class, including the relief sought.

*e.* A statement that the judgment, whether favorable or not, will bind all members of the class who are not excluded from the action.

*f.* A statement that any member of the class may enter an appearance either personally or through counsel.

*g.* An address to which inquiries may be directed.

*h.* Other information the court deems appropriate.

**1.266(3)** 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.

**1.266(4)** 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 that member's identity and whereabouts can be ascertained by the exercise of reasonable diligence.

**1.266(5)** For members of the class not given personal or mailed notice under rule 1.266(4), 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 ensure 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.

**1.266(6)** 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.

**1.266(7)** The court may order that steps be taken to minimize the expense of notice. [Report 1980; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.267 Exclusion.**

**1.267(1)** A member of a plaintiff class may elect to be excluded from the action unless any of the following occur:

*a.* The member is a representative party.

*b.* The certification order contains an affirmative finding under rule 1.263(1)(*a*), (*b*), or (*c*).

*c.* A counterclaim under rule 1.270 is pending against the member or that member's class or subclass.

**1.267(2)** Any member of a plaintiff class entitled to be excluded under rule 1.267(1) 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.

**1.267(3)** The elections shall be made a part of the record in the action.

**1.267(4)** A member of a defendant class may not elect to be excluded. [Report 1980; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.268 Conduct of action.**

**1.268(1)** 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, any of the following:

*a.* Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument.

*b.* 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 the following:

(1) Any step in the action.

(2) The proposed extent of the judgment.

(3) 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.

*c.* Imposing conditions on the representative parties or on intervenors.

*d.* Inviting the attorney general to participate with respect to the question of adequacy of class representation.

*e.* Making any other order to ensure that the class action proceeds only with adequate class representation.

*f.* Making any order to ensure that the class action proceeds only with competent representation by the attorney for the class.

**1.268(2)** A class member who is not a representative party may appear and be represented by separate counsel. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.269 Discovery by or against class members.**

**1.269(1)** 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.

**1.269(2)** 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. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.270 Counterclaims.**

**1.270(1)** 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.

**1.270(2)** Any counterclaim in an action brought by a plaintiff class must be asserted before notice is given under rule 1.266.

**1.270(3)** 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.

**1.270(4)** 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.

**1.270(5)** 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 1.267.

**1.270(6)** 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. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.271 Dismissal or compromise.**

**1.271(1)** Unless certification has been refused under rule 1.262, a class action, without the approval of the court after hearing, may not be:

*a.* Dismissed voluntarily.

*b.* Dismissed involuntarily without an adjudication on the merits.

*c.* Compromised.

**1.271(2)** If the court has certified the action under rule 1.262, 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.

**1.271(3)** Notice given under rule 1.271(2) shall include a description of the procedure available for modification of the dismissal or compromise and a full disclosure of the reasons for the dismissal or compromise including, but not limited to, the following:

*a.* Any payments made or to be made in connection with the dismissal or compromise.

*b.* The anticipated effect of the dismissal or compromise on the class members.

*c.* Any agreement made in connection with the dismissal or compromise.

*d.* A description and evaluation of alternatives considered by the representative parties.

*e.* An explanation of any other circumstances giving rise to the proposal.

**1.271(4)** On the hearing of the dismissal or compromise, the court may do any of the following:

*a.* As to the representative parties or a class certified under rule 1.262, permit dismissal with or without prejudice or approve the compromise.

*b.* As to a class not certified, permit dismissal without prejudice.

*c.* Deny the dismissal.

*d.* Disapprove the compromise.

*e.* Take other appropriate action for the protection of the class and in the interest of justice.

**1.271(5)** The cost of notice given under rule 1.271(2) shall be paid by the party seeking dismissal, or as agreed in case of a compromise, unless the court after a hearing orders otherwise. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.272 Effect of judgment on class.** In a class action certified under rule 1.262 in which notice has been given under rule 1.266 or 1.271, 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 1.267. The judgment shall name or describe the members of the class who are bound by its terms. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.273 Costs.**

**1.273(1)** Only the representative parties and those members of the class who have appeared individually are liable for costs assessed against a plaintiff class.

**1.273(2)** The court shall apportion the liability for costs assessed against a defendant class.

**1.273(3)** Expenses of notice advanced under rule 1.266 are taxable as costs in favor of the prevailing party. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.274 Relief afforded.**

**1.274(1)** 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.

**1.274(2)** Damages fixed by a minimum measure of recovery provided by any statute may not be recovered in a class action.

**1.274(3)** If a class is awarded a judgment for money, the distribution shall be determined as follows:

*a.* 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.

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

*c.* The court may order steps taken to minimize the expense of identification.

*d.* 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.

*e.* 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 a hearing shall distribute that amount, in whole or in part, to one or more states as unclaimed property or to the defendant.

*f.* In determining the amount, if any, to be distributed to a state or to the defendant, the court shall consider the following criteria:

(1) Any unjust enrichment of the defendant.

(2) The willfulness or lack of willfulness on the part of the defendant.

(3) The impact on the defendant of the relief granted.

(4) The pendency of other claims against the defendant.

(5) Any criminal sanction imposed on the defendant.

(6) The loss suffered by the plaintiff class.

*g.* The court, in order to remedy or alleviate any harm done, may impose conditions respecting the use of the money distributed to the defendant.

*h.* 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 1.266 or 1.271 and shall afford the attorney general an opportunity to move for an order requiring payment to the state. [Report 1980; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.275 Attorney's fees.**

**1.275(1)** Attorney's fees for representing a class are subject to control of the court.

**1.275(2)** 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.

**1.275(3)** If a prevailing class recovers a judgment for money or other award that can be divided for the pur-

pose, the court may order reasonable attorney's fees and litigation expenses of the class to be paid from the recovery.

**1.275(4)** 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.

**1.275(5)** In determining the amount of attorney's fees for a prevailing class the court shall consider all of the following factors:

*a.* The time and effort expended by the attorney in the litigation, including the nature, extent, and quality of the services rendered.

*b.* Results achieved and benefits conferred upon the class.

*c.* The magnitude, complexity, and uniqueness of the litigation.

*d.* The contingent nature of success.

*e.* In cases awarding attorney's fees and litigation expenses under rule 1.275(4) because of the vindication of an important public interest, the economic impact on the party against whom the award is made.

*f.* Appropriate criteria in the Iowa Code of Professional Responsibility for Lawyers. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.276 Arrangements for attorney's fees and expenses.**

**1.276(1)** Before a hearing under rule 1.262(1) 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, all of the following:

*a.* 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.

*b.* 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.

*c.* 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 that law firm.

This statement shall be supplemented promptly if additional arrangements are made.

**1.276(2)** 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. [Report 1980; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.277 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:

**1.277(1)** Upon filing an election of exclusion by that member.

**1.277(2)** Upon entry of an order of certification, or of an amendment thereof, eliminating that member from the class.

**1.277(3)** Except as to representative parties, upon entry of an order under rule 1.262 refusing to certify an action as a class action.

**1.277(4)** Upon dismissal of the action without an adjudication on the merits. [Report 1980; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** Former Iowa R. Civ. P. 42.6 was stricken in order to eliminate its restriction on personal jurisdiction over nonresident class members, and to permit exercise of jurisdiction over nonresident class members to the extent permitted by the U.S. and state constitutions as interpreted by the courts. Former Iowa Rs. Civ. P. 42.19 and 42.20 were stricken because the Model Act has been adopted in only two states.

**Rule 1.278 Virtual representation.** Where persons composing a class which may be increased by others later born, do or may make a claim affecting specific property involved in an action to which all living members of the class are parties, any others later born shall also be deemed to have been parties to the action and bound by any decree rendered therein. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.279 Shareholder's actions.** Shareholders in an incorporated or unincorporated association, who sue to enforce its rights because of its failure to do so, shall support their petition by affidavit, and allege their efforts to have the directors, trustees or other shareholders bring the action or enforce the right, or a sufficient reason for not making such effort. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rules 1.280** to **1.300** Reserved.

## DIVISION III

COMMENCEMENT OF ACTIONS

**Rule 1.301 Commencement of actions; tolling; cover sheet.**

**1.301(1)** For all purposes, a civil action is commenced by filing a petition with the court. The date of filing shall determine whether an action has been commenced within the time allowed by statutes for limitation of actions, even though the limitation may inhere in the statute creating the remedy.

**1.301(2)** A cover sheet available from the clerk of court or from the judicial branch web site (www.judicial.state.ia.us) must be completed and accompany every civil petition except in small claims, probate, and mental health commitment actions. This requirement is solely for administrative purposes, and matters appearing on the civil cover sheet have no legal effect in the action. The clerk may assist pro se litigants in completing the cover sheet. The cover sheet may be modified from time to time as deemed necessary by the supreme court. [Report 1943; amendment 1975; October 31, 1997, effective January 24, 1998; December 21, 1999, effective February 1, 2000; October 18, 2000, effective January 2, 2001; November 9, 2001, effective February 15, 2002]

**Rule 1.302 Original notice; form, issuance and service.** A notice to the defendant, respondent, or other party against whom an action has been filed shall be served in the form and manner provided by this rule. This notice shall be called the original notice.

**1.302(1)** The original notice shall contain the following information:

*a.* The name of the court and the names of the parties.

*b.* The name, address, telephone number, and if available, the facsimile transmission number of the plaintiff's or petitioner's attorney, if any, otherwise the plaintiff's or petitioner's address.

*c.* The date of the filing of the petition.

*d.* The time within which these rules or statutes require the defendant, respondent, or other party to serve, and within a reasonable time thereafter file, a motion or answer.

The original notice shall also state that if the defendant, respondent or other party fails to move or answer, judgment by default may be rendered for the relief demanded in the petition. The original notice shall also include the compliance notice required by the Americans with Disabilities Act (ADA). A copy of the petition shall be attached to the original notice except when service is by publication. If service is by publication, the original notice alone shall be published and shall also contain a general statement of the claim or claims and, subject to the limitation in rule 1.403(1), the relief demanded.

**1.302(2)** If the papers are to be served by the sheriff, sufficient copies of the original notice, petition, and other papers to be served together with written directions for service shall be delivered to the clerk.

**1.302(3)** The original notice shall be signed by the clerk and be under the seal of the court. The clerk may require the party delivering the original notice to the clerk to advance reasonable costs of service.

**1.302(4)** The clerk shall forthwith deliver the service copies of the original notice, petition and other papers to be served with written directions for service to the sheriff, to a person specially appointed to serve them, or other appropriate person.

**1.302(5)** Original notices may be served by any person who is neither a party nor the attorney for a party to the action. A party or party's agent or attorney may take an acknowledgment of service and deliver a copy of the original notice in connection therewith and may mail a copy of the original notice when mailing is required or permitted under any rule or statute.

**1.302(6)** If service of the original notice is not made upon the defendant, respondent, or other party to be served within 90 days after filing the petition, the court, upon motion or its own initiative after notice to the party filing the petition, shall dismiss the action without prejudice as to that defendant, respondent, or other party to be served or direct an alternate time or manner of service. If the party filing the papers shows good cause for the failure of service, the court shall extend the time for service for an appropriate period. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** Rule 1.302 is a combination of former Iowa Rs. Civ. P. 49, 50 and 52 reorganized to present the information in a more logical sequence. This rule was changed to reflect the present practice. Original notices should now include the telephone number and facsimile transmission number of the party's attorney requesting the issuance of an original notice. It also requires the original notice to have the proper ADA notice. The language is changed stating a default "may be rendered" rather than "will be rendered." This change reflects the actual practice and the 10-day notice before a default judgment can be entered. The rule also has a 90-day requirement for service. Ninety days was chosen in order that service would be perfected prior to the issuance of scheduling orders by most courts. The forms of the original notices contained in the appendix are changed accordingly.

**Rule 1.303 Time for motion or answer to petition.**

**1.303(1)** Unless otherwise provided, the defendant, respondent, or other party shall serve, and within a reasonable time thereafter file, a motion or answer within 20 days after the service of the original notice and petition upon such party.

**1.303(2)** Any statute of Iowa which specifically requires response by a particular party, or in a particular action, within a specified time, shall govern the time for serving, and within a reasonable time thereafter filing, a motion or answer in such cases.

**1.303(3)** A defendant, respondent, or other party served in a manner prescribed by an order of court shall serve, and within a reasonable time thereafter file, a motion or answer on or before the date fixed.

**1.303(4)** A defendant, respondent, or other party served by publication or by publication and mailing shall serve, and within a reasonable time thereafter file, a motion or answer on or before the date fixed in the notice as published, which date shall not be less than 20 days after the date of last publication.

**1.303(5)** A defendant, respondent, or other party served by mail under rule 1.306 shall serve, and within a reasonable time thereafter file, a motion or answer on or before the date fixed in the notice as mailed, which date shall be not less than 60 days following the date of mailing. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.304 Response of garnishee.** The officer serving a writ of attachment or execution shall garnish such persons as the plaintiff may direct who are supposed debtors, or who possess property of the principal defendant. Garnishment shall be effected by a notice served in the manner and as an original notice in civil actions. The notice shall forbid the garnishee from paying any debt owing such defendant, due or to become due, and require the garnishee to retain possession of all property of the defendant in the garnishee's hands or under the garnishee's control, to the end that the same may be dealt with according to law. Unless answers are required to be taken as provided by statute, the notice shall cite the garnishee to appear before the court at a time specified not less than ten days after service and answer such interrogatories as may be propounded, or the garnishee will be liable to pay any judgment which the plaintiff may obtain against the defendant. [Report 1943; amendment 1945; Report 1978, effective July 1, 1979; April 30, 1987, effective July 1, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.305 Personal service.** Original notices are "served" by delivering a copy to the proper person. Personal service may be made as follows:

**1.305(1)** Upon any individual who has attained majority and who has not been adjudged incompetent either by taking the individual's signed, dated acknowledgment of service endorsed on the notice; or by serving the individual personally; or by serving, at the individual's dwelling house or usual place of abode, any person residing therein who is at least 18 years old, but if such place is a rooming house, hotel, club or apartment building, the copy shall there be delivered to such a person who is either a member of the individual's family or the manager, clerk, proprietor or custodian of such place; or upon the individual's spouse at a place other than the individual's dwelling house or usual place of abode if probable cause exists to believe that the spouse lives at the individual's dwelling house or usual place of abode.

**1.305(2)** Upon a minor by serving the minor's conservator or guardian, unless the notice is served on behalf of such conservator or guardian, or the minor's parent, or some person aged 18 years or more who has the minor's care and custody, or with whom the minor resides, or in whose service the minor is employed. Where the notice is served on behalf of one who is the conservator or guardian and the conservator or guardian is the only person who would be available upon whom service could be made, the court shall appoint, without prior notice to the ward, a guardian ad litem who shall be served and defend for the minor.

**1.305(3)** Upon any person adjudged incompetent but not confined in a state hospital for the mentally ill, by serving the conservator or guardian, unless the notice is served on behalf of such conservator or guardian, or that person's spouse, or some person aged 18 years or more who has that person's care and custody, or with whom that person resides. When the notice is served on behalf of one who is the conservator or guardian and the conservator or guardian is the only person who would be available upon whom service could be made, the court shall appoint without prior notice to the ward a guardian ad litem who shall be served and defend for the incompetent person.

**1.305(4)** Any person confined in a county care facility, or in any state hospital for the mentally ill, or any patient in the State University of Iowa hospital or its psychopathic ward, or any patient or inmate of any institution in the control of a director of a division of the department of human services or department of corrections or of the United States, may be served by the official in charge of such institution or that official's assistant. Proof of such service may be made by the certificate of such official, if the institution is in Iowa, or that official's affidavit if it is out of Iowa.

**1.305(5)** If any defendant, respondent, or other party is a patient in any state or federal hospital for the mentally ill, in or out of Iowa, or has been adjudged incompetent and is confined to a county care facility, the official in charge of such institution or the official's assistant shall accept service on the party's behalf, if in the official's or assistant's opinion direct service on the party would cause injury, which shall be stated in the acceptance.

**1.305(6)** Upon a partnership, or an association suable under a common name, or a corporation, by serving any present or acting or last known officer thereof, or any general or managing agent, or any agent or person now authorized by appointment or by law to receive service of original notice, or on the general partner of a partnership.

**1.305(7)** If the action, whether against an individual, corporation, partnership or other association suable under a common name, arises out of or is connected with the business of any office or agency maintained by the defendant in a county other than where the principal resides, by serving any agent or clerk employed in such office or agency.

**1.305(8)** Upon any city by serving its mayor or clerk.

**1.305(9)** Upon any county by serving its auditor or the chair of its board of supervisors.

**1.305(10)** Upon any school district, school township or school corporation by serving its president or secretary.

**1.305(11)** Upon the state, where made a party pursuant to statutory consent or authorization for suit in the manner provided by any applicable statute.

**1.305(12)** Upon any individual, corporation, partnership or association suable under a common name, either as provided in these rules, as provided by any consent to service or in accordance with any applicable statute.

**1.305(13)** Upon a governmental board, commission or agency, by serving its presiding officer, clerk or secretary.

**1.305(14)** If service cannot be made by any of the methods provided by this rule, any defendant may be served as provided by court order, consistent with due process of law. [Report 1943; amendment 1945; amended by 58GA, ch152, §201; amended by 62GA, ch 209, §443; amendment 1974; amendment 1975; 1986 Iowa Acts, H.F. 721, §1; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.306 Alternate method of service.** Every corporation, individual, personal representative, partnership or association that shall have the necessary minimum contact with the state of Iowa shall be subject to the jurisdiction of the courts of this state, and the courts of this state shall hold such corporation, individual, personal representative, partnership or association amenable to suit in Iowa in every case not contrary to the provisions of the Constitution of the United States.

Service may be made on any such corporation, individual, personal representative, partnership or association as provided in rule 1.305 within or without the state or, if such service cannot be so made, in any manner consistent with due process of law prescribed by order of the court in which the action is brought.

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 hereafter permitted by statute or rule. [Report 1975; November 9, 2001, effective February 15, 2002]

**Rule 1.307 Member of general assembly.** No member of the general assembly shall be held to move or answer in any civil action in any court in this state while such general assembly is in session. [Report 1943; Report 1978, effective July 1, 1979; April 30, 1987, effective July 1, 1987; November 9, 2001, effective February 15, 2002]

**Rule 1.308 Returns of service.**

**1.308(1)** *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 that officer's own or a contiguous county; any other peace officer, bailiff, or marshal, as to service in that officer's own territorial jurisdiction. The court shall take judicial notice of such signatures. All other returns, except those specified in rules 1.305(4) and 1.305(5), 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, reasonable fees or mileage, not to exceed those allowed to a sheriff under Iowa Code section 331.655, shall be taxed as costs.

**1.308(2)** *Contents.* A return of personal service shall state the time, manner, and place thereof and name the person to whom copy was delivered; and if delivered under rule 1.305(1) to a person other than defendant, respondent, or other party, it must also state the facts showing compliance with said rule.

**1.308(3)** *Endorsement and filing.* If a sheriff receives the notice for service, the sheriff shall note thereon the date when received, and serve it without delay in the sheriff's own or a contiguous county, and upon receiving the appropriate fees, the sheriff shall either file it and the return with the clerk, or deliver it by mail or otherwise to the person from whom the sheriff received it.

**1.308(4)** *Proof of service.* The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service does not affect the validity of the service.

**1.308(5)** *By mail.* Where service includes notice by mail, proof of such mailing shall be by affidavit. The affidavit, with a duplicate copy of the papers referred to in the affidavit attached thereto, shall be forthwith filed with the court. [Report 1943; amendment 1975; February 13, 1986, effective July 1, 1986; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.309 Amendment of process or proof of service.** The court may allow any process or proof of service thereof to be amended at any time in its discretion and upon such terms as it deems just, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued. [Report 1975; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.310 Service by publication; what cases.** After filing an affidavit that personal service cannot be had on an adverse party in Iowa, the original notice may be served by publication, in any action brought for the following:

**1.310(1)** For recovery of real property or any estate or interest therein.

**1.310(2)** For the partition of real or personal property in Iowa.

**1.310(3)** To foreclose a mortgage, lien, encumbrance or charge on real or personal property.

**1.310(4)** For specific performance of a contract for sale of real estate.

**1.310(5)** To establish, set aside or construe a will, if defendant, respondent, or other party resides out of Iowa, or if the residence is unknown.

**1.310(6)** Against a nonresident of Iowa or a foreign corporation which has property, or debts owing to it in Iowa, sought to be taken by any provisional remedy, or appropriated in any way.

**1.310(7)** Against any defendant, respondent, or other party who, being a nonresident of Iowa, or a foreign corporation, has or claims any actual or contingent interest in or lien on real or personal property in Iowa which is the subject of such action, or to which it relates; or where the action seeks to exclude such defendant, respondent, or other party from any lien, interest or claim therein.

**1.310(8)** Against any resident of the state who has departed therefrom, or from the county of defendant's, respondent's or other party's residence, with intent to delay or defraud creditors, or to avoid service, or a defendant, respondent or other party who keeps concealed with like intent.

**1.310(9)** For dissolution of marriage or separate maintenance or to modify a decree in such action, or to annul an illegal marriage, against a party who is a nonresident of Iowa or whose residence is unknown.

**1.310(10)** To quiet title to real estate, against a party who is a nonresident of Iowa, or whose residence is unknown.

**1.310(11)** Against a partnership, corporation or association suable under a common name, when no person can be found on whom personal service can be made.

**1.310(12)** To vacate or modify a judgment or for a new trial under rules 1.1012 and 1.1013. [Report 1943; amendment 1945; Report 1978, effective July 1, 1979; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.311 Known defendants.**

**1.311(1)** In every case where service of original notice is made upon a known defendant, respondent, or other party by publication, copy of the notice shall also be sent by ordinary mail addressed to such party at the party's last-known mailing address, unless an affidavit of a party or that party's attorney is filed stating that no mailing address is known and that diligent inquiry has been made to ascertain it.

**1.311(2)** Such copy of notice shall be mailed by the party, the party's agent or attorney not less than 20 days before the date for motion or answer.

**1.311(3)** Proof of such mailing shall be by affidavit, and such affidavit or the affidavit referred to in rule 1.311(1) shall be filed before the entry of judgment or decree. The court, in its judgment or decree, or prior thereto, shall make a finding that the address to which such copy was directed is the last-known mailing address, or that no such address is known, after diligent inquiry. [Report 1951; Report 1978, effective July 1, 1979; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.312 Unknown defendants, respondents, or other parties.** The original notice against unknown parties shall be directed to the unknown claimants of the property involved, describing it. It shall otherwise comply with rule 1.302. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.313 How published.** After the filing of a petition, publication of the original notice shall be made once each week for three consecutive weeks in a newspaper of general circulation published in the county where the petition is filed. The newspaper shall be selected by the plaintiff. [Report 1943; amendment 1951; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.314 Proof of publication.** Before default is taken, proof of such publication shall be filed, sworn to by the publisher or an employee of the newspaper. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.315 Actual service.** Service of original notice in or out of Iowa according to rule 1.305 supersedes the need of its publication. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rules 1.316** to **1.400** Reserved.

## DIVISION IV

## PLEADINGS AND MOTIONS

### A. PLEADINGS GENERALLY

**Rule 1.401 Allowable pleadings.** There shall be a petition and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a cross-petition, if a person who was not an original party is summoned under the provisions of rule 1.246; and an answer to cross-petition, if a cross-petition is served. [Report 1943; amendment 1974; Report 1978, effective July 1, 1979; November 9, 2001, effective February 15, 2002]

**Rule 1.402 General rules of pleading.**

**1.402(1)** *Form and sufficiency.* The form and sufficiency of all pleadings shall be determined by these rules, construed and enforced to secure a just, speedy and inexpensive determination of all controversies on their merits.

**1.402(2)** *Pleading to be concise and direct; consistency.*

*a.* Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings are required.

*b.* 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 the party has regardless of consistency and whether based on legal or equitable grounds. "Pleadings" as used in these rules do not include motions.

**1.402(3)** *Correcting or recasting pleadings.* On its own motion or that of any party, the court may order any prolix, confused or multiple pleading to be recast in a concise single document within such time as the order may fix. In like manner, it may order any pleading not complying with these rules to be corrected on such terms as it may impose.

**1.402(4)** *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. Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires.

**1.402(5)** *Making and construing amendments.* All amendments must be on a separate paper, duly filed, without interlining or expunging prior pleadings. 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 the party, the party to be brought in by amendment has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.403 Claims for relief.**

**1.403(1)** *Generally.* A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or cross-petition, shall contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the type of relief sought. Relief in the alternative or of several different types may be demanded. Except in small claims and cases involving only liquidated damages, a pleading shall not state the specific amount of money damages sought but shall state whether the amount of damages meets applicable jurisdictional requirements for the amount in controversy. The specific amount and elements of monetary damages sought may be obtained through discovery.

**1.403(2)** *Petition.* The petition shall state whether it is at law or in equity. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.404 Appearances.**

**1.404(1)** *By attorney.* 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. Such appearance shall entitle the attorney to service as provided in rule 1.442.

**1.404(2)** *Appearance alone.* The court shall have no power to treat an appearance as sufficient to delay or prevent a default or any other order which would be made in absence thereof, or of timely pleading. Notice and opportunity to respond to any motion for judgment under rule 1.973(2) shall be given to any party who has appeared. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.405 Answer.**

**1.405(1)** *Generally.* The answer shall show on whose behalf it is filed, and specifically admit or deny each allegation or paragraph of the pleading to which it responds, which denial may be for lack of information. It must state any additional facts deemed to show a defense. It may raise points of law appearing on the face of the pleading to which it responds. It may contain a counterclaim which must be in a separate division.

**1.405(2)** *Answers for ward.* All answers by conservators, guardians or guardians ad litem, or filed under rule 1.212, shall state whether proper service has been had on the ward; and they shall deny all material allegations prejudicial to the ward.

**1.405(3)** *What admitted.* Every fact pleaded and not denied in a subsequent pleading as permitted by these rules shall be deemed admitted except for any of the following:

*a.* Allegations of value or amount of damage.

*b.* Averments in a pleading to which no responsive pleading is required or permitted.

*c.* Facts not previously pleaded that are set forth in pleadings filed subsequent to the seventh day preceding the trial, all of which shall be deemed denied by operation of law.

**1.405(4)** *Denying signature.*

*a.* *By party.* If a pleading copies a writing purporting to be signed by an adverse party, such signature shall be deemed genuine for all purposes in the case, unless such party denies it and supports the denial by the party's affidavit that it is not a genuine or authorized signature. The party may, on application made during the time to plead, procure an inspection of the original writing.

*b.* *By nonparty.* If a pleading copies a nonnegotiable writing purporting to be signed by a nonparty to the action, such signature shall be deemed genuine, unless a party denies it, and supports the denial by affidavit, which denial may be for lack of information. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.406 Reply.** The court may order a reply to an answer or to an answer to a cross-petition. [Report 1943; amendment 1974; Report 1978, effective July 1, 1979; November 9, 2001, effective February 15, 2002]

**Rule 1.407 Interventions.**

**1.407(1)** *Intervention of right.* Upon timely application, anyone shall be permitted to intervene in an action under any of the following circumstances:

*a.* When a statute confers an unconditional right to intervene.

*b.* When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

**1.407(2)** *Permissive intervention.* Upon timely application, anyone may be permitted to intervene in an action under any of the following circumstances:

*a.* When a statute confers a conditional right to intervene.

*b.* When an applicant's claim or defense and the main action have a question of law or fact in common.

*c.* When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action.

In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

**1.407(3)** *Procedure.* A person desiring to intervene shall serve a motion to intervene upon the parties. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

**1.407(4)** *Disposition.* The court shall grant interventions of right unless the applicant's interest is adequately represented by existing parties. The court shall consider applications for permissive intervention and grant or deny the application as the circumstances require. The intervenor shall have no right to delay, and shall pay the costs of the intervention unless the intervenor prevails. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** The amendments to former Iowa R. Civ. P. 75, now rule 1.407, adopted provisions substantially similar to Fed. R. Civ. P. 24 and allow the trial court more discretion in determining whether to allow intervention.

**Rules 1.408** to **1.410** Reserved.

B. PLEADINGS; FORMAT AND CONTENT

**Rule 1.411 Caption and signature.**

**1.411(1)** *Required information.* Each appearance, notice, motion, or pleading shall be captioned with the title of the case, naming the court, parties, and instrument, and shall bear the signature, personal identification number, address, telephone number, and, if available, facsimile transmission number of the party or attorney filing it. The caption of the first papers filed or served by or on behalf of any named party shall include the personal identification number of each named party if available or as soon as is available. The caption of a petition shall state whether the action is at law or equity. In all subsequent papers filed or served, the caption need name only the first of several coparties.

**1.411(2)** *Personal identification numbers.* In lieu of including social security numbers on pleadings, parties shall complete a confidential information form available from the clerk of court. The clerk shall separately file the confidential information forms, and the social security numbers contained therein shall be confidential and cannot be disclosed except as authorized by federal or state law. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.412 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. [Report 1943; amendment 1976; November 9, 2001, effective February 15, 2002]

**Rule 1.413 Verification abolished; affidavits; certification.**

**1.413(1)** Pleadings need not be verified unless special statutes so require and, where a pleading is verified, it is not necessary that subsequent pleadings be verified unless special statutes so require. Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation. If a motion, pleading, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee. The signature of a party shall impose a similar obligation on such party.

**1.413(2)** If a party commencing an action has in the preceding five-year period unsuccessfully prosecuted

three or more actions, the court may, if it deems the actions to have been frivolous, stay the proceedings until that party furnishes an undertaking secured by cash or approved sureties to pay all costs resulting to opposing parties to the action including a reasonable attorney fee.

**1.413(3)** Any motion asserting facts as the basis of the order it seeks, and any pleading seeking interlocutory relief, shall contain or be accompanied by an affidavit of the person or persons knowing the facts requisite to such relief. A similar affidavit shall be appended to all petitions which special statutes require to be verified.

**1.413(4)** Any pleading, motion, affidavit, or other document required to be verified under Iowa law may, alternatively, be certified pursuant to Iowa Code section 622.1, using substantially the following form:

"I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

_____ _____

Date Signature"

[Report 1943; amendment 1945; Report January 21, 1986, effective April 1, 1986; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.414 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. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.415 Judicial notice; statutes.** Matters of which judicial notice is taken, including statutes of Iowa, need not be stated in any pleading. A pleading asserting any statute of another state, territory or jurisdiction of the United States, or a right derived therefrom, shall refer to such statute by plain designation and if such reference is made the court shall judicially notice such statute. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.416 Negligence; mitigation.** In an action by an employee against an employer, or by a passenger against a common carrier to recover for negligence, plaintiff need not plead or prove freedom from contributory negligence, but defendant may plead and prove contributory negligence in mitigation of damages. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.417 Permissible conclusions; denials.** The following may be pleaded as legal conclusions without averring the facts comprising them: partnership, corporate or representative capacity; corporate authority to sue or do business in Iowa; performance of conditions precedent; or judgments of a court, board or officer of special jurisdiction. It shall not be sufficient to deny such averment in terms contradicting it, but the facts relied on must be stated. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.418 Contract.** Every pleading referring to a contract must state whether it is written or oral. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.419 Defenses to be specially pleaded.** Any defense that a contract or writing sued on is void or voidable, or was delivered in escrow, or which alleges any matter in justification, excuse, release or discharge, or which admits the facts of the adverse pleading but seeks to avoid their legal effect, must be specially pleaded. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.420 Account; bill of particulars; denial.** A pleading founded on an account shall contain a bill of particulars thereof, by consecutively numbered items, which shall define and limit the proof, and may be amended as other pleadings. A pleading controverting such account must specify the items denied, and any items not thus specified shall be deemed admitted. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.421 Defenses; how raised; consolidation; waiver.**

**1.421(1)** Every defense to a claim for relief in any pleading must be asserted in the pleading responsive thereto, or in an amendment to the answer made within 20 days after service of the answer, or if no responsive pleading is required, then at trial. The following defenses or matters may be raised by pre-answer motion:

*a.* Lack of jurisdiction of the subject matter.

*b.* Lack of jurisdiction over the person.

*c.* Insufficiency of the original notice or its service.

*d.* To recast or strike.

*e.* For more specific statement.

*f.* Failure to state a claim upon which any relief may be granted.

**1.421(2)** Improper venue under rule 1.808 must be raised by pre-answer motion filed prior to or in a motion under rule 1.421(3).

**1.421(3)** If the grounds therefor exist at the time a pre-answer motion is made, motions under rule 1.421(1)(*b*) through 1.421(1)(*f*) shall be contained in a single motion and only one such motion assailing the same pleading shall be permitted, unless the pleading is amended thereafter.

**1.421(4)** If a pre-answer motion is made under rule 1.421(3), any matter specified in rule 1.421(1) or 1.421(2) which is not included in the motion is waived, except lack of jurisdiction of the subject matter or failure to state a claim upon which relief may be granted.

**1.421(5)** Sufficiency of any defense may be raised by a motion to strike it, filed before pleading to it.

**1.421(6)** Motions under this rule must specify how the pleading they attack is claimed to be insufficient. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.422** to **1.430** Reserved.

C. MOTIONS

**Rule 1.431 Motion practice; generally.**

**1.431(1)** A motion is an application made by any party or interested person for an order related to the action. It is not a "pleading" but is subject to the certification requirements of rule 1.413(1).

**1.431(2)** Each motion filed shall be captioned and signed in accordance with rule 1.411 and shall set out the specific points upon which it is based.

**1.431(3)** A concise memorandum brief citing supporting authorities may be served in accordance with rule 1.442(4).

**1.431(4)** Unless otherwise ordered by the court or provided by rule or statute, each party opposing the motion shall file within ten days after a copy of the motion has been served a written resistance to the motion. A concise brief citing supporting authorities may be served in accordance with rule 1.442(4).

**1.431(5)** Within seven days after service of the resistance or before any hearing on the motion, whichever is earlier, the movant may file a reply and serve a concise reply brief in accordance with rule 1.442(4) to assert newly decided authority or to respond to new and unanticipated matters. The reply brief should not reargue points made in the opening brief.

**1.431(6)** Evidence to sustain or resist a motion may be made by affidavit or in any other form to which the parties agree or the court directs. The court may require any affiant to appear for cross-examination.

**1.431(7)** The trial court shall rule on all motions within 30 days after their submission, unless it extends the time for reasons stated of record.

**1.431(8)** The clerk of each court shall maintain a motion calendar on which every motion filed shall be entered. It shall be arranged to show the following:

*a.* Docket, page and cause number of action in which filed.

*b.* Abbreviated title of the case with surname of the first-named party on each side.

*c.* Counsel of record for parties.

*d.* Denomination of the motion.

*e.* Date filed.

*f.* Party by whom filed.

*g.* Date entered on calendar.

*h.* Date of disposition by ruling, order or otherwise.

Separate motion calendars for law, equity or other divisions may be maintained.

**1.431(9)** The court may arrange for the submission of motions under these rules by telephone conference call unless oral testimony may be offered. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** Rule 1.431 is a consolidation of former Iowa Rs. Civ. P. 109, 116, 117(c), 117(e), 117(f), and portions of 117(a), all of which pertained to motions, filing of motions, evidence to sustain or resist them, placing them on the motion calendar, and the time within which they should be ruled upon.

**Rule 1.432 Failure to move; effect of overruling motion.** No pleading shall be held sufficient for failure to move to strike or dismiss it. If such motion is filed and overruled, error in such ruling is not waived by pleading over or proceeding further; and the moving party may always question the sufficiency of the pleading during subsequent proceedings. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.433 Motion for more specific statement.** A party may move for a more specific statement of any matter not pleaded with sufficient definiteness to enable the party to plead to it and for no other purpose. It shall point out the insufficiency claimed and particulars desired. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.434 Motion to strike.** Improper or unnecessary matter in a pleading may be stricken out on motion of the adverse party. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.435 Motion days; submission of pretrial motions.**

**1.435(1)** The chief judge of each judicial district shall provide by order for motion days to be held each month in each county, when all pretrial motions on file 14 days or more shall be deemed submitted unless a hearing has been set or another time for submission is fixed by rule, statute, or order of court entered for good cause shown. A party who has been served with original notice or has appeared shall take notice of the regular motion day on which motions will be heard.

**1.435(2)** The court may hear and rule on any motion prior to motion day so as not to delay completing the issues or trial of the case.

**1.435(3)** The court may require counsel to be apprised, in any manner it directs, of the time and place at which it will hear or act on any motion, application or other matter other than at the regular motion day. This subrule shall be applied to expedite, but not delay, hearings

and submissions. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.436** to **1.440** Reserved.

D. TIME, FILING, AND NOTICE REQUIREMENTS

**Rule 1.441 Time to move or plead.**

**1.441(1)** *Motions.* Motions attacking a pleading must be served before responding to the pleading or, if no responsive pleading is required by these rules, within 20 days after the service of the pleading on such party.

**1.441(2)** *Pleading.* Answer to a petition must be served on or before the date prescribed in accordance with rule 1.303. 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.

**1.441(3)** *Time after filing motions.* The service of a motion permitted under the rules in this chapter alters these periods of time as follows, unless a different time is fixed by order of the court.

If the motion is so disposed of as to require further pleading, such pleading shall be served within ten days after notice of the court's action.

**1.441(4)** *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 is longer, unless the court otherwise orders.

**1.441(5)** *Shortening time.* The court may order any motion or pleading to be filed within a shorter time than specified above.

**1.441(6)** *Extending time.* For good cause, but not ex parte, the court may extend the time to answer or reply for not more than 30 days beyond the times above specified. For good cause but not ex parte, and upon such terms as the court prescribes, the court may grant a party the right to file an answer or reply where the time to file same has expired.

**1.441(7)** *Notice of removal to federal court.* The filing of a notice of removal to the federal court shall suspend the jurisdiction of the state court until an order of the federal court, remanding the cause, or determining that the removal has not been perfected, is filed in the state court. Thereupon, the times fixed for motions or pleadings shall begin anew. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.442 Service and filing of pleadings and other papers.**

**1.442(1)** *When service required.* Unless the court otherwise orders, everything required by the rules in this chapter to be filed, every order required by its terms to be served, every pleading subsequent to the original petition, every paper relating to discovery, every written motion including one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on any party against whom a default has been entered except that pleadings asserting new or additional claims for relief against the party shall be served upon the party in the manner provided for service of original notice in rule 1.305. In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

**1.442(2)** *Same: how made.* Service upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the court. Service shall be made by delivering, mailing, or transmitting by fax (facsimile) a copy to the attorney or to the party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of court. Delivery within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion residing therein. Service by mail is complete upon mailing.

**1.442(3)** *Same: numerous defendants.* In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

**1.442(4)** *Filing.* Except as provided in rule 1.502, all papers after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter; however, no party shall file legal briefs or memoranda, except in support of or resistance to a motion for summary judgment, unless expressly ordered by the court. Such briefs and memoranda shall be served upon the parties with an original copy delivered to the presiding judge. The party submitting the legal brief or memoranda shall file a statement certifying compliance with this rule. Whenever these rules or the rules of appellate procedure require a filing with the district court or its clerk within a certain time, the time requirement shall be tolled when service is made, provided the actual filing is done within a reasonable time thereafter.

**1.442(5)** *Filing with the court defined.* The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that a judge may permit them to be filed with the judge, who shall note thereon the filing date and forthwith transmit them to the office of the clerk.

**1.442(6)** *Notice of orders or judgments.* Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in this rule upon each party except a party against whom a default has been entered and shall make a note in the docket of the mailing. In the event a case involves an appeal or review relating to an administrative agency, officer, commissioner, board, administrator, or judge, the clerk shall mail without cost to the applicable administrative agency, officer, commissioner, board, administrator, or judge a copy of any remand order, final judgment or decision in the case and a copy of any procedendo from the supreme court.

Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by the rules in this chapter; but any party may in addition serve a notice of such entry in the manner provided in this rule for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the district court to relieve a party for failure to appeal within the time allowed.

**1.442(7)** *Certificate of service.* All papers required or permitted to be served or filed shall include a certificate of service. Action shall not be taken on any paper until a certificate of service is filed in the clerk's office. The certificate shall identify the document served and include the date, manner of service, names and addresses of the persons served. The certificate shall be signed by the person making service. Unless ordered by the court, no other proof of service shall be filed. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** Rule 1.442(2) authorizes service by facsimile transmission and deletes archaic and unnecessary language regarding service by delivery to a clerk or person in charge of an office which is not closed. Rule 1.442(7) clarifies that all documents served or filed shall include a certificate of service, that proofs of service shall not be filed regarding documents that are not to be filed, and it sets forth the requirements of a certificate of service and prohibits the filing of other proofs of service unless ordered by the Court.

**Rule 1.443 Enlargement; additional time after service by mail.**

**1.443(1)** *Enlargement.* When by the rules in this chapter or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion do the following:

*a.* With or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order.

*b.* Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 1.1001, 1.1003, and 1.1004, except to the extent and under the conditions stated in rule 1.1007.

**1.443(2)** *Additional time after service by mail.* When by the rules in this chapter a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period. 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 given or where the deadline runs from entry or filing of a judgment, order or decree. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.444 Pleading over; election to stand.** If a party is required or permitted to plead further by an order or ruling, the clerk shall forthwith mail or deliver notice of such order or ruling to the attorneys of record. Unless otherwise provided by order or ruling, such party shall file such further pleading within ten days after such mailing or delivery; and if such party fails to do so within such time, the party thereby elects to stand on the record theretofore made. On such election, the ruling shall be deemed a final adjudication in the trial court without further judgment or order; reserving only such issues, if any, which remain undisposed of by such ruling and election. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.445** to **1.450** Reserved.

E. COURT ACTION

**Rule 1.451 Specific rulings required.** A motion, or other matter involving separate grounds or parts, shall be disposed of by separate ruling on each and not sustained generally. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.452 Order defined.** Every direction of the court, made in writing and not included in the judgment or decree, is an order. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.453 When and how entered.** A judge may enter judgments, orders or decrees at any time after the matter has been submitted, effective when filed with the clerk, or as provided by rule 1.442(5). The clerk shall promptly mail or deliver notice of such entry, or copy thereof, to each party appearing, or to one of the party's attorneys. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.454 Separate adjudication of law points.** The court may in its discretion, and must on application of a party made after issues are joined and before trial, sepa-

rately hear and determine any point of law raised in any pleading which goes to the whole or any material part of the case. It shall enter an appropriate final order before trial of the remaining issues, adjudicating the point so determined, which shall not be questioned on the trial of any part of the case of which it does not dispose. If such ruling does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.455 Preliminary determination.** On application of any party, the motion for judgment on the pleadings under rule 1.954, and the defenses of (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, and (7) failure to join a party under rule 1.234, whether made in a pleading or by motion, shall be determined before trial, unless the court orders that determination thereof be deferred until the trial. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.456 Cross-petition, cross-claim, counter-claim; judgment.** 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. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.457 Amending to conform to the evidence.** When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice that party in maintaining the action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.458 Special action; proper remedy awarded.** In any case of mandamus, certiorari, appeal to the district court, or for specific equitable relief, where the facts pleaded and proved do not entitle the petitioner to the specific remedy asked, but do show the petitioner entitled to another remedy, the court shall permit the petitioner on such terms, if any, as it may prescribe, to amend by asking for such latter remedy, which may be awarded. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.459** to **1.500** Reserved.

## DIVISION V

## DISCOVERY AND INSPECTION

**Rule 1.501 Discovery methods.**

**1.501(1)** Parties may obtain discovery by one or more of the following methods: 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.

**1.501(2)** 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.

**1.501(3)** Unless the court orders otherwise under rule 1.504, the frequency of use of these methods is not limited.

**1.501(4)** A rule requiring a matter to be under oath may be satisfied by an unsworn written statement in substantially the following form: "I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

_____ _____
Date Signature"

[Report 1943; amendment 1957; amendment 1967; amendment 1973; February 13, 1986, effective July 1, 1986; May 28, 1987, effective August 3, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.502 Discovery materials not filed.** Unless otherwise ordered by the court, no deposition, notice of deposition, interrogatory, request for production of documents, request for admission, or response, document or thing produced, or objection thereto shall be filed with the clerk. Any motion under rule 1.517 attacking the sufficiency of a response to a discovery request must have a copy of the request and response attached or the motion may be denied. This rule does not apply to depositions to perpetuate testimony under rules 1.721 through 1.728. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.503 Scope of discovery.** Unless otherwise limited by order of the court in accordance with the rules in this chapter, the scope of discovery is as follows:

**1.503(1)** *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

**1.503(2)** *Insurance agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this rule, an application for insurance shall not be treated as part of an insurance agreement.

**1.503(3)** *Trial preparation materials.* Subject to the provisions of rule 1.508, a party may obtain discovery of documents and tangible things otherwise discoverable under rule 1.503(1) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party seeking discovery is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of rule 1.517(1)(*d*) apply to the award of expenses incurred in relation to the motion. For purposes of this rule, a statement previously made is any of the following:

*a.* A written statement signed or otherwise adopted or approved by the person making it.

*b.* A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

**1.503(4)** *Supplementation of responses.* A party who has responded to a request for discovery is under a duty to supplement or amend the response to include information thereafter acquired as follows:

*a.* A party is under a duty seasonably to supplement the response with respect to any question directly addressed to any of the following:

(1) The identity and location of persons having knowledge of discoverable matters.

(2) The identity of each person expected to be called as a witness at trial.

(3) Any matter that bears materially upon a claim or defense asserted by any party to the action.

*b.* A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:

(1) The party knows that the response was incorrect when made.

(2) The party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

*c.* As provided in rule 1.508(3), a party shall supplement discovery as to experts and the substance of their testimony.

*d.* An additional duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses. [Report 1943; amendment 1973; amended by 65GA, ch 315, §3; amendment 1980; Report February 13, 1986, effective July 1, 1986; May 28, 1987, effective August 3, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** Rule 1.503(4) states the duty to supplement in the affirmative and expands that duty to require supplementation as to material matters and as to experts.

**Rule 1.504 Protective orders.**

**1.504(1)** Upon motion by a party or by the person from whom discovery is sought or by any person who may be affected thereby, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken:

*a.* May make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had.

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place.

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery.

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters.

(5) That discovery be conducted with no one present except persons designated by the court.

(6) That a deposition after being sealed be opened only by order of the court.

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

*b.* Shall limit the frequency of use of the methods described in rule 1.501(1) if it determines that any of the following applies:

(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.

(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.

**1.504(2)** If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 1.517(1)(*d*) apply to the award of expenses incurred in relation to the motion. [Report 1943; amendment 1965; amendment 1970; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.505 Sequence and timing of discovery.** Unless the court upon motion orders otherwise for the convenience of parties and witnesses and in the interests of justice, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. [Report 1943; amendment 1957; amendment 1973; November 9, 2001, effective February 15, 2002]

**Rule 1.506 Stipulations regarding discovery procedure.** Unless the court orders otherwise, the parties may by written stipulation do the following:

**1.506(1)** Provide that depositions may be taken before any qualified person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

**1.506(2)** Modify the procedures provided by these rules for other methods of discovery. [Report 1975; amended by 66GA, ch 259, §1; amendment 1976; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** As parties rarely enter into formal stipulations extending the times to answer interrogatories or respond to production requests, the requirement for formal stipulations is removed. Formal stipulations remain required for extensions of time for responding to requests for admissions. The final phrase of the rule clarifies the time within which a response is required in the event the court supersedes a stipulation. Consistent with rule 1.502, the requirement that discovery stipulations be filed, including those regarding responses to requests for admissions, is deleted.

**Rule 1.507 Discovery conference.**

**1.507(1)** At any time after commencement of an action, the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

*a.* A statement of the issues as they then appear.

*b.* A proposed plan and schedule of discovery.

*c.* Any limitations proposed to be placed on discovery.

*d.* Any other proposed orders with respect to discovery.

*e.* A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

**1.507(2)** Each party and that party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than ten days after service of the motion.

**1.507(3)** Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

**1.507(4)** Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by rule 1.602. [Report May 28, 1987, effective August 3, 1987; November 9, 2001, effective February 15, 2002]

**Rule 1.508 Discovery of experts.**

**1.508(1)** *Expert who is expected to be called as a witness.* In addition to discovery provided pursuant to rule 1.516, discovery of facts known, mental impressions, and opinions held by an expert whom the other party expects to call as a witness at trial, otherwise discoverable under the provisions of rule 1.503(1) and acquired or developed in anticipation of litigation or for trial may be obtained as follows:

*a.* A party may through interrogatories require any other party to state the name and address of each person whom the other party expects to call as an expert witness at trial and to state, with reasonable particularity, all of the following:

(1) The subject matter on which the expert is expected to testify.

(2) The designated person's qualifications to testify as an expert on such subject.

(3) The mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which relate to, or form the basis of, the mental impressions and opinions held by the expert.

Nothing in this rule shall be construed to preclude a witness from testifying as to knowledge of the facts obtained by the witness prior to being retained as an expert or mental impressions or opinions formed by the witness which are based on such knowledge.

In the case of an expert retained in anticipation of litigation or for trial, answers to interrogatories asking for the qualifications of the person expected to testify as an expert, the mental impressions and opinions held by the expert, and the facts known to the expert shall be separately signed by the designated expert witness. If the party serving such interrogatories believes that the answers were required to be signed by the expert and they were not so signed, the party may object on that basis and move for an order compelling discovery. An objection based on the failure of such answers to be signed by the designated expert shall be asserted within 30 days of service of such answers, otherwise the objection is waived.

*b.* Discovery by other means is available without leave of court in lieu of or in addition to interrogatories:

(1) A party may take the deposition of any person identified by any other party as a person expected to be called as an expert witness at trial.

(2) A party may also obtain discovery of documents and tangible things including all tangible reports, physical models, compilations of data, and other material prepared by an expert or for an expert in anticipation of the expert's trial and deposition testimony. The disclosure of material prepared by an expert used for consultation is required even if it was prepared in anticipation of litigation or for trial when it forms a basis, either in whole or in part, of the opinions of an expert who is expected to be called as a witness.

(3) If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert who will be called as a witness have not been recorded and reduced to tangible form, the court may order these matters be reduced to tangible form and produced within a reasonable time before the date of trial.

**1.508(2)** *Expert who is not expected to be called as a witness.* The disclosure of the same information concerning an expert used for consultation and who is not expected to be called as a witness at trial is required if the expert's work product forms a basis, either in whole or in part, of the opinions of an expert who is expected to be called as a witness. Otherwise, a party may discover the identity of and facts known, or mental impressions and opinions held, by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in rule 1.516 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

**1.508(3)** *Duty to supplement discovery as to experts.* If a party expects to call an expert witness when the identity or the substance of such expert witness' testimony has not been previously disclosed in response to an appropriate inquiry directly addressed to these matters, or when the substance of an expert's testimony has been updated, revised or changed since the response, such response must be supplemented to include the information described in rule 1.508(1)(*a*)(1) to (3), as soon as practicable, but in no event less than 30 days prior to the beginning of trial except on leave of court. If the identity of an expert witness and the information described in rule 1.508(1)(*a*)(1) to (3) are not disclosed or supplemented in compliance with this rule, the court in its discretion may exclude or limit the testimony of such expert, or make such orders in regard to the nondisclosure as are just.

**1.508(4)** *Expert testimony at trial.* To the extent that the facts known, or mental impressions and opinions held, by an expert have been developed in discovery proceedings under rule 1.508(1)(*a*) or 1.508(1)(*b*), the expert's direct testimony at trial may not be inconsistent with or go beyond the fair scope of the expert's testimony in the discovery proceedings as set forth in the expert's deposition, answer to interrogatories, separate report, or supplement thereto. However, the expert shall not be prevented from testifying as to facts or mental impressions and opinions on matters with respect to which the expert has not been interrogated in the discovery proceedings.

**1.508(5)** *Court's discretion to compel disclosure of experts.* The court has discretion to compel a party to make the determination and disclosure of whether an expert is expected to be called as a witness and shall do so to ensure that determination and the disclosures required by this rule occur within a reasonable and specific time before the date of trial. Upon motion, or at a discovery conference held pursuant to rule 1.507, or on its own initiative, the court may prescribe the sequence in which the parties make the determination and disclosures provided for under this rule.

**1.508(6)** *Expert fees during discovery.* Unless manifest injustice would result, the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under rules 1.508(1)(*b*) and 1.508(2). With respect to discovery obtained under rule 1.508(1)(*b*), the court may require, and with respect to discovery obtained under rule 1.508(2), the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert. Any fee which the court requires to be paid shall not exceed the expert's customary hourly or daily fee; and, in connection with a party's deposition of another party's expert, shall include the time reasonably and necessarily spent in connection with such deposition, including time spent in travel to and from the deposition, but excluding time spent in preparation. [Re-

port 1943; amendment 1957; amendment 1973; Report May 28, 1987, effective August 3, 1987; June 23, 1988, effective September 1, 1988; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.509 Interrogatories to parties.**

**1.509(1)** *Availability; procedures for use.* Except in small claims, any party may serve written interrogatories to be answered by another party 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. 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 each interrogatory immediately preceding the answer 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 1.517. Answers are to be signed by the person making them. Answers shall not be filed; however, they shall be served upon all adverse parties within 30 days after the interrogatories are served. Objections, if any, shall be served within 30 days after the interrogatories are served. Defendants, however, may serve their objections or answers within 60 days after they have been served original notice. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under rule 1.517(1) with respect to any objection to or other failure to answer an interrogatory.

A party shall not serve more than 30 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 30 interrogatories must be in writing and shall set forth the proposed interrogatories and the reasons establishing good cause for their use.

**1.509(2)** *Scope; use at trial.* Interrogatories may relate to any matters which can be inquired into under rule 1.503, including a statement of the specific dollar amount of money damages claimed, the amounts claimed for separate items of damage, and the names and addresses of witnesses the party expects to call to testify at the trial. Interrogatory 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.

**1.509(3)** *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. A specification shall be in sufficient detail to permit the party serving the interrogatory to locate and identify as readily as can the party served, the records from which the answer may be ascertained. [Report 1943; amendment 1957; amendment 1973; amendment 1975; amendment 1976; amendment 1980; amendment 1983; amendment 1984; Report April 30, 1987, effective July 1, 1987; November 30, 1993, effective March 1, 1994; September 23, 1994, effective January 3, 1995; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** The requirement to file answers or objections, absent court order, is eliminated. Notices of serving interrogatories are abolished. Rule 1.509(2) adds to the permissible scope of interrogatories the amounts claimed for items of damages approved by the court in *Gordon v. Noel,* 356 N.W. 2d 559 (Iowa 1984), and the addresses of trial witnesses.

**Rule 1.510 Requests for admission.**

**1.510(1)** *Availability; procedures for requests.* 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 rule 1.503 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.

A party shall not serve more than 30 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 30 requests for admission must be in writing and shall set forth the proposed requests and the reasons establishing good cause for their use.

**1.510(2)** *Time for and content of responses.* The matter is admitted unless, within 30 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 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 60 days after service of the original notice upon 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 the party's answer or deny only a part of the matter of which an admission is requested, 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 the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable 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; the party may, subject to the provisions of rule 1.517(3) deny the matter or set forth reasons why the party cannot admit or deny it.

**1.510(3)** *Determining sufficiency of responses.* 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 rule 1.517(1)(*d*) apply to the award of expenses incurred in relation to the motion. [Report 1943; amendment 1957; amendment 1973; amendment 1984; February 13, 1986, effective July 1, 1986; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.511 Effect of admission.** Any matter admitted under rule 1.510 is conclusively established in the pending action unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of rule 1.604 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 that party in maintaining that party's action or defense on the merits. Any admission made by a party under rule 1.510 may be used as an evidentiary admission only in any other proceeding. [Report 1943; amendment 1957; amendment 1973; February 13, 1986, effective July 1, 1986; November 9, 2001, effective February 15, 2002]

**Rule 1.512 Production of documents and things and entry upon land for inspection and other purposes.** Any party may serve on any other party a request:

**1.512(1)** To produce and permit the party making the request, or someone acting on that party's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of rule 1.503 and which are in the possession, custody or control of the party upon whom the request is served.

**1.512(2)** Except as otherwise provided by statute, to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of rule 1.503. [Report 1943; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.513 Procedure under rule 1.512.** 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 30 days after the service of the request, except that a defendant may serve a response within 60 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.

The party submitting the request may move for an order under rule 1.517 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. [Report 1943; amendment 1973; amendment 1984; December 28, 1989, effective July 2, 1990; October 31, 1997, effec-

tive January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.514 Action for production or entry against persons not parties.** Rules 1.512 and 1.513 do not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land. [Report 1943; amendment 1957; amendment 1973; November 9, 2001, effective February 15, 2002]

**Rule 1.515 Physical and mental examination of persons.** When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a health care practitioner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. [Report 1943; amendment 1957; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** Rule 1.515 expands the category of those who can conduct a court-ordered physical or mental examination from only physicians to all health care practitioners.

**Rule 1.516 Report of health care practitioner.**

**1.516(1)** If requested by the party against whom an order is made under rule 1.515 or the person examined, the party causing the examination shall deliver a copy of the examiner's detailed written report setting out the findings, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, if requested by the party causing the examination, the party against whom the order is made shall deliver a like report of any examination of the same condition, previously or thereafter made, unless the party shows an inability to obtain a report of examination of a nonparty. The court on motion may order a party to deliver a report on such terms as are just. If an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at the trial.

**1.516(2)** By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

**1.516(3)** This rule applies to examination made by agreement of the parties, unless the agreement expressly provides otherwise. This rule does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule or statute. [Report 1943; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.517 Consequences of failure to make discovery.**

**1.517(1)** *Motion for order compelling discovery.* A party, upon reasonable notice to other parties and all persons affected thereby may move for an order compelling discovery as follows:

*a. Appropriate court.* A motion for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. A motion for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

*b. Motion.* If a deponent fails to answer a question propounded or submitted under rule 1.701 or 1.710, or a corporation or other entity fails to make a designation under rule 1.707(5), or a party fails to answer an interrogatory submitted under rule 1.509, or if a party, in response to a request for inspection submitted under rule 1.512, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the party seeking discovery may move for an order compelling an answer, a designation, or an inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before moving for an order.

Any order granting a motion made under this rule shall include a statement that a failure to comply with the order may result in the imposition of sanctions pursuant to rule 1.517.

In ruling on such motion, the court may make such protective order as it would have been empowered to make on a motion pursuant to rule 1.504(1).

*c. Evasive or incomplete answer.* For purposes of this rule an evasive or incomplete answer is to be treated as a failure to answer.

*d. Award of expenses of motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

*e. Notice to litigants.* If the motion is granted, the court shall direct the clerk to mail a copy of the order to counsel and to the party or parties whose conduct, individually or by counsel, necessitated the motion.

**1.517(2)** *Failure to comply with order.*

*a. Sanctions by court in district where deposition is taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

*b. Sanctions by court in which action is pending.* If a party or an officer, director, or managing agent of a party or a person designated under rule 1.707(5) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under rule 1.515 or rule 1.517(1), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

(5) In lieu of any of the foregoing orders or in addition thereto, the court shall require the disobedient party or the attorney advising such party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

**1.517(3)** *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 1.510, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may move for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds any of the following:

*a.* The request was held objectionable pursuant to rule 1.510.

*b.* The admission sought was of no substantial importance.

*c.* The party failing to admit had reasonable grounds to believe that the party might prevail on the matter.

*d.* There was other good reason for the failure to admit.

**1.517(4)** *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.* If a party or an officer, director, or managing agent of a party or a person designated under rule 1.707(5) to testify on behalf of a party fails:

*a.* To appear before the officer who is to take the person's deposition, after being served with a proper notice; or

*b.* To serve answers or objections to interrogatories submitted under rule 1.509, after proper service of the interrogatories; or

*c.* To serve a written response to a request for inspection submitted under rule 1.512, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under rule 1.517(2)(*b*)(1), (2), (3), and (5).

The failure to act described in this subrule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 1.504.

**1.517(5)** *Motions relating to discovery.* No motion relating to depositions or discovery shall be filed with 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. [Report 1943; amendment 1957; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** Rule 1.517(1)(*b*) requires that any order granting a motion to compel discovery shall warn of the possibility of sanctions, and rule 1.517(1)(*e*) requires that such an order shall be mailed by the clerk to both the attorney and client.

**Rules 1.518** to **1.600** Reserved.

## DIVISION VI

## PRETRIAL PROCEDURE

**Rule 1.601 Pretrial calendar.** The court may provide for a pretrial calendar in any county, which may extend to all actions, or be limited either to jury or nonjury actions. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.602 Pretrial conferences; scheduling; management.**

**1.602(1)** *Pretrial conferences; objectives.* In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

*a.* Expediting the disposition of the action.

*b.* Establishing early and continuing control so that the case will not be protracted because of lack of management.

*c.* Discouraging wasteful pretrial activities.

*d.* Improving the quality of the trial through more thorough preparation.

*e.* Facilitating the settlement of the case.

**1.602(2)** *Scheduling and planning.*

*a.* Upon application of any party or on the court's own motion, except in categories of cases exempted by supreme court rule as inappropriate, the court or its designee shall enter a scheduling order setting time limits for all of the following:

(1) Joining other parties.

(2) Designating experts.

(3) Completing discovery.

(4) Amending the pleadings.

(5) Filing and hearing motions.

*b.* After consulting with the attorneys for the parties and any unrepresented parties, the court may also order any of the following:

(1) Special procedures, including assignment to a single judge, for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems.

(2) The date or dates for conferences before trial, a final pretrial conference and trial.

(3) Any other matters appropriate in the circumstances of the case including extension of those deadlines which are then justified.

*c.* A schedule shall not be modified except by leave of the court upon a showing of good cause.

**1.602(3)** *Subjects to be discussed at pretrial conferences.* The court at any conference under this rule may consider and take action with respect to the following:

*a.* The formulation and simplification of the issues, including the elimination of frivolous claims or defenses.

*b.* The necessity or desirability of amendments to the pleadings.

*c.* The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence.

*d.* The avoidance of unnecessary proof including limitation of the number of expert witnesses and of cumulative evidence.

*e.* The identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial.

*f.* The advisability of referring matters to a master.

*g.* The possibility of settlement and imposition of a settlement deadline or the use of extrajudicial procedures to resolve the dispute.

*h.* The substance of the pretrial order.

*i.* The disposition of pending motions.

*j.* Settling any facts of which the court is to be asked to take judicial notice.

*k.* Specifying all damage claims in detail as of the date of conference.

*l.* All proposed exhibits and mortality tables and proof thereof.

*m.* Consolidation, separation for trial, and determination of points of law.

*n.* Questions relating to voir dire examination of jurors.

*o.* Filing of advance briefs when required.

*p.* Such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

**1.602(4)** *Final pretrial conference.* A final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

**1.602(5)** *Sanctions.* If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the court, upon motion or the court's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in rule 1.517(2)(*b*)(2) - (4). In lieu of or in addition to any other sanction, the court shall require the party or the attorney representing that party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust. [Report 1943; amendment 1961; amendment 1979; amendment 1982; amendment 1983; Report June 16, 1987, effective September 1, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.603 Pretrial conference; record.** On the request of any interested counsel or the court, the reporter must record the entire conference, or any designated part thereof. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.604 Pretrial orders.** After any conference held pursuant to rule 1.602, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be in accordance with the final pretrial order form found in rule 1.1901, form 6, and shall be modified only to prevent manifest injustice. [Report 1943; amendment 1957; Report May 28, 1987, effective August 3, 1987; November 9, 2001, effective February 15, 2002]

**Rules 1.605** to **1.700** Reserved.

## DIVISION VII

## DEPOSITIONS AND PERPETUATING TESTIMONY

### A. DEPOSITIONS

**Rule 1.701 Depositions upon oral examination.**

**1.701(1)** *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 motion or answer for any defendant, except that leave is not required under any of the following circumstances:

*a.* If a defendant has served a notice of taking deposition or otherwise sought discovery.

*b.* If special notice is given as provided in rule 1.701(2)(*b*).

The attendance of witnesses may be compelled by subpoena as provided in rule 1.715. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

**1.701(2)** *Special notice for taking of deposition by plaintiff.* Leave of court is not required for the taking of a deposition by plaintiff if the notice, in addition to those things required by rule 1.707(1), does the following:

*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 ten days after the date for motion or answer for any defendant.

*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 rule, the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against that party.

**1.701(3)** *Enlarging and shortening time.* The court may for cause shown enlarge or shorten the time for taking the deposition.

**1.701(4)** *Recording.* 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 ensure 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 the 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.

**1.701(5)** *Place of deposition.*

*a.* Oral depositions may be taken only within this state or within 100 miles from the nearest Iowa point. But, upon motion of the party desiring the deposition, and after hearing on notice to the other parties, 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 by written interrogatories or by deposition by telephone.

*b.* 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.

**1.701(6)** *Failure to attend or serve subpoena; expenses.*

*a.* 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.

*b.* 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 in attending, including reasonable attorney's fees.

**1.701(7)** *Depositions by telephone.* Any deposition permitted by the rules in this chapter 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 rule 1.707(1) 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. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.702 Depositions in small claims.** In small claims, depositions may not be taken unless leave of court is first obtained on notice and showing of just cause therefor and upon such terms as justice may require. [Report 1943; amendment 1957; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** The revised rule requires leave of court before any depositions may be taken in a small claims case. The prior rule required leave of court for discovery depositions and did not address depositions for evidentiary purposes. The distinction between discovery and evidentiary depositions was previously abolished.

**Rule 1.703 Deposition notice to parties in default.** A party requiring proof to obtain a judgment against a defaulted party may take depositions after serving notice on the attorney of record for the defaulted party, or on any defaulted party having no attorney of record. Parties in default are not entitled to notice as to depositions taken under any other rule. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** The rule eliminates the requirement that a copy of the deposition notice be served on the Clerk if the defaulted party has no attorney and adds a requirement that notice be given to any defaulted party who has no attorney of record.

**Rule 1.704 Use of depositions.** Any part of a deposition, so far as admissible under the rules of evidence, may be used upon the trial or at an interlocutory hearing or upon the hearing of a motion in the same action against any party who appeared when it was taken, or stipulated therefor, or had due notice thereof, to do any of the following:

**1.704(1)** To impeach or contradict deponent's testimony as a witness.

**1.704(2)** For any purpose if, when it was taken, deponent was a party adverse to the offeror, or was an officer, partner, or managing agent of any adverse party which is not a natural person.

**1.704(3)** For any purpose, if the court finds that the offeror was unable to procure deponent's presence at the trial by subpoena; or that deponent is out of the state and such absence was not procured by the offeror; or that deponent is dead, or unable to testify because of age, illness, infirmity, or imprisonment.

**1.704(4)** For any purpose, if it was taken of an expert witness specially retained for litigation; or the deponent was a health care practitioner offering opinions or facts concerning a party's physical or mental condition.

**1.704(5)** On application and notice, the court may also permit a deposition to be used for any purpose, under exceptional circumstances making it desirable in the interests of justice; having due regard for the importance of witnesses testifying in open court. [Report 1943; amendment 1957; Report August 27, 1987, effective November 2, 1987; Report March 21, 1989, effective June 1, 1989; November 9, 2001, effective February 15, 2002]

**Rule 1.705 Effect of taking or using depositions.**

**1.705(1)** If a party offers only part of a deposition, any other party may require an offer of all of the deposition relevant to the portion offered, and any other party may offer other relevant parts.

**1.705(2)** A party does not make a deponent the party's own witness by taking a deposition or using it solely under rule 1.704(1) or 1.704(2). A party introducing a deposition for any other purpose makes the deponent that party's witness, but may contradict the witness' testimony by relevant evidence. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.706 Substituted parties; successive actions.** Substitution of parties does not prevent use of depositions previously taken in the action. If an action is dismissed, depositions legally taken therein may be used in any subsequent action involving the same subject matter, between the same parties, their representatives or successors in interest. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.707 Notice for oral deposition.**

**1.707(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.

**1.707(2)** 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.

**1.707(3)** The notice to a party deponent may be accompanied by a request made in compliance with rules 1.512 and 1.513 for the production of documents and tangible things at the taking of the deposition. The procedure of rule 1.513 shall apply to the request.

**1.707(4)** No subpoena is necessary to require the appearance of a party for a deposition. Service on the party or the party's attorney of record of notice of the taking of the deposition of the party or of an officer, partner or managing agent of any party who is not a natural person, as provided in rule 1.707(1), is sufficient to require the appearance of a deponent for the deposition.

**1.707(5)** A notice or subpoena may name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the witness will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This rule does not preclude taking a deposition by any other procedure authorized in the rules in this chapter. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.708 Conduct of oral deposition.**

**1.708(1)** *Examination; cross-examination; recording examination; administering the oath; objections.* Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness under oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with rule 1.701(4). If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition who shall transmit them to the officer. The officer shall propound them to the witness and record the answers verbatim.

**1.708(2)** *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in rule 1.504. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of rule 1.517(1)(*d*) apply to the award of expenses incurred in relation to the motion. [Report 1943; amendment 1957; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.709 Reading and signing depositions.**

**1.709(1)** *Where reading or signing not required.* No oral deposition reported and transcribed by an official court reporter or certified shorthand reporter of Iowa need be submitted to, read or signed by the deponent.

**1.709(2)** *Submission to witness; changes; signing.* In other cases, when the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or dead or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission, the officer shall sign it and state on the record the fact of the waiver or of the illness, death, or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor. The deposition may then be used as fully as though signed unless on a motion to suppress under rule 1.717(6) the court holds that the reason given for the refusal to sign requires rejection of the deposition in whole or in part. [Report 1943; amendment 1963; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.710 Depositions on written interrogatories.**

**1.710(1)** A party may take depositions on written interrogatories after first serving all other parties not in default for failure to appear with copies thereof and with a notice stating the name, title, and address of the officer to take them, and the name and address of the deponents.

**1.710(2)** Other parties may thereafter serve successive interrogatories on each other, but only as follows: Cross-interrogatories within ten days after the notice; redirect interrogatories within five days after the latter service; and recross interrogatories within three days thereafter. On application of any party, the court may, for good cause shown, shorten or enlarge the time for serving any such succeeding interrogatories.

**1.710(3)** Within the time required for cross-interrogatories, a party may elect instead to appear and orally cross-examine, by serving notice thereof on the party taking the deposition and all other parties. The party taking the deposition shall then within five days serve all parties with notice of the date, hour, and place where the deposition will be taken, which shall allow a reasonable time to enable the parties to attend. A party may waive the original written interrogatories and examine the deponent orally. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT:** Rules 1.710(2) and 1.710(3) allow all parties, not just those who are adversaries to the party taking the deposition, to serve written interrogatories, elect to appear and orally cross-examine the witness, and receive notice.

**Rule 1.711 Answers to interrogatories.** The party taking a deposition on written interrogatories shall promptly transmit a copy of the notice and all interrogatories to the officer designated in the notice. The officer shall promptly take deponent's answers thereto and complete the deposition, all as provided in rules 1.708 and 1.709, except that answers need not be taken stenographically. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.712 Certification and return; copies.**

**1.712(1)** The officer shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. Documents and things produced for inspection during the deposition shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that:

*a.* The person producing the materials may substitute copies to be marked for identification, if all parties are provided fair opportunity to verify the copies by comparison with the originals.

*b.* 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 the deposition. Any party may move for an order that the original materials be filed with the court, pending final disposition of the case.

**1.712(2)** Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. [Report 1943; amendment 1973; amendment 1980; Report October 15, 1993, effective January 3, 1994; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.713 Before whom taken.**

**1.713(1)** The officer taking the deposition shall not be a party, a person financially interested in the action, an attorney or employee of any party, an employee of any such attorney, or any person related within the fourth degree of consanguinity or affinity to a party, a party's attorney, or an employee of either of them.

**1.713(2)** Depositions within the United States or a territory or insular possession thereof may be taken before any person authorized to administer oaths, by the laws of the United States this state or any other state, or of the place where the examination is held.

**1.713(3)** Depositions in a foreign land may be taken before a secretary of embassy or legation, or a consul, vice-consul, consul-general or consular agent of the United States, or under rule 1.714.

**1.713(4)** The deposition of a witness who is in the military or naval service of the United States may be taken before any commissioned officer under whose command the witness is serving, or any commissioned officer in the judge advocate general's department. [Report 1943; amendment 1945; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.714 Letters rogatory.** A commission or letters rogatory to take depositions in a foreign land shall be issued only when convenient or necessary, on application and notice, and on such terms and with such directions as are just and appropriate. They shall specify the officer to take the deposition, by name or descriptive title, and may be addressed: "To the Appropriate Judicial Authority of (country)." [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.715 Deposition subpoena.**

**1.715(1)** On application of any party, or proof of service of a notice to take depositions under rule 1.707 or rule 1.710, the clerk of court where the action is pending shall issue subpoenas for persons named in and described in said notice of application. Subpoenas may also be issued as provided by statute or by rule 1.1701.

**1.715(2)** No resident of Iowa shall be subpoenaed to attend out of the county where the deponent resides, or is employed, or transacts business in person. [Report 1943; amendment 1957; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.716 Costs of taking deposition.** Costs of taking and proceeding to procure a deposition shall be paid by the party taking it who cannot use it in evidence until such costs are paid. The judgment shall award against the losing party only such portion of these costs as were necessarily incurred for testimony offered and admitted upon the trial. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.717 Irregularities and objections.**

**1.717(1)** *Notice.* All objections to any notice of taking any depositions are waived unless promptly served in writing upon the party giving the notice.

**1.717(2)** *Officer.* Objection to the officer's qualification to take a deposition is waived unless made before such taking begins, or as soon thereafter as objector knows it or could discover it with reasonable diligence.

**1.717(3)** *Interrogatories.* All objections to the form of any written interrogatory served under rule 1.710 are waived unless the objections are served on the interrogating party within the time allowed the objector for serving succeeding interrogatories and, as to the last interrogatories authorized, within three days after the service thereof.

**1.717(4)** *Taking depositions.* Errors or irregularities occurring during an oral deposition as to any conduct or manner of taking it, or the oath, or the form of any question or answer, and any other errors which might thereupon have been cured, obviated or removed, are waived unless seasonably objected to during the deposition.

**1.717(5)** *Testimony.* Except as above provided, testimony taken by deposition may be objected to at the trial on any ground which would require its exclusion if given by a witness in open court, and objections to testimony, or competency of a witness, need not be made prior to or during the deposition, unless the grounds thereof could then have been obviated or removed.

**1.717(6)** *Motion to suppress.* All objections to the manner of transcribing the testimony, or to preparing, signing, certifying, sealing, endorsing, or transmitting the deposition, or the officer's dealing with it, are waived unless made by motion to suppress the deposition or the part complained of. Such motion shall be filed with reasonable promptness after the objector knows of, or could with reasonable diligence discover, the defect. No such motion shall be sustained unless the defect is substantial and materially affects the right of some party. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.718** to **1.720** Reserved.

B. PERPETUATING TESTIMONY

**Rule 1.721 Common law preserved.** Rules 1.722 through 1.728 do not limit the court's common law powers to entertain actions to perpetuate testimony. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.722 Application before action.** An application to take depositions to perpetuate testimony for use in an action not yet pending shall be filed in the court where the prospective action might be brought. The application shall be captioned in the name of the applicant, be supported by affidavit, and show all of the following:

**1.722(1)** That the applicant expects to be a party to an action cognizable in some court of record of Iowa, but which cannot currently be brought.

**1.722(2)** The subject matter of such action, and the applicant's interest therein.

**1.722(3)** The facts to be shown by the proposed testimony, and reasons for desiring to perpetuate it.

**1.722(4)** The name or description of each expected adverse party, with address if known.

**1.722(5)** The name and address of each deponent and the substance of the deponent's testimony. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.723 Notice of application.** The applicant shall thereafter serve a notice upon each person named in the application as an expected adverse party, together with a copy of the application, stating that the application will come on for hearing at a time and place named therein. The notice shall be served as provided for the service of original notices other than by publication at least 20 days before the date of hearing. If service cannot with due diligence be so made upon any expected adverse party named in the application, the court may make such order as is just for service by publication or otherwise, or may, upon a showing of extraordinary circumstances, prescribe a hearing upon less than 20 days' notice. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.724 Guardian ad litem.** Before hearing the application, the court shall appoint an attorney to act as guardian ad litem for any person under legal disability or not personally served with notice, who shall cross-examine for the ward if any deposition is ordered, and unless an attorney has been so appointed the deposition shall not be admissible against such person in any subsequent action. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.725 Order allowing application.** If satisfied that the application is not for the purpose of discovery, and that its allowance may prevent future delay or failure of justice, and that the applicant is unable to bring the contemplated action or cause it to be brought, the court shall order the testimony perpetuated. In its order, the court shall designate the deponents, the subject matter of their examination, the time, location and officer before whom the depositions shall be taken, and whether orally or on written interrogatories. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.726 Taking and filing testimony.** Depositions shall be taken as directed in the court's order; and shall be otherwise governed by rules 1.708 to 1.713 and 1.717. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the petition was filed shall be deemed to refer to the court in which the application for such deposition was filed. Unless the court enlarges the time, all such depositions must be filed therein within 30 days after the date fixed for taking them, and if not so filed cannot be later received in evidence. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.727 Limitations on use.** Any party to any later action involving any expected adverse party who was named in the application and who was served with notice as required in rule 1.723 or the privies or successors in interest of such expected adverse party, may use such deposition, or a certified copy thereof, if the deponent is dead, mentally ill or if the deponent's attendance cannot be obtained. [Report 1943; amended by 58GA, ch 152, §202; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.728 Perpetuating testimony pending appeal.** During the time allowed for taking an appeal from judgment of a court of record or during the pendency of such appeal, that court may, on motion, allow testimony to be

perpetuated for use in the event of further proceedings before it. The motion shall state the name and address of each proposed deponent, the substance of the deponent's expected testimony, and the reason for perpetuating it. If the court finds such perpetuation is proper to avoid a failure or delay of justice, and the depositions are not sought for discovery, it may order them taken as in rules 1.725 and 1.726. When taken and filed as thus provided, they shall be used and treated as though they had been taken pending the trial of the action. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.729** to **1.800** Reserved.

## DIVISION VIII

### CHANGE OF VENUE

**Rule 1.801 Grounds for change.** On motion, the place of trial may be changed in the following situations:

**1.801(1)** *County.* If the county where the case would be tried is a party, the motion is by an adverse party, the issue is triable by a jury, and a jury has been demanded.

**1.801(2)** *Interest of judge.* Where the trial judge is directly interested in the action, or related by consanguinity or affinity within the fourth degree to any party.

**1.801(3)** *Prejudice or influence.* If the trial judge or the inhabitants of the county are so prejudiced against the moving party, or if an adverse party has such undue influence over the county's inhabitants that the movant cannot obtain a fair trial. The motion in such case shall be supported by affidavit of the movant and three disinterested persons, none being the agent, servant, employee or attorney of the movant, nor related to the movant by consanguinity or affinity within the fourth degree. The other party shall have a reasonable time to file counter affidavits. Affiants may be examined pursuant to rule 1.431(6).

**1.801(4)** *Agreement.* Pursuant to written agreement of the parties.

**1.801(5)** *Fraud in contract.* A defendant, respondent, or other party, sued in a county where the party does not reside, on a written contract expressly performable in that county, who has filed a sworn answer claiming fraud in the inception of said contract as a complete defense, may have the case transferred to the county of that party's residence. Within ten days after the transfer is ordered, the defendant, respondent, or other party must file a bond in an amount fixed by the court, with sureties approved by the clerk, for payment of all costs; and any judgment rendered against such party shall include costs in a reasonable amount fixed by the court for expenses incurred by plaintiff and plaintiff's attorney by reason of the change. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.802 Limitations.** Change of venue shall not be allowed under any of the following circumstances:

**1.802(1)** In an appeal from a small claims case.

**1.802(2)** Under rule 1.801(3) where the issues are triable to the court alone, except for prejudice of the judge.

**1.802(3)** Until the issues are made up, unless the objection is to the judge.

**1.802(4)** After a continuance, except for a cause arising since such continuance or not known to movant prior thereto.

**1.802(5)** After one change, for any cause then existing, and known or ascertainable with reasonable diligence.

In no event shall more than two changes be allowed to any party. [Report 1943; July 28, 1986, effective October 1, 1986; November 9, 2001, effective February 15, 2002]

**Rule 1.803 Subsequent change.** Where the case is tried after a change of place of trial, and the jury disagrees or a new trial is granted, the court may in its discretion allow a subsequent change, under rule 1.801(1), 1.801(2), 1.801(3), or 1.801(4), subject to rule 1.802. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.804 Of whole case.** A change may be granted on motion of one of several coparties; and the whole cause shall then be transferred, unless separate trials are granted under rule 1.914. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.805 Where tried.** Unless the change is under rule 1.801(5), the court granting it shall order the trial held in a convenient county in the judicial district, or if the ground applies to all such counties, then in another judicial district. If the ground applies only to a judge, the court in its discretion may refuse a change and procure another judge to try the case where it was brought, or the supreme court may designate another judge. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.806 Costs.** Unless the change is under rule 1.801(4) or 1.801(5), the order shall designate generally all costs occasioned by the change, which movant must pay before the change is perfected. Failure to make such payment within ten days from the order waives the change of venue. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.807 Transferring cause.** When a change is ordered and the required costs paid, the clerk shall forthwith transmit to the proper court a transcript of the proceedings with any original papers and shall retain an authenticated copy. The case shall be docketed in the second court without fee and shall proceed. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.808 Action brought in wrong county.**

**1.808(1)** An action brought in the wrong county may be prosecuted there until termination, unless a defendant, before answer, moves for change to the proper county. Thereupon the court shall order the change at plaintiff's costs, which may include reasonable compensation for defendant's trouble and expense, including attorney's fees, in attending in the wrong county.

**1.808(2)** If all such costs are not paid within 20 days of the transfer order, the action shall be dismissed. Upon payment of the costs, the clerk shall forthwith transmit to the proper court the transcript of the proceedings, with any original papers, an authenticated copy of which shall be retained. The case shall be docketed in the second court without fee and shall proceed. [Report 1943; November 30, 1993, effective July 1, 1994; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.809** to **1.900** Reserved.

## DIVISION IX

## TRIAL AND JUDGMENT

### A. TRIALS

**Rule 1.901 Trials and issues.** A trial is a judicial examination of issues in an action, whether of law or fact. Issues arise where a pleading of one party maintains a claim controverted by an adverse party. Issues are either of law or fact. An issue of fact arises on a material allegation of fact in a pleading which is denied in an adversary's pleading or by operation of law. All other issues are issues of law which must be tried first. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.902 Demand for jury trial.**

**1.902(1)** Jury trial is waived if not demanded according to this rule; but a demand once filed may not be withdrawn without consent of all parties not in default.

**1.902(2)** A party desiring a jury trial of an issue must make written demand therefor not later than ten days after the last pleading directed to that issue. A jury demand may be made in the pleading of a party and shall be noted in the caption. If filed separately with the petition, the jury demand shall be served with the original notice and petition. If filed after the petition, the jury demand shall be served and filed in accordance with rule 1.442.

**1.902(3)** Unless limited to a specific issue, every demand shall be deemed to include all issues triable to a jury. If a limited demand is filed, any other party may, within ten days thereafter or such shorter time as the court may order, file a demand for a jury trial of some or all other issues.

**1.902(4)** Notwithstanding the failure of a party to demand a jury in an action in which a demand might have been made of right, the court, in its discretion on motion and for good cause shown, but not ex parte, and upon such terms as the court prescribes, may order a trial by jury of any or all issues. [Report 1943; amendment 1945; amendment 1961; amendment 1979; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.903 To court or jury.** All issues shall be tried to the court except those for which a jury is demanded. Issues for which a jury is demanded shall be tried to a jury unless the court finds that there is no right thereto or all parties appearing at the trial waive a jury in writing or orally in open court. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.904 Findings by court.**

**1.904(1)** The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law, and direct an appropriate judgment. No request for findings is necessary for purposes of review. Findings of a master shall be deemed those of the court to the extent it adopts them.

**1.904(2)** On motion joined with or filed within the time allowed for a motion for new trial, the findings and conclusions may be enlarged or amended and the judgment or decree modified accordingly or a different judgment or decree substituted. But a party, on appeal, may challenge the sufficiency of the evidence to sustain any finding without having objected to it by such motion or otherwise. Resistances to such motions and replies may be filed and supporting briefs may be served as provided in rules 1.431(4) and 1.431(5). [Report 1943; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.905 Exceptions unnecessary.** Exceptions to rulings or orders of court are unnecessary whenever a matter has been called to the attention of the court, by objection, motion or otherwise and the court has ruled thereon. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.906 Civil trial-setting conference.** No later than 120 days after a case has been commenced the clerk shall send a notice of civil trial-setting conference to all parties not in default. A party may move for an earlier trial-setting conference, giving notice to all parties. [Report 1943; amendment 1961; amendment 1977; Report 1978, effective July 1, 1979; amendment 1979; amendment 1984; Report May 28, 1987, effective August 3, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.907 Trial assignments.**

**1.907(1)** *Civil cases.* The court, in the exercise of its discretion, may assign a case for trial by order upon any one of the following:

*a.* The conclusion of a scheduling or pretrial conference.

*b.* The conclusion of a trial-setting conference.

*c.* The agreement of all parties or their counsel.

*d.* The court's own motion after consultation with counsel for all parties. Trial of a dissolution of marriage or a small claim may be set without consulting counsel subject to rescheduling by the court administrator upon the request of counsel in the event of a scheduling conflict.

The court may delegate its power and duty to assign cases for trial to the court administrator or other suitable person.

**1.907(2)** *Small claims appeals.* At least twice each month, the clerk of court shall present to a judge authorized by statute to hear the appeal, the file and any transcript or exhibits in each small claims case in which appeal was taken more than 20 days previously. The appeal shall be decided upon the record without oral argument unless, within 20 days after the appeal was taken, a party filed with the clerk of court a written request for oral argument specifying the issues to be argued, in which event the judge may schedule oral argument. Additional evidence shall not be received except as authorized by statute. [Report 1961; amended by 62GA, ch 474, §1; amendment 1969; amendment 1979; amended by 1984 Iowa Acts, ch 1322, §8; Report December 3, 1985, effective February 3, 1986; May 28, 1987, effective August 3, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.908 Duty to notify court.**

**1.908(1)** *Of settlements.* Whenever a case assigned for trial has been settled, it shall be the duty of the attorneys or parties appearing in person to so notify the court immediately.

**1.908(2)** *Of conflicting engagements and termination thereof.* When a case assigned for trial is reached and an attorney of record therein is then actually engaged in a trial in another court, it shall be the attorney's duty to so inform the court who may hold the trial of such case in abeyance until the engagement is concluded. As soon as the attorney is free from such engagement, it shall be the attorney's duty to notify the court immediately and stand ready to proceed with trial of the case. [Report 1961; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.909 Fee for late settlement of jury trial.** In the event notice of settlement is given later than two full working days before a civil action is scheduled to be tried to a jury or is reached for jury trial, whichever is later, or the case is settled during trial, a fee of $500 shall be assessed as court costs. A late settlement fee shall not be waived by the court. Fees so collected shall be remitted by the clerk to the treasurer of state to be deposited in the general fund of the state. [Report 1984; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.910 Motions for continuance.**

**1.910(1)** Motions for continuance shall be filed without delay after the grounds therefor become known to the party or the party's counsel. Such motion may be amended only to correct a clerical error.

**1.910(2)** 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. [Report 1943; February 13, 1986, effective July 1, 1986; November 9, 2001, effective February 15, 2002]

**Rule 1.911 Causes for continuance.**

**1.911(1)** A continuance may be allowed for any cause not growing out of the fault or negligence of the movant, which satisfies the court that substantial justice will be more nearly obtained. It shall be allowed if all parties so agree and the court approves.

**1.911(2)** All such motions based on absence of evidence must be supported by affidavit of the party, the party's agent or attorney, and must show the following:

*a.* The name and residence of the absent witness, or, if unknown, that affiant has used diligence to ascertain them.

*b.* What efforts, constituting due diligence, have been made to obtain the witness or the witness' testimony, and facts showing reasonable grounds to believe the testimony will be procured by a certain, specified date.

*c.* What particular facts, distinct from legal conclusions, affiant believes the witness will prove, affiant believes the facts to be true, and affiant knows of no other witness by whom the facts can be fully proved.

**1.911(3)** 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. [Report 1943; amendment 1961; amendment 1980; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.912 Objections; ruling; costs.** The adverse party may at once, or within such reasonable time as the court allows, file specific written objections to the motion for continuance, which shall be part of the record. Where the defenses are distinct, the cause may be continued as to any one or more defendants. Every continuance shall be at the cost of the movant unless otherwise ordered by the court. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.913 Consolidation.** Unless a party shows the party will be prejudiced thereby the court may consolidate separate actions which involve common questions of law or fact or order a single trial of any or all issues therein. In such cases it may make such orders concerning the proceedings as tend to avoid unnecessary cost or delay. [Report 1943; amendment 1955; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.914 Separate trials.** In any action the court may, for convenience or to avoid prejudice, order a separate trial of any claim, counterclaim, cross-claim, cross-petition, or of any separate issue, or any number of any of them. Any claim against a party may be thus severed and proceeded with separately. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.915 Impaneling jury.**

**1.915(1)** *Selection.* At each jury trial a person designated by the court shall select 16 jurors by drawing their names from a box without seeing the names. All jurors so drawn shall be listed. Computer selection processes may be used instead of separate ballots to select jury panels. Before drawing begins, either party may require that the names 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.

**1.915(2)** *Oath or examination.* The prospective jurors shall be sworn. The parties shall have the right to examine those drawn. The court may conduct such examination as it deems proper. It may on its own motion exclude any juror.

**1.915(3)** *Challenges.* Challenges are objections to trial jurors for cause, and may be either to the panel or to an individual juror. The court shall determine the law and fact as to all challenges, and must either allow or deny them.

**1.915(4)** *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.

**1.915(5)** *To juror.* Challenge to an individual juror must be made before the jury is sworn to try the case. On demand of either party to a challenge, the juror shall answer every question pertinent to the inquiry, and other evidence may be taken.

**1.915(6)** *For cause.* A juror may be challenged by a party for any of the following causes:

*a.* Conviction of a felony.

*b.* Want of any statutory qualification required to make that person a competent juror.

*c.* Physical or mental defects rendering the person incapable of performing the duties of a juror.

*d.* Consanguinity or affinity within the ninth degree to the adverse party.

*e.* Being a conservator, guardian, ward, employer, employee, agent, landlord, tenant, family member, or member of the household of the adverse party.

*f.* Being a client of the firm of any attorney engaged in the cause.

*g.* Being a party adverse to the challenging party in any civil action; or having complained of or been accused by the challenging party in a criminal prosecution.

*h.* Having already sat upon a trial of the same issues.

*i.* Having served as a grand or trial juror in a criminal case based on the same transaction.

*j.* 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 the juror from rendering a just verdict.

*k.* Being interested in an issue like the one being tried.

*l.* Having requested, directly, or indirectly, that the person's name be returned as a juror.

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

**1.915(7)** *Number; striking.* Each side must strike four jurors. Where there are two or more parties represented by different counsel, the court in its discretion may authorize and fix an additional number of jurors to be impaneled and strikes to be exercised. After all challenges are completed, plaintiff and defendant shall alternately exercise their strikes.

**1.915(8)** *Vacancies.* After a challenge is sustained, another juror shall be called and examined and shall be subject to being challenged or stricken as are other jurors.

**1.915(9)** *Jury sworn.* The names of the eight jurors who remain on the list after all others have been stricken shall be read. 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." [Report 1943; amendment 1980; amendment 1982; 1986 Iowa Acts, ch 1108, §55; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.916 Saturday a religious day.** Prior to final submission of the case, no juror whose faith requires observing Saturday as a religious day can be compelled to attend on that day. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.917 Juror incapacity; minimum number of jurors.**

**1.917(1)** *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.

**1.917(2)** *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. [Report 1943; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.918 Returning ballots to box.** When a jury is sworn, the ballots containing the names of those absent or excused from the trial shall be immediately returned to the box. Those containing the names of jurors sworn shall be set aside, and returned to the box immediately on the discharge of that jury. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.919 Procedure after jury sworn.** After the jury is sworn, the trial shall proceed in the following order:

**1.919(1)** The party having the burden of proof on the whole action may briefly state the party's claim, and by what evidence the party expects to prove it.

**1.919(2)** The other party may similarly state that party's defense and evidence.

**1.919(3)** The first above party must then produce that party's evidence; to be followed by that of the adverse party.

**1.919(4)** The parties will be confined to rebutting evidence, unless the court in furtherance of justice, permits them to offer evidence in their original case.

**1.919(5)** Only one counsel on each side shall examine the same witness, unless otherwise permitted by the court. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.920 Further testimony for mistake.** At any time before final submission, the court may allow any party to offer further testimony to correct an evident oversight or mistake, imposing such terms as it deems just. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.921 Adjournments.** After trial begins, the court may, in furtherance of justice, adjourn it for such time, and on such conditions as to costs or otherwise, as it deems just. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.922 View.** When the court deems proper, it may order an officer to conduct the jury in a body to view any real or personal property, or any place where a material fact occurred, and to show it to them. No other person shall speak to them during their absence on any subject connected with the trial. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.923 Arguments.** The parties may either submit the case or argue it. The party with the burden of the issue shall have the opening and closing arguments. In opening, the party shall disclose all points the party relies on, and if the party's closing argument refers to any new material point or fact not so disclosed, the adverse party may reply thereto, which shall close the argument. A party waiving opening argument is limited, in closing, to reply to the adverse argument; otherwise the adverse party shall have the closing argument. The court may limit the time for argument to itself, but not for arguments to the jury. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.924 Instructions.** The court shall instruct the jury as to the law applicable to all material issues in the case and such instructions shall be in writing, in consecutively numbered paragraphs, and shall be read to the jury without comment or explanation; provided, however, that in any action where the parties so agree, the instructions may be oral. At the close of the evidence, or such prior time as the court may reasonably fix, any party may file written requests that the jury be instructed as set forth in such requests. Before argument to the jury begins, the court shall furnish counsel with a preliminary draft of instructions which it expects to give on all controversial issues, which shall not be part of the record. Before jury arguments, the court shall give to each counsel a copy of its instructions in their final form, noting this fact of record and granting reasonable time for counsel to make objections, which shall be made and ruled on before arguments to the jury. Within such time, all objections to giving or failing to give any instruction must be made in writing or dictated into the record, out of the jury's presence, specifying the matter objected to and on what grounds. No other grounds or objections shall be asserted thereafter, or considered on appeal. But if the court thereafter revises or adds to the instructions, similar specific objection to the revision or addition may be made in the motion for new trial, and if not so made shall be deemed waived. All instructions and objections, except as above provided, shall be part of the record. Nothing in the rules in this chapter shall prohibit the court from reading to the jury one or more of the final instructions at any stage of the trial, provided that counsel for all parties has been given an opportunity to review the instructions being read and to make objections as provided in this rule. Any instructions read prior to conclusion of the evidence shall also be included in the instructions read to the jury following conclusion of the evidence. [Report 1943; amendment 1961; amendment 1970; amendment 1973; amended by 65GA, ch 315, §2; amended September 5, 1984, effective November 5, 1984; amended February 21, 1985, effective July 1, 1985; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.925 Additional instructions.** While the jury is deliberating, the court may in its discretion further instruct the jury, in the presence of or after notice to counsel. Such instruction shall be in writing, be filed as other instructions in the case, and be a part of the record and any objections thereto shall be made in a motion for a new trial. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.926 Materials available to jurors.**

**1.926(1)** *Notes.* Jurors shall be permitted to take notes during the trial using materials to be provided by the court on the request of any juror. The court shall instruct the jury that the notes are not evidence and must be destroyed at the completion of the jury's deliberations.

**1.926(2)** *What jury may take to jury room.* When retiring to deliberate, jurors may take their notes with them and shall take with them all exhibits in evidence except as otherwise ordered. Depositions shall not be taken unless all of the evidence is in writing and none of it has been stricken. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.927 Separation and deliberation of jury.**

**1.927(1)** A jury once sworn shall not separate unless so ordered by the court, who must then advise them that it is the duty of each juror not to converse with any other juror or person, nor be addressed on the subject of the trial; and that, during the trial it is the duty of each juror to avoid, as far as possible, forming any opinion thereon until the cause is finally submitted.

**1.927(2)** On final submission, the jury shall retire for deliberation, and be kept together in charge of an officer until the jurors agree on a verdict or are discharged by the court, unless the court permits the jurors to separate temporarily overnight, on weekends or holidays, or in emergencies. During their deliberations, the officer in charge must not allow any communication to be made to the jurors, nor may the officer make any, except to ask them if they have agreed on a verdict, unless by order of court; nor communicate to any person the state of their deliberations, or the verdict agreed upon before it is rendered. [Report 1943; amendment 1967; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.928 Discharge; retrial.** The court may discharge a jury because of any accident or calamity requiring it, or by consent of all parties, or when on an amendment a continuance is ordered, or if they have deliberated until it satisfactorily appears that they cannot agree. The case shall be retried immediately or at a future time, as the court directs. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.929 Court open for verdict.** The court may adjourn as to other business while the jury is absent, but shall be open for every purpose connected with the cause submitted to the jury until it returns a verdict or is discharged. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.930 Food and lodging.** The court may order that food and lodging be provided at state expense for a jury being kept together to try or deliberate on a cause. [Report 1943; 1983 Iowa Acts, ch 186, §10142; November 9, 2001, effective February 15, 2002]

**Rule 1.931 Rendering verdict and answering interrogatories.**

**1.931(1)** *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 must be rendered unanimously. However, a general verdict, special verdict, or answers to interrogatories may be rendered by all jurors excepting one of the jurors 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.

**1.931(2)** *Return; poll.* The jury agreeing on a general verdict, special verdicts, or answers to interrogatories shall bring the finding into court where it shall be read to the jury and inquiry made if it is the jury's finding. A party may then require a poll, whereupon the court or clerk shall ask each juror if it is the juror's finding. If the required number of jurors does not express agreement, the jury shall be sent out for further deliberation; otherwise, the finding is complete and, unless otherwise provided by law, the jury shall be discharged.

**1.931(3)** *Sealed.* When, by consent of the parties and the court, the jury has been permitted to seal its finding and separates before it is rendered, such sealing is equivalent to a rendition and a recording thereof in open court, and such jury shall not be polled or permitted to disagree with respect thereto. [Report 1943; amendment 1973; amended by 65GA, ch 315, §4; amendment 1980; amended February 21, 1985, effective July 1, 1985; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.932 Form and entry of verdicts.** General verdicts, special verdicts, and answers to interrogatories shall be in writing. When unanimous they shall be signed by the foreman or forewoman chosen by the jury, and when they are not unanimous, they shall be signed by all jurors concurring therein. They shall be sufficient in form if they express the intent of the jury. They shall be filed with the clerk and be entered of record after being put in form by the court if need be. [Report 1943; amendment 1973; November 9, 2001, effective February 15, 2002]

**Rule 1.933 Special verdicts.** The court may require that the verdict consist wholly of special written findings on each issue of fact. It shall then submit in writing questions susceptible of categorical or brief answers, or forms of several special findings that the jury might properly make under the issues and evidence, or submit the issues and require the findings in any other appropriate manner. It shall so instruct the jury as to enable it to find upon each issue submitted. If the submission omits any issue of fact, any party not demanding submission of such issue before the jury retires waives jury trial thereof, and the court may find upon it; failing which, it shall be deemed found in accord with the judgment on the special verdict. The

court shall direct such judgment on the special verdict and answers as is appropriate thereto. Special interrogatories under Iowa Code chapter 668 shall be treated as special verdicts for purposes of the rules in this chapter. [Report 1943; amended February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 1.934 Interrogatories.** The jury in any case in which it renders a general verdict may be required by the court, and must be so required on the request of any party to the action, to find specially upon any particular questions of fact, to be stated to it in writing, which questions of fact shall be submitted to the attorneys of the adverse party before argument to the jury is commenced. The instructions shall be such as will enable the jury to answer the interrogatories and return the verdict. If both are harmonious, the court shall order the appropriate judgment. If the answers are consistent with each other, but any is inconsistent with the general verdict, the court may order judgment appropriate to the answers notwithstanding the verdict, or a new trial, or send the jury back for further deliberation. If the answers are inconsistent with each other, and any is inconsistent with the verdict, the court shall not order judgment, but either send the jury back or order a new trial. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.935 Reference to master.** A "master" includes a referee, auditor or examiner. On a showing of exceptional conditions requiring it, the court may appoint a master as to any issues not to be tried to a jury. The clerk shall furnish the master with a copy of the order of appointment. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.936 Compensation.** The court shall fix the master's compensation and order it paid or advanced by such parties, or from such fund or property, as it may deem just. Execution may issue on such order at the master's demand. The master shall not retain any reports as security for compensation. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.937 Powers.** The order may specify or limit the master's powers or duties, the issue on which a report is to be made, or the time within which a hearing shall be held or a report filed, or specify that the master merely take and report evidence. Except as so limited the master shall have and exercise power to regulate all proceedings before the master; to administer oaths and to do all acts and take all measures appropriate for the efficient performance of the master's duties; to compel production before the master of any witness or party whom the master may examine, or of any evidence on any matters embraced in the reference, and to rule on admissibility of evidence. The master shall, on request, make a record of evidence offered and excluded. The master may appoint a shorthand reporter whose fees shall be advanced by the requesting party. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.938 Speedy hearing.** Upon appointment the master shall notify the parties of the time and place of their first meeting, which shall be within 20 days or such other time as the court's order may fix. If a party so notified fails to appear, the master may proceed ex parte, or, in the master's discretion, adjourn to a future day, giving notice thereof to the absent party. It is the duty of the master to proceed with all reasonable diligence; and the court, after notice to the master and the parties, may order the master to expedite proceedings or make a report. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.939 Witnesses.** Any party may subpoena witnesses before a master as for trial in open court; and a witness failing to appear or testify without good cause shall be subject to the same punishment and consequences. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.940 Accounts.** The master may prescribe the form for submission of accounts which are in issue. In any proper case the master may require or receive in evidence the statement of a certified public accountant who testifies as a witness. If any item submitted or stated is objected to, or shown insufficient in form, the master may require that a different form be furnished, or that the accounts or any item thereof be proved by oral testimony or written interrogatories of the accounting parties, or in such other manner as the master directs. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.941 Filing report.** The master shall file with the clerk the original exhibits, and any transcript of the proceedings and evidence, otherwise a summary thereof, with a report on the matters submitted in the order of reference, including separate findings and conclusions if so ordered. The master may submit a draft of the report to counsel for their suggestions. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.942 Disposition.** The clerk shall mail notice of filing the report to all attorneys of record. Within ten days after mailing, unless the court enlarges the time, any party may file written objections to it. Application for action on said report, or objections, shall be heard on such notice as the court prescribes. The report shall have the same effect whether or not the reference was by consent; but where parties stipulate that the master's findings shall be final, only questions of law arising upon the report shall thereafter be considered. The court shall accept the master's findings of fact unless clearly erroneous; and may adopt, reject or modify the report wholly or in any part, or recommit it with instructions. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.943 Voluntary dismissal.** A party may, without order of court, dismiss that party's own petition, counterclaim, cross-claim, cross-petition or petition of intervention, at any time 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. [Report 1943; amendment 1982; amended October 9, 1984, effective December 8, 1984; December 28, 1989, effective July 2, 1990; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.944 Uniform rule for dismissal for want of prosecution.**

**1.944(1)** It is the declared policy that in the exercise of reasonable diligence every civil and special action, except under unusual circumstances, shall be brought to issue and tried within one year from the date it is filed and docketed and in most instances within a shorter time.

**1.944(2)** All cases at law or in equity where the petition has been filed more than one year prior to July 15 of any year shall be for trial at any time prior to January 1 of the next succeeding year. The clerk shall prior to August 15 of each year give notice to counsel of record as provided in rule 1.442 of the docket number, the names of parties, counsel appearing, and date of filing petition. The notice shall state that such case will be for trial and subject to dismissal if not tried prior to January 1 of the next succeeding year pursuant to this rule. All such cases shall be assigned and tried or dismissed without prejudice at plaintiff's costs unless satisfactory reasons for want of prosecution or grounds for continuance be shown by application and ruling thereon after notice and not ex parte.

**1.944(3)** This rule shall not apply to the following cases provided, however, that a finding as to *"a"* through *"e"* is made and entered of record:

*a.* Cases pending on appeal from a court of record to a higher court or under order of submission to the court.

*b.* Cases in which proceedings subsequent to judgment or decree are pending.

*c.* Cases which have been stayed pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. app. §501]

*d.* Cases where a party is paying a claim pursuant to written stipulation on file or court order.

*e.* Cases awaiting the action of a referee, master or other court-appointed officer.

**1.944(4)** The case shall not be dismissed if there is a timely showing that the original notice and petition have not been served and that the party resisting dismissal has used due diligence in attempting to cause process to be served.

**1.944(5)** No continuance under this rule shall be by stipulation of parties alone but must be by order of court. Where appropriate the order of continuance shall be to a date certain.

**1.944(6)** The trial court may, in its discretion, and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, reinstate the action or actions so dismissed. Application for such reinstatement, setting forth the grounds therefor, shall be filed within six months from the date of dismissal. [Report 1961; amended by 61GA, ch 487, §2; amendment 1969; amendment 1975; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.945 Involuntary dismissal.** A party may move for dismissal of any action or claim against the party or for any appropriate order of court, if the party asserting it fails to comply with the rules of this chapter or any order of court. After a party has rested, the adverse party may move for dismissal because no right to relief has been shown, under the law or facts, without waiving the right to offer evidence thereafter. [Report 1943; amendment 1967; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.946 Effect of dismissal.** All dismissals not governed by rule 1.943 or not for want of jurisdiction or improper venue, shall operate as adjudications on the merits unless they specify otherwise. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.947 Costs of previously dismissed action.** Where a plaintiff sues on a claim that was previously dismissed against the same defendant in any court of any state or the United States, the court may stay such suit until the costs of the prior action are paid. [Report 1943; Oc-

tober 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.948** to **1.950** Reserved.

B. JUDGMENTS GENERALLY

**Rule 1.951 Judgment defined.** Every final adjudication of any of the rights of the parties in an action is a judgment. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.952 Partial judgment.** A party who succeeds in part only may have judgment expressly for the successful part and against that party as to the rest. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.953 As to some parties only.** Where the action involves two or more parties, the court may, in its discretion, and though it has jurisdiction of them all, render judgment for or against some of them only, whenever the prevailing party would have been entitled thereto had the action involved the prevailing party alone, or whenever a several judgment is proper; leaving the action to proceed as to the other parties. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.954 Judgment on the pleadings.** Any party may, at any time, on motion, have any judgment to which that party is entitled under the uncontroverted facts stated in all the pleadings, or on any portion of that party's claim or defense which is not controverted, leaving the action to proceed as to any other matter of which such judgment does not dispose. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.955 On verdict.** The clerk must forthwith enter judgment upon a verdict when filed, unless it is special, or the court has ordered the case reserved for future argument or consideration. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.956 Principal and surety; order of liability.** A judgment against principal and surety shall recite the order of their liability upon it. A "surety" includes all persons whose liability on the claim is secondary to that of another. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.957 On claim and counterclaim.** A claim and counterclaim shall not be set off against each other, except by agreement of both parties or unless required by statute. The court, on motion, may order that both parties make payment into court for distribution, if it finds that the obligation of either party is likely to be uncollectible. If there are multiple parties and separate set-off issues, each set-off issue should be determined independently of the others. The court shall distribute the funds received and declare obligations discharged as if the payment into court by either party had been a payment to the other party and any distribution of those funds back to the party making payment had been a payment to that party by the other party. [Report 1943; amendment 1984; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.958 By agreement.** Except in actions for dissolution of marriage, separate maintenance and annulment of marriage, the clerk shall forthwith enter any judgment upon which all parties agree in open court, or by writing filed with the clerk; and execution may issue forthwith unless otherwise agreed. [Report 1943; Report 1978, effective July 1, 1979; November 9, 2001, effective February 15, 2002]

**Rule 1.959 Entry.** All judgments and orders must be entered on the record of the court and clearly specify the relief granted or the order made. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.960 Taxation of costs.** Where an action is disposed of without payment, or provision for assessment, of court costs the clerk shall at once enter judgment for costs against the plaintiff. [Report 1961; November 9, 2001, effective February 15, 2002]

**Rule 1.961 Notes surrendered.** The clerk shall not, unless by special order of the court, enter or record any judgment based on a note or other written evidence of indebtedness until such note or writing is first filed with the clerk for cancellation. [Report 1943; amendment 1945; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.962 Affidavit of identity.** The clerk shall not enter a personal judgment until the creditor, creditor's agent or attorney, files an affidavit stating the full name, occupation and residence of the judgment debtor, to affiant's information and belief. If such residence is in an incorporated place of more than 5,000 population, the affidavit shall include the street number of debtor's residence and business address, if any. But a judgment entered or recorded without such affidavit shall not be invalid. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.963** to **1.970** Reserved.

C. DEFAULTS AND JUDGMENTS THEREON

**Rule 1.971 Default defined.** A party shall be in default whenever that party does any of the following:

**1.971(1)** Fails to serve and, within a reasonable time thereafter, file a motion or answer as required in rule 1.303 or 1.304.

**1.971(2)** Withdraws a pleading without permission to replead.

**1.971(3)** Fails to be present for trial.

**1.971(4)** Fails to comply with any order of court.

**1.971(5)** Does any act which permits entry of default under any rule or statute. [Report 1943; Report 1978, effective July 1, 1979; April 30, 1987, effective July 1, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.972 Procedure for entry of default.**

**1.972(1)** *Entry.* If a party not under legal disability or not a prisoner in a reformatory or penitentiary is in default under rule 1.971(1) or 1.971(2), the clerk shall enter that party's default in accordance with the procedures set forth in this rule without any order of court. All other defaults shall be entered by the court.

**1.972(2)** *Application.* Requests for entry of default under rule 1.972(1) shall be by written application to the clerk of the court in which the matter is pending. No default shall be entered unless the application contains a certification that written notice of intention to file the written application for default was given after the default occurred and at least ten days prior to the filing of the written application for default. A copy of the notice shall be attached to the written application for default. If the certification is filed, the clerk on request of the adverse party must enter the default of record without any order of court.

**1.972(3)** *Notice.*

*a. To the party.* A copy of the notice of intent to file written application for default shall be sent by ordinary mail to the last known address of the party claimed to be in default. No other notice to a party claimed to be in default is required.

*b. Represented party.* When a party claimed to be in default is known by the party requesting the entry of default to be represented by an attorney, whether or not that attorney has formally appeared, a copy of notice of intent to file written application for default shall be sent by ordinary mail to the attorney for the party claimed to be in default. This rule shall not be construed to create any obligation to undertake any affirmative effort to determine the existence or identity of counsel representing the party claimed to be in default.

*c. Computation of time.* The ten-day period specified in rule 1.972(2) shall begin from the date of mailing notice, not the receipt thereof.

*d. Form of notice.* The notice required by rule 1.972(2) shall be substantially as set forth in rule 1.1901, Form 10.

**1.972(4)** *Applicability.* The notice provisions of this rule shall not apply to a default sought and entered in the following cases:

*a.* Any case prosecuted under small claims procedure.

*b.* Any forcible entry and detainer case, whether or not placed on the small claims docket.

*c.* Any juvenile proceeding.

*d.* Against any party claimed to be in default when service of the original notice on that party was by publication. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.973 Judgment on default.** Judgment upon a default shall be rendered as follows:

**1.973(1)** Where the claim is for a sum certain, or which by computation, can be made certain, the clerk, upon request, shall make such computation as may be necessary, and upon affidavit that the amount is due shall enter judgment for that amount, and costs against the party in default.

**1.973(2)** In all cases the court on motion of the prevailing party, shall order the judgment to which the prevailing party is entitled, provided notice and opportunity to respond have been given to any party who has appeared, and the clerk shall enter the judgment so ordered. If no judge is holding court in the county, such order may be made by a judge anywhere in the judicial district as provided in rule 1.453. The court may, and on demand of any party not in default shall, either hear any evidence or accounting required to warrant the judgment or refer it to a master; or submit it to a jury if proper demand has been made therefor under rule 1.902. [Report 1943; Report 1978, effective July 1, 1979; February 1, 1991, effective July 1, 1991; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.974 Notice of default in certain cases.** When any judgment other than one in rem has been taken by default against a party served with notice delivered to another person as provided in rule 1.305(1), the clerk shall immediately give written notice thereof, by ordinary mail to such party at that party's last known address, or the address where such service was had. The clerk shall make a record of such mailing. Failure to give such notice shall not invalidate the judgment. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.975 On published service.** No personal judgment shall be entered against a person served only by publication or by publication and mailing, as provided in rule 1.311, unless that party has appeared. [Report 1943; amendment 1951; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.976 Relief in other cases.** The judgment may award any relief consistent with the petition and embraced in its issues; but unless the defaulting party has appeared, it cannot exceed what is demanded. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.977 Setting aside default.** On motion and for good cause shown, and upon such terms as the court prescribes, but not ex parte, the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. Such motion must be filed promptly after the discovery of the grounds thereof, but not more than 60 days after entry of the judgment. Its filing shall not affect the finality of the judgment or impair its operation. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rules 1.978** to **1.980** Reserved.

D. SUMMARY JUDGMENTS

**Rule 1.981 On what claims.** Summary judgment may be had under the following conditions and circumstances:

**1.981(1)** *For claimant.* A party seeking to recover upon a claim, counterclaim, cross-petition or cross-claim or to obtain a declaratory judgment may, at any time after the appearance day or after the filing of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in that party's favor upon all or any part thereof.

**1.981(2)** *For defending party.* A party against whom a claim, counterclaim, cross-petition or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in that party's favor as to all or any part thereof.

**1.981(3)** *Motion and proceedings thereon.* The motion shall be filed not less than 60 days prior to the date the case is set for trial, unless otherwise ordered by the court. Any party resisting the motion shall file a resistance within 15 days, unless otherwise ordered by the court, from the time when a copy of the motion has been served. The resistance shall include a statement of disputed facts, if any, and a memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. Notwithstanding the provisions of rules 1.431 and 1.435, the time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the court. 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 1.904(2) shall apply.

**1.981(4)** *Case not fully adjudicated on motion.* If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

**1.981(5)** *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.

**1.981(6)** *When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion that the party for reasons stated cannot present by affidavit facts essential to justify the opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

**1.981(7)** *Affidavits made in bad faith.* Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused that party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

**1.981(8)** *Supporting statement and memorandum.* Upon any motion for summary judgment pursuant to this rule, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file and affidavits which support such contentions and a memorandum of authorities. [Report 1943; amendment 1967; amendment 1975; amendment 1980; July 15, 1991, effective January 2, 1992; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.982 On motion in other cases.**

**1.982(1)** Judgments may be obtained on motion by sureties against principals or cosureties for money due because paid by them as such; by clients against attorneys, by plaintiffs in execution against sheriffs or other officers for money or property collected by them; and in all other cases specially authorized by statute.

**1.982(2)** A judgment for contribution based on comparative fault may be obtained on motion only where the basis for such judgment has been established by findings of fact previously made by the court or jury in the action in which the motion is filed, and only by or against the persons who were parties to that action at the time said findings were made.

**1.982(3)** A motion for contribution permitted by this rule may be filed after final judgment has been entered in the action and the pendency of an appeal shall not deprive the court of jurisdiction to consider same.

**1.982(4)** A judgment for contribution on motion, where permitted under this rule, may be in the form of a declaratory judgment conditioned upon the future satisfaction by a party of one or more of the judgments entered in the action. [Report 1943; amended February 21, 1985, effective July 1, 1985; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.983 Procedure.** If a motion under rule 1.982 is filed in an action already pending, the procedure shall be as in rule 1.981. Otherwise, the motion shall be served on the party against whom relief is sought, together with notice of the time and place of hearing. Service shall be made at least ten days before the date set for hearing. The court shall hear the motion at the time fixed in the notice without further pleadings and give judgment accordingly. [Report 1943; amendment 1967; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.984** to **1.1000** Reserved.

## DIVISION X

### PROCEEDINGS AFTER JUDGMENT

**Rule 1.1001 Bill of exceptions.**

**1.1001(1)** *When necessary.* A bill of exceptions shall be necessary only to show material portions of the record of the cause not shown by the court files, entries, or legally certified shorthand notes of the trial, if any.

**1.1001(2)** *Affidavits.* Not more than five affidavits in support of any exception may be filed with the bill. Controverting affidavits, not exceeding five, may be filed within seven days thereafter. The court, for good cause shown, may extend the time for filing such affidavits.

**1.1001(3)** *Certification; judge; bystanders.* The proposed bill of exceptions shall be promptly presented to the trial judge, who shall sign it if it fairly presents the facts. If the judge refuses, and counsel so certifies, and at least two bystanders attest in writing that the exceptions are correctly stated, the bill thus certified and attested shall be filed and become part of the record.

**1.1001(4)** *Disability.* Whenever the judge or master who tried the cause is for any reason unable to sign a bill of exceptions or certify the shorthand reporter's record, the same may be done by a successor, or by any judge of the court in which the proceeding was pending. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1002 New trial defined.** A new trial is the reexamination in the same court of any issue of fact or part thereof, after a verdict, or master's report, or a decision of the court. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1003 Judgment notwithstanding verdict.** On motion, any party may have judgment in that party's favor despite an adverse verdict, or the jury's failure to return any verdict under any of the following circumstances:

**1.1003(1)** If the pleadings of the adverse party fail to allege some material fact necessary to constitute a complete claim or defense and the motion clearly specifies such failure.

**1.1003(2)** If the movant was entitled to a directed verdict at the close of all the evidence, and moved therefor, and the jury did not return such verdict, the court may then either grant a new trial or enter judgment as though it had directed a verdict for the movant. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1004 New trial.** On motion, the aggrieved party may have an adverse verdict, decision, or report or some portion thereof vacated and a new trial granted if any of the following causes materially affected movant's substantial rights:

**1.1004(1)** Irregularity in the proceedings of the court, jury, master, or prevailing party; or any order of the court or master or abuse of discretion which prevented the movant from having a fair trial.

**1.1004(2)** Misconduct of the jury or prevailing party.

**1.1004(3)** Accident or surprise which ordinary prudence could not have guarded against.

**1.1004(4)** Excessive or inadequate damages appearing to have been influenced by passion or prejudice.

**1.1004(5)** Error in fixing the amount of the recovery, whether too large or too small, in an action upon contract or for injury to or detention of property.

**1.1004(6)** That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law.

**1.1004(7)** Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial.

**1.1004(8)** Errors of law occurring in the proceedings, or mistakes of fact by the court.

**1.1004(9)** On any ground stated in rule 1.1003, the motion specifying the defect or cause giving rise thereto.

[Report 1943; amendment 1945; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1005 Motion; affidavits.** Motions under rules 1.1003 and 1.1004 shall be in writing; and if based on grounds stated in rule 1.1004(2), 1.1004(3), or 1.1004(7) may be sustained and controverted by affidavits and heard pursuant to rule 1.431(6). [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1006 Stay.** If motions under rule 1.1003 or 1.1004 or a petition under rule 1.1012 are timely filed, the court may, in its discretion and on such terms, if any, as it deems proper order a stay of any or all further proceedings, executions or process to enforce the judgment, pending disposition of such motion or petition. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1007 Time for motions and exceptions.** Motions under rules 1.1003 and 1.1004 and bills of exception under rule 1.1001 must be filed within ten days after filing of the verdict, report or decision with the clerk or discharge of a jury which failed to return a verdict, unless the court, for good cause shown and not ex parte, grants an additional time not to exceed 30 days. Resistances and replies may be filed and supporting briefs may be served as provided in rules 1.431(4) and 1.431(5). [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1008 Conditional rulings on grant of motion.**

**1.1008(1)** Any motion may be filed under rule 1.1003 or 1.1004 without waiving the right to file or rely on any other of such motions.

**1.1008(2)** Not later than ten days after entry of a judgment notwithstanding the verdict, the party whose verdict has been set aside may file a motion for new trial pursuant to rule 1.1004.

**1.1008(3)** If a motion for judgment notwithstanding the verdict is granted, the court shall also rule on any motion for new trial by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for new trial. If a motion for new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. If a motion for new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless otherwise ordered by the appellate court. If a motion for new trial has been conditionally denied, the appellee may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court. [Report 1943; amendment 1953; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1009 Issues tried by consent; amendment.** In deciding motions under rule 1.1003 or 1.1004, the court shall treat issues not embraced in the pleadings but actually tried by express or implied consent of the parties as though they had been pleaded. Either party may then amend to conform the party's pleadings to such issues and the evidence upon them; but failure so to amend shall not affect the result of the trial. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1010 Conditional new trial.**

**1.1010(1)** The district court may permit a party to avoid a new trial under rule 1.1003 or 1.1004 by agreeing to such terms or conditions as it may impose, which shall then be shown of record and a judgment entered accordingly.

**1.1010(2)** If the term or condition imposed is a choice between consenting to a reduced, modified or increased judgment amount or proceeding to a new trial, regardless of whether imposed by the district court or an appellate court, then the choice shall be made by filing a written consent to the reduced, modified or increased judgment with the clerk of the district court in which the case was tried within the following times:

*a.* If imposed by the district court, on or before seven days before the date when an appeal must be taken pursuant to Iowa R. App. P. 6.5.

*b.* If imposed by an appellate court, on or before 30 days after the date the procedendo is filed with the district court.

If such a written consent is not filed within these time periods, then the new trial imposed as the other choice shall be deemed ordered automatically.

**1.1010(3)** In the event of an appeal any such term or condition or judgment entered pursuant to district court order shall be deemed of no force and effect and the original judgment entered pursuant to rule 1.955 shall be deemed reinstated. [Report 1943; amendment 1953; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1011 Retrial after published notice.**

**1.1011(1)** *Retrial.* Except in actions for dissolution of marriage and annulment of marriage, if judgment is entered against a defendant who did not appear and was served only by publication or by publication and mailing, as provided in rule 1.311, the defendant may apply for retrial within six months after entry of judgment, and on giving security for costs is then entitled to a defense and trial as though there was no judgment.

**1.1011(2)** *New judgment.* After such retrial, the court may confirm the judgment, modify or set it aside and order a party to restore any money or property remaining in the party's possession under it, or to repay the value of any money or property the party thus received. [Report 1943; amendment 1951; Report 1978, effective July 1, 1979; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1012 Grounds for vacating or modifying judgment.** Upon timely petition and notice under rule 1.1013 the court may correct, vacate or modify a final judgment or order, or grant a new trial on any of the following grounds:

**1.1012(1)** Mistake, neglect or omission of the clerk.

**1.1012(2)** Irregularity or fraud practiced in obtaining it.

**1.1012(3)** Erroneous proceedings against a minor or person of unsound mind, when such errors or condition of mind do not appear in the record.

**1.1012(4)** Death of a party before entry of the judgment or order, and its entry without substitution of a proper representative.

**1.1012(5)** Unavoidable casualty or misfortune preventing the party from prosecuting or defending.

**1.1012(6)** Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not discovered within the time for moving for new trial under rule 1.1004. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1013 Procedure for vacating or modifying judgment.**

**1.1013(1)** *Petition.* A petition for relief under rule 1.1012 must be filed and served in the original action within one year after the entry of the judgment or order involved. It shall state the grounds for relief, and, if it seeks a new trial, show that they were not and could not have been discovered in time to proceed under rule 1.977 or 1.1004. If the pleadings in the original action did not allege a meritorious action or defense the petition shall do so. It shall be supported by affidavit as provided in rule 1.413(3).

**1.1013(2)** *Notice.* The petitioner must serve the adverse party with an original notice and petition in the manner provided in rules 1.301 through 1.315, located in division III of the rules in this chapter.

**1.1013(3)** *Trial.* The court shall promptly assign the petition for trial not less than 20 days after notice is served. The petition shall stand denied without answer; otherwise the issues and pleadings, and form and manner of the trial shall be the same, as nearly as may be, as in the trial of an ordinary action to the court, and with the same right of appeal. No new claim shall be introduced.

**1.1013(4)** *Preliminary determination.* The court may try and determine the validity of the grounds to vacate or modify a judgment or order before trying the validity of the claim or defense.

**1.1013(5)** *Judgment.* If the original judgment or order is affirmed after a stay under rule 1.1006, additional judgment shall be entered against the petitioner for the costs of the trial, and also, in the court's discretion, for damages not exceeding 10 percent of the judgment affirmed. [Report 1943; amended February 1, 1989, effective May 1, 1989; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1014 Disposition of exhibits.** One year after the final determination of a case, the clerk may destroy all exhibits filed provided that counsel of record are notified in writing that the exhibits will be destroyed unless receipted for within 60 days thereafter. The clerk may destroy all trial exhibits without notice two years after final determination of the case. [Report 1965; January 2, 1996, effective March 1, 1996; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1015 Titles and liens protected.**

**1.1015(1)** The title of a good faith purchaser to property sold under the original judgment shall not be affected or impaired by any judgment, order or proceeding under rules 1.1011 through 1.1013.

**1.1015(2)** If the original judgment is merely modified pursuant to any of said rules, all liens or securities obtained under it shall be preserved in the modified judgment. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1016 Judgment discharged on motion.** Where matter in discharge of a judgment has arisen since its entry, the defendant or any interested person may, on motion, have the same discharged in whole or in part, according to the circumstances. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1017 Fraudulent assignment; motion.** The court may, on motion, inquire into the assignment of a judgment, or its entry to the use of any party, and cancel the assignment or strike out such use, in whole or in part, whenever it determines the same to be inequitable, fraudulent or done in bad faith. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1018 Execution; duty of officer.** An officer receiving an execution must execute it with diligence. The officer shall levy on such property of the judgment debtor as is likely to bring the exact amount, as nearly as practicable. The officer may make successive levies if necessary. The officer shall collect the things in action, by suit in the officer's own name if need be, or sell them. The officer shall sell sufficient property levied on and garnish sufficient funds, or property of sufficient value, to satisfy the execution, paying the proceeds, less the officer's own costs, to the clerk. [Report 1943; 1992 Iowa Acts, ch

1044, §1, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 1.1019 Endorsement.** The officer shall endorse on the execution, the day and hour the officer receives it; and the levy, sale, or other act done by virtue of it, with the date thereof; and the date and amount of any receipts or payments toward its satisfaction. Each endorsement shall be made at the time of the act or receipt; but no levy or sale under the execution shall be impaired by failure to make any such endorsement at the time here provided. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1020 Levy on personalty.** Levy on personalty may be made under an attachment or general execution by either of the following methods, but no lien is created until compliance with one of them.

**1.1020(1)** By the officer taking possession of the property, and signing and appending to the execution its exact description at length, with the date of the levy.

**1.1020(2)** If the creditor or the creditor's agent first so requests in writing, the officer may view the property, prepare a written inventory of its exact description at length, and append the inventory to the execution, with the officer's signed statement of the number and title of the case, the names of the debtor and judgment creditor, the amount claimed under the execution, the exact location of the property and in whose possession, and the last known address of the judgment debtor. A certified transcript of the inventory and statement shall be filed with the secretary of state. Such filing shall be accepted by the secretary of state and shall be marked, indexed and certified in the same manner as a financing statement, and shall be constructive notice of the levy to all persons. If the writ is satisfied or the levy discharged the officer shall file a termination statement with the secretary of state. The fees normally charged by the secretary of state for the filing of a financing statement and the filing of a termination statement shall be paid by the officer and shall be taxed as a part of the costs of the levy. [Report 1943; amendment 1967; amendment 1975; October 31, 1997, effective January 24, 1998; July 27, 2001, effective October 1, 2001; November 9, 2001, effective February 15, 2002]

**Rules 1.1021** to **1.1100** Reserved.

## DIVISION XI

### DECLARATORY JUDGMENTS

**Rule 1.1101 Declaratory judgments permitted.** Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The enumeration in rules 1.1102, 1.1103, and 1.1104, does not limit or restrict the exercise of this general power. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1102 Construing contracts, etc.** Any person interested in an oral or written contract, or a will, or whose rights, status or other legal relations are affected by any statute, municipal ordinance, rule, regulation, contract or franchise, may have any question of the construction or validity thereof or arising thereunder determined, and obtain a declaration of rights, status or legal relations thereunder. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1103 Before or after breach.** A contract may be construed either before or after a breach. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1104 Fiduciaries, beneficiaries and others.** Any person interested as or through an executor, administrator, trustee, guardian, conservator or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust or the estate of a decedent, insolvent, an infant or other person for whom a guardian, or conservator has been appointed, may obtain a declaration of rights or legal relations for any of the following reasons:

**1.1104(1)** To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others.

**1.1104(2)** To direct executors, administrators, guardians, conservators, trustees or other fiduciaries, to do or abstain from doing any particular act in their fiduciary capacity.

**1.1104(3)** To determine any question arising in the administration of the estate, guardianship, conservatorship or trust, including questions of construction of wills and other writings. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1105 Discretionary.** The court may refuse to render a declaratory judgment or decree where it would not, if rendered, terminate the uncertainty or controversy giving rise to the proceeding. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1106 Supplemental relief.** Supplemental relief based on a declaratory judgment may be granted wherever necessary or proper. The application for relief shall be by petition in the original case. If the court deems the petition sufficient, it shall, on such reasonable notice as it prescribes, require any adverse party whose rights have been adjudicated to show cause why such relief should not be granted. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1107 Review.** All orders, judgments or decrees under rules 1.1101 through 1.1106 may be reviewed as other judgments, orders or decrees. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1108 Jury trial.** The right of trial by jury shall not be abridged or extended by rules 1.1101 through 1.1107. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1109 "Person."** For purposes of this division, "person" shall include any individual or entity capable of suing or being sued under the laws of Iowa. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rules 1.1110** to **1.1200** Reserved.

## DIVISION XII

### PARTITION OF REAL AND PERSONAL PROPERTY

**Rule 1.1201 The action.**

**1.1201(1)** Real or personal property may be partitioned by equitable proceedings.

**1.1201(2)** Property shall be partitioned by sale and division of the proceeds, unless a party prays for partition in kind by its division into parcels, and shows that such partition is equitable and practicable. But personalty which is subject to any lien on the whole or any part can be partitioned only by sale.

**1.1201(3)** When partition can be conveniently made of part of the premises but not of all, one portion may be partitioned and the other sold, as provided in the rules in this division.

**1.1201(4)** Real and personal property owned by the same persons may be partitioned in the same action. The same referee may act as to both real and personal property. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1202 Pending probate.** Where the entire interest in real estate is owned by a decedent on whose estate administration or probate is pending, the action cannot be brought until four months after the second publication of the notice of the appointment of the personal representative, or at any time while an application for authority to sell such real estate is pending in the probate proceeding. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1203 Petition and answer.**

**1.1203(1)** The petition shall describe the property and plaintiff's interest in it. It shall name all indispensable parties as defined in rule 1.1205(1), and state the nature and extent of each interest or lien, all so far as is known.

**1.1203(2)** The answers of the defendants must state the amount and nature of their respective interests. They may deny the interest of any plaintiff, and by supplemental pleading, if necessary, may deny the interest of any other defendant. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1204 Abstracts, plats, and surveys.** The court may order the filing of a complete abstract covering any real estate involved. The court may require any party to produce any abstract in the party's possession or control, and plaintiff to complete the same or supply the whole if no part is available. The expense shall be taxed as costs. The abstracts shall be available for use of the court or any party during the proceedings. A like order may be made as to plats and surveys. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1205 Parties.**

**1.1205(1)** *Indispensable parties.* All owners of undivided interests, and all holders of liens against less than the entire property are indispensable parties to any partition. All holders of any liens on personal property are indispensable to its partition.

**1.1205(2)** *Optional parties.* Other persons having actual, apparent, claimed or contingent interests, and holders of liens on the entire real estate may be made parties.

**1.1205(3)** *Interests of unborn persons.* The court shall have jurisdiction over an unborn person's contingent or a prospective vested interest as a cotenant of real estate. The court shall appoint a suitable guardian ad litem to act for such person in the partition proceeding. Rules 1.210 through 1.212 shall apply in such cases. The decree of partition and the division or sale thereunder shall have the same force and effect as to all such persons, or persons claiming by, through or under them, as though they were in being when the decree was entered, and the property or proceeds of the person's interest shall be subject to the order of the court until the right fully vests. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1206 Early hearing for partition of personal property.** Upon application after a petition for partition of personal property only is filed, the court may set the petition for hearing at any specified time and place in the judicial district on not less than five days' personal service of original notice on all defendants. [Report 1943;

October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1207 Joinder and counterclaim.** Except as permitted by this rule there shall be no joinder of any other claim and no counterclaim. Any party may perfect or quiet title to the property, or have an adjudication of the rights of any or all parties as to any or all matters growing out of or connected with the property, including liens between them. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1208 Jurisdiction of property or proceeds.** The property or its proceeds shall be subject to the order of the court until the right becomes fully vested. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1209 Proceeds of sale.** After a sale, all parties, including holders of liens from which the property has been freed by the sale, shall have the same rights or interests in the proceeds as they had in the property sold, subject to a prior charge for costs.

The court shall appoint a trustee or make other suitable provision for the proceeds of any share held for life or years or in remainder. The ascertained share of any absent owner shall be retained, or the proceeds invested for the owner's benefit, under like order. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1210 Decree.** The decree shall establish the shares and interests of the owners in the property. A decree for partition in kind shall appoint three referees unless the parties agree on a smaller number. A decree ordering a sale shall appoint one or more referees, and three disinterested freeholders to appraise the property, and may direct either a public or private sale. All other matters involved in the cause, including those relating to liens, may be determined by the same decree or later supplemental decree or decrees. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1211 Liens.** The court shall decide the nature, extent, priority or validity of any party's lien, not previously determined, on notice to the interested parties by the referees as the court prescribes, and upon issues as the court directs. Such adjudication shall precede a partition in kind. The pendency of any such controversy shall not delay a sale or distribution of the proceeds to any party not affected by the lien. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1212 Sale free of liens.** Personal property shall be sold free of all liens. Real property shall be sold free of all liens, except those held against the entire property sold. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1213 Possession and preservation of property.** The court may order the referee to lease or take possession of any property involved in the action. The court may order the property preserved by injunction or by other appropriate provision for its care and custody. Expenses incurred under this rule and allowed by the court shall be part of the costs. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1214 Referees to divide; oath.** Referees authorized to make partition in kind shall qualify by taking an oath and need give no bond. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1215 Partition in kind; marking parcels.** Referees who partition real estate in kind shall mark out each parcel by visible monuments, and file a report thereof. Referees may employ a surveyor or assistants to aid them, if necessary, whose fees and expenses, when allowed by the court, shall be part of the costs. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1216 Specific allotment.** For good reasons shown, the court may order referees making a partition in kind to allot a particular tract or article to a particular party. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1217 Report of referees; notice and hearing.**

**1.1217(1)** Referees shall file a report of their proposed partition in kind, describing with reasonable particularity the respective shares and the specific property allotted to each owner, with a plat of any real estate involved. The court shall promptly fix a time and place for a hearing, and the referee shall give at least ten days' notice thereof in such manner as the court directs. On hearing, the court may approve, modify or disapprove the report, and refer it to the same or different referees or order a sale.

**1.1217(2)** Referees shall report their inability to make a division to the court. The court shall order a sale of personal property without further notice. As to real estate, the report shall be heard under rule 1.1217(1). On hearing, the court may make any further decree of sale or otherwise as may be proper under the exigencies of the case. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1218 Partition in kind; decree; apportioning costs; recording.**

**1.1218(1)** *Decree; costs.* On approving a partition in kind, the court shall enter a decree allotting the property or share set off to each party, apportioning the costs among the allottees and entering judgment against them for their individual shares thereof, which shall be liens on the respective allotments, and for which special execution may issue on demand of anyone interested.

**1.1218(2)** *Recording.* The clerk shall file with the recorder of each county where any of the real estate lies, a certified transcript of so much of the decree as shows the book and page where it is recorded, the confirmation of the shares and interests in the property apportioned, the names of the parties found entitled to share therein, and an accurate description of each parcel allotted to each several owner. Such transcript shall be presented to the county auditor for transfer, recorded in the deed records, and indexed as a conveyance of each parcel, with the name of the allottee as grantee and names of all other parties as grantors. The costs of making and recording such transcript shall be assessed as part of the costs in the case. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1219 Referees to sell; oath; bond.** A sale referee shall qualify by taking an oath. No bond shall be required before the referee conveys real estate unless the referee is to sell personal property, take possession of real estate, or receive a payment on the sale before conveyance, in which case, the referee shall give such bond as the court directs. Before conveying real estate, the referee shall give bond for 125 percent of the total sale price, payable to the parties entitled to the proceeds, conditioned for the faithful discharge of the referee's duties in connection with the sale and its proceeds. [Report 1943; amendment 1945; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1220 Notice and expense of sale.**

**1.1220(1)** *Notice of public sale.* The referees shall give notice of the time and place of any public sale by two publications, at least six days apart, in some newspaper of general circulation in the county where the sale is to be held. The last publication shall be at least seven days prior to a sale of real estate and at least four days prior to a sale of personal property.

**1.1220(2)** *Expense.* If authorized by the court, referees may advertise the sale beyond the required notice, or employ an auctioneer, clerk or assistant. When allowed by the court the expense thereof shall be part of the costs. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1221 Report of sale; notice.**

**1.1221(1)** *Generally.* The referees shall report all proposed sales to the court, which in its discretion, may require a hearing thereon at a specified time and place. The referee shall mail notice of the hearing as directed by the court to all parties requesting notice pursuant to rule 1.1221(2) at the addresses shown in the requests within the time prescribed by the court and shall give such notice to other parties as the court may direct.

**1.1221(2)** *Request for notice.* Notice and hearing must be accorded to any party who, before the report is approved, files with the clerk, a duplicate request therefor, bearing the party's name and the address to which notice is to be sent. The clerk shall docket the request, and transmit the copy to any referee forthwith, or if none has been appointed, then as soon as appointment is made. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1222 Approval or disapproval of sale; conveyance; security.**

**1.1222(1)** The court may dispense with approval of a public sale of personal property, which may then be sold on full payment of the price bid. All other sales shall be subject to the approval of the court. The court by express order may approve a private sale though it be for less than the appraised value.

**1.1222(2)** No real estate shall be conveyed until the sale is approved by the court. No conveyance shall be made until the price is fully paid.

**1.1222(3)** If the sale is disapproved, the money paid and the securities given must be returned to the persons entitled thereto.

**1.1222(4)** The court in its discretion may require all or any of the parties, before they receive the monies arising from any sale, to give satisfactory security to refund the same, with interest, in case it afterward appears such parties were not entitled thereto. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1223 Validity of deed.** A referee's deed, recorded in the county where the land lies, shall be valid against all subsequent purchasers, and against all persons interested at the time, who were parties to the proceeding. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1224 Costs.** All costs shall be advanced by the plaintiff, but eventually paid by all parties proportionately to their interests. Costs created by contests shall be taxed against the losing contestant unless otherwise ordered. If partition is in kind, costs shall be adjudged, and may be collected as provided in rule 1.1218(1). If partition is by sale, the costs shall be paid from the proceeds and deducted from the shares of the parties against whom they are taxed. These remedies for collecting costs shall be cumulative of other remedies. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

[See rule 1.1225]

**Rule 1.1225 Attorney fees.** On partition of real estate, but not of personal property, the court shall fix, and tax as

costs, a fee in favor of plaintiff's attorney, in a reasonable amount, to be determined by the court. [Report 1943; amendment 1955; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1226 Other fees.** Appraisers and referees in all partition suits, and any attorney employed by a referee with approval of the court, shall receive such reasonable compensation as the court allows, which shall be part of the costs. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1227 Final reports.** Unless waived in writing by all interested parties, the court shall fix a time and place of hearing the referee's final report, and prescribe the time and manner of notice which the referee shall give to all interested persons. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1228 Paying small sums for minor.** Whenever a minor for whom no conservator has been appointed is entitled to proceeds of a partition sale in an amount not exceeding $10,000, the court may order the proceeds paid to the minor's parent or natural guardian, or the person with whom the minor resides, for the use of such minor. The written receipt of such person, when filed with the court, shall discharge the referee of all liability for the proceeds. [Report 1943; amendment 1961; amendment 1973; May 24, 1988, effective August 1, 1988; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.1229** to **1.1300** Reserved.

## DIVISION XIII

### QUO WARRANTO

**Rule 1.1301 For what causes.** A civil action in the nature of quo warranto, triable by equitable proceedings, may be brought in the name of the state against any defendant who is any of the following:

**1.1301(1)** Unlawfully holding or exercising any public office or franchise in Iowa, or an office in any Iowa corporation.

**1.1301(2)** A public officer who has done or suffered to be done, an act which works a forfeiture of the office.

**1.1301(3)** Acting as a corporation in Iowa without being authorized by law so to act.

**1.1301(4)** A corporation exercising powers not conferred by law, or doing or omitting acts, which work a forfeiture of its corporate rights or privileges.

**1.1301(5)** A person or corporation claiming under a patent, permit, certificate of convenience and necessity or license of any nature which was granted by the state because of fraud, or mistake or ignorance of a material fact, or the terms of which have expired or been violated by the defendant, or which the defendant has in any manner forfeited. The action in such cases shall be to annul or vacate the patent, permit, certificate or license in question. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1302 By whom brought.**

**1.1302(1)** The county attorney of the county where the action lies has discretion to bring the action, but must do so when directed by the governor, general assembly or the supreme or district court, unless the county attorney may be a defendant, in which event the attorney general may, and shall when so directed, bring the action.

**1.1302(2)** If on demand of any citizen of the state, the county attorney fails to bring the action, the attorney general may do so, or such citizen may apply to the court where the action lies for leave to bring it. On leave so granted, and after filing bond for costs in an amount fixed by the court, with sureties approved by the clerk, the citizen may bring the action and prosecute it to completion. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1303 No joinder or counterclaim.** In such action there shall be no joinder of any other claim, and no counterclaim. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1304 Petition.** The petition shall state the grounds on which the action is brought, and if it involves an office, franchise or right claimed by others than the defendant, it shall name them; and they may be made parties. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1305 Judgment.**

**1.1305(1)** The judgment shall determine all rights and claims of all parties respecting the matters involved, and shall include any provision necessary to enforce their rights as so determined, or to accomplish the objects of the decision.

**1.1305(2)** The judgment shall also determine which party, if any, is entitled to hold any office in controversy.

**1.1305(3)** If a party is unlawfully holding or exercising any office, franchise or privilege, or if a corporation has violated the law by which it exists or been guilty of any act or omission which amounts to a surrender or forfeiture of its privileges, the judgment shall remove the party from office or franchise, or forfeit the privilege, and forbid the party to exercise or use any such office, franchise or privilege.

**1.1305(4)** If a party has merely exercised powers or privileges to which that party was not entitled, but which does not warrant forfeiture under the law, the judgment shall prohibit that party from the further exercise thereof. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1306 Costs.**

**1.1306(1)** Judgment against any defendant or intervenor shall include judgment for the costs of the action. Judgment against a pretended corporation shall assess the costs against the person or persons acting as such.

**1.1306(2)** If the action fails, the court may assess the costs against any private individual who brought it; otherwise they shall be paid as provided by the statutes governing costs in criminal cases. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1307 Corporation dissolved.** If the judgment dissolves a corporation, the court shall make appropriate orders for the dissolution as provided by the statutes in force. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rules 1.1308** to **1.1400** Reserved.

## DIVISION XIV

## CERTIORARI

**Rule 1.1401 When writ may issue.** A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded proper jurisdiction or otherwise acted illegally. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1402 Procedure.**

**1.1402(1)** *Title.* The petition shall be entitled in the name of the petitioner as plaintiff, against the inferior tribunal, board or officer as defendant.

**1.1402(2)** *Nature of proceeding.* The action shall be by ordinary proceedings, so far as applicable.

**1.1402(3)** *Time for filing.* The petition must be filed within 30 days from the time the tribunal, board or officer exceeded its jurisdiction or otherwise acted illegally. An extension of such time, however, may be allowed by the reviewing court upon a showing that failure to file the petition within the time provided was due to a failure of the tribunal, board or officer to notify the petitioner of the action complained of. Any motion for extension of time shall be filed with the clerk of the court in which the writ of certiorari is sought within 90 days of the action complained of. The motion and any resistance may be supported by copies of relevant portions of the record of the proceedings complained of, and by affidavits, and no other form of evidence will be received. [Report 1943; amendment 1973; amended July 18, 1984, effective September 17, 1984; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1403 Other remedies.** The writ shall not be denied or annulled because plaintiff has another plain, speedy or adequate remedy; but the relief by way of certiorari shall be strictly limited to questions of jurisdiction or illegality of the acts complained of, unless otherwise specially provided by statute. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1404 The writ.** The writ may be granted only by the district court acting through a district judge unless it is directed to that court, a district judge, or a district associate judge, and then by the supreme court or a justice thereof. Only the district court acting through a district judge may grant the writ directed at a judicial magistrate appointed pursuant to Iowa Code section 602.6402 or 602.6403. The writ shall be issued by the clerk of the court where the petition is filed, under its seal. It shall command the defendant to certify to that court, at a specified time and place, a transcript of so much of defendant's records and proceedings as are complained of in the petition or as may be pertinent thereto, together with the facts of the case, describing or referring to them or any of them with reasonable certainty. [Report 1943; Report 1978; effective July 1, 1979; amendment 1982; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1405 Stay; bond.** In the exercise of discretion, the court or justice granting the writ may stay the original proceedings, though no stay is sought. When sought by plaintiff, a stay can be granted only on plaintiff's filing bond with penalty and conditions, including security for costs, prescribed by the court or justice, and with sureties approved by it or its clerk. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1406 Notice of issuing writ.** The writ may issue without notice on filing the petition, unless it is filed before a final order or decree in the original proceedings, or the plaintiff seeks a stay. Before issuing the writ in the latter cases the court or justice shall, and in any case may in the exercise of discretion, fix a time and place for hearing and prescribe reasonable notice to the defendant. The hearing shall be confined to the sufficiency of the petition, what records or proceedings shall be certified, and the terms of any bond to be given. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1407 Service of writ.** Unless the defendant accepts service of the writ, it shall be served by a sheriff or deputy sheriff. If directed to a court, service shall be on a judge or clerk thereof; if to a board or other tribunal on its secretary, clerk or any member. Service shall be by delivery of the original writ; and a copy, with return of service, shall be returned to the office of its issuance. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1408 Return to writ; by whom.** Where the writ is directed to a court, return thereto, if practicable, shall be made and signed by the judge whose action is com-

plained of, otherwise by any judge of that court. Where directed to an officer, the officer shall make and sign the return. Where directed to a board or tribunal, return thereto shall be made and signed by its presiding officer, or its clerk or secretary. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1409 Defective return.** If the return is defective, the court or justice who issued the writ, on the court's or justice's own motion or that of any party, may order a further return; or compel obedience to the writ or to such order, by attachment or citation for contempt. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1410 Trial.** When full return has been made, the court shall fix a time and place of hearing, and hear the parties upon the record made by the return. In its discretion, it may receive any transcript of the evidence taken in the original proceeding, and such other oral or written evidence as is explanatory of the matters contained in the return. Such transcript and additional evidence shall be considered for the sole purpose of determining the legality of the proceedings, and the sufficiency of the evidence before the original tribunal, board or officer to sustain its, or the officer's action, unless otherwise specially provided by statute. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1411 Judgment limited.** Unless otherwise specially provided by statute, the judgment on certiorari shall be limited to sustaining the proceedings below, or annulling the same wholly or in part, to the extent that they were illegal or in excess of jurisdiction, and prescribing the manner in which either party may proceed further, nor shall such judgment substitute a different or amended decree or order for that being reviewed. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1412 Appeal.** Appeal to the supreme court lies from a judgment of the district court in a certiorari proceeding, and will be governed by the rules applicable to appeals in ordinary actions. Appeal is discretionary when the order or judgment sought to be reviewed is itself a discretionary review of another tribunal, board, or officer. [Report 1943; December 28, 1993, effective March 1, 1994; November 9, 2001, effective February 15, 2002]

**Rules 1.1413** to **1.1500** Reserved.

## DIVISION XV

## INJUNCTIONS

**Rule 1.1501 Independent or auxiliary remedy.** An injunction may be obtained as an independent remedy by an action in equity, or as an auxiliary remedy in any action. In either case, the party applying therefor may claim damages or other relief in the same action. An injunction may be granted as part of the judgment; or may be granted by order at any prior stage of the proceedings, and is then known as a temporary injunction. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1502 Temporary; when allowed.** A temporary injunction may be allowed under any of the following circumstances:

**1.1502(1)** When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff.

**1.1502(2)** Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's right respecting the subject of the action and tending to make the judgment ineffectual.

**1.1502(3)** In any case specially authorized by statute. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1503 Endorsing refusal.** A court, or justice of the supreme court, refusing a temporary injunction shall endorse the refusal on the petition therefor. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1504 Statement re prior presentation.** A petition seeking a temporary injunction shall state, or the attorney shall certify thereon, whether a petition for the same relief, or part thereof, has been previously presented to and refused by any court or justice, and if so, by whom and when. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rule 1.1505 Place for filing.** A request for a temporary injunction shall be filed in the county where the action is, or will be, pending. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1506 By whom granted.** A temporary injunction may be granted by any of the following:

**1.1506(1)** A judge of the district in which the action is or will be pending.

**1.1506(2)** The supreme court or a justice thereof. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1507 Notice.** Before granting a temporary injunction, the court may require reasonable notice of the time and place of hearing therefor to be given the party to be enjoined. When the applicant is requesting that a temporary injunction be issued without notice, applicant's attorney must certify to the court in writing either the efforts which have been made to give notice to the adverse party or that party's attorney or the reason supporting the claim that notice should not be required. Such notice and hearing must be had for a temporary injunction or stay of agency action pursuant to Iowa Code section 17A.19(5), to stop the general and ordinary business of a corporation, or action of an agency of the state of Iowa, or the operations of a railway or of a municipal corporation, or the erection of a building or other work, or the board of supervisors of a county, or to restrain a nuisance. [Report 1943; amended October 9, 1984, effective December 8, 1984; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1508 Bond.** The order directing a temporary injunction must require that before the writ issues, a bond be filed, with a penalty to be specified in the order, which shall be 125 percent of the probable liability to be incurred. Such bond with sureties to be approved by the clerk shall be conditioned to pay all damages which may be adjudged against the petitioner by reason of the injunction. But in actions for dissolution of marriage, separate maintenance, annulment of marriage, or domestic abuse, the court in its discretion may waive any bond, or fix its penalty in any amount deemed just and reasonable. [Report 1943; Report 1978, effective July 1, 1979; amendment 1981; November 9, 2001, effective February 15, 2002]

**Rule 1.1509 Hearing to dissolve temporary injunction.** A party against whom a temporary injunction is issued without notice may, at any time, move the court where the action is pending to dissolve, vacate or modify it. Such motion shall be submitted to that court. A hearing shall be held within ten days after the filing of the motion. [Report 1943; amendment 1984; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**COMMENT ON AMENDMENTS TO RULES 1.1505, 1.1506, 1.1507, AND 1.1509:** Concern has been raised regarding the issuance of temporary injunctions without a hearing or notice to the adverse party, and the subsequent difficulty in scheduling a hearing to dissolve, vacate or modify the injunction. The amendment to rule 1.1507 puts the burden upon the applicant to certify that he or she has either made an attempt to provide notice or has legitimate reasons for not providing notice. The amendment to rule 1.1509 provides once the temporary injunction has been issued, the adverse party may then file a motion to dissolve, vacate or modify the injunction, which shall be heard within ten days. This puts the burden upon the adverse party to request the hearing.

**Rule 1.1510 Enjoining proceedings or judgment; venue; bond.** An action seeking to enjoin proceedings in a civil action, or on a judgment or final order, must be brought in the county and court where such proceedings are pending or such judgment or order was obtained, unless that be the supreme court, in which case the action must be brought in the court from which appeal was taken. Any bond in such action must be further conditioned to pay or comply with such judgment or order, or to pay any judgment that may be recovered against the petitioner on the claim enjoined. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1511 Violation as contempt.** Violation of any provision of any temporary or permanent injunction shall constitute contempt and be punished accordingly. [Report 1943; November 9, 2001, effective February 15, 2002]

**Rules 1.1512** to **1.1600** Reserved.

## DIVISION XVI

### PROCEEDINGS FOR JUDICIAL REVIEW OF AGENCY ACTION

**Rule 1.1601 Applicability of rules.** Except to the extent that they are inconsistent with any provision of the Iowa Administrative Procedure Act, Iowa Code chapter 17A, 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. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 1.1602 Time for motion or answer.** Respondent shall, within 20 days from the date of personal service or mailing of a petition for judicial review under Iowa Code section 17A.19(2), serve upon petitioner and all others upon whom the petition is required to be served, and within a reasonable time thereafter file a motion or answer. [Report 1980; amendment 1984; Report April 30, 1987, effective July 1, 1987; November 9, 2001, effective February 15, 2002]

**Rule 1.1603 Contested case proceedings; intervention, schedule, applicability of rule 1.904(2).** In proceedings for judicial review of agency action in a contested case pursuant to Iowa Code section 17A.19:

**1.1603(1)** An intervenor may join with petitioner or respondent or claim adversely to both.

**1.1603(2)** Upon request of any party the reviewing court shall, or upon its own motion may, establish a schedule for the conduct of the proceeding.

**1.1603(3)** The provisions of rule 1.904(2) shall apply. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rules 1.1604** to **1.1700** Reserved.

## DIVISION XVII

SUBPOENAS

**Rule 1.1701 Specific provisions.**

**1.1701(1)** *Form; issuance.* Every subpoena shall comply with the following requirements:

*a.* State the name of the court from which it is issued and the title of the action, including its docket number.

*b.* Command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified. A command to produce evidence or to permit inspection may be joined with a command to appear at trial, hearing or deposition, or may be issued separately.

*c.* Be issued by the clerk of court as provided by these Rules of Civil Procedure or by statute.

*d.* Set forth the text of rules 1.1701(2), 1.1701(3), and 1.1701(4).

**1.1701(2)** *Protection of persons subject to subpoenas.*

*a.* A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

*b. Presence; objections.*

(1) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2) Subject to rule 1.1701(3)(*b*), a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance, if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

*c. Motion to quash.*

(1) On timely motion, the court which issued the subpoena shall quash or modify it if the subpoena does any of the following:

1. Fails to allow reasonable time for compliance.

2. Requires a person who is not a party or an officer of a party to travel to a place outside of the county in which that person resides, is employed or regularly transacts business in person, except that, such a person may be ordered to attend trial anywhere within the state in which the person is served with a subpoena.

3. Requires disclosure of privileged or other protected matter and no exception or waiver applies.

4. Subjects a person to undue burden.

(2) To protect a person subject to or affected by the subpoena, the court may quash or modify it if the subpoena does any of the following:

1. Requires disclosure of a trade secret or other confidential research, development, or commercial information.

2. Requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party.

If the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**1.1701(3)** *Duties in responding to subpoena.*

*a.* A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

*b.* When the information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**1.1701(4)** *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by rule 1.1701(2)(*c*)(1)(2).

**1.1701(5)** *Service.* Subpoenas shall be served as prescribed in these rules or by statute.

**1.1701(6)** *Notice.* Prior notice of any commanded production of documents and things or inspection of premises shall be served on each party in the manner prescribed by rule 1.442(2) and in a manner reasonably calculated to give all parties an opportunity to object before the commanded production or inspection is to occur.

**1.1701(7)** *Limits.* An attorney may cause a subpoena to be issued only in a pending proceeding governed by the rules of civil procedure and in which the attorney has appeared. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rules 1.1702** to **1.1800** Reserved.

## DIVISION XVIII

RULES OF A GENERAL NATURE

**Rule 1.1801 Computing time; holidays.** In computing time under these rules, the provisions of Iowa Code section 4.1, subsection 34, shall govern. [Report 1943; amendment 1967; November 9, 2001, effective February 15, 2002]

**Rule 1.1802 Death, retirement or disability of judge.**

**1.1802(1)** In the event of the death or disability of a judge in the course of a proceeding at which the judge is presiding, or while a motion for new trial or for judgment notwithstanding the verdict, or for other relief, is pending, any other judge of the district may hear or act upon the same, and, if in the judge's opinion the judge can proceed with the matter or determine the motion the judge shall do so; otherwise, the judge may order a continuance, declare a mistrial, order a new trial of all or any of the issues, or make such disposition of the matter as the situation warrants.

**1.1802(2)** In the event of the death or disability of a judge who has under advisement an undecided motion, or case tried without a jury, any other judge of the district may be called in, or a judge from another district may be appointed by the chief justice of the supreme court to consider the same, and, if by a review of the transcript or a reargument the judge can, in the judge's opinion, become sufficiently informed to render a decision, the judge shall do so; otherwise the judge may order a continuance, declare a mistrial, or order a new trial of all or any of the issues, or direct the recalling of any witnesses, or make such disposition of the matter as the situation warrants.

**1.1802(3)** In the event of the death, disability or retirement of a judge before the record for appeal in any case tried by the judge is settled, the record shall be settled by another judge of the district, or by a judge of another district appointed for that purpose by the chief justice of the supreme court. [Report 1943; amendment 1945; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1803 Appeal to district court from administrative body.** Where appeal to the district court from an action or decision of any officer, body or board is provided for by statute and the statute does not provide for the formulation of the issues either before such officer, body or board, or in the district court, the appellant shall file a petition in the district court within ten days after perfecting the appeal, or within such time as may be prescribed by the court. The appellee shall file motion or an answer to such petition within 20 days thereafter, or within such further time as may be prescribed by the court. Thereafter the rules of pleading and procedure in actions in the district court shall be applicable. [Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1804 Effect of notice by posting.** Notice by posting shall not have legal effect except where expressly authorized by statute. [Report 1943; amendment 1945; amendment 1973; November 9, 2001, effective February 15, 2002]

**Rule 1.1805 General provisions, comments and footnotes.**

**1.1805(1)** The past, present and future tense shall each include the others; the masculine, feminine and neuter gender shall include the others; and the singular and plural number shall each include the other.

**1.1805(2)** Rule and subrule headings do not in any manner affect the scope, meaning or intent of the provisions of the rules in this chapter.

**1.1805(3)** All references to sources, comments, and footnotes are incorporated solely for convenience in the use of the rules and do not form a part thereof. [Report 1943; amendment 1961; November 9, 2001, effective February 15, 2002]

**Rule 1.1806 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. All such rules or changes shall be subject to prior approval of the supreme court. [Report 1961; amendment 1969; amendment 1979; December 28, 1989, effective July 2, 1990; November 9, 2001, effective February 15, 2002]

**Rule 1.1807 Purpose of administrative rules.** The purpose of all rules for court administration shall be to provide for the administration of justice in an orderly, efficient and effective manner, in accordance with the highest standards of justice and judicial service. [Report 1969; November 9, 2001, effective February 15, 2002]

**Rules 1.1808** to **1.1900** Reserved.

## DIVISION XIX

FORMS

**Rule 1.1901 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. [Report 1976; Report 1978, effective July 1, 1979; amendment 1979; November 9, 2001, effective February 15, 2002]

# APPENDIX OF FORMS

**Rule 1.1901 Form 1:** ***Form of Original Notice for Personal Service.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| Plaintiff(s), PIN | No. _____ |
| vs. | _____ (INSERT "LAW" OR "EQUITY") |
| Defendant(s), PIN | **ORIGINAL NOTICE** |

TO THE ABOVE-NAMED DEFENDANT(S):

You are notified that a petition has been filed in the office of the clerk of this court naming you as the defendant in this action. A copy of the petition (and any documents filed with it) is attached to this notice. The attorney for the plaintiff(s) is _____, whose address is _____, Iowa _____ _____. That attorney's telephone number is _____; facsimile number _____ _____.

You must serve a motion or answer within 20 days after service of this original notice upon you and, within a reasonable time thereafter, file your motion or answer with the Clerk of Court for _____ County, at the county courthouse in _____, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at _____. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

(SEAL)

_____
CLERK OF COURT
_____County Courthouse
_____, Iowa_____

IMPORTANT

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS.

[Report 1976; Report 1978, effective July 1, 1979; April 30, 1987, effective July 1, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1901 Form 2:** ***Form of Original Notice Against a Nonresident Motor Vehicle Owner or Operator Under Iowa Code Section 321.500.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| Plaintiff(s), PIN | No. _____ |
| vs. | _____ (INSERT "LAW" OR "EQUITY") |
| Defendant(s), PIN | **ORIGINAL NOTICE** |

TO THE ABOVE-NAMED DEFENDANT(S):

You are notified that a petition has been filed in the office of the clerk of this court naming you as the defendant in this action. A copy of the petition (and any documents filed with it) is attached to this notice. The attorney for the plaintiff(s) is _____, whose address is _____, Iowa _____. That attorney's telephone number is _____; facsimile number _____.

You must serve a motion or answer within 60 days following the filing of this notice with the director of transportation of this state, and within a reasonable time thereafter, file your motion or answer with the Clerk of Court for _____ County, at the county courthouse in _____, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at _____. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

(SEAL)

_____
CLERK OF COURT
_____County Courthouse
_____, Iowa_____

IMPORTANT

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS.

[Report 1976; Report 1978, effective July 1, 1979; amendment 1984; Report April 30, 1987, effective July 1, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1901 Form 3:** ***Form of Original Notice Against Foreign Corporation or Nonresident Under Iowa Code Section 617.3.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| Plaintiff(s), PIN | No. _____ |
| vs. | _____ (INSERT "LAW" OR "EQUITY") |
| Defendant(s), PIN | **ORIGINAL NOTICE** |

TO THE ABOVE-NAMED DEFENDANT(S):

You are notified that a petition has been filed in the office of the clerk of this court naming you as the defendant in this action. A copy of the petition (and any documents filed with it) is attached to this notice. The attorney for the plaintiff(s) is _____, whose address is _____, Iowa _____. That attorney's telephone number is _____; facsimile number _____.

You must serve a motion or answer within 60 days following the filing of this notice with the secretary of state of the State of Iowa, and, within a reasonable time thereafter, file your motion or answer with the Clerk of Court for _____ County, at the county courthouse in _____, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at _____. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

(SEAL)

_____
CLERK OF COURT
_____County Courthouse
_____, Iowa_____

IMPORTANT

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS.

[Report 1976; Report 1978, effective July 1, 1979; April 30, 1987, effective July 1, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1901 Form 4:** ***Form of Original Notice for Publication.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| Plaintiff(s), PIN | No. _____ |
| vs. | _____ (INSERT "LAW" OR "EQUITY") |
| Defendant(s), PIN | **ORIGINAL NOTICE** |

TO THE ABOVE-NAMED DEFENDANT(S):

You are notified that a petition has been filed in the office of the clerk of this court naming you as a defendant in this action, which petition prays[1] _____. The attorney for the plaintiff(s) is _____, whose address is _____, Iowa _____. That attorney's telephone number is _____; facsimile number _____.

You must serve a motion or answer on or before the[2] _____ day of _____, 20 ___, and, within a reasonable time thereafter, file your motion or answer with the Clerk of Court for _____ County, at the courthouse in _____, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at _____. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

(SEAL)

_____
CLERK OF COURT
_____County Courthouse
_____, Iowa_____

IMPORTANT

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS.

[Report 1976; Report 1978, effective July 1, 1979; amendment 1979; Report April 3, 1986, effective July 1, 1986; April 30, 1987, effective July 1, 1987; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

---

[1]Here make a general statement of the claim or claims and, subject to the limitation in Iowa R. Civ. P. 1.403(1), the relief demanded (Iowa R. Civ. P. 1.302(1)).
[2]Date inserted here must not be less than 20 days after the day of the last publication of the original notice (Iowa R. Civ. P. 1.303).

**Rule 1.1901  Form 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: _____

_____ Courthouse _____

_____, 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

[Report 1976; November 9, 2001, effective February 15, 2002]

**Rule 1.1901 Form 6:** ***Final Pretrial Order.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| Plaintiff(s)<br><br>vs.<br><br>Defendant(s) | No. _____<br><br><br>**FINAL PRETRIAL ORDER** |
|---|---|

FOLLOWING THE FINAL PRETRIAL CONFERENCE IT IS ORDERED:

1. The following facts are undisputed:
   [list facts not in dispute]

2A. The following exhibits are received without objection:

2B. The following exhibits are subject to objection to be made at trial:

3. The legal issues to be tried are:
   [list theories of recovery or defense]

4. The factual issues to be tried are:
   [list the principal factual disputes and specifications of negligence or fault asserted by each party if applicable]

5. Requested instructions, motions in limine, and trial briefs shall be filed by _____

6. Trial will commence at _____ _____.m. on _____

7. It is further ordered that:
   [list other matters which the court desires to include]

_____

Judge for the _____ Judicial District of Iowa

[Report May 28, 1987, effective August 3, 1987; November 9, 2001, effective February 15, 2002]

**Rule 1.1901 — Form 7:** ***Dissolution of Marriage — Affidavit of Financial Status.*** The clerk of district court shall furnish without charge to parties in a dissolution of marriage action the following form of affidavit of financial status which includes the statement of net worth required by Iowa Code section 598.13, and other information deemed pertinent when a party is seeking or resisting alimony or support allowances.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| IN RE THE MARRIAGE OF<br>_____,<br>Petitioner,<br>and concerning<br>_____,<br>Respondent. | **DISSOLUTION OF MARRIAGE**<br>**AFFIDAVIT OF FINANCIAL STATUS** |

I, _____, the Petitioner/Respondent in the above-entitled matter, being first duly sworn, state the following is a true and complete statement of my assets and liabilities, under Division I (and my present income under Division II, if applicable) as of the _____ day of _____, 20 _____ (to be signed on page 2).

DIVISION I — NET WORTH STATEMENT
(Required in all dissolution cases §598.13)

ASSETS

(Attach additional sheets if necessary)

| Description | Ownership (H) (W) (J) | Market Value | Encumbrance | Net Value |
|---|---|---|---|---|
| Real Estate | | | | |
| (a) Homestead | ( ) | $ | $ | $ |
| (b) Other (describe) | ( ) | $ | $ | $ |
| Vehicles (make, year) | | | | |
| (a) | ( ) | $ | $ | $ |
| (b) | ( ) | $ | $ | $ |
| (c) | ( ) | $ | $ | $ |
| Life Insurance (cash value) | | | | |
| (a) | ( ) | $ | $ | $ |
| (b) | ( ) | $ | $ | $ |
| (c) | ( ) | $ | $ | $ |
| Securities | | | | |
| (a) | ( ) | $ | $ | $ |
| (b) | ( ) | $ | $ | $ |
| (c) | ( ) | $ | $ | $ |
| Cash & Bank Accounts | | | | |
| (a) | ( ) | $ | $ | $ |
| (b) | ( ) | $ | $ | $ |
| (c) | ( ) | $ | $ | $ |
| Household Contents | | | | |
| (a) Furniture | ( ) | $ | $ | $ |
| (b) Appliances | ( ) | $ | $ | $ |
| Other: | | | | |
| (c) | ( ) | $ | $ | $ |
| Other Assets - Itemize: | | | | |
| (a) | ( ) | $ | $ | $ |
| (b) | ( ) | $ | $ | $ |
| (c) | ( ) | $ | $ | $ |
| (d) | ( ) | $ | $ | $ |
| Totals | | $_____ | $_____ | $_____ |
| Less: Other debts - itemized below | | | | $_____ |

| Description | Ownership (H) (W) (J) | Market Value | Encumbrance | Net Value |
|---|---|---|---|---|
| NET WORTH | | | | $_____ |

DIVISION I — *continued*

_____ $_____
_____ $_____
_____ $_____
_____ $_____
Total $_____

DIVISION II — CURRENT INCOME AND EXPENSE INFORMATION
(To be completed by all parties seeking or resisting alimony or support allowances)

A. Income Source (including ADC & other support payments)

| | Gross | Deduction(s) (see below) | Net Income |
|---|---|---|---|
| (a) | $_____ per _____ | $_____ | $_____ |
| (b) | $_____ per _____ | $_____ | $_____ |
| (c) | $_____ per _____ | $_____ | $_____ |
| (d) | $_____ per _____ | $_____ | $_____ |
| | | Total | $_____ |

Deductions Explained (specify Income Source (a), (b), (c), etc.)

Income Source:

( ) $_____ per _____ for _____
( ) $_____ per _____ for _____
( ) $_____ per _____ for _____
( ) $_____ per _____ for _____
( ) $_____ per _____ for _____
( ) $_____ per _____ for _____

B. Affiant's estimate of the other spouse's income (including ADC & other support payment)

| | Gross | Deduction(s) (see below) | Net Income |
|---|---|---|---|
| (a) | $_____ per _____ | $_____ | $_____ |
| (b) | $_____ per _____ | $_____ | $_____ |
| (c) | $_____ per _____ | $_____ | $_____ |
| (d) | $_____ per _____ | $_____ | $_____ |
| | | Total | $_____ |

Deductions Explained (specify Income Source (a), (b), (c), etc.)

Income Source:

( ) $_____ per _____ for _____
( ) $_____ per _____ for _____
( ) $_____ per _____ for _____
( ) $_____ per _____ for _____
( ) $_____ per _____ for _____
( ) $_____ per _____ for _____

C. Residential Arrangements

Are both spouses living in the same dwelling? _____
If there are children, which spouse or other person has physical care of the children? _____
Do the children reside in the family dwelling or elsewhere? _____

DIVISION II — *continued*

D. Personal Expenses For Support of Affiant (and _____ children)
(Note: Report all expenses uniformly either weekly or monthly)

House payment or rent $_____ per _____
Meals or food $_____ per _____
Clothing $_____ per _____
Car expense, transportation $_____ per _____
Medical, dental $_____ per _____
Utilities & telephone $_____ per _____
Other expenses: _____ $_____ per _____
_____ $_____ per _____
_____ $_____ per _____

Installment Payments and Other
Debts Payable to:

_____ $_____ per _____
_____ $_____ per _____
_____ $_____ per _____
_____ $_____ per _____
_____ $_____ per _____

Total of Division D $_____

Affiant requests:
$_____ per _____ as child support
$_____ per _____ as temporary alimony
$_____ per _____ as temporary attorney fees

_____
Petitioner/Respondent

Subscribed and Sworn to before me this _____ day of _____, 20 _____.

_____
Notary Public In And For The State of Iowa

[Court Order June 26, 1980; July 10, 1980; July 27, 1984; Letter of request to correct total line of Division II, D by substituting "D" for "B," February 22, 1991; November 9, 2001, effective February 15, 2002]

**Rule 1.1901  Form 8:** ***Application for Appointment of Counsel and Financial Statement.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| Plaintiff,<br><br>v.<br><br>Defendant. | No. _____<br><br>**APPLICATION FOR APPOINTMENT OF COUNSEL AND FINANCIAL STATEMENT**<br><br>(General) |

I request that the court appoint counsel to represent me at public expense. I realize that I may be required to repay in whole or in part any public funds expended for this purpose. The following financial statement is submitted in support of my application:

Current mailing address: _____

Age: _____ Telephone number(s): _____

Marital status: Single _____ Married _____ Divorced _____ Widow(er) _____

Name of husband/wife: _____ Live with husband/wife Yes _____ No _____

If no, length of physical separation from husband/wife: _____

Number and ages of dependents: _____

_____

How long a resident of this county: _____

Occupation: _____

Present employer: _____

Address: _____

Former employer: _____

Address: _____

Weekly take-home (net) earnings: $_____ Weekly gross earnings $ _____

Total gross income for past 12 months: $ _____

Bank with: _____ Address: _____

Balance personal bank account: $ _____

Balance account in name of husband/wife: $ _____

Balance joint account with husband/wife: $ _____

Balance joint account with any other person(s): $ _____

What is your average monthly living expense (clothing, food, housing, transportation, other)? $_____

Does any person pay all or any portion of these expenses: Yes _____ No _____ If yes, who pays these costs and how much do they contribute? _____

Motor vehicles: Give make, year, present value, amount owing thereon, if any, and whether registered or titled in your name, name of husband/wife or jointly with another: _____

_____

_____

List all sources of income, in your name, name of husband/wife or jointly shared with another, including salary (net wages), pensions, bonds, stocks, securities, private business, farming, insurance, retirement benefits, social security benefits, lawsuits or settlements or others: _____

_____

_____

ADC or welfare relief, if any, in your name, name of husband/wife or jointly shared with another: _____

_____

List all sources of public assistance, if any, including ADC, unemployment compensation, heating assistance, food stamps: _____

_____

Real estate owned in your name, name of husband/wife or jointly shared with another (describe): _____

_____

_____

Other assets in your name, name of husband/wife or jointly shared with another (stereo, TV, furniture, trust funds, notes, bonds, stocks savings certificates, life insurance, other):

_____

_____

_____ Value: $ _____

Are you a beneficiary or heir in an estate of a person deceased? _____

List all debts or unpaid bills, including money owed for such things as: Housing, food, clothing, transportation (car, gas), utility costs, medical and dental services and other items, be specific: _____

_____

_____

Does anyone owe you money or have any property belonging to you? _____

_____

Give details in full: _____

_____

Do you have a judgment against anyone: Yes _____ No _____ If yes, give name, date, court and amount:

_____

_____

Have you or anyone else employed or offered to employ an attorney for _____ in this matter? Yes _____ No _____ If so, how much has the attorney been paid by you or for you?

$ _____

Who can verify this information: _____

Telephone number: _____ Address: _____

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the foregoing statements are true and correct to the best of my knowledge, and are made in support of my request that the court appoint legal counsel for me because I am financially unable to employ counsel.

_____

(Signature of applicant)

_____

The State of Iowa:

_____ does not object to the appointment of counsel.

_____ objects to the appointment of counsel and requests a hearing on the application.

Dated: _____, 20 _____.

(Assistant _____ County Attorney)

[Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 1.1901  Form 9:** ***Order on Application for Appointment of Counsel and Financial Statement.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| _____<br>Plaintiff,<br><br>v.<br><br>_____<br>Defendant. | No. _____<br><br>**ORDER ON APPLICATION FOR APPOINTMENT OF COUNSEL AND FINANCIAL STATEMENT**<br><br>(General) |

ORDER

Application is set for hearing at _____ o'clock _____a.m./p.m., the_____ day of _____, 20 ____, at _____.
Dated: _____, 20 _____.

_____
Judge/Magistrate

---

ORDER

Applicant's request for appointment of counsel is approved/denied.
_____is appointed to serve as counsel for _____.
Dated: _____, 20 _____.

_____
Judge/Magistrate

[Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 1.1901 Form 10:** ***Form of Notice of Intent to File Written Application for Default.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| Plaintiff(s),<br><br>vs.<br><br>Defendant(s). | No. _____<br><br>**NOTICE OF INTENT TO FILE WRITTEN APPLICATION FOR DEFAULT** |

TO: (defendant)

DATE OF NOTICE: (date of mailing)

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A DEFAULT JUDGMENT WILL BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD SEEK LEGAL ADVICE AT ONCE.

_____
(Signature of Plaintiff or Attorney)

_____
(Address)

_____
(Telephone Number)

[Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1901 Form 11:** ***Petition for Termination of Parental Rights and Child Support Obligation Pursuant to Iowa Code Section 600B.41A(7).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
(Name of county where you are filing this petition)

| | |
|---|---|
| IN THE MATTER OF THE PATERNITY OF<br>_____,<br>Child(ren),<br><br>_____,<br>Petitioner. (Father) | Case No. _____<br>(Leave blank—Clerk of Court will complete)<br><br>**PETITION FOR TERMINATION OF PARENTAL RIGHTS AND CHILD SUPPORT OBLIGATION PURSUANT TO IOWA CODE SECTION 600B.41A(7)** |

I, the petitioner, state:

1. In an order dated _____, and filed in _____ County, Iowa, the court found that I am the established, but not the biological, father of the child(ren) below:

_____

_____

Contrary to my wishes, the court denied my petition to overcome paternity and continued my child support obligation. A copy of that order is attached.

2. I seek to be relieved of the obligations of parenthood and child support.

3. I request that the court enter an order that terminates my parental rights to the above-named child(ren) and ends my obligation for any and all future child support.

4. Upon filing this petition, I will serve a copy on the following individuals:

(a) any parent who has not joined in this petition; and
(b) any person or agency with the right to receive child support for the above-named child(ren).

5. I understand that I must provide proof to the court that I served a copy of this petition as required in paragraph (4).

**WHEREFORE**, I ask the court to grant this petition to terminate my parental rights and to relieve me from any future child support payments.

_____
Petitioner

_____

_____
Address

Date: _____

NOTICE: If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at _____.
(If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

**STATE OF IOWA**
**_____ COUNTY** } **ss:**

I, _____, do on oath state that I have read the above petition and the information provided is true and accurate to the best of my knowledge.

_____
Petitioner (sign **only** in front of a Notary Public)

Sworn and subscribed to before me by _____ on this _____ day of _____, 20 _____.

_____
Notary Public in and for the State of Iowa

[Court Order June 26, 1997, temporary rules effective July 1, 1997; June 26, 1997, permanent rules effective September 1, 1997; November 9, 2001, effective February 15, 2002]

# CHAPTER 2
# RULES OF CRIMINAL PROCEDURE

## INDICTABLE OFFENSES

**Rule 2.1 Scope of rules and definitions.**

**2.1(1)** *Scope.* The rules in this section provide procedures applicable to indictable offenses.

**2.1(2)** *Definitions.*

*a. "Committing magistrate"* means judicial magistrates, district associate judges, and district judges.

*b. "Judicial officer"* means justices of the supreme court, judges of the court of appeals, and committing magistrates.

*c. "Mentally ill,"* as used in these rules, describes the condition of a person who is suffering from a mental disease or disorder and who, by reason of that condition, lacks sufficient judgment to make responsible decisions regarding treatment and is reasonably likely to injure the person's self or others who may come into contact with the person if the person is allowed to remain at liberty without treatment.

*d. "Unnecessary delay"* is any unexcused delay longer than 24 hours, and consists of a shorter period whenever a magistrate is accessible and available. [66GA, ch 1245(2), §1301; 67GA, ch 153, §2, 3; amendment 1981; 1984 Iowa Acts, ch 1323, §4; Report November 9, 2001, effective February 15, 2002]

**Rule 2.2 Proceedings before the magistrate.**

**2.2(1)** *Initial appearance of defendant.* An officer making an arrest with or without a warrant shall take the arrested person without unnecessary delay before a committing magistrate as provided by rule 2.27. When a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith. If the defendant received a citation or was arrested without a warrant, the magistrate shall, prior to further proceedings in the case, make an initial, preliminary determination from the complaint, or from an affidavit or affidavits filed with the complaint or from an oral statement under oath or affirmation from the arresting officer or other person, whether there is probable cause to believe that an offense has been committed and that the defendant has committed it. The magistrate's decision in this regard shall be entered in the magistrate's record of the case.

**2.2(2)** *Statement by the magistrate.* The magistrate shall inform a defendant who appears before the magistrate after arrest, complaint, summons, or citation of the complaint against the defendant, of the defendant's right to retain counsel, of the defendant's right to request the appointment of counsel if the defendant is unable by reason of indigency to obtain counsel, of the general circumstances under which the defendant may secure pretrial release, of the defendant's right to review of any conditions imposed on the defendant's release and shall provide the defendant with a copy of the complaint. The magistrate shall also inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant. The magistrate shall allow the defendant reasonable time and opportunity to consult counsel.

**2.2(3)** *Counsel for indigent.* The magistrate may appoint counsel to represent the defendant at public expense if the magistrate determines the defendant to be indigent in accordance with Iowa Code section 815.9.

**2.2(4)** *Preliminary hearing.* The defendant shall not be called upon to plead and the magistrate shall proceed as follows:

*a. Preliminary hearing.* The magistrate shall inform the defendant of the right to a preliminary hearing unless the defendant is indicted by a grand jury or a trial information is filed against the defendant or unless preliminary hearing is waived in writing or on the record. If the defendant waives preliminary hearing, the magistrate shall order the defendant held to answer in further proceedings. If the defendant does not waive the preliminary hearing, the magistrate shall schedule a preliminary hearing and inform the defendant of the date of the preliminary hearing. Such hearing shall be held within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if the defendant is not in custody. Upon showing of good cause, the time limits specified in this paragraph may be extended by the magistrate.

*b. Probable cause finding.* If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate shall order the defendant held to answer in further proceedings. The finding of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. The defendant may cross-examine witnesses and may introduce evidence in the defendant's own behalf.

*c. Constitutional objections.* Rules excluding evidence on the ground that it was acquired by unlawful means are not applicable. Motions to suppress must be made to the trial court as provided in rule 2.11(2).

*d. Private hearing.* Upon defendant's request and after making specific findings on the record that: (1) there is a substantial probability that the defendant's right to a fair trial will be prejudiced by publicity that closure would prevent and, (2) reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights, the magistrate may exclude from the hearing all persons except the magistrate, the magistrate's clerk, the peace officer who has custody of the defendant, a court reporter, the attorney or attorneys representing the state, a

peace officer selected by the attorney representing the state, the defendant, and the defendant's counsel.

*e. Discharge of defendant.* If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same offense.

*f. Transmission of magistrate's record entries.* After concluding the proceeding the magistrate shall transmit forthwith to the clerk of the district court all papers and recordings in the proceeding.

*g. Preliminary hearing testimony preserved by stenographer or tape recorder; production prior to trial.* Proceedings at the preliminary hearing shall be taken down by a court reporter or recording equipment and shall be made available on the following basis:

(1) On timely application to a magistrate, for good cause shown, and subject to the availability of facilities, the attorney for a defendant in a criminal case may be given the opportunity to have the recorded tape of the hearing on preliminary examination replayed in connection with any further hearing or in connection with the attorney's preparation for trial.

(2) On application of a defendant addressed to a district judge, showing that the record of preliminary hearing, in whole or in part, should be made available to the defendant's counsel, an order may issue that the clerk make available a copy of the record, or of a portion thereof, to defense counsel. The order shall require prepayment of the costs of the record by the defendant. However, if the defendant is indigent the record shall be made at public expense. The prosecution may move also that a copy of the record, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the government need not prepay costs nor furnish security therefor.

(3) The copy of the record of such proceedings furnished pursuant to rule 2.2(4)(*g*)(2) may consist of a tape of the recorded proceedings or a stenographic transcript of the proceedings.

If the record is ordered, the court shall specify in its order to the magistrate an appropriate method of making the record available. If, in any circumstance, a typewritten transcript is furnished counsel, a copy thereof shall be filed with the clerk of court. [66GA, ch 1245(2), §1301; 67GA, ch 153, §4 to 7; 69GA, ch 117, §1241; 1983 Iowa Acts, ch 186, §10143 and 10144; Report January 31, 1989, effective May 1, 1989; April 20, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 2.3 The grand jury.**

**2.3(1)** *Drawing grand jurors.* At such times as prescribed by the chief judge of the district court in the public interest, the names of the twelve persons constituting the panel of the grand jury shall be placed by the clerk in a container, and after thoroughly mixing the same, in open court the clerk shall draw therefrom seven names, and the persons so drawn shall constitute the grand jury. Computer selection processes may be used to randomly draw the seven names. Should any of the persons so drawn be excused by the court or fail to attend on the day designated for their appearance, the clerk shall draw either manually or by use of a computer selection process additional names until the seven grand jurors are secured.

If the panel is insufficient to provide and maintain a grand jury of seven members, the panel shall be refilled from the jury box or computer selection process by the clerk of the court under direction of the court; additional grand jurors shall be selected until a grand jury of seven grand jurors is secured, and they shall be summoned in the manner as those originally drawn.

**2.3(2)** *Challenge to grand jury.*

*a. Challenge to array.* A defendant held to answer for a public offense may, before the grand jury is sworn, challenge the panel or the grand jury, only for the reason that it was not composed or drawn as prescribed by law. If the challenge be sustained, the court shall thereupon proceed to take remedial action to compose a proper grand jury panel or grand jury.

*b. Challenge to individual jurors.* A challenge to an individual grand juror may be made before the grand jury is sworn as follows:

(1) By the state or the defendant, because the grand juror does not possess the qualifications required by law.

(2) By the state only because:

1. The juror is related either by affinity or consanguinity nearer than in the fifth degree, or stands in the relation of agent, clerk, servant, or employee, to any person held to answer for a public offense, whose case may come before the grand jury.

2. The juror is providing bail for anyone held to answer for a public offense, whose case may come before the grand jury.

3. The juror is defendant in a prosecution similar to any prosecution to be examined by the grand jury.

4. The juror is, or within one year preceding has been, engaged or interested in carrying on any business, calling, or employment the carrying on of which is a violation of law, and for which the juror may be indicted by the grand jury.

(3) By the defendant only because:

1. The juror is a complainant upon a charge against the defendant.

2. The juror has formed or expressed such an opinion as to the guilt or innocence of the defendant as would prevent the juror from rendering a true indictment upon the evidence submitted.

*c. Decision by court.* Challenges to the panel or to an individual grand juror shall be decided by the court.

*d. Motion to dismiss.* A motion to dismiss the indictment may be based on challenges to the array or to an individual juror, if the grounds for challenge which are alleged in the motion of the defendant have not previously been determined pursuant to a challenge asserted by the defendant pursuant to rule 2.3(2)(*a*) or 2.3(2)(*b*).

**2.3(3)** *Discharging and summoning jurors.*

*a. Discharge.* A grand jury, on the completion of its business, shall be discharged by the court. The grand jury shall serve until discharged by the court, and the regular term of service by a grand juror should not exceed one calendar year. However, when an investigation which has been undertaken by the grand jury is incomplete, the court may by order extend the eligibility of a grand juror beyond one year, to the completion of the investigation.

*b. Summoning jurors.* Upon order of the court the clerk shall issue a precept or precepts to the sheriff, commanding the sheriff to summon the grand juror or jurors. Upon a failure of a grand juror to obey such summons without sufficient cause, the grand juror may be punished for contempt.

*c. Excusing jurors.* If the court excuses a juror, the court may impanel another person in place of the juror excused. If the grand jury has been reduced to fewer than seven by reason of challenges to individual jurors being allowed, or from any other cause, the additional jurors required to fill the panel shall be summoned, first, from such of the twelve jurors originally summoned which were not drawn on the grand jury as first impaneled, and if they are exhausted the additional number required shall be drawn from the grand jury list. If a challenge to the array is allowed, a new grand jury shall be impaneled to inquire into the charge against the defendant in whose behalf the challenge to the array has been allowed, and they shall be summoned in the manner prescribed in this rule.

**2.3(4)** *Oaths and procedure.*

*a. Foreman or forewoman.* From the persons impaneled as grand jurors the court shall appoint a foreman or forewoman, or when the foreman or forewoman already appointed is discharged, excused, or from any cause becomes unable to act before the grand jury is finally discharged, an acting foreman or forewoman may be appointed.

The foreman or forewoman of the grand jury may administer the oath to all witnesses produced and examined before it.

*b. Clerks, bailiffs and court attendants.* The court may appoint as clerk of the grand jury a competent person who is not a member thereof. In addition the court may, if it deems it necessary, appoint assistant clerks of the grand jury. If no such appointments are made by the court, the grand jury shall appoint as its clerk one of its own number who is not its foreman or forewoman. In like manner the court may appoint bailiffs for the grand jury to serve with the powers of a peace officer while so acting.

*c. Oaths administered to grand jury, clerk, bailiff, and court attendant.* The following oath shall be administered to the grand jury: "Do each of you, as the grand jury, solemnly swear or affirm that you will diligently inquire and true presentment make of all public offenses against the people of this state, triable on indictment within this county, of which you have or can obtain legal evidence; you shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your presentments that you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding?"

Any clerk, assistant clerk, bailiff, or court attendant appointed by the court must be given the following oath: "Do you solemnly swear that you will faithfully and impartially perform the duties of your office, that you will not reveal to anyone its proceedings or the testimony given before it and will abstain from expressing any opinion upon any question before it, to or in the presence or hearing of the grand jury or any member thereof?"

*d. Secrecy of proceedings.* Every member of the grand jury, and its clerks, bailiffs and court attendants, shall keep secret the proceedings of that body and the testimony given before it, except as provided in rule 2.14. No such person shall disclose the fact that an indictment has been found except when necessary for the issuance and execution of a warrant or summons, and such duty of nondisclosure shall continue until the indicted person has been arrested. The prosecuting attorney shall be allowed to appear before the grand jury on his or her own request for the purpose of giving information or for the purpose of examining witnesses, and the grand jury may at all reasonable times ask the advice of the prosecuting attorney or the court. However, neither the prosecuting attorney nor any other officer or person except the grand jury may be present when the grand jury is voting upon the finding of an indictment.

*e. Securing witnesses and records.* The clerk of the court must, when required by the foreman or forewoman of the grand jury or prosecuting attorney, issue subpoenas including subpoenas duces tecum for witnesses to appear before the grand jury.

The grand jury is entitled to free access at all reasonable times to county institutions and places of confinement, and to the examination without charge of all public records within the county.

*f. Minutes.* The clerk of the grand jury shall take and preserve minutes of the proceedings and of the evidence given before it, except the votes of its individual members on finding an indictment.

*g. Evidence for defendant.* The grand jury is not bound to hear evidence for the defendant, but may do so, and must weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it may order the same produced.

*h. Refusal of witness to testify.* When a witness under examination before the grand jury refuses to testify or to answer a question, it shall proceed with the witness before a district judge, and the foreman or forewoman shall then distinctly state before a district judge the question

and the refusal of the witness, and if upon hearing the witness the court decides that the witness is bound to testify or answer the question propounded, the judge shall inquire whether the witness persists in refusing and, if the witness does, shall proceed with the witness as in cases of similar refusal in open court.

*i. Effect of refusal to indict.* If, upon investigation, the grand jury refuses to find an indictment against one charged with a public offense, it shall return all papers to the clerk, with an endorsement thereon, signed by the foreman or forewoman, to the effect that the charge is ignored. Thereupon, the district judge must order the discharge of the defendant from custody if in jail, and the exoneration of bail if bail be given. Upon good cause shown, the district judge may direct that the charge again be submitted to the grand jury. Such ignoring of the charge does not prevent the cause from being submitted to another grand jury as the court may direct; but without such direction, it cannot again be submitted.

*j. Duty of grand jury.* The grand jury shall inquire into all indictable offenses brought before it which may be tried within the county, and present them to the court by indictment. The grand jury shall meet at times specified by order of a district judge. In addition to those times, the grand jury shall meet at the request of the county attorney or upon the request of a majority of the grand jurors.

It is made the special duty of the grand jury to inquire into:

(1) The case of every person imprisoned in the detention facilities of the county on a criminal charge and not indicted.

(2) The condition and management of the public prisons, county institutions and places of detention within the county.

(3) The unlawful misconduct in office in the county of public officers and employees.

*k. Appearance not required.* A person under the age of ten years shall not be required to personally appear before a grand jury to testify against another person related to the person or another person who resided with the person at the time of the action which is the subject of the grand jury's investigation, unless there exists a special order of the court finding that the interests of justice require the person's appearance and that the person will not be disproportionately traumatized by the appearance. [66GA, ch 1245(2), §1301; 67GA, ch 153, §8 to 11, ch 1037, §11; amendment 1980; amendment 1983; 1985 Iowa Acts, ch 174, §12; Report November 9, 2001, effective February 15, 2002; February 22, 2002, effective May 1, 2002]

**Rule 2.4 Indictment.**

**2.4(1)** *Defined.* An indictment is an accusation in writing, found and presented by a grand jury legally impaneled and sworn to the court in which it is impaneled, charging that the person named therein has committed an indictable public offense.

**2.4(2)** *Use of indictment.* Criminal offenses other than simple misdemeanors may be prosecuted to final judgment either on indictment or on information as provided in rule 2.5.

**2.4(3)** *Evidence to support.* An indictment should be found when all the evidence, taken together, is such as in the judgment of the grand jury, if unexplained, would warrant a conviction by the trial jury; otherwise it shall not. An indictment can be found only upon evidence given by witnesses produced, sworn, and examined before the grand jury, or furnished by legal documentary evidence, or upon the stenographic or taped record of evidence given by witnesses before a committing magistrate. If an indictment is found in whole or in part upon testimony taken before a committing magistrate, the clerk of the grand jury shall write out a brief minute of the substance of such evidence, and the same shall be returned to the court with the indictment.

**2.4(4)** *Vote necessary.* An indictment cannot be found without the concurrence of five grand jurors. Every indictment must be endorsed "a true bill" and the endorsement signed by the foreman or forewoman of the grand jury.

**2.4(5)** *Presentation and filing.* An indictment, when found by the grand jury and properly endorsed, shall be presented to the court with the minutes of evidence of the witnesses relied on. The presentation shall be made by the foreman or forewoman of the grand jury in the presence of the members of the grand jury. The indictment, minutes of evidence, and all exhibits relating thereto shall be transmitted to the clerk of the court and filed by the clerk.

**2.4(6)** *Minutes.*

*a. Contents.* A minute of evidence shall consist of a notice in writing stating the name, place of residence, and occupation of the witness upon whose testimony the indictment is found, and a full and fair statement of the witness' testimony before the grand jury and a full and fair statement of additional expected testimony at trial.

*b. Copy to defense.* Such minutes of evidence shall not be open for the inspection of any person except the judge of the court, the prosecuting attorney, or the defendant and the defendant's counsel. The clerk of the court must, on demand made, furnish the defendant or his or her counsel a copy thereof without charge.

*c. Minutes used again.* A grand jury may consider minutes of testimony previously heard by the same or another grand jury. In any case, a grand jury may take additional testimony.

**2.4(7)** *Contents of indictment.* An indictment is a plain, concise, and definite statement of the offense charged. The indictment shall be signed by the foreman or forewoman of the grand jury. The names of all witnesses on whose evidence the indictment is found must be endorsed thereon. The indictment shall substantially comply with the form that accompanies these rules. The indictment shall include the following:

*a.* The name of the accused, if known, and if not known, designation of the accused by any name by which the accused may be identified.

*b.* The name and if provided by law the degree of the offense, identifying by number the statutory provision or provisions alleged to have been violated.

*c.* Where the time or place is a material ingredient of the offense a brief statement of the time or place of the offense if known.

*d.* Where the means by which the offense is committed are necessary to charge an offense, a brief statement of the acts or omissions by which the offense is alleged to have been committed.

No indictment is invalid or insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in a matter of form which does not prejudice a substantial right of the defendant.

**2.4(8)** *Amendment.*

*a. Generally.* The court may, on motion of the state, either before or during the trial, order the indictment amended so as to correct errors or omissions in matters of form or substance. Amendment is not allowed if substantial rights of the defendant are prejudiced by the amendment, or if a wholly new and different offense is charged.

*b. Amendment before trial.* If the application for an amendment be made before the commencement of the trial, the application and a copy of the proposed amendment shall be served upon the defendant, or upon the defendant's attorney of record, and an opportunity given the defendant to resist the same.

*c. Amendment during trial.* If the application be made during the trial, the application and the amendment may be dictated into the record in the presence of the defendant and the defendant's counsel, and such record shall constitute sufficient notice to the defendant.

*d. Continuance.* When an application for amendment is sustained, no continuance or delay in trial shall be granted because of such amendment unless it appears that defendant should have additional time to prepare because of such amendment.

*e. Amendment of minutes.* Minutes may be amended in the same manner and to the same extent that an indictment may be amended. [66GA, ch 1245(2), §1301; 67GA, ch 153, §12, 13; amendment 1979; amendment 1980; amendment 1999; Report November 9, 2001, effective February 15, 2002]

**Rule 2.5 Information.**

**2.5(1)** *Prosecution on information.* All indictable offenses may be prosecuted by a trial information. An information charging a person with an indictable offense may be filed with the clerk of the district court at any time, whether or not the grand jury is in session. The county attorney shall have the authority to file such a trial information except as herein provided or unless that authority is specifically granted to other prosecuting attorneys by statute.

The attorney general, unless otherwise authorized by law, shall have the authority to file such a trial information upon the request of the county attorney and the determination of the attorney general that a criminal prosecution is warranted.

**2.5(2)** *Endorsement.* An information shall be endorsed "a true information" and shall be signed by the prosecuting attorney.

**2.5(3)** *Witness names and minutes.* The prosecuting attorney shall, at the time of filing such information, also file the minutes of evidence of the witnesses which shall consist of a notice in writing stating the name, place of residence and occupation of each witness upon whose expected testimony the information is based, and a full and fair statement of the witness' expected testimony.

**2.5(4)** *Approval by judge.* Prior to the filing of the information, it must be approved by a district judge, or a district associate judge or judicial magistrate having jurisdiction of the offense. If the judge or magistrate finds that the evidence contained in the information and the minutes of evidence, if unexplained, would warrant a conviction by the trial jury, the judge or magistrate shall approve the information which shall be promptly filed. If not approved, the charge may be presented to the grand jury for consideration. At any time after judicial approval of an information, and prior to the commencement of trial, the court, on its own motion, may order the information set aside and the case submitted to the grand jury.

**2.5(5)** *Indictment rules applicable.* The information shall be drawn and construed, in matters of substance, as indictments are required to be drawn and construed. The term "indictment" embraces the trial information, and all provisions of law applying to prosecutions on indictments apply also to informations, except where otherwise provided for by statute or in these rules, or when the context requires otherwise.

**2.5(6)** *Investigation by prosecuting attorney.* The clerk of the district court, on written application of the prosecuting attorney and the approval of the court, shall issue subpoenas including subpoenas duces tecum for such witnesses as the prosecuting attorney may require in investigating an offense, and in such subpoenas shall direct the appearance of said witnesses before the prosecuting attorney at a specified time and place. Such application and judicial order of approval shall be maintained by the clerk in a confidential file until a charge is filed, in which event disclosure shall be made, unless the court in an in-camera hearing orders that it be kept confidential. The prosecuting attorney shall have the authority to administer oaths to said witnesses and shall have the services of the clerk of the grand jury in those counties in which such clerk is regularly employed. The rights and responsibilities of such witnesses and any penalties for

violations thereof shall otherwise be the same as a witness subpoenaed to the grand jury. [66GA, ch 1245(2), §1301; 67GA, ch 153, §14, 15; Report 1978, effective July 1, 1979; amendment 1979; amendment 1982; amendment 1983; amended February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 2.6 Multiple offenses or defendants; pleading special matters.**

**2.6(1)** *Multiple offenses.* Two or more indictable public offenses which arise from the same transaction or occurrence or from two or more transactions or occurrences constituting parts of a common scheme or plan, when alleged and prosecuted contemporaneously, shall be alleged and prosecuted as separate counts in a single complaint, information or indictment, unless, for good cause shown, the trial court in its discretion determines otherwise. Where a public offense carries with it certain lesser included offenses, the latter should not be charged, and it is sufficient to charge that the accused committed the major offense.

**COMMENT:** This rule is not intended to eliminate a prosecutor's discretion not to charge certain offenses at the time other offenses growing out of the same transaction or that are part of a common scheme are being charged. Nor is it intended to prevent a later charge from being filed with respect to an offense that has not initially been included. The rule is only intended to require that all contemporaneous criminal filings in which the crimes charged grow out of the same transaction or are part of a common scheme be combined in a single indictment or information. The rule will facilitate uniformity in charging practices to assure the comparability of statistical data derived from case filings and will eliminate unnecessary multiple filings which place an unnecessary administrative burden on the court system.

**2.6(2)** *Prosecution and judgment.* Upon prosecution for a public offense, the defendant may be convicted of either the public offense charged or an included offense, but not both.

**2.6(3)** *Duty of court to instruct.* In cases where the public offense charged may include some lesser offense it is the duty of the trial court to instruct the jury, not only as to the public offense charged but as to all lesser offenses of which the accused might be found guilty under the indictment and upon the evidence adduced, even though such instructions have not been requested.

**2.6(4)** *Charging multiple defendants.*

*a. Multiple defendants.* Two or more defendants may be charged in the same indictment, information, or complaint if they are alleged to have participated in the same act or the same transaction or occurrence out of which the offense or offenses arose. Such defendants may be charged in one or more counts together or separately, and all the defendants need not be charged in each count.

*b. Prosecution and judgment.* When an indictment or information jointly charges two or more defendants, those defendants may be tried jointly if in the discretion of the court a joint trial will not result in prejudice to one or more of the parties. Otherwise, defendants shall be tried separately. When jointly tried, defendants shall be adjudged separately on each count.

**2.6(5)** *Allegations of prior convictions.* If the offense charged is one for which the defendant, if convicted, will be subject by reason of the Code to an increased penalty because of prior convictions, the allegation of such convictions, if any, shall be contained in the indictment. A supplemental indictment shall be prepared for the purpose of trial of the facts of the current offense only, and shall satisfy all pertinent requirements of the Code, except that it shall make no mention, directly or indirectly, of the allegation of the prior convictions, and shall be the only indictment read or otherwise presented to the jury prior to conviction of the current offense. The effect of this subrule shall be to alter the procedure for trying, in one criminal proceeding, the offenses appropriate to its provisions, and not to alter in any manner the basic elements of an offense as provided by law.

**2.6(6)** *Allegations of use of a dangerous weapon.* If the offense charged is one for which the defendant, if convicted, will be subject by reason of the Code* to a minimum sentence because of use of a dangerous weapon, the allegation of such use, if any, shall be contained in the indictment. If use of a dangerous weapon is alleged as provided by this rule, and if the allegation is supported by the evidence, the court shall submit to the jury a special interrogatory concerning this matter, as provided in rule 2.22(2). [Report 1980; amendment 1999; November 9, 2001, effective February 15, 2002]

**See* §902.7

**2.6(7)** *Pleading statutes.* A pleading asserting any statute of another state, territory or jurisdiction of the United States, or a right derived therefrom, shall refer to such statute by plain designation and if such reference is made, the court shall judicially notice such statute. [66GA, ch 1245(2), §1301; 67GA, ch 153, §16; amendment 1980; amendment 1982; amendment 1983; Report January 24, 2000, effective March 1, 2000; November 9, 2001, effective February 15, 2002]

**Rule 2.7 Proceedings after indictment or information.**

**2.7(1)** *Issuance.* Upon the request of the prosecuting attorney the court shall issue a warrant for each defendant named in the indictment or information. The clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court. The warrant or summons shall be delivered to a person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

**2.7(2)** *Form.*

*a. Warrant.* The warrant shall be signed by the judge or clerk; it shall describe the offense charged in the indictment; and it shall command that the defendant shall be arrested and brought before the court. The amount of bail or other conditions of release may be fixed by the court and endorsed on the warrant. The warrant shall substantially comply with the form that accompanies these rules. The warrant may be served in any county in the state.

*b. Summons.* The summons shall be in the form described in Iowa Code section 804.2, except that it shall be signed by the clerk. A summons to a corporation shall be in the form prescribed in Iowa Code section 807.5.

**2.7(3)** *Execution, service, and return.*

*a. Execution or service.* The warrant shall be executed or the summons served as provided in Iowa Code chapter 804. Upon the return of an indictment or upon the filing of trial information against a person confined in any penal institution, the court to which such indictment is returned may enter an order directing that such person be produced before it for trial. The sheriff shall execute such order by serving a copy thereof on the warden having such accused person in custody and thereupon such person shall be delivered to such sheriff and conveyed to the place of trial.

*b. Return.* The officer executing a warrant, or the person to whom a summons was delivered for service shall make return thereof to the court. [66GA, ch 1245(2), §1301; 67GA, ch 153, §17, 18; amendment 1983; Report November 9, 2001, effective February 15, 2002]

**Rule 2.8 Arraignment and plea.**

**2.8(1)** *Conduct of arraignment.* Arraignment shall be conducted as soon as practicable. If the defendant appears for arraignment without counsel, the court must, before proceeding further, inform the defendant of the right to counsel and ask if the defendant desires counsel; and if the defendant does, and is unable by reason of indigency to employ any, the court must appoint defense counsel, who shall have free access to the defendant at all reasonable hours. Arraignment shall consist of reading the indictment to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the indictment or information before being called upon to plead.

The defendant must be informed that if the name by which the defendant is indicted or informed against is not the defendant's true name, the defendant must then declare what the defendant's true name is, or be proceeded against by the name in the indictment. If the defendant gives no other name or gives the defendant's true name, the defendant is thereafter precluded from objecting to the indictment or information upon the ground of being therein improperly named. If the defendant alleges that another name is the defendant's true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment shall be had against the defendant by that name, and the indictment amended accordingly.

Unless otherwise ordered by the court, a defendant represented by an attorney may waive the formal arraignment contemplated by this rule and enter a plea of not guilty by executing and filing a written arraignment that substantially complies with the form that accompanies these rules. The arraignment form must assure the court that the defendant has been advised of, and is aware of, all the rights and matters specified in this rule and that the full purposes of an arraignment have been satisfied.

**2.8(2)** *Pleas to the indictment or information.*

*a. In general.* A defendant may plead guilty, not guilty, or former conviction or acquittal. If the defendant fails or refuses to plead at arraignment, or if the court refuses to accept a guilty plea, the court shall enter a plea of not guilty. At any time before judgment, the court may permit a guilty plea to be withdrawn and a not guilty plea substituted.

*b. Pleas of guilty.* The court may refuse to accept a plea of guilty, and shall not accept a plea of guilty without first determining that the plea is made voluntarily and intelligently and has a factual basis. Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered.

(2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.

(3) That a criminal conviction, deferred judgment, or deferred sentence may affect a defendant's status under federal immigration laws.

(4) That the defendant has the right to be tried by a jury, and at trial has the right to assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right not to be compelled to incriminate oneself, and the right to present witnesses in the defendant's own behalf and to have compulsory process in securing their attendance.

(5) That if the defendant pleads guilty there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial.

The court may, in its discretion and with the approval of the defendant, waive the above procedures in a plea of guilty to a serious or aggravated misdemeanor.

*c. Inquiry regarding plea agreement.* The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the attorney for the state and the defendant or the defendant's attorney. The terms of any plea agreement shall be disclosed of record as provided in rule 2.10(2).

*d. Challenging pleas of guilty.* The court shall inform the defendant that any challenges to a plea of guilty based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to so raise such challenges shall preclude the right to assert them on appeal.

**2.8(3)** *Record of proceedings.* A verbatim record of the proceedings at which the defendant enters a plea shall be made. [66GA, ch 1245(2), §1301; 67GA, ch 153, §19 to 23; Report 1978, effective July 1, 1979; amendment 1979; amendment 1982; amendment 1983; 1984 Iowa Acts, ch 1321, §1; Report of April 20, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 2.9 Trial assignments.**

**2.9(1)** *Prompt assignment.* Within seven days after the entry of an oral plea of not guilty or the filing of a written plea of not guilty, the court or its designee shall set the date and time for trial in writing with copies to counsel and to the clerk for the court file.

**2.9(2)** *Firmness of trial date.* The date assigned for trial shall be considered firm. Motions for continuance are discouraged. A motion for continuance shall not be granted except upon a showing of good and compelling cause.

**2.9(3)** *Priority assignment.* Prosecutions for violations of Iowa Code sections 709.2, 709.3, 709.4 and 726.2 shall, as practicable, be given priority on a court's criminal docket. [Report 1982; 1985 Iowa Acts, ch 174, §13; November 9, 2001, effective February 15, 2002]

**Rule 2.10 Plea bargaining.**

**2.10(1)** *In general.* The prosecuting attorney and the attorney for the defendant may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will make a charging or sentencing concession.

**2.10(2)** *Advising court of agreement.* If a plea agreement has been reached by the parties the court shall require the disclosure of the agreement in open court at the time the plea is offered. Thereupon, if the agreement is conditioned upon concurrence of the court in the charging or sentencing concession made by the prosecuting attorney, the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until receipt of a presentence report.

**2.10(3)** *Acceptance of plea agreement.* When the plea agreement is conditioned upon the court's concurrence, and the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement. In that event, the court may accept a waiver of the use of the presentence investigation, the right to file a motion in arrest of judgment, and time for entry of judgment, and proceed to judgment.

**2.10(4)** *Rejection of plea agreement.* If, at the time the plea of guilty is tendered, the court refuses to be bound by or rejects the plea agreement, the court shall inform the parties of this fact, afford the defendant the opportunity to then withdraw defendant's plea, and advise the defendant that if persistence in a guilty plea continues, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement. If the defendant persists in the guilty plea and it is accepted by the court, the defendant shall not have the right subsequently to withdraw the plea except upon a showing that withdrawal is necessary to correct a manifest injustice.

**2.10(5)** *Inadmissibility of plea discussions.* If a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or is withdrawn, or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible in any criminal or civil action or administrative proceeding. [66GA, ch 1245(2), §1301; 67GA, ch 153, §24; amendment 1979; Court Order April 10, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 2.11 Motions and pleadings.**

**2.11(1)** *Pleadings and motions.* Pleadings in criminal proceedings shall be the indictment and the information, and the pleas entered pursuant to rule 2.8. Demurrers, motions to quash, and motions to set aside are abolished, and defenses and objections raised before trial which heretofore could have been raised under them shall be raised by motion to dismiss, or a motion to grant appropriate relief, as the case may be.

**2.11(2)** *Pretrial motions.* Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. The following must be raised prior to trial:

*a.* Defenses and objections based on defects in the institution of the prosecution.

*b.* Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceeding).

*c.* Motions to suppress evidence on the ground that it was illegally obtained including, but not limited to, motions on any ground listed in rule 2.12.

*d.* Requests for discovery.

*e.* Requests for a severance of charges or defendants.

*f.* Motions for change of venue or change of judge.

*g.* Motion in limine.

**2.11(3)** *Effect of failure to raise defenses or objections.* Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial under this rule shall constitute waiver thereof, but the court for good cause shown, may grant relief from such waiver.

**2.11(4)** *Time of filing.* Motions hereunder, except motions in limine, shall be filed when the grounds therefor reasonably appear but no later than 40 days after arraignment. Motions in limine shall be filed when grounds therefor reasonably appear but no later than nine days before the trial date. If a written arraignment under rule 2.8(1) is used, the date of arraignment is the date the written arraignment is filed.

**2.11(5)** *Bill of particulars.* When an indictment or information charges an offense in accordance with this rule, but fails to specify the particulars of the offense sufficiently to fairly enable the defendant to prepare a defense, the court may, on written motion of the defendant, require the prosecuting attorney to furnish the defendant with a bill of particulars containing such particulars as may be necessary for the preparation of the defense. A motion for a bill of particulars may be made any time prior to or within ten days after arraignment unless the time be extended by the court for good cause shown. A plea of not guilty at arraignment does not waive the right to move for a bill of particulars if such motion is timely filed within this rule. The prosecuting attorney may furnish a bill of particulars on the prosecuting attorney's own motion, or the court may order a bill of particulars without motion. Supplemental bills of particulars may be likewise ordered by the court or voluntarily furnished, or a new bill may be substituted for a bill already furnished. At the trial the state's evidence shall be confined to the particulars of the bill or bills.

**2.11(6)** *Dismissing indictment or information.*

*a. In general.* If it appears from the indictment or information and the minutes of evidence that the particulars stated do not constitute the offense charged in the indictment or information, or that the defendant did not commit that offense or that a prosecution for that offense is barred by the statute of limitations, the court may and on motion of the defendant shall dismiss the indictment or information unless the prosecuting attorney shall furnish a bill of particulars which so states the particulars as to cure the defect.

*b. Indictment.* A motion to dismiss the indictment may be made on one or more of the following grounds:

(1) When the minutes of the evidence of witnesses examined before the grand jury are not returned therewith.

(2) When it has not been presented and marked "filed" as prescribed.

(3) When any person other than the grand jurors was present before the grand jury when the question was taken upon the finding of the indictment.

(4) When any person other than the grand jurors was present before the grand jury during the investigation of the charge, except as required or permitted by law.

(5) That the grand jury was not selected, drawn, summoned, impaneled, or sworn as prescribed by law.

*c. Information.* A motion to dismiss the information may be made on one or more of the following grounds:

(1) When the minutes of evidence have not been filed with the information.

(2) When the information has not been filed in the manner required by law.

(3) When the information has not been approved as required under rule 2.5(4).

*d. Time of motion.* Entry of a plea of not guilty at arraignment does not waive the right to move to dismiss the indictment or information if such motion is timely filed within this rule.

**2.11(7)** *Effect of determination.* If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified period pending the filing of a new indictment or information if the same was dismissed by the court, or the amendment of any such pleading if the defect is subject to correction by amendment. The new information or indictment must be filed within 20 days of the dismissal of the original indictment or information. The 90-day period under rule 2.33(2)(*b*) for bringing a defendant to trial shall commence anew with the filing of the new indictment or information.

**2.11(8)** *Ruling on motion.* A pretrial motion shall be determined without unreasonable delay. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

**2.11(9)** *Motion for change of judge.*

*a. Form of motion.* A motion for a change of judge shall be verified on information and belief by the movant.

*b. Change of judge.* If the court is satisfied from a motion for a change of judge and the evidence introduced in support of the motion that prejudice exists on the part of the judge, the chief judge shall name a new presiding judge. The location of the trial need not be changed.

**2.11(10)** *Motion for change of venue.*

*a. Form of motion.* A motion for a change of venue shall be verified on information and belief by the movant.

*b. Change of venue ordered.* If the court is satisfied from a motion for a change of venue and the evidence introduced in support of the motion that such degree of prejudice exists in the county in which the trial is to be held that there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from that county, the court either shall order that the action be transferred to another county in which the offensive condition does not exist, as provided in rule 2.11(10)(*c*), or shall order that the trial jury be impaneled in and transferred from a county in which the offensive condition does not exist, as provided in rule 2.11(10)(*d*).

*c. Transfer of action.* When a transfer of the action to another county is ordered under rule 2.11(10)(*b*) the clerk shall transmit to the clerk of the court of the county to which the proceeding is transferred all papers in the proceeding or duplicates of them and any bail taken, and the prosecution shall continue in that county. If the defendant is in custody, the court may order the defendant to be delivered to the sheriff of the receiving county, and upon receipt of a certified copy of the order, the sheriff shall receive and detain the defendant. All expenses attendant upon the change of venue and trial, including the costs of keeping the defendant, which shall be allowed by the court trying the case, may be recovered by the receiving county from the transferring county. The prosecuting attorney in the transferring county is responsible for prosecution in the receiving county.

*d. Transfer of jury.*

(1) This paragraph applies if the court orders under rule 2.11(10)(*b*) that a jury be transferred from another county.

(2) Upon issuance of the order under rule 2.11(10)(*b*), the clerk of court shall immediately notify the chief judge of the judicial district that includes the county from which the trial jury is to be obtained. The chief judge shall schedule a day for the commencement of proceedings under rule 2.11(10)(*d*)(5) and shall cause notice of the proceedings to be delivered to the trial judge, to the attorneys for the prosecution and the defense, and to the clerks of court of the two counties that are affected by the proceedings. The clerk of the trial court shall deliver to the trial judge all documents that must be present in court at the time trial is commenced under rule 2.11(10)(*d*)(5).

(3) The trial judge shall issue orders as necessary to assure the presence of the defendant during proceedings under rule 2.11(10)(*d*)(5). If the defendant is in custody, the sheriff of the trial county is responsible for transporting the defendant to and from the place of jury selection. The sheriff of the county from which the jury is to be obtained shall receive and maintain temporary custody of the defendant as ordered by the trial court.

(4) The trial court shall retain jurisdiction of the action, and all proceedings and records shall be maintained in the ordinary manner, except that the trial record shall contain pertinent information respecting the change of location for the proceedings under rule 2.11(10)(*d*)(5) and the reason for the change.

(5) The commencement of the trial and the jury selection process shall take place in the county in which the jury is to be impaneled. The clerk of court of that county shall perform all of the trial duties of the clerk of court during proceedings that take place in that county. Once the jury has been sworn, the court shall adjourn for the period of time necessary to permit the transportation of the jury to the trial county. Upon reconvening, the trial shall continue in the usual manner.

(6) The court may issue orders respecting segregation of the jury while traveling and during the trial as necessary to preserve the integrity of the trial.

(7) The trial county shall provide transportation for the jurors to and from the place of trial, and shall provide the proper officers to take custody of the jurors after they are sworn and until they are discharged, as ordered by the trial court.

(8) The trial county shall pay all expenses incurred in connection with the jury, including but not necessarily limited to juror fees, the costs of transporting, housing, and feeding the jury, and the costs and expenses of officers assigned to take custody of the jury. The trial county shall pay the costs of transporting the defendant to and from the place of jury selection, if any. The county from which the jury is obtained may recover from the trial county any costs allowed by the trial court for maintaining custody of the defendant at the time of trial commencement and jury selection.

(9) Members of the trial jury and alternates shall each be paid the usual juror fee for service under this paragraph, but the fee shall be due for each calendar day they are under the direction of the court or its officers, commencing with the day they are sworn and ending with the day they are returned to the county of their residence after being discharged.

*See also* Iowa Ct. R. 22.9

**2.11(11)** *Notices of defendant.*

*a. Alibi.* A defendant who intends to offer evidence of an alibi defense shall, within the time provided for the making of pretrial motions or at such later time as the court shall direct, file written notice of such intention. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. In the event that a defendant shall file such notice the prosecuting attorney shall file written notice of the names and addresses of the witnesses the state proposes to offer in rebuttal to discredit the defendant's alibi. Such notice shall be filed within ten days after filing of defendant's witness list, or within such other time as the court may direct.

*b. Insanity and diminished responsibility.*

(1) *Defense of insanity and diminished responsibility.* If a defendant intends to rely upon the defense of insanity or diminished responsibility at the time of the alleged crime, the defendant shall, within the time provided for the filing of pretrial motions, file written notice of such intention. The court may for good cause shown, allow late filing of the notice or grant additional time to the parties to prepare for trial or make other order as appropriate.

When the defendant has asserted a defense of insanity the burden of proof is on the defendant to prove insanity by a preponderance of the evidence as provided for in Iowa Code section 701.4.

(2) *State's right to expert examination.* When a defendant has given notice of the use of the defense of insanity or diminished responsibility and intends to call an expert witness or witnesses on that issue at trial the defendant shall, within the time provided for the filing of pretrial motions, file written notice of the name of each such witness. Upon such notice or as otherwise appropriate the court may upon application order the examination of the defendant by a state-named expert or experts whose names shall be disclosed to the defendant prior to examination.

*c. Intoxication, entrapment, and self-defense.* If defendant intends to rely upon the defense of intoxication by drugs or alcohol, entrapment, or self-defense, the defendant shall, within the time for filing pretrial motions, file written notice of such intention. The court may for good cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

*d. Failure to comply.* If either party fails to abide by the time periods heretofore described, such party may not offer evidence on the issue of alibi, insanity, diminished responsibility, intoxication, entrapment, or self-defense without leave of court for good cause shown. In granting leave, the court may impose terms and conditions including a delay or continuance of trial. The right of a defendant to give evidence of alibi, insanity, diminished responsibility, intoxication, entrapment, or self-defense in the defendant's own testimony is not limited by this rule. [66GA, ch 1245(2), §1301; 67GA, ch 153, §25 to 36; amendment 1980; amendment 1981; 82 Acts, ch 1021, §1 to 3, effective July 1, 1983; amendment 1983; amendment 1984; 1984 Iowa Acts, ch 1320, §2; Report January 31, 1989, effective May 1, 1989; Report September 22, 1999; February 8, 2000; November 9, 2001, effective February 15, 2002]

**Rule 2.12 Suppression of evidence obtained by an unlawful search and seizure.**

**2.12(1)** *Motion to suppress evidence.* A person aggrieved by an unlawful search and seizure may move to suppress for use as evidence anything so obtained on any of the following grounds:

*a.* The property was illegally seized without a warrant.

*b.* The warrant is insufficient on its face.

*c.* The property seized is not that described in the warrant.

*d.* There was not probable cause for believing the existence of the grounds on which the warrant was issued.

*e.* The warrant was illegally executed. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored to its owner or legal custodian unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial.

The motion shall be made as provided in rules 2.11(2) to 2.11(4)

**2.12(2)** *Discretionary review of interlocutory order.* Any party aggrieved by an interlocutory order affecting the validity of a search warrant or the suppression of evidence, except in simple misdemeanors, may apply for discretionary review of the order in advance of trial. [66GA, ch 1245(2), §1301; 67GA, ch 153, §37; amendment 1979; amendment 1980; Report November 9, 2001, effective February 15, 2002]

*See also* rule 2.70

**Rule 2.13 Depositions.**

**2.13(1)** *By defendant.* A defendant in a criminal case may depose all witnesses listed by the state on the indictment or information or notice of additional witnesses in the same manner and with like effect and with the same limitations as in civil actions except as otherwise provided by statute and these rules. Depositions before indictment or trial information is filed may only be taken with leave of court.

When the state receives notice that a deposition will be taken of a witness listed on the indictment, information or notice of additional witnesses, the state may object that the witness *(a)* is a foundation witness or *(b)* has been adequately examined on preliminary hearing. The court shall immediately determine whether discovery of the witness is necessary in the interest of justice and shall allow or disallow the deposition.

**2.13(2)** *Special circumstances.*

*a.* Whenever the interests of justice and the special circumstances of a case make necessary the taking of the testimony of a prospective witness not included in rule 2.13(1) or 2.13(3), for use at trial, the court may upon motion of a party and notice to the other parties order that the testimony of the witness be taken by deposition and that any designated book, paper, document, record, recording, or other material, not privileged, be produced at the same time and place. For purposes of this subsection, special circumstances shall be deemed to exist and the court shall order that depositions be taken only upon a showing of necessity arising from either of the following:

(1) The information sought by way of deposition cannot adequately be obtained by a bill of particulars or voluntary statements.

(2) Other just cause necessitating the taking of the deposition.

*b.* The court may upon motion of a party and notice to the other parties order that the testimony of a victim or witness who is a child, as defined in Iowa Code section 702.5, be taken by deposition for use at trial. Only the judge, parties, counsel, persons necessary to record the deposition, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the child may be present in the room with the child during the child's deposition.

The court may require a party be confined to an adjacent room or behind a screen or mirror that permits the party to see and hear the child during the child's deposition, but does not allow the child to see or hear the party. However, if a party is so confined, the court shall take measures to ensure that the party and counsel can confer during the deposition and shall inform the child that the party can see and hear the child during deposition.

**2.13(3)** *By state.* At or before the time of the taking of a deposition by a defendant under rule 2.13(1) or 2.13(2), the defendant shall file a written list of the names and addresses of all witnesses expected to be called for the defense (except the defendant and surrebuttal witnesses), and the defendant shall have a continuing duty before and throughout trial promptly to disclose additional defense

witnesses. Such witnesses shall be subject to being deposed by the state.

**2.13(4)** *Failure to comply.* If the defendant has taken depositions under rule 2.13(1) and does not disclose to the prosecuting attorney all of the defense witnesses (except the defendant and surrebuttal witnesses) at least nine days before trial, the court may order the defendant to permit the discovery of such witnesses, grant a continuance, or enter such other order as it deems just under the circumstances. It may, if it finds that no less severe remedy is adequate to protect the state from undue prejudice, order the exclusion of the testimony of any such witnesses.

**2.13(5)** *Perpetuating testimony.* A person expecting to be a party to a criminal prosecution may perpetuate testimony in the person's favor in the same manner and with like effect as may be done in expectation of a civil action.

**2.13(6)** *Time of taking.* Depositions shall be taken within 30 days after arraignment unless the period for taking is extended by the court for good cause shown. [66GA, ch 1245(2), §1301; 67GA, ch 153, §38; amendment 1980; amendment 1981; amendment 1982; 1985 Iowa Acts, ch 174, §14; Report November 9, 2001, effective February 15, 2002]

**Rule 2.14 Discovery.**

**2.14(1)** *Witnesses examined by the prosecuting attorney.* When a witness subpoenaed by the prosecuting attorney pursuant to rule 2.5 is summoned by the prosecuting attorney after complaint, indictment or information, the defendant shall have a right to be present and have the opportunity to cross-examine any witnesses whose appearance before the county attorney is required by this rule.

**2.14(2)** *Disclosure of evidence by the state upon defense motion or request.*

*a. Disclosure required upon request.*

(1) Upon a filed pretrial request by the defendant the attorney for the state shall permit the defendant to inspect and copy or photograph: Any relevant written or recorded statements made by the defendant or copies thereof, within the possession, custody or control of the state, unless same shall have been included with the minutes of evidence accompanying the indictment or information; the substance of any oral statement made by the defendant which the state intends to offer in evidence at the trial, including any voice recording of same; and the transcript or record of testimony of the defendant before a grand jury, whether or not the state intends to offer same in evidence upon trial.

(2) When two or more defendants are jointly charged, upon the filed request of any defendant the attorney for the state shall permit the defendant to inspect and copy or photograph any written or recorded statement of a codefendant which the state intends to offer in evidence at the trial, and the substance of any oral statement which the state intends to offer in evidence at the trial made by a codefendant whether before or after arrest in response to interrogation by any person known to the codefendant to be a state agent.

(3) Upon the filed request of the defendant, the state shall furnish to defendant such copy of the defendant's prior criminal record, if any, as is then available to the state.

*b. Discretionary discovery.*

(1) Upon motion of the defendant the court may order the attorney for the state to permit the defendant to inspect, and where appropriate, to subject to scientific tests, items seized by the state in connection with the alleged crime. The court may further allow the defendant to inspect and copy books, papers, documents, statements, photographs or tangible objects which are within the possession, custody or control of the state, and which are material to the preparation of the defense, or are intended for use by the state as evidence at the trial, or were obtained from or belong to the defendant.

(2) Upon motion of a defendant the court may order the attorney for the state to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the state.

**2.14(3)** *Disclosure of evidence by the defendant.*

*a. Documents and tangible objects.* If the court grants the relief sought by the defendant under rule 2.14(2)(*b*)(1), the court may, upon motion of the state, order the defendant to permit the state to inspect and copy books, papers, documents, statements other than those of the accused, photographs or tangible objects which are not privileged and are within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at trial.

*b. Reports of examinations and tests.* If the court grants relief sought by the defendant under rule 2.14(2)(*b*)(2), the court may, upon motion of the state, order the defendant to permit the state to inspect and copy the results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant and which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when such results or reports relate to the witness's testimony.

*c. Time of motion.* A motion for the relief provided under rule 2.14(3) shall be made, if at all, within five days after any order granting similar relief to the defendant.

**2.14(4)** *Failure to employ evidence.* When evidence intended for use and furnished under this rule is not actually employed at the trial, that fact shall not be commented upon at trial.

**2.14(5)** *Continuing duty to disclose.* If, subsequent to compliance with an order issued pursuant to this rule, either party discovers additional evidence, or decides to use evidence which is additional to that originally intended for use, and such additional evidence is subject to discovery under this rule, the party shall promptly file written notice of the existence of the additional evidence to allow the other party to make an appropriate motion for additional discovery.

**2.14(6)** *Regulation of discovery.*

*a. Protective orders.* Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. In addition to any other grounds for issuing an order pursuant to this paragraph, the court may limit or deny discovery or inspection, or limit the number of depositions to be taken if the court determines that any of the following exist:

(1) That granting the motion will unfairly prejudice the nonmoving party and will deny that party a fair trial.

(2) That the motion is intended only as a fishing expedition and that granting the motion will unduly delay the trial and will result in unjustified expense.

(3) That the granting of the motion will result in the disclosure of privileged information.

*b. Time, place and manner of discovery and inspection.* An order of the court granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

*c. Failure to comply.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may upon timely application order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing any evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

*d. Secrecy of grand jury.* Except where specific provisions require otherwise, grand jury proceedings remain confidential. However, any member of the grand jury and the clerk thereof, and any officer of the court, may be required by the court or any legislative committee duly authorized to inquire into the conduct or acts of any state officer which might be the basis for impeachment proceedings, to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that given by the witness before the court or legislative committee, or to disclose the same upon a charge of perjury against the witness, or when in the opinion of the court or legislative committee such disclosure is necessary in the administration of justice.

No grand juror shall be questioned for anything the juror may say or any vote the juror may give in the grand jury relative to a matter legally pending before it, except for perjury of which the juror may have been guilty in making an accusation, or in giving testimony to any fellow jurors. [66GA, ch 1245(2), §1301; 67GA, ch 153, §39, 40, 41; amendment 1981; Report November 9, 2001, effective February 15, 2002]

**Rule 2.15 Subpoenas.**

**2.15(1)** *For witnesses.* A magistrate in a criminal action before the magistrate, and the clerk of court in any criminal action pending therein, shall issue blank subpoenas for witnesses, signed by the magistrate or clerk, with the seal of the court if by the clerk, and deliver as many of them as requested to the defendant or the defendant's attorney or the attorney for the state.

**2.15(2)** *For production of documents duces tecum.* A subpoena may contain a clause directing the witness to bring with the witness any book, writing, or other thing under the witness's control which the witness is bound by law to produce as evidence. The court on motion may dismiss or modify the subpoena if compliance would be unreasonable or oppressive.

**2.15(3)** *Service.* A subpoena may be served in any part of the state. It may be served by any adult person. A peace officer making service in a criminal case must serve without delay in the peace officer's county or city any subpoena delivered to the peace officer for service and make a written return stating the time, place, and manner of service. When service is made by a person other than a peace officer, proof thereof shall be by affidavit. Service upon an adult witness is made by showing the original to the witness and delivering a copy to the witness. Service upon a minor witness shall be as provided for personal service of an original notice in a civil case pursuant to Iowa R. Civ. P. 1.305(2).

**2.15(4)** *Depositions.* An order to take a deposition authorizes the clerk of the court for the county in which the deposition is to be taken to issue subpoenas for the persons named or described therein.

**2.15(5)** *Sanctions for refusing to appear or testify.* Disobedience to a subpoena, or refusal to be sworn or to answer as a witness, may be punished by the court or magistrate as a contempt. The attendance of a witness who so fails to appear may be coerced by warrant. [66GA, ch 1245(2), §1301; 67GA, ch 153, §42; Report April 20, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 2.16 Pretrial conference.**

**2.16(1)** *When held.* Where a plea of not guilty to an indictment or trial information is entered on behalf of the defendant, the court may order all parties to the action to appear before it for a conference to consider such matters as will promote a fair and expeditious trial.

**2.16(2)** *Discussions and record.* The conference may explore such matters as amendment of pleadings, agreement to the introduction into evidence of photographs or other exhibits to which there is no objection, submission of requested jury instructions, and any other matters appropriate for discussion which may aid and expedite trial of the case.

**2.16(3)** *Stipulations and orders.* The court shall make an order reciting any action taken at the conference which will control the subsequent course of the action relative to matters it includes, unless modified to prevent manifest injustice. A stipulation entered into at such conference shall bind the defendant at trial, on appeal, or in a post-conviction proceeding only if signed by both the defendant and the defendant's attorney and filed with the clerk. [66GA, ch 1245(2), §1301; 67GA, ch 153, §43; Report November 9, 2001, effective February 15, 2002]

**Rule 2.17 Trial by jury or court.**

**2.17(1)** *Trial by jury.* Cases required to be tried by jury shall be so tried unless the defendant voluntarily and intelligently waives a jury trial in writing and on the record within 30 days after arraignment, or if no waiver is made within 30 days after arraignment the defendant may waive within ten days after the completion of discovery, but not later than ten days prior to the date set for trial, as provided in these rules for good cause shown, and after such times only with the consent of the prosecuting attorney. The defendant may not withdraw a voluntary and knowing waiver of trial by jury as a matter of right, but the court, in its discretion, may permit withdrawal of the waiver prior to the commencement of the trial.

**2.17(2)** *Findings.* In a case tried without a jury the court shall find the facts specially and on the record, separately stating its conclusions of law and rendering an appropriate verdict. [66GA, ch 1245(2), §1301; 67GA, ch 153, §44; 69GA, ch 206, §16; amendment 1983; 1986 Iowa Acts, ch 1106, §1; Report November 9, 2001, effective February 15, 2002]

**Rule 2.18 Juries.**

**2.18(1)** *Selection.* At each jury trial the clerk shall select a number of prospective jurors equal to twelve plus the prescribed number of strikes, by drawing ballots from a box without seeing the names. The clerk shall list all jurors so drawn. Computer selection processes may be used instead of separate ballots to select jury panels. Before drawing begins, either party may require that the names 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.

**2.18(2)** *Depletion of panel.* If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the statutes pertaining to selecting, drawing, and summoning juries.

**2.18(3)** *Challenges to the panel.* Before any juror is sworn for examination, 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 the trial.

**2.18(4)** *Challenges to individual juror.* A challenge to an individual juror for cause is an objection which may be taken orally.

**2.18(5)** *Challenges for cause.* A challenge for cause may be made by the state or defendant, and must distinctly specify the facts constituting the causes thereof. It may be made for any of the following causes:

*a.* A previous conviction of the juror of a felony.

*b.* A want of any of the qualifications prescribed by statute to render a person a competent juror.

*c.* Unsoundness of mind, or such defects in the faculties of the mind or the organs of the body as render the juror incapable of performing the duties of a juror.

*d.* Affinity or consanguinity, within the fourth degree, to the person alleged to be injured by the offense charged, or on whose complaint, or at whose instance, the prosecution was instituted, or to the defendant, to be computed according to the rule of the civil law.

*e.* Standing in the relation of guardian and ward, attorney and client, employer and employee, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint, or at whose instance, the prosecution was instituted, or in the person's employ on wages.

*f.* Being a party adverse to the defendant in a civil action, or having been the prosecutor against or accused by the defendant in a criminal prosecution.

*g.* Having served on the grand jury which found the indictment.

*h.* Having served on a trial jury which has tried another defendant for the offense charged in the indictment.

*i.* Having been on a jury formerly sworn to try the same indictment and whose verdict was set aside, or which was discharged without a verdict after the cause was submitted to it.

*j.* Having served as a juror, in a civil action brought against the defendant, for the act charged as an offense.

*k.* Having formed or expressed such an opinion as to the guilt or innocence of the defendant as would prevent the juror from rendering a true verdict upon the evidence submitted on the trial.

*l.* Because of the juror providing bail for any defendant in the indictment.

*m.* Because the juror is a defendant in a similar indictment, or complainant against the defendant or any other person indicted for a similar offense.

*n.* Because the juror is, or within a year preceding has been, engaged or interested in carrying on any business, calling, or employment, the carrying on of which is a violation of law, where the defendant is indicted for a like offense.

*o.* Because the juror has been a witness, either for or against the defendant, on the preliminary hearing or before the grand jury.

*p.* Having requested, directly or indirectly, that the juror's name be returned as a juror for the regular biennial period.

**2.18(6)** *Examination of jurors.* Upon examination the jurors shall be sworn. If an individual juror is challenged, the juror may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry thereon, but the juror's answer shall not afterwards be testimony against the juror. Other witnesses may also be examined on either side. The rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge, and the court shall determine the law and the facts, and must allow or disallow the challenge.

**2.18(7)** *Order of challenges for cause.* The state shall first complete its challenges for cause, and the defendant afterward, until a number of jurors equal to twelve plus the prescribed number of strikes has been obtained against whom no cause of challenge has been found to exist.

**2.18(8)** *Vacancy filled.* After each challenge for cause which is sustained, another juror shall be called and examined before a further challenge is made; and any new juror thus called may be challenged for cause and shall be subject to being struck from the list as other jurors.

**2.18(9)** *Strikes—number.* If the offense charged is a class "A" felony, the state and defendant shall each strike ten prospective jurors.

If the offense charged is a felony other than a class "A" felony, the state and the defendant shall each strike six prospective jurors.

If the offense charged is a misdemeanor, the state and the defendant shall each strike four prospective jurors.

**2.18(10)** *Multiple charges.* If the indictment charges different offenses in different counts, the state and the defendant shall each have that number of strikes which they each would have if the highest grade of offense charged in the indictment were the only charge.

**2.18(11)** *Multiple defendants.* In a case where two or more defendants are tried, each defendant shall have one-half the number of strikes allowed in rule 2.18(9). The state shall have the number of strikes equal to the total number of strikes allotted to all defendants. Subject to the court's approval, the parties may agree to a reduced number of strikes.

**2.18(12)** *Clerk to prepare list—procedure.* The clerk shall prepare a list of jurors called; and, after all challenges for cause are exhausted or waived, each side, commencing with the state, shall alternately exercise its strikes by indicating the strike upon the list opposite the name of the juror.

**2.18(13)** *Reading of names.* After all challenges have thus been exercised or waived and the required number of jurors has been struck from the list the clerk shall read the names of the twelve jurors remaining who shall constitute the jury selected.

**2.18(14)** *Jurors sworn.* When twelve jurors are accepted they shall be sworn to try the issues.

**2.18(15)** *Alternate jurors.* The court may require one or more alternate jurors to be selected whose qualifications, powers, functions, facilities, and privileges shall be the same as regular jurors. After the regular jury is selected, the clerk shall draw the names of three more persons if one alternate juror is desired, or four more persons if two alternate jurors are desired, and so on in like proportion, who are to serve under this rule, who shall be sworn and subject to examination and challenge for cause as provided in this rule. Each side must then strike off one such name, and the one or two or appropriate number remaining shall be sworn to try the case with the regular jury, and sit at the trial. Alternate jurors shall, in the order they were drawn, replace any juror who becomes unable to act, or is disqualified, before the jury retires, and if not so needed shall then be discharged.

If a jury is being selected for trial of an action outside of the county pursuant to rule 2.11(10)*(d)*, the court shall require two alternate jurors to be selected, who shall be sworn with the regular jury to try the case, and who shall sit at the trial. These alternates shall be used or discharged in accordance with this rule. The court may require more than two alternates to be selected.

**2.18(16)** *Returning ballots to box.* When a jury is sworn, the ballots containing the names of those absent or excused from the trial shall be immediately returned to the box. Those containing the names of jurors sworn shall be set aside, and returned to the box immediately on the discharge of that jury. [66GA, ch 1245(2), §1301; 67GA, ch 153, §45 to 49; Report 1978, effective July 1, 1979; amendment 1980; amendment 1982; 82 Acts, ch 1021, §4, effective July 1, 1983; amendment 1983; 1986 Iowa Acts, ch 1108, §56; November 9, 2001, effective February 15, 2002]

**Rule 2.19 Trial.**

**2.19(1)** *Order of trial and arguments.*

*a. Order of trial.* The jury having been impaneled and sworn, the trial must proceed in the following order:

(1) *Reading indictment and plea.* The clerk or prosecuting attorney must read the accusation from the indictment or the supplemental indictment, as appropriate, and state the defendant's plea to the jury.

(2) *Statement of state's evidence.* The prosecuting attorney may briefly state the evidence by which the prosecuting attorney expects to sustain the indictment.

(3) *Statement of defendant's evidence.* The attorney for the defendant may then briefly state the defense, or the attorney for the defendant may waive the making of such statement; the attorney for the defendant may reserve the right to make such statement to a time immediately prior to presentation of defendant's evidence.

(4) *Offer of state's evidence.* The state may then offer the evidence in support of the indictment.

(5) *Offer of defendant's evidence.* The defendant or the defendant's counsel may then offer evidence in support of the defense.

(6) *Rebutting or additional evidence.* The parties may then, respectively, offer rebutting evidence only, unless the court, for good reasons, in furtherance of justice, permits them to offer evidence upon their original case.

*b. Order of argument.* After the closing of evidence the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal. Length of argument and

the number of counsel arguing shall be as limited by the court. When two or more defendants are on trial for the same offense, they may be heard by one counsel each.

**2.19(2)** *Advance notice of evidence supporting indictments or informations.* The prosecuting attorney, in offering trial evidence in support of an indictment, shall not be permitted to introduce any witness the minutes of whose testimony was not presented with the indictment to the court; in the case of informations, a witness may testify in support thereof if the witness's identity and a minute of the witness's evidence has been given pursuant to these rules. However, these provisions are subject to the following exception: Additional witnesses in support of the indictment or trial information may be presented by the prosecuting attorney if the prosecuting attorney has given the defendant's attorney of record, or the defendant if the defendant has no attorney, a minute of such witness's evidence, as defined in rule 2.4(6)(*a*) or rule 2.5(3), at least ten days before the commencement of the trial.

**2.19(3)** *Failure to give notice.* If the prosecuting attorney does not give notice to the defendant of all prosecution witnesses (except rebuttal witnesses) at least ten days before trial, the court may order the state to permit the discovery of such witnesses, grant a continuance, or enter such other order as it deems just under the circumstances. It may, if it finds that no less severe remedy is adequate to protect the defendant from undue prejudice, order the exclusion of the testimony of any such witnesses.

**2.19(4)** *Reporting of trial.* All the provisions relating to mode and manner of the trial of civil actions, report thereof, translation of the shorthand reporter's notes, the making of such reports and translation of the record, and in all other respects, apply to the trial of criminal actions. Upon request of any party, final arguments shall be reported. [Transcript fee, see Iowa Code section 602.3202]

**2.19(5)** *The jury upon trial.*

*a. View.*

(1) *When taken.* Upon motion made, when the court is of the opinion that it is proper, the jury may view the place where the offense is charged to have been committed, or where any other material fact occurred. The court may order the jury to be conducted in a body, in the custody of proper officers, to the place, which shall be shown them by a person appointed by the court for that purpose.

(2) *Attending officers.* The officers must be sworn to suffer no person to speak to or communicate with the jury on any subject connected with the trial, or to do so themselves, except the person appointed by the court for that purpose, and then only to show the place to be viewed, and to return them into court without unreasonable delay at a specified time.

*b. Juror may not be witness.* A member of the jury may not testify as a witness in the trial of the case in which the juror is sitting. If the juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

*c. Separation of jurors.* The jurors shall be kept together unless the court permits the jurors to separate as in civil cases; and the officers having charge of the jury shall be sworn to suffer no person to communicate with them except as provided for in civil cases.

*d. Admonition to jurors.* The jury, whether permitted to separate or kept together in charge of sworn officers, must be admonished by the court that it is their duty not to permit any person to speak to or communicate with them on any subject connected with the trial, and that any and all attempts to do so should be immediately reported by them to the court, and that they should not converse among themselves on any subject connected with the trial, or form or express an opinion thereon, until the cause is finally submitted to them, that they should not make an unauthorized visit to the scene of the alleged offense, and that they should refrain from conducting any unauthorized experiments or tests relating to the alleged offense. Said admonition must be given or referred to by the court at each adjournment during the progress of the trial previous to the final submission of the cause to the jury.

*e. Notes taken by jurors during trial; exhibits used during deliberations.* Notes may be taken by jurors during the testimony of witnesses. All jurors shall have an equal opportunity to take notes. The court shall instruct the jury to mutilate and destroy any notes taken during the trial at the completion of the jury's deliberations. Upon retiring for deliberations the jury may take with it all papers and exhibits which have been received in evidence, and the court's instructions; provided, however, the jury shall not take with it depositions, nor shall it take original public records and private documents as ought not, in the opinion of the court, to be taken from the person possessing them.

*f. Instructions.* The rules relating to the instruction of juries in civil cases shall apply to the trial of criminal cases.

*g. Report for information.* After the jury has retired for deliberation, if there be any disagreement as to any part of the testimony, or if it desires to be informed on any point of law arising in the cause, it must require the officer to conduct it into court, and, upon its being brought in, the information required may be given, in the discretion of the trial court. Where further information as to the testimony which was given at trial is taken by the jury, this shall be accomplished by the court reporter or other appropriate official reading from the reporter's notes. Where the court gives the jury additional instructions, this shall appear of record. The procedures described shall take place in the presence of defendant and counsel for the defense and prosecution, unless such presence is waived.

*h. Jury deliberations.* On final submission, the jury shall retire for deliberation, and be kept together in charge of an officer until they agree on a verdict or are discharged by the court, unless the court permits the jurors to separate temporarily overnight, on weekends or holidays, or in emergencies. The officer in charge must be sworn to not suffer any communication to be made to them during their deliberations, nor to make any to them, except to ask them if they have agreed on a verdict, unless by order of court; nor to communicate to any person the state of their deliberations, or the verdict agreed upon before it is rendered.

**2.19(6)** *Retrial of defendants when original jury is discharged, and in other cases.*

*a. Illness of jurors and other cases.* The court may discharge a jury because of any accident or calamity requiring it, or by consent of all parties, or when on an amendment a continuance is ordered, or if they have deliberated until it satisfactorily appears that they cannot agree. The case shall be retried within 90 days unless good cause for further delay is shown.

*b. Lack of jurisdiction; no offense charged.* The court may also discharge the jury when it appears that it has no jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law.

*c. Crime committed in another state.* If the jury be discharged because the court lacks jurisdiction of the offense charged in the indictment, the offense being committed out of the jurisdiction of this state, the defendant must be discharged, or ordered to be retained in custody a reasonable time until the prosecuting attorney shall have a reasonable opportunity to inform the chief executive of the state in which the offense was committed of the facts, and for said officer to require the delivery of the offender.

*d. No offense charged; resubmission.* If the jury be discharged because the facts set forth do not constitute an offense punishable by law, the court must order the defendant discharged and his or her bail, if any, exonerated, or, if the defendant has deposited money instead of bail, that the money deposited be refunded, or that any conditions upon the defendant's release from custody be discharged. If in the court's opinion a new indictment can be framed upon which the defendant can be legally convicted, the court may direct that the case be submitted to the same or another grand jury.

**2.19(7)** *The trial judge.*

*a. Competency of judge as witness.* The judge presiding at the trial shall not testify in that trial as a witness. If the judge is called to testify, no objection need be made in order to preserve the point.

*b. Disability of trial judge.*

(1) *During trial.* If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying familiarity with the record of the trial, may proceed with and finish the trial.

(2) *After verdict or finding of guilt.* If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilty, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that such duties cannot be performed because the judge did not preside at the trial or for any other reason, the judge may, exercising discretion, grant a new trial.

*c. Adjournments declared by trial court.* While the jury is absent, the court may adjourn from time to time for other business, but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury is discharged.

**2.19(8)** *Motion for judgment of acquittal.*

*a. Motion before submission to jury.* The court on motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the prosecuting attorney is not granted, the defendant may offer evidence without having waived the right to rely on such motion.

*b. Reservation of decision on motion.* If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict or is discharged without having returned a verdict.

**2.19(9)** *Trial of questions involving prior convictions.* After conviction of the primary or current offense, but prior to pronouncement of sentence, if the indictment or information alleges one or more prior convictions which by the Code subjects the offender to an increased sentence, the offender shall have the opportunity in open court to affirm or deny that the offender is the person previously convicted, or that the offender was not represented by counsel and did not waive counsel. If the offender denies being the person previously convicted, sentence shall be postponed for such time as to permit a trial before a jury on the issue of the offender's identity with the person previously convicted. Other objections shall be heard and determined by the court, and these other objections shall be asserted prior to trial of the substantive offense in the manner presented in rule 2.11. On the issue of identity, the court may in its discretion reconvene the jury which heard the current offense or dismiss that jury and submit the issue to another jury to be later impaneled. If the offender is found by the jury to be the person previously convicted, or if the offender acknowledged being such person, the offender shall be sentenced as prescribed in the Code. [66GA, ch 1245(2), §1301; 67GA, ch 153, §50 to 57; Report 1978, effective July 1, 1979; amendment 1979; amendment 1982; Report December 29, 1992, effective July 1, 1993; November 9, 2001, effective February 15, 2002]

**Rule 2.20 Witnesses.**

**2.20(1)** *Competency of witnesses; cross-examination of the accused.* The rules for determining the competency of witnesses in civil actions are, so far as they are in their nature applicable, extended also to criminal actions and proceedings, except as otherwise provided. A defendant in a criminal action or proceeding shall be a competent witness in the defendant's own behalf, but cannot be called by the state. If the defendant is offered as a witness, the defendant may be cross-examined as an ordinary witness, but the state shall be strictly confined therein to the matters testified to in the examination in chief.

**2.20(2)** *Compelling attendance of witnesses from without the state to proceedings in Iowa.* The presence and testimony of a witness located outside the state may be secured through the uniform Act to secure witnesses from without the state set forth in Iowa Code chapter 819.

**2.20(3)** *Immunity.*

*a.* Before any witness shall be compelled to answer or to produce evidence in any judicial proceeding after having asserted that such answer or evidence would tend to render the witness criminally liable, incriminate the witness or violate the witness's right to remain silent, the witness must knowingly waive the witness's right or:

(1) A county attorney or the attorney general must file with a district judge a verified application setting forth that:

The testimony of the witness, or the production of documents or other evidence in the possession of such witness, or both, is necessary and material; and

The witness has refused to testify, or to produce documents or other evidence, or both, upon the ground that such testimony or evidence would tend to incriminate the witness; and

It is the considered judgment of the county attorney or attorney general that justice and the public interest require the testimony, documents or evidence in question.

(2) The application, transcripts and orders required by this subrule shall be filed as a separate case in the criminal docket entitled "In the matter of the testimony of (Name of witness)" and shall be indexed in the criminal index under the name of the witness. Any testimony given in support of the application for immunity shall be reported and a transcript of the testimony shall be filed with the application.

(3) Upon consideration of such application the judge shall enter an order granting the witness immunity to prosecution for any crime or public offense concerning which the witness was compelled to give competent and relevant testimony or to produce competent and relevant evidence.

(4) Testimony, documents or evidence which has been given by a witness granted immunity shall not be used against the witness in any trial or proceeding, or subject the witness to any penalty or forfeiture; provided, that such immunity shall not apply to any prosecution or proceeding for a perjury or a contempt of court committed in the course of or during the giving of such testimony.

*b.* A complete verbatim transcript of testimony given pursuant to an order of immunity shall be made and filed with the application and the order of court. The application, order granting immunity and all transcripts filed shall be sealed upon motion of the defendant, county attorney, or attorney general and shall be opened only by order of the court. This section shall not bar the use of the transcript as evidence in any proceeding except the transcript shall not be used in any proceeding against the witness except for perjury or contempt.

*c.* Whoever shall refuse to testify or to produce evidence after having been granted immunity as aforesaid shall be subject to punishment for contempt of court as in the case of any witness who refuses to testify, a claim to privilege against self-incrimination notwithstanding.

**2.20(4)** *Witnesses for indigents.* Counsel for a defendant who because of indigency is financially unable to obtain expert or other witnesses necessary to an adequate defense of the case may request in a written application that the necessary witnesses be secured at public expense. Upon finding, after appropriate inquiry, that the services are necessary and that the defendant is financially unable to provide compensation, the court shall authorize counsel to obtain the witnesses on behalf of the defendant. The court shall determine reasonable compensation and direct payment pursuant to Iowa Code chapter 815. [66GA, ch 1245(2), §1301; 67GA, ch 153, §58 to 60; 1983 Iowa Acts, ch 186, §10145; Report November 9, 2001, effective February 15, 2002]

**Rule 2.21 Evidence.**

**2.21(1)** *Rules.* The rules of evidence prescribed in civil procedure shall apply to criminal proceedings as far as applicable and not inconsistent with the provisions of statutes and these rules.

**2.21(2)** *Questions of law and fact.* Upon jury trial of a criminal case, questions of law are to be decided by the court, saving the right of the defendant and state to object; questions of fact are to be tried by jury.

**2.21(3)** *Corroboration of accomplice or person solicited.* A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

Corroboration of the testimony of victims shall not be required.

**2.21(4)** *Confession of defendant.* The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the defendant committed the offense.

**2.21(5)** *Disposition of exhibits.* In all criminal cases other than class "A" felonies, the clerk may dispose of all exhibits within 60 days after the first to occur of:

*a.* Expiration of all sentences imposed in the case.

*b.* Order of the court after at least 30 days written notice to all counsel of record including the last counsel of record for the defense, and to the defendant, if incarcerated, granting the right to be heard on the question.

Disposal of firearms and ammunition shall be by delivery to the Department of Public Safety for disposition as provided by law. Disposal of controlled substances shall be by delivery to the Department of Public Safety for disposal under Iowa Code section 124.506. [66GA, ch 1245(2), §1301; 67GA, ch 153, §61 to 63; 1983 Iowa Acts, ch 37, §7; 1985 Iowa Acts, ch 174, §15; Court Order January 2, 1996, effective March 1, 1996; Report November 9, 2001, effective February 15, 2002]

**Rule 2.22 Verdict.**

**2.22(1)** *Form of verdicts.* The jury must render a verdict of "guilty," which imports a conviction, or "not guilty," "not guilty by reason of insanity," or "not guilty by reason of diminished responsibility," which imports acquittal, on the charge. The jury shall return a verdict determining the degree of guilt in cases submitted to determine the grade of the offense.

**2.22(2)** *Answers to interrogatories.* It must also return with the general verdict answers to special interrogatories submitted by the court upon its own motion, or at the request of the defendant in prosecutions where the defense is an affirmative one, or it is claimed any witness is an accomplice, or there has been a failure to corroborate where corroboration is required.

Where a defendant is alleged to be subject to the minimum sentence provisions of Iowa Code section 902.7, (use of a dangerous weapon), and the allegation is supported by the evidence, the court shall submit a special interrogatory concerning that matter to the jury.

**2.22(3)** *Finding offense of different degree; included offenses.* Upon trial of an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense when such attempt is prohibited by law. In all cases, the defendant may be found guilty of any offense the commission of which is necessarily included in that with which the defendant is charged.

**2.22(4)** *Several defendants.* On an indictment or information against several defendants, if the jury cannot agree upon a verdict as to all, it may render a verdict as to those in regard to whom it does agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted.

**2.22(5)** *Return of jury; reading and entry of verdict; unanimous verdict; sealed verdict.* The jury, agreeing on a verdict unanimously, shall bring the verdict into court, where it shall be read to them, and inquiry made if it is their verdict. A party may then require a poll asking each juror if it is the juror's verdict. If any juror expresses disagreement on such poll or inquiry, the jury shall be sent out for further deliberation; otherwise, the verdict is complete and the jury shall be discharged. When the verdict is given and is such as the court may receive, the clerk shall enter it in full upon the record. In any misdemeanor case in which the defendant is not in custody at the time of trial and the parties agree, the court may permit the return of a sealed verdict. The sealing of the verdict is equivalent to rendition in open court, and the jury shall not be polled or permitted to disagree with the verdict. A sealed verdict and the answer to each interrogatory shall be signed by all jurors, sealed, and delivered by the court attendant to the clerk of court, who shall enter it upon the record and disclose it to the court as soon as practicable.

**2.22(6)** *Verdict insufficient; reconsideration; informal verdict.* If the jury renders a verdict which is in none of the forms specified in this rule, or a verdict of guilty in which it appears to the court that the jury was mistaken as to the law, the court may direct the jury to reconsider it, and it shall not be recorded until it is rendered in some form from which the intent of the jury can be clearly understood. If the jury persists in finding an informal verdict, from which, however, it can be understood that the intention is to find for the defendant upon the issue, it shall be entered in the terms in which it is found, and the court must give judgment of acquittal.

**2.22(7)** *Defendant discharged on acquittal.* If judgment of acquittal is given on a general verdict of not guilty, and the defendant is not detained for any other legal cause, the defendant must be discharged as soon as the judgment is given.

**2.22(8)** *Acquittal on ground of insanity or diminished responsibility; commitment hearing.*

*a. Jury finding.* If the defense is insanity or diminished responsibility, the jury must be instructed that, if it acquits the defendant on either of those grounds, it shall state that fact in its verdict.

*b. Commitment for evaluation.* Upon a verdict of not guilty by reason of insanity or diminished responsibility, the court shall immediately order the defendant committed to a state mental health institute or other appropriate facility for a complete psychiatric evaluation and shall set a date for a hearing to inquire into the defendant's present mental condition. The court shall prepare written findings which shall be delivered to the facility at the time the defendant is admitted fully informing the chief medical officer of the facility of the reason for the commitment. The chief medical officer shall report to the court within 15 days of the admission of the defendant to the facility, stating the chief medical officer's diagnosis and opinion as to whether the defendant is mentally ill and dangerous to the defendant's self or to others. The court shall promptly forward a copy of the report to the defendant's attorney and to the attorney for the state. An extension of time for the evaluation, not to exceed 15 days, may be granted upon the chief medical officer's request after due consideration of any objections or comments the defendant may have.

*c. Independent examination.* The defendant may have a separate examination conducted at the facility by a licensed physician of the defendant's choice and the report of the independent examiner shall be submitted to the court.

*d. Return for hearing.* Upon filing the report required by this rule or the filing of any subsequent report regarding the defendant's mental condition, the chief medical officer shall give notice to the sheriff and county attorney of the county from which the defendant was committed and the sheriff shall receive and hold the defendant for hearing. However, if the chief medical officer believes continued custody of the defendant at the facility is necessary to ensure the defendant's safety or the safety of others and states that finding in the report, the court shall make arrangements for the hearing to be conducted as soon as practicable at a suitable place within the facility to which the defendant was committed.

*e. Hearing; release or retention in custody.* If, upon hearing, the court finds that the defendant is not mentally ill and no longer dangerous to the defendant's self or to others, the court shall order the defendant released. If, however, the court finds that the defendant is mentally ill and dangerous to the defendant's self or to others, the court shall order the defendant committed to a state mental health institute or to the Iowa security and medical facility and retained in custody until the court finds that the defendant is no longer mentally ill and dangerous to the defendant's self or to others. The court shall give due consideration to the chief medical officer's findings and opinion along with any other relevant evidence that may be submitted.

No more than 30 days after entry of an order for continued custody, and thereafter at intervals of not more than 60 days as long as the defendant is in custody, the chief medical officer of the facility to which the defendant is committed shall report to the court which entered the order. Each periodic report shall describe the defendant's condition and state the chief medical officer's prognosis if the defendant's condition has remained unchanged or has deteriorated. The court shall forward a copy of each report to the defendant's attorney and to the attorney for the state.

If the chief medical officer reports at any time that the defendant is no longer mentally ill and is no longer dangerous to the defendant's self or to others, the court shall, upon hearing, order the release of the defendant unless the court finds that continued custody and treatment are necessary to protect the safety of the defendant's self or others in which case the court shall order the defendant committed to the Iowa security and medical facility for further evaluation, treatment, and custody.

**2.22(9)** *Proof necessary to sustain verdict of guilty.*

*a. Reasonable doubt.* Where there is a reasonable doubt of the defendant being proven to be guilty, the defendant is entitled to an acquittal.

*b. Reasonable doubt as to degree.* Where there is a reasonable doubt of the degree of the offense of which the defendant is proved to be guilty, the defendant shall only be convicted of the degree as to which there is no reasonable doubt. [66GA, ch 1245(2), §1301; 67GA, ch 153, §64, 65; amendment 1980; amendment 1982; 1984 Iowa Acts, ch 1323, §5; amendment 1999; Report November 9, 2001, effective February 15, 2002]

**Rule 2.23 Judgment.**

**2.23(1)** *Entry of judgment of acquittal or conviction.* Upon a verdict of not guilty for the defendant, or special verdict upon which a judgment of acquittal must be given, the court must render judgment of acquittal immediately. Upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court must fix a date for pronouncing judgment, which must be within a reasonable time but not less than 15 days after the plea is entered or the verdict is rendered, unless defendant consents to a shorter time.

**2.23(2)** *Forfeiture of bail; warrant of arrest.* If the defendant has been released on bail, or has deposited money instead thereof, and does not appear for judgment when the defendant's personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail or money deposited, may make an order directing the clerk, on the application of the county attorney at any time thereafter, to issue a warrant that substantially complies with the form that accompanies these rules into one or more counties for the defendant's arrest. The warrant may be served in any county in the state. The officer must arrest the defendant and bring the defendant before the court, or commit the defendant to the officer mentioned in the warrant.

**2.23(3)** *Imposition of sentence.*

*a. Informing the defendant.* When the defendant appears for judgment, the defendant must be informed by the court or the clerk under its direction, of the nature of the indictment, the defendant's plea, and the verdict, if any thereon, and be asked whether the defendant has any legal cause to show why judgment should not be pronounced against the defendant.

*b. What may be shown for cause.* The defendant may show for cause against the entry of judgment any sufficient ground for a new trial or in arrest of judgment.

*c. Incompetency.* If it reasonably appears to the court that the defendant is suffering from a mental disorder which prevents the defendant from appreciating or understanding the nature of the proceedings or effectively assisting defendant's counsel, judgment shall not be immediately entered and the defendant's mental competency shall be determined according to the procedures described in Iowa Code sections 812.3 through 812.5.

*d. Judgment entered.* If no sufficient cause is shown why judgment should not be pronounced, and none appears to the court upon the record, judgment shall be rendered. Prior to such rendition, counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment. In every case the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced. The court shall state on the record its reason for selecting the particular sentence.

*e. Notification of right to appeal.* After imposing sentence in a case, the court shall advise the defendant of the defendant's statutory right to appeal and the right of a person who is unable to pay the costs of appeal to apply to the court for appointment of counsel and the furnishing of a transcript of the evidence as provided in Iowa Code sections 814.9 and 814.11.

Such notification shall advise defendant that filing a notice of appeal within the time and in the manner specified in Iowa R. App. P. 6.101 is jurisdictional and failure to comply with these provisions shall preclude defendant's right of appeal.

The trial court shall make compliance with this rule a matter of record.

*f. Exercise of right to appeal.* After notifying the defendant of the defendant's statutory right to appeal, the trial court may ask the defendant if the defendant desires to appeal. If, after appropriate consultation with counsel the defendant responds affirmatively, the court shall direct defense counsel to file notice of appeal forthwith and, if the defendant is indigent, shall at once order the transcript and appoint appellate counsel, without awaiting application therefor under Iowa Code sections 814.9 and 814.11.

*g. Clerical mistakes.* Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders. [66GA, ch 1245(2), §1301; 67GA, ch 153, §66 to 68; Report 1978, effective July 1, 1979; 1984 Iowa Acts, ch 1323, §6; Report June 5, 1985, effective August 5, 1985; November 9, 2001, effective February 15, 2002]

**Rule 2.24 Motions after trial.**

**2.24(1)** *In general.* Permissible motions after trial include motions for new trial, motions in arrest of judgment, and motions to correct a sentence.

**2.24(2)** *New trial.*

*a. Procedural steps in seeking or ordering new trial.* The application for a new trial can be made only by the defendant and shall be made not later than 45 days after verdict of guilty or special verdict upon which a judgment of conviction may be rendered. In any case, the application shall not be made later than five days before the date set for pronouncing judgment. However, an application for a new trial based upon newly discovered evidence may be made after judgment. After giving the parties notice and an opportunity to be heard, the court may grant a motion for a new trial even for a reason not asserted in the motion. In any case the court shall specify in the order the grounds therefor.

*b. Grounds.* The court may grant a new trial for any or all of the following causes:

(1) When the trial has been held in the absence of the defendant, in cases where such presence is required by law, except as provided in rule 2.27.

(2) When the jury has received any evidence, paper or document out of court not authorized by the court.

(3) When the jury have separated without leave of court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and just consideration of the case.

(4) When the verdict has been decided by lot, or by means other than a fair expression of opinion on the part of all jurors.

(5) When the court has misdirected the jury in a material matter of law, or has erred in the decision of any question of law during the course of the trial, or when the prosecuting attorney has been guilty of prejudicial misconduct during the trial thereof before a jury.

(6) When the verdict is contrary to law or evidence.

(7) When the court has refused properly to instruct the jury.

(8) When the defendant has discovered important and material evidence in the defendant's favor since the verdict, which the defendant could not with reasonable diligence have discovered and produced at the trial. A motion based upon this ground shall be made without unreasonable delay and, in any event, within two years after final judgment, but such motion may be considered thereafter upon a showing of good cause. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits or testimony of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits or testimony, the court may postpone the hearing of the motion for such length of time as, under all circumstances of the case, may be reasonable.

(9) When from any other cause the defendant has not received a fair and impartial trial.

*c. Trials without juries.* On a motion for a new trial in an action tried without a jury, the court may where appropriate, in lieu of granting a new trial, vacate the judgment if entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and enter judgment accordingly.

*d. Effect of a new trial.* Upon a new trial, the former verdict cannot be used or referred to either in evidence or argument.

*e. Time of decision.* A motion for new trial shall be heard and determined by the court within 30 days from the date it is filed, except upon good cause entered in the record.

**2.24(3)** *Arrest of judgment.*

*a. Motion in arrest of judgment; definition and grounds.* A motion in arrest of judgment is an application by the defendant that no judgment be rendered on a finding, plea, or verdict of guilty. Such motion shall be granted when upon the whole record no legal judgment can be pronounced. A defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude the defendant's right to assert such challenge on appeal.

*b. Time of making motion by party.* The motion must be made not later than 45 days after plea of guilty, verdict of guilty, or special verdict upon which a judg-

ment of conviction may be rendered, but in any case not later than five days before the date set for pronouncing judgment.

*c. On motion of court.* The court may also, upon its own observation of any of these grounds, arrest the judgment on its own motion.

*d. Effect of order arresting judgment.* The effect of an order arresting judgment on any ground other than a defect in a guilty plea proceeding is to place the defendant in the same situation in which the defendant was immediately before the indictment was found or the information filed. The effect of an order arresting judgment on the ground the guilty plea proceeding was defective is to place the defendant in the same situation in which the defendant was immediately after the indictment was found or the information filed; provided, however, that when the only ground upon which the guilty plea is found to be defective is failure to establish a factual basis for the charge, the court shall afford the state an opportunity to establish an adequate factual basis before ruling on the motion in arrest of judgment.

*e. Proceedings after order arresting judgment on any ground other than a defect in a guilty plea proceeding.* If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment or information can be framed, the court may order the defendant to be recommited to the officer of the proper county, or admitted to bail or otherwise released anew, to answer the new indictment. In such case the order arresting judgment shall not be a bar to another prosecution. But if the evidence upon trial appears to the trial court insufficient to charge the defendant with any offense, the defendant must, if in custody, be released; or, if admitted to bail, the defendant's bail be exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant or to the person or persons found by the court to have deposited said money on behalf of the defendant.

*f. Time of decision.* A motion in arrest of judgment shall be heard and determined by the court within 30 days from the date it is filed, except upon good cause entered in the record.

**2.24(4)** *General principles.*

*a. Extensions.* The time for filing motions for new trial or in arrest of judgment may be extended to such further time as the court may fix.

*b. Disposition.* If the defendant moves for a new trial, or in arrest of judgment, the court shall defer the judgment and proceed to hear and decide the motions.

*c. Appeal.* Appeal from an order granting or denying a motion for new trial or in arrest of judgment may be taken by the state or the defendant. Where the court has denied the motion for new trial or in arrest of judgment, or both, appeal may be had only after judgment is pronounced.

*d. Custody pending appellate determination.* Pending determination by the appellate court of such appeal, the trial court shall determine whether the defendant shall remain in custody, or whether, if in custody, the defendant should be released on bail or the defendant's own recognizance. Where the trial court has arrested judgment and an appeal is taken by the state, and it further appears to the trial court that there is no evidence sufficient to charge the defendant with an offense, the defendant shall not be held in custody.

*e. Reinstatement of verdict.* In the event the appellate court reverses the order of the trial court arresting judgment or granting a new trial, it shall order that the verdict be reinstated, unless the appellate court finds other reversible errors, in which event it may enter an appropriate different order.

**2.24(5)** *Correction of sentence.*

*a. Time when correction of sentence may be made.* The court may correct an illegal sentence at any time.

*b. Credit for time served.* The defendant shall receive full credit for time spent in custody under the sentence prior to correction or reduction. [66GA, ch 1245(2), §1301; 67GA, ch 153, §69 to 73; Report 1978, effective July 1, 1979; amendment 1983; November 9, 2001, effective February 15, 2002]

**Rule 2.25 Bill of exceptions.**

**2.25(1)** *Purpose.* The purpose of a bill of exceptions is to make the proceedings or evidence appear of record which would not otherwise so appear.

**2.25(2)** *What constitutes record; exceptions unnecessary.* All papers pertaining to the cause and filed with the clerk, and all entries made by the clerk in the record book pertaining to them, and showing the action or decision of the court upon them or any part of them, and the judgment, are to be deemed parts of the record, and it is not necessary to except to any action or decision of the court so appearing of record.

**2.25(3)** *Grounds for exceptions.* On the trial of an indictable offense, exceptions may be taken by the state or by the defendant to any decision of the court upon matters of law, in any of the following cases:

*a.* In disallowing a challenge to an individual juror.

*b.* In admitting or rejecting witnesses or evidence on the trial of any challenge to an individual juror.

*c.* In admitting or rejecting witnesses or evidence.

*d.* In deciding any matter of law, not purely discretionary on the trial of the issue.

Exceptions may also be taken to any action or decision of the court which affects any other material or substantial right of either party, whether before or after the trial of the indictment, or on the trial.

**2.25(4)** *Bill by judge.* Either party may take an exception to any decision or action of the court, in any stage of the proceedings, not required to be and not entered in the record book, and reduce the same to writing, and tender the same to the judge, who shall sign it if true, and if signed it shall be filed with the clerk and become part of the record of the cause.

**2.25(5)** *Bill by bystanders.* If the judge refuses to sign it, such refusal must be stated at the end thereof, and it may then be signed by two or more attorneys or officers of the court or disinterested bystanders, and sworn to by them, and filed with the clerk, and it shall thereupon become a part of the record of the cause.

**2.25(6)** *Time to approve bill.* The judge shall be allowed one court day to examine the bill of exceptions, and the party excepting shall be allowed three court days thereafter to procure the signatures and file the same.

**2.25(7)** *Modification of bill.* If the judge and the party excepting can agree in modifying the bill of exceptions, it shall be modified accordingly.

**2.25(8)** *Time allowed to prepare bill.* Time must be given to prepare the bill of exceptions when it is necessary; if it can reasonably be done, it shall be settled at the time of taking the exception. [Report 1979; Court Order December 20, 1996; November 9, 2001, effective February 15, 2002]

**Rule 2.26 Execution and stay thereof.**

**2.26(1)** *Mechanics of execution.*

*a. Copy of judgment.* When a judgment of confinement, either in the penitentiary or county jail or other detention facility, is pronounced, an execution, consisting of a certified copy of the entry of judgment must be forthwith furnished to the officer whose duty it is to execute the same, who shall proceed and execute it accordingly, and no other warrant or authority is necessary to justify or require its execution.

*b. Execution and return within county; confinement.* A judgment for confinement to be executed in the county where the trial is had shall be executed by the sheriff thereof, and return made upon the execution, which shall be delivered to and filed by the clerk of said court.

*c. Executions outside county; confinement.*

(1) Under all other judgments for confinement, the sheriff shall deliver a certified copy of the execution with the body of the defendant to the keeper of the jail or penitentiary in which the defendant is to be confined in execution of the judgment, and take receipt therefor on a duplicate copy thereof, which the sheriff must forthwith return to the clerk of the court in which the judgment was rendered, with the sheriff's return thereon, and a minute of said return shall be entered by the clerk as a part of the record of the proceedings in the cause in which the execution issued.

(2) When such defendant is discharged from custody, the jailer or warden of the place of confinement shall make return of such fact to the proper court, and an entry thereof shall be made by its clerk as is required in the first instance.

*d. Execution for fine.*

(1) Upon a judgment for a fine, an execution may be issued as upon a judgment in a civil case, and return thereof shall be made in like manner.

(2) Judgments for fines, in all criminal actions rendered, are liens upon the real estate of the defendant, and shall be entered upon the lien index in the same manner and with like effect as judgments in civil actions.

*e. Execution in other cases.* When the judgment is for the abatement or removal of a nuisance, or for anything other than confinement or payment of money by the defendant, an execution consisting of a certified copy of the entry of such judgment, delivered to the sheriff of the proper county, shall authorize and require the sheriff to execute such judgment and return the same, with the sheriff's doings under the same thereon endorsed, to the clerk of the court in which the judgment was rendered, within a time specified by the court but not exceeding 70 days after the date of the certificate of such certified copy.

*f. Days in jail before trial credited.* The defendant shall receive full credit for time spent in custody on account of the offense for which the defendant is convicted.

**2.26(2)** *Stay of execution.*

*a. Confinement.* A sentence of confinement shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to Iowa Code chapter 814.

*b. Fine and other cases.* The defendant may have a stay of execution for the same length of time and in the same manner as provided by law in civil actions, and with like effect, and the same proceedings may be had therein.

*c. Probation.* An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed the court shall fix the terms of the stay. [66GA, ch 1245(2), §1301; 67GA, ch 153, §74; Report November 9, 2001, effective February 15, 2002]

**Rule 2.27 Presence of defendant; regulation of conduct by the court.**

**2.27(1)** *Felony or misdemeanor.* In felony cases the defendant shall be present personally or by interactive audiovisual closed circuit system at the initial appearance, arraignment and plea, unless a written arraignment form as provided in rule 2.8(1) is filed, and pretrial proceedings, and shall be personally present at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. In other cases the defendant may appear by counsel.

**2.27(2)** *Continued presence not required.* In all cases, the progress of the trial or any other proceeding shall not be prevented whenever a defendant, initially present:

*a.* Is voluntarily absent after the trial or other proceeding has commenced.

*b.* Engages in conduct justifying exclusion from the courtroom.

**2.27(3)** *Presence not required.* A defendant need not be present in the following situations:

*a.* A corporation may appear by counsel for all purposes.

*b.* The defendant's presence is not required at a reduction of sentence under rule 2.24.

**2.27(4)** *Regulation of conduct in the courtroom.*

*a.* When a defendant engages in conduct seriously disruptive of judicial proceedings, one or more of the following steps may be employed to ensure decorum in the courtroom:

(1) Cite the defendant for contempt.

(2) Take the defendant out of the courtroom until the defendant promises to behave properly.

(3) Bind and gag the defendant, thereby keeping the defendant present.

*b.* When a magistrate reasonably believes a person who is present in the courtroom has a weapon in the person's possession, the magistrate may direct that such person be searched, and any weapon be retained subject to order of the court.

*c.* The magistrate may cause to have removed from the courtroom any person whose exclusion is necessary to preserve the integrity or order of the proceedings. [66GA, ch 1245(2), §1301; 67GA, ch 153, §75, 76; amendment 1984; Report April 20, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 2.28 Right to appointed counsel.**

**2.28(1)** *Representation.* Every defendant who is an indigent person as defined in Iowa Code section 815.9, is entitled to have counsel appointed to represent the defendant at every stage of the proceedings from the defendant's initial appearance before the magistrate or the court through appeal, including probation and parole revocation hearings, unless the defendant waives such appointment.

**2.28(2)** *Compensation.* When counsel is appointed to represent an indigent defendant, compensation shall be paid as directed in Iowa Code chapter 815. [66GA, ch 1245(2), §1301; 67GA, ch 153, §77; 69GA, ch 117, §1242; 1983 Iowa Acts, ch 186, §10146; Report November 9, 2001, effective February 15, 2002]

**Rule 2.29 Appointment of appellate counsel in criminal cases.**

**2.29(1)** An indigent defendant, as defined in Iowa Code section 815.9, convicted of an indictable offense or a simple misdemeanor where defendant faces the possibility of imprisonment, is entitled to appointment of counsel on appeal or application for discretionary review to the supreme court. Application for appointment of appellate counsel shall be made to the trial court, which shall retain authority to act on the application after notice of appeal or application for discretionary review has been filed. The district court clerk shall promptly submit any application for appointment of counsel or for transcript at public expense to a judge with authority to act on the application. The clerk shall also provide the supreme court clerk with a copy of any order appointing appellate counsel. The supreme court or a justice may appoint counsel if the trial court fails or refuses to appoint and it becomes necessary to further provide for counsel.

**2.29(2)** Defendant may orally apply for appointment of appellate counsel only at the time specified in rule 2.23(3)(*f*). Upon such oral application if the trial court determines defendant is an indigent, the court shall proceed pursuant to rule 2.23(3)(*f*).

**2.29(3)** At all subsequent times defendant shall apply for appointment of appellate counsel in writing to the trial court, which shall by order either approve or deny such application no later than seven days after it is filed.

**2.29(4)** If the trial court finds defendant is ineligible for appointment of appellate counsel, it shall include in the record a statement of the reasons why counsel was not appointed. Defendant may apply to the supreme court for review of a trial court order denying defendant appointed counsel. Such application must be filed with the supreme court within ten days of the filing of the trial court order denying defendant's request for appointed counsel.

**2.29(5)** If defendant has proceeded as an indigent in the trial court and a financial statement already has been filed pursuant to Iowa Code section 815.9, the defendant, upon making application for appointment of appellate counsel, shall be presumed to be indigent, and an additional financial statement shall not be required unless evidence is offered that defendant is not indigent. In all other cases defendant shall be required to submit a financial statement to the trial court. Defendant and appointed appellate counsel are under a continuing obligation to inform the trial court of any change in circumstances that would make defendant ineligible to qualify as indigent.

**2.29(6)** Trial counsel shall continue as defendant's appointed appellate counsel unless the trial court or supreme court orders otherwise. Unless appellate counsel is immediately appointed under rule 2.23(3)(*f*), trial counsel shall determine whether defendant wants to appeal. If so, and defendant desires appointed appellate counsel, trial counsel shall file with the district court the notice of appeal and an application for appointment of counsel and for transcript at public expense. If defendant wants to appeal but desires to proceed pro se, trial counsel shall file with the district court the notice of appeal, a notice signed by defendant indicating defendant's intent to proceed pro se, an application for transcript at public expense, and the combined certificate along with counsel's motion to withdraw. Selection of appointed appellate counsel shall be the responsibility of the trial court. Defendant shall not have the right to select the attorney to be assigned; however, defendant's request for particular counsel shall be given consideration by the trial court. [Report 1980; 1983 Iowa Acts, ch 186, §10147; Report October 27, 1999, effective January 3, 2000; November 9, 2001, effective February 15, 2002]

**Rule 2.30 Waiver of right to appellate counsel in criminal cases.** An indigent defendant may waive the defendant's right to have appellate counsel appointed if defendant does so in writing and the trial court finds of record that defendant has acted with full awareness of the defendant's rights and of the consequences of a waiver and if the waiver is otherwise made according to law. Defendant may withdraw a waiver of the defendant's right to appellate counsel at any time. Such withdrawal and subsequent appointment of counsel shall not affect any prior appellate proceedings in which defendant acted pro se and shall not extend any appellate deadlines, unless the appropriate appellate court otherwise orders. Notwithstanding a waiver by defendant, the trial court, after notice of appeal or application for discretionary review has been filed, may appoint counsel to advise defendant during appellate proceedings if it appears to the court that, because of the gravity of the offense and other circumstances affecting defendant, the failure to appoint counsel may result in injustice to the defendant. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 2.31 Compensation of appointed appellate counsel.** Appointed appellate counsel's compensation shall be determined by the trial court pursuant to the provisions of Iowa Code section 815.7. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 2.32 Forms  Appointment of Counsel**

**Rule 2.32  Form 1:** ***Application for Appointment of Counsel and Financial Statement.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| STATE OF IOWA,<br>Plaintiff,<br><br>v.<br><br>_____,<br>Defendant. | Criminal No. _____<br><br>**APPLICATION FOR APPOINTMENT OF COUNSEL AND FINANCIAL STATEMENT** |

I, _____, state that I am accused of the crime of _____ _____ and request that the court appoint counsel to represent me at public expense.

I realize that I may be required to repay in whole or in part any public funds expended for this purpose. The following financial statement is submitted in support of my application:

Current mailing address: _____

Age: _____ Telephone number(s): _____

Marital status: Single _____ Married _____ Divorced _____ Widow(er) _____

Name of husband/wife: _____ Live with husband/wife Yes _____ No_____

If no, length of physical separation from husband/wife: _____

Number and ages of dependents: _____

_____

How long a resident of this county: _____

Occupation: _____

Present employer: _____

Address: _____

Former employer: _____

Address: _____

Weekly take-home (net) earnings: $_____ Weekly gross earnings $_____

Total gross income for past 12 months: $_____

Are you now in jail? _____ Do you have a job to go to? _____

If so, where and at what wages? _____

Bank with: _____ Address:_____

Balance personal bank account: $_____

Balance account in name of husband/wife: $_____

Balance joint account with husband/wife: $_____

Balance joint account with any other person(s): $_____

What is your average monthly living expense (clothing, food, housing, transportation, other)? $_____

Does any person pay all or any portion of these expenses: Yes ____No _____ If yes, who pays these costs and how much do they contribute? _____

Motor vehicles: Give make, year, present value, amount owing thereon, if any, and whether registered or titled in your name, name of husband/wife or jointly with another: _____

_____

_____

List all sources of income, in your name, name of husband/wife or jointly shared with another, including salary (net wages), pensions, bonds, stocks, securities, private business, farming, insurance, retirement benefits, social security benefits, lawsuits or settlements or others: _____

_____

_____

ADC or welfare relief, if any, in your name, name of husband/wife or jointly shared with another: _____

_____

List all sources of public assistance, if any, including ADC, unemployment compensation, heating assistance, food stamps: _____

_____

Real estate owned in your name, name of husband/wife or jointly shared with another (describe): _____

_____

Application for Appointment of Counsel and Financial Statement *(cont'd)*

Other assets in your name, name of husband/wife or jointly shared with another (stereo, TV, furniture, trust funds, notes, bonds, stocks, savings certificates, life insurance, other): _____

_____

_____

_____ Value: $ _____

Are you a beneficiary or heir in an estate of a person deceased? _____

List all debts or unpaid bills, including money owed for such things as: Housing, food, clothing, transportation (car, gas), utility costs, medical and dental services and other items, be specific: _____

_____

_____

Does anyone owe you money or have any property belonging to you? _____

_____

Give details in full: _____

_____

Do you have a judgment against anyone: Yes _____ No _____ If yes, give name, date, court and amount: _____

Are you free on bond: Yes _____ No _____ If yes, name(s) and addresses of sureties: _____

_____

If surety company, who paid bond premium: _____

Have you or anyone else employed or offered to employ an attorney for you in this matter? Yes _____ No _____

If so, how much has the attorney been paid by you or for you? $ _____

Who can verify this information: _____

Telephone number: _____ Address: _____

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the foregoing statements are true and correct to the best of my knowledge, and are made in support of my request that the court appoint legal counsel for me because I am financially unable to employ counsel.

_____

_____

The State of Iowa:

_____ does not object to the appointment of counsel.

_____ objects to the appointment of counsel and requests a hearing on the application.

Dated: _____, 20 _____.

(Assistant _____ County Attorney)

[Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 2.32  Form 2:** ***Order on Application For Appointment of Counsel and Financial Statement.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| STATE OF IOWA,<br>Plaintiff,<br><br>v.<br><br>_____,<br>Defendant. | Criminal No. _____<br><br>**ORDER ON APPLICATION FOR APPOINTMENT OF COUNSEL AND FINANCIAL STATEMENT** |

ORDER

Application is set for hearing at _____ o'clock a.m./p.m., the _____ day of _____, 20 _____, at _____.
Dated: _____, 20 _____.

_____
Judge/Magistrate

ORDER

Defendant's request for appointment of counsel is approved/denied. _____ is appointed to serve as counsel for the defendant.
Dated: _____, 20 _____.

_____
Judge/Magistrate

[Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 2.33 Dismissal of prosecutions; right to speedy trial.**

**2.33(1)** *Dismissal generally; effect.* The court, upon its own motion or the application of the prosecuting attorney, in the furtherance of justice, may order the dismissal of any pending criminal prosecution, the reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal is a bar to another prosecution for the same offense if it is a simple or serious misdemeanor; but it is not a bar if the offense charged be a felony or an aggravated misdemeanor.

**2.33(2)** *Speedy trial.* It is the public policy of the state of Iowa that criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties. Applications for dismissals under this rule may be made by the prosecuting attorney or the defendant or by the court on its own motion.

*a.* When an adult is arrested for the commission of a public offense, or, in the case of a child, when the juvenile court enters an order waiving jurisdiction pursuant to Iowa Code section 232.45, and an indictment is not found against the defendant within 45 days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives the defendant's right thereto.

*b.* If a defendant indicted for a public offense has not waived the defendant's right to a speedy trial the defendant must be brought to trial within 90 days after indictment is found or the court must order the indictment to be dismissed unless good cause to the contrary be shown.

*c.* All criminal cases must be brought to trial within one year after the defendant's initial arraignment pursuant to rule 2.8 unless an extension is granted by the court, upon a showing of good cause.

*d.* If the court directs the prosecution to be dismissed, the defendant, if in custody, must be discharged, or the defendant's bail, if any, exonerated, and if money has been deposited instead of bail, it must be refunded to the defendant.

**2.33(3)** *Jury impaneled outside of county.* For purposes of this section, when a jury is to be impaneled from outside the county under rule 2.11(10)(*d*), a defendant is deemed to have been brought to trial as of the day when the trial commences in the county in which jury selection takes place.

**2.33(4)** *Change of venue after jury selection commenced.* Whenever a change of venue is granted pursuant to Iowa Code section 803.2, the defendant may be brought to trial within 30 days of the grant of the change of venue, notwithstanding rule 2.33(2)(*b*). [66GA, ch 1245(2), §1301; amendment 1979; amendment 1980; amendment 1982; 82 Acts, ch 1021, §5, effective July 1, 1983; Report November 9, 2001, effective February 15, 2002]

**Rule 2.34 Motions and other papers.**

**2.34(1)** *Motions.* An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

**2.34(2)** *Service of motions and papers.* Service and filing of written motions, notices and other similar papers shall be in the manner provided in civil actions. [66GA, ch 1245(2), §1301; Report November 9, 2001, effective February 15, 2002]

**Rule 2.35 Rules of court.**

**2.35(1)** *District court practice rules.* The supreme court and district court shall have authority to adopt rules governing practice in the district court which are not inconsistent with these rules and applicable statutes.

**2.35(2)** *Procedures not specified.* If no procedure is specifically prescribed by these rules or by statute, the court may proceed in any lawful manner not inconsistent therewith. [66GA, ch 1245(2), §1301; 67GA, ch 153, §78; Report November 9, 2001, effective February 15, 2002]

**Rule 2.36 Forms for search and arrest warrants.**

**Rule 2.36 Form 1:** ***Search Warrant.***

A search warrant shall be in substantially the following form:

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| State of Iowa,<br><br>vs.<br><br>_____<br>(Defendant). | Before (Judge, Magistrate)_____<br>Criminal Case No._____<br><br>**SEARCH WARRANT** |

TO ANY PEACE OFFICER OF THIS STATE:

Proof has been made before me, as provided by law, on this day that (describe property) is being kept at (describe location/address) in the possession of _____, and has been or is being held in violation of the laws of this state.

You are commanded to make immediate search of (state here whether the search is of a person (named), premises, or a designated thing).

If the property or any portion of the property is found, you are commanded to bring the property before me at my office. Dated at _____, Iowa, this _____ day of _____, 20 _____.

_____ _____
(Signature) (Official title)

**Rule 2.36 Form 2:** ***Application for Search Warrant.***

An application for a search warrant shall be in substantially the following form:

Case No._____

STATE OF IOWA, COUNTY OF _____

**APPLICATION FOR SEARCH WARRANT**

Being duly sworn, I, the undersigned, say that at the place (and on the person(s) and in the vehicle(s)) described as follows:

in _____ County, there is now certain property, namely:

which is:

_____ Property that has been obtained in violation of law.
_____ Property, the possession of which is illegal.
_____ Property used or possessed with the intent to be used as the means of committing a public offense or concealed to prevent an offense from being discovered.
_____ Property relevant and material as evidence in a criminal prosecution.

The facts establishing the foregoing ground(s) for issuance of a search warrant are as set forth in the attachment(s) made part of this application.

_____
Applicant

Subscribed and sworn to before me this _____ day of _____, 20 _____.

_____
Judge or Magistrate

_____ Judicial District,

_____ County, Iowa

WHEREFORE, the undersigned asks that a search warrant be issued.

_____

_____ County Attorney

By _____
Assistant County Attorney

Application for Search Warrant *(cont'd)*

Case No._____

ATTACHMENT A

Applicant's name: _____
Occupation: _____ No. of years: _____
Assignment: _____ No. of years: _____

Your applicant conducted an investigation and received information from other officers and other sources as follows:
(_____ See attached investigative and police reports.)

Case No._____

**INFORMANT'S ATTACHMENT**

(Note: Prepare separate attachment for each informant.)
Peace officer _____ received information from an informant whose name is:

_____

___Confidential because disclosure of informant's identity would:
___Endanger informant's safety;

___Impair informant's future usefulness to law enforcement.

The informant is reliable for the following reason(s):

___The informant is a concerned citizen who has been known by the above peace officer for _____ years and who:

___Is a mature individual.
___Is regularly employed.
___Is a student in good standing.
___Is a well-respected family or business person.
___Is a person of truthful reputation.
___Has no motivation to falsify the information.
___Has no known association with known criminals.
___Has no known criminal record.
___Has otherwise demonstrated truthfulness. (State in the narrative the facts that led to this conclusion.)
___Other: _____
_____

___The informant has supplied information in the past _____ times.
___The informant's past information has helped supply the basis for _____ search warrants.
___The informant's past information has led to the making of _____ arrests.
___Past information from the informant has led to the filing of the following charges:
_____

___Past information from the informant has led to the discovery and seizure of stolen property, drugs, or other contraband.
___The informant has not given false information in the past.
___The information supplied by the informant in this investigation has been corroborated by law enforcement personnel. (Indicate in the narrative the corroborated information and how it was corroborated.)
___Other: _____
_____

The informant has provided the following information:

**Rule 2.36  Form 3:** ***Endorsement on Search Warrant Application*.**

An endorsement on a search warrant shall be in substantially the following form:

Case No._____

**ENDORSEMENT ON SEARCH WARRANT APPLICATION**

1. In issuing the search warrant, the undersigned relied upon the sworn testimony of the following person(s) together with the statements and information contained in the application and any attachments thereto. The court relied upon the following witnesses:

| Name | Address |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

2. Abstract of Testimony. (As set forth in the application and the attachments thereto, plus the following information.)

3. The undersigned has relied, at least in part, on information supplied by a confidential informant (who need not be named) to the peace officer(s) shown on Attachment(s)

_____.

4. The information appears credible because (select):

_____A. Sworn testimony indicates this informant has given reliable information on previous occasions; or,

_____B. Sworn testimony indicates that either the informant appears credible or the information appears credible for the following reasons (**if credibility is based on this ground, the magistrate MUST set out reasons here**):

_____

_____

_____

5. The information (is/is not) found to justify probable cause.

6. I therefore (do/do not) issue the warrant.

_____

Judge or Magistrate

**Rule 2.36  Form 4:** ***Return of Service.***

The form of a return of search warrant shall be substantially as follows:

**RETURN OF SERVICE**

State of Iowa
_____County } ss:

I, _____, being a peace officer in and for _____ _____ County, state of Iowa, certify that the attached search warrant came into my hands on the _____ day of _____, 20 _____, and on the _____ day of _____, 20 _____, I executed the warrant by making a search of the described person, premises, or thing and found the following property: (state kind and quantity)

_____

_____

_____

which property I seized by virtue of the attached warrant and which I now hold subject to further order of the court.

I have further executed the attached warrant by giving a copy of the warrant, together with a receipt for the property taken to _____ , or;

No person having been found on the premises, I have left a copy of the inventory and a receipt for the property taken at the place where the property taken was found.

I, the officer by whom the attached warrant was executed, do certify that the above inventory contains a true and detailed account of the property taken by me on the warrant, and is accurate to the best of my knowledge.

Fees _____
Services _____
Mileage _____
Cartage _____

_____
Peace Officer

Subscribed and sworn to before me this _____ day of _____, 20 _____.

_____
Judge, Magistrate, Clerk, or Deputy
Clerk of the District Court, or
Notary Public

[66 GA, ch 1245(2), §1301; 1984 Iowa Acts, ch 1324, §1; Report February 13, 1986, effective July 1, 1986; August 1, 1997; Report November 20, 1997, effective January 21, 1998; November 9, 2001, effective February 15, 2002]

**Rule 2.36  Form 5:** ***Arrest Warrant on a Complaint.***

FORM 5
**ARREST WARRANT ON A COMPLAINT**

State of Iowa
County of _____
Criminal Case No. _____

To any peace officer of the state:

Complaint upon oath or affirmation having been this day filed with me, charging that the crime (naming it) has been committed and accusing A _____ B _____ thereof:

You are commanded forthwith to arrest the said A _____ B _____ and bring such person before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible magistrate in this county, without unnecessary delay.

Dated at _____ this _____ day of _____, 20 ____

C _____ D _____
(with official title)

[66GA, ch 1245(2), §1301; 67GA, ch 153, §93; Report November 9, 2001, effective February 15, 2002]

**Rule 2.36  Form 6:** ***Arrest Warrant After Indictment or Information.***

FORM 6
**ARREST WARRANT AFTER INDICTMENT OR INFORMATION**

State of Iowa
County of _____
Criminal Case No. _____

To any peace officer of the state:

An indictment (information) having been filed in the district court of said county on the _____ day of _____, 20 _____, (the day on which the indictment (information) is filed) charging A. B. with the crime of (here designate the offense by the number of the statutory provision and name of the offense if it have one, or by a brief general description of it, substantially as in the indictment).

You are hereby commanded to arrest the said A. B. and bring such person before said court to answer said indictment.

Signed this _____ day of _____, 20 _____

(Seal)

_____
Clerk or Judge

By order of the judge of the court.

There may be added to the above, "Let the defendant be admitted to bail in the amount of _____ dollars (or subject to other conditions endorsed on the warrant)."

If the offense be a misdemeanor, the warrant may be in a similar form, adding to the body thereof a direction substantially to the following effect: "Or, if the said A. B. require it, that you take such person before a magistrate or the clerk of the district court in said county, or in the county in which you arrest such person, that such person may give bail to answer the said indictment," and the clerk may make an endorsement thereon to the following effect: "The defendant is to be admitted to bail in the sum of _____ dollars" (the amount fixed by the judge).

[66GA, ch 1245(2), §1301; 67GA, ch 153, §94; Report November 9, 2001, effective February 15, 2002]

**Rule 2.36  Form 7:** ***Arrest Warrant When Defendant Fails to Appear for Sentencing.***

FORM 7
**ARREST WARRANT WHEN DEFENDANT FAILS TO APPEAR FOR SENTENCING**

State of Iowa
County of _____
Criminal Case No. _____

To any peace officer in the state:

A _____ B _____, having been duly convicted on the _____ day of _____, 20 _____, in the district court of _____ County, of the crime of (here state the name of the offense and the statutory provision).

You are hereby commanded to arrest the said A _____ B _____ and bring such person before said court for judgment.

Signed this _____ day of _____, 20 _____

_____
Clerk or Judge

[66GA, ch 1245(2), §1301; 67GA, ch 153, §95; Report November 9, 2001, effective February 15, 2002]

**Rule 2.37 Forms other than warrants.** The following forms are illustrative and not mandatory, but any particular instrument shall substantially comply with the form illustrated. [66GA, ch 1245(2), §1301; 1984 Iowa Acts, ch 1324, §2; Report November 9, 2001, effective February 15, 2002]

**Rule 2.37 Form 1:** ***Bail Bond.***

FORM 1
**BAIL BOND**

State of Iowa
County of _____
Criminal Case No. _____

An indictment (or charge) having been found (or made) in the district court (or other appropriate court) of the county of _____ on the _____ day of _____, charging A _____ B _____ with the crime of _____, (designating it as in the warrant, indictment, or complaint), and such person having been duly admitted to bail in the sum of _____ dollars:

We, A _____ B _____ and E _____ F _____, hereby undertake that the said A _____ B _____ shall appear at the _____ court of the county of _____ _____, on the _____ day of _____, 20 _____, and answer the said indictment (or charge), and submit to the orders and judgment of said court, and not depart without leave of same, or, if such person fail to perform either of these conditions, that such person will pay to the State of Iowa the sum of _____ _____ (inserting the sum in which the defendant is admitted to bail).

A_____ B_____

E_____ F_____

Acknowledged before and accepted by me at _____, in the township of _____ in the county of _____ this _____ day of _____, 20 _____

G_____ H_____
(with official title)

[66GA, ch 1245(2), §1301; 67GA, ch 153, §96; Report November 9, 2001, effective February 15, 2002]

**Rule 2.37 Form 2:** ***Order for Discharge of Defendant Upon Bail.***

FORM 2
**ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL**

State of Iowa
County of _____
Criminal Case No. _____

To the sheriff of the County of _____:

C _____ D _____, who is detained by you on commitment (or indictment or conviction, as the case may be) for the offense of (here designate it generally), having given sufficient bail to answer the same, you are commanded forthwith to discharge such person from custody.

Dated at _____, in the township (town or city) of _____, in the County of _____, this _____ day of _____, 20 _____.

K_____ L_____
(with official title)

[66GA, ch 1245(2), §1301; 67GA, ch 153, §97; Report November 9, 2001, effective February 15, 2002]

**Rule 2.37  Form 3:** ***Order for Discharge of Defendant Upon Bail: Another Form.***

FORM 3
**ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL: ANOTHER FORM**
(For endorsement on warrant or order of commitment)

State of Iowa
County of _____
Criminal Case No. _____

To the officer (naming the officer and the officer's title, thus A _____ B _____, Sheriff of _____ County) having in custody C _____ D _____ (name):

The defendant named in the within warrant of arrest (or order of commitment) now in your custody under the authority thereof for the offense therein designated, having given sufficient bail to answer the same by the undertaking herewith delivered to you, you are commanded forthwith to discharge such person from custody, and, without unnecessary delay, deliver this order, together with the said undertaking of bail, to _____ (name and address of the appropriate district court clerk, or the court or magistrate who issued the warrant).

Dated at _____ this _____ day of _____, 20 _____.

E_____ F_____
(with official title)

[66GA, ch 1245(2), §1301; 67GA, ch 153, §98; Report November 9, 2001, effective February 15, 2002]

**Rule 2.37 Form 4:** ***Trial Information*.**

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| THE STATE OF IOWA,<br>vs.<br>_____,<br>Defendant. | **TRIAL INFORMATION**<br>No. _____ |

COMES NOW, _____, as Prosecuting Attorney of _____ County, Iowa, and in the name and by the authority of the State of Iowa accuses _____ of the crime of _____ _____ committed as follows: The said _____ on or about the _____ day of _____, 20 ___, in the County of _____ and State of Iowa did unlawfully and willfully

_____

_____

_____

_____

in violation of Iowa Code section(s) _____(_____).
insert year

A TRUE INFORMATION

_____
Prosecuting Attorney

Trial Information *(cont'd)*

On _____ I find that the evidence contained in the within Trial Information and minutes of evidence, if unexplained, would _____ warrant a conviction by the trial jury, and being satisfied from the
showing made herein that this case should _____ be prosecuted by Trial Information the same is _____ approved.

Defendant is released on:

1. personal recognizance _____
2. appearance bond $_____
   a. unsecured _____
   b. secured _____
3. other (specify) _____

_____
JUDGE OF THE _____ JUDICIAL
DISTRICT OF THE STATE OF IOWA

(Court file stamp)

This Trial Information, together with the minutes of evidence relating thereto, is duly filed in the District Court of Iowa for _____ County this _____ day of _____, 20 _____.

_____
CLERK OF THE DISTRICT COURT OF IOWA
FOR _____ COUNTY

Names of Witnesses

By: _____
Deputy Clerk

[66GA, ch 1245(2), §1301; 67GA, ch 153, §99; Report 1978, effective July 1, 1979; amendment 1979; November 9, 2001, effective February 15, 2002]

**Rule 2.37  Form 5:** ***General Indictment Form.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| STATE OF IOWA,<br>vs.<br>A _____ B _____.<br>Criminal Case No. _____ | **INDICTMENT** |
|---|---|

The grand jurors of the county of _____ accuse A _____ B _____ of (here state the offense and whether felony or misdemeanor) in violation of (here state by number the statutory section violated) and charge that the said A _____ B _____ on or about the _____ day of _____, _____, in the county of _____ and State of Iowa, (here briefly insert any particulars of the offense, such as the name of the victim in a criminal homicide case).

A true bill.

/s/_____
Foreman or forewoman of grand jury

Names of witnesses:
_____
_____
_____

[66GA, ch 1245(2), §1301; 67GA, ch 153, §100; Report November 9, 2001, effective February 15, 2002]

**Rule 2.37 Form 6:** ***Written Arraignment and Plea of Not Guilty.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| THE STATE OF IOWA,<br>Plaintiff,<br><br>vs.<br><br>_____,<br>Defendant. | **WRITTEN ARRAIGNMENT AND PLEA OF NOT GUILTY**<br><br>No. _____ |

Comes now the above named defendant in the above captioned criminal case and under oath states:

1. I am represented by Attorney _____, whose address and telephone number are _____, _____, Iowa _____.

2. My current mailing and residence addresses and telephone number are:

_____

_____

_____

3. I am _____ years old, having been born on _____. I can read and understand the English language and have completed the following level of education: _____

_____

4. I have been advised by the above named attorney and understand that I have a right to arraignment in open court, and I hereby voluntarily waive that right, choosing instead to sign this written arraignment and plea of not guilty. I understand that times for further proceedings which are computed from the date of arraignment will be computed from the date of filing this written arraignment and plea of not guilty.

5. I have received a copy of the indictment/trial information which charges me with the crime(s) of _____ _____ in violation of Iowa Code section(s) _____ (_____). I have read it, and I have familiarized myself with its contents.
insert year

6. With regard to the name by which I am charged in the indictment/trial information [either check "a" or check and complete "b"]:

[ ] a. The name shown on the indictment/trial information is my true name. I have been advised and understand that I am now precluded from objecting to the indictment/trial information upon the ground I am improperly named.

[ ] b. The name shown on the indictment/trial information is not my true name. My true name is _____ _____. I request that an entry be made in the minutes showing my true name. I have been advised and understand further proceedings will be had against me by that name, the indictment/trial information will be amended accordingly, and when the indictment/trial information is so amended I will be precluded from objecting upon the ground I am improperly named.

7. I have been advised and understand that I may plead guilty, not guilty, or former conviction or acquittal.

8. For the purpose of this arraignment, I have had sufficient time to discuss my case with the above named attorney, and I waive any further time in which to enter a plea.

9. I plead NOT GUILTY to the charge(s) of _____

_____

10. I have been advised and understand that I have a right under Iowa R. Crim. P. 2.33 (2)(*b*) to a trial within 90 days after indictment/filing of the trial information and [check either "a" or "b"]:

[ ] a. I demand a speedy trial pursuant to Iowa R. Crim. P. 2.33(2)(*b*).

[ ] b. I waive my right to a speedy trial pursuant to Iowa R. Crim. P. 2.33(2)(*b*).

Written Arraignment and Plea of Not Guilty *(cont'd)*

11. I request that a trial date be promptly set pursuant to Iowa R. Crim. P. 2.9. My attorney and I will be available for trial on the following days:

_____

_____

_____
Defendant

State of Iowa _____ County, ss.

Subscribed, sworn to, and acknowledged before me by _____ this _____ day of _____, 20 _____.

_____
Notary public or other officer authorized to take and certify acknowledgements and administer oaths.

[SEAL]

[Report 1982; November 9, 2001, effective February 15, 2002]

**Rule 2.37  Form 7:** ***Application for Postconviction Relief Form.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| _____, Applicant,<br><br>vs.<br><br>STATE OF IOWA, Respondent. | Law No. CL _____<br><br>**APPLICATION FOR POSTCONVICTION RELIEF PURSUANT TO IOWA CODE CHAPTER 822** |

I.

Conviction or sentence concerning which postconviction relief is demanded:

A. Crime and statute applicant was convicted of violating:

_____

B. Criminal Case No. _____

C. District court and judge that entered judgment of conviction or sentence:

_____

D. Date of entry of judgment of conviction or sentence:

_____

E. Sentence: _____

F. Place of confinement: _____

G. Plea:

_____Guilty

_____Not Guilty

H. Trial:

_____Jury

_____Judge only

II.

Prior proceedings:

A. Conviction or sentence was _____ appealed

1. to _____ court

2. Grounds raised: _____

_____

3. Result: _____

4. Date of result: _____

B. Other petitions, applications or motions relating to this conviction or sentence in any court, state or federal:

1. Name of court: _____

2. Nature of proceedings: _____

_____

3. Grounds raised: _____

_____

4. Result: _____

5. Date of result: _____

Application for Postconviction Relief Form *(cont'd)*

III.

Grounds upon which application is based (grounds checked must be fully explained in space below):

A. _____ The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.

B. _____ The court was without jurisdiction to impose sentence.

C. _____ The sentence exceeds the maximum authorized by law.

D. _____ There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.

E. _____ (1) Applicant's sentence has expired.

_____ (2) Applicant's probation, parole, or conditional release has been unlawfully revoked.

_____ (3) Applicant is otherwise unlawfully held in custody or other restraint.

F. _____ The conviction or sentence is otherwise subject to collateral attack upon ground(s) of alleged error formerly available under any common law, statutory, or other writ, motion, proceeding, or remedy.

Specific explanation of grounds and allegation of facts:

_____

_____

_____

_____

_____

_____

_____

_____

IV.

Facts supporting application within personal knowledge of applicant:

_____

_____

_____

_____

V.

The following documents, exhibits, affidavits, records, or other evidence supporting this application are attached to the application (list):

_____

_____

_____

_____

VI.

The following documents, exhibits, affidavits, records, or other evidence supporting this application are not attached to the application (list):

_____

_____

_____

_____

Application for Postconviction Relief Form *(cont'd)*

These items are not attached for the following reason(s):

_____

_____

_____

_____

VII.

Relief desired (state clearly)

_____

_____

_____

_____

_____

_____

_____

_____

VIII.

I, the undersigned applicant, am _____ able to pay court costs and expenses of representation and do _____ desire to have counsel appointed to represent me concerning this application. (If applicant indicates inability to pay court costs and expenses of representation and does desire to have counsel appointed, applicant shall attach a financial statement to this application. See Iowa Code §815.9 and 815.10.)

VERIFICATION

I, _____, applicant, being first duly sworn, declare to the undersigned authority that the information in this application, including the facts within my personal knowledge set out in division IV and the items listed in division V, is true and correct.

_____
Applicant's signature

_____
Attorney (if any) for applicant

Address: _____

_____

State of Iowa, _____ County, ss.

Subscribed, sworn to, and acknowledged before me by _____ this _____ day of _____, 20 _____.

_____
Notary public or other officer authorized to take and certify acknowledgements and administer oaths.

DIRECTIONS TO CLERK OF COURT

The clerk of court shall docket this application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the county attorney and the attorney general. See Iowa Code §822.3. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rules 2.38** to **2.50** Reserved.

SIMPLE MISDEMEANORS

**Rule 2.51 Scope.** The rules set forth in this section shall apply to trials of simple misdemeanors, and attendant proceedings and to appeals from conviction in such cases. [66GA, ch 1245(2), §1302; Report November 9, 2001, effective February 15, 2002]

**Rule 2.52 Applicability of indictable offense rules.** Procedures not provided for herein shall be governed by the provisions of the rules or statutes governing indictable offenses which are by their nature applicable to misdemeanor prosecutions. [66GA, ch 1245(2), §1302; 67GA, ch 153, §81; Report November 9, 2001, effective February 15, 2002]

**Rule 2.53 To whom tried.** Judicial magistrates and district associate judges may hear, try and determine simple misdemeanors. District judges may transfer any simple misdemeanors pending before them to the nearest judicial magistrate or district associate judge. [66GA, ch 1245(2), §1302; 67GA, ch 153, §82; Report November 9, 2001, effective February 15, 2002]

**Rule 2.54 The charge.** Prosecutions for simple misdemeanors must be commenced by filing a subscribed and sworn to complaint with a magistrate or district court clerk or the clerk's deputy. [66GA, ch 1245(2), §1302; Report November 9, 2001, effective February 15, 2002]

**Rule 2.55 Contents of the complaint.** The complaint shall contain:

**2.55(1)** The name of the county and of the court where the complaint is filed.

**2.55(2)** The names of the parties, if the defendants be known, and if not, then such names as may be given them by the complainant.

**2.55(3)** A concise statement of the act or acts constituting the offense, including the time and place of its commission as near as may be, and identifying by number the provision of law alleged to be violated.

**2.55(4)** The provisions of rule 2.6(5) shall be applicable to the prosecution before a magistrate of cases within the magistrate's jurisdiction. [66GA, ch 1245(2), §1302; 67GA, ch 153, §83; Report November 9, 2001, effective February 15, 2002]

**Rule 2.56 Filing of complaint.** The magistrate or district court clerk or the clerk's deputy must file the complaint and mark thereon the time of filing the same. [66GA, ch 1245(2), §1302; Report November 9, 2001, effective February 15, 2002]

**Rule 2.57 Arrest warrant.** Immediately upon filing the complaint, the magistrate or district court clerk or the clerk's deputy may issue an arrest warrant or may issue a citation instead of an arrest warrant and deliver it to a peace officer. [66GA, ch 1245(2), §1302; Report November 9, 2001, effective February 15, 2002]

**Rule 2.58 Arrest.** The officer who receives the warrant shall arrest the defendant and bring the defendant before the magistrate without unnecessary delay or serve the citation in the manner provided in Iowa Code chapter 804. [66GA, ch 1245(2), §1302; 67GA, ch 153, §84; Report November 9, 2001, effective February 15, 2002]

**Rule 2.59 Prosecution of corporations.** In prosecutions against corporations the corporation may be proceeded against by summons as set forth in Iowa Code chapter 807. [66GA, ch 1245(2), §1302; Report November 9, 2001, effective February 15, 2002]

**Rule 2.60 Appearance of defendant.** Upon initial appearance, the charge against the defendant must be distinctly read to the defendant, and a copy given to the defendant, and the defendant shall be asked whether the defendant is charged under the defendant's correct name. If the defendant objects to being wrongly named in the complaint, the defendant must give the correct name, and if the defendant refuses to do so, or does not object to being wrongly named, the magistrate shall make an entry thereof in the docket, and the defendant is thereafter precluded from making any such objection. [66GA, ch 1245(2), §1302; Report November 9, 2001, effective February 15, 2002]

**Rule 2.61 Rights of defendant.**

**2.61(1)** The court shall inform the defendant:

*a.* Of the defendant's right to counsel.

*b.* Of the circumstances under which the defendant might secure pretrial release, and of the defendant's right to review any conditions imposed on the defendant's release.

*c.* That the defendant is not required to make a statement and that if the defendant does, it may be used against the defendant.

**2.61(2)** In cases where the defendant faces the possibility of imprisonment, the court shall appoint counsel for an indigent defendant in accordance with procedures established under rule 2.2(3). The magistrate shall allow the defendant reasonable time and opportunity to consult with counsel, in the event the defendant expresses a desire to do so. [66GA, ch 1245(2), §1302; 67GA, ch 153, §85; Report November 9, 2001, effective February 15, 2002]

**Rule 2.62 Bail.** Admission to bail shall be as provided for in Iowa Code chapter 811. Upon proper application, a district court judge or district associate judge is authorized to review and amend the conditions of bail previously imposed. There shall be no more than one review except upon changed conditions. [66GA, ch 1245(2), §1302; Report December 28, 1989, effective April 2, 1990; November 9, 2001, effective February 15, 2002]

**Rule 2.63 Plea.** The defendant shall be required to enter a plea to the complaint, and permissible pleas include those allowed when the defendant is indicted, as set forth in rule 2.8. [66GA, ch 1245(2), §1302; Report November 9, 2001, effective February 15, 2002]

**Rule 2.64 Trial date.** Upon a plea other than guilty the magistrate shall set a trial date which shall be at least 15 days after the plea is entered. The magistrate shall notify the prosecuting attorney of the trial date and shall advise the defendant that the trial will be without a jury unless demand for jury trial is made no later than ten days following the plea of not guilty. Failure to make a jury demand in the manner prescribed herein constitutes a waiver of jury. If demand is made, the action shall be tried by a jury of six members. Upon the request of the defendant, the magistrate may set the date of trial at a time less than 15 days after a plea other than guilty is entered. The magistrate shall notify the defendant that a request for earlier trial date shall constitute a waiver of jury. [66GA, ch 1245(2), §1302; Report December 28, 1989, effective April 2, 1990; November 9, 2001, effective February 15, 2002]

**Rule 2.65 Change of venue.** A change of venue may be applied for and accomplished in either of the manners prescribed in rule 2.11(10). [66GA, ch 1245(2), §1302; 82 Acts, ch 1021, §6, effective July 1, 1983; Report November 9, 2001, effective February 15, 2002]
*See also* rule 22.9

**Rule 2.66 Bailiff obtained.** If trial by jury is demanded and a court attendant employed under Iowa Code section 602.6601 is not available to assist the magistrate, the magistrate shall notify the sheriff who shall furnish a bailiff at that time and place to act as officer of the court. [66GA, ch 1245(2), §1302; 1983 Iowa Acts, ch 186, §10148; Report November 9, 2001, effective February 15, 2002]

**Rule 2.67 Selection of jury; trial.**

**2.67(1)** *Selection of panel.* If a trial by jury is demanded, the magistrate shall notify the clerk of the district court of the time and place of trial. The clerk shall thereupon select by lot 14 names from the district court jury panel. The clerk shall notify these jurors of the time and place for trial.

**2.67(2)** *Challenges.* Except where inconsistent with this rule, rule 2.18 shall apply, but no challenge to the panel is allowed.

**2.67(3)** *Completion of panel.* If for any reason the panel as chosen by the clerk becomes insufficient to obtain a jury, the magistrate may direct the officer of the court to summon any bystander or others who may be competent, and against whom no sufficient cause of challenge appears, to act as jurors.

**2.67(4)** *Strikes.* If, after all challenges and strikes as noted in rule 2.18 have been exercised, the remaining jurors number more than six, the parties, commencing with the defendant, shall continue to strike jurors in order until the panel is reduced to six jurors.

**2.67(5)** *Alternate jurors.* No alternate jurors shall be chosen.

**2.67(6)** *Jury of six.* When six jurors appear and are accepted, they shall constitute the jury.

**2.67(7)** *Oath of jurors.* The magistrate must thereupon administer to them the following oath or affirmation: "You do swear (or, you do solemnly affirm, as the case may be) that you will well and truly try the issue between the state of Iowa and the defendant, and a true verdict give according to the law and evidence."

**2.67(8)** *Trial.* The court shall conduct the trial in the manner of indictable cases in accordance with rule 2.19.

**2.67(9)** *Record.* The proceedings upon trial shall not be reported, unless a party provides a reporter at such party's expense. The magistrate may cause the proceedings upon trial to be reported electronically. If the proceedings are being electronically recorded both parties shall be notified in advance of that recording. If the defendant is indigent and requests that the proceedings upon trial be reported, the judicial magistrate shall cause them to be reported by a reporter, or electronically, at public expense. If the proceedings are not reported electronically, the judicial magistrate shall make minutes of the testimony of each witness and append the exhibits or copies thereof. If the proceedings have been reported electronically the recording shall be retained under the jurisdiction of the magistrate and upon request shall be transcribed only by a person designated by the court under the supervision of the magistrate. The transcription shall be provided anyone requesting it upon payment of actual cost of transcription or to an indigent defendant as herein above provided. [66GA, ch 1245(2), §1302; 67GA, ch 153, §86; 1987 Iowa Acts, ch 25, §1; Report November 9, 2001, effective February 15, 2002]

**Rule 2.68 Judgment.** When the defendant is acquitted, the defendant must be immediately discharged. When the defendant pleads guilty or is convicted, the magistrate may render judgment thereon as the case may require, being governed by the rules prescribed for the trial of indictable offenses, as far as the same are applicable.

If the judgment and costs are not fully and immediately satisfied, the magistrate shall indicate on the judgment the portion unsatisfied and shall promptly certify a copy of the judgment to the clerk of the district court. The clerk shall index and file the judgment, whereupon it is a judgment of the district court. [66GA, ch 1245(2), §1302; 1983 Iowa Acts, ch 186, §10149; Report November 9, 2001, effective February 15, 2002]

**Rule 2.69 Costs taxed to prosecuting witness.** If the prosecuting witness fails without good cause to appear or give evidence on the trial, and defendant is discharged on account of such failure, the magistrate may, in the magistrate's discretion, tax the costs of the proceeding against such prosecuting witness and render judgment therefor; and if defendant is acquitted, the magistrate shall, if satisfied that the prosecution is malicious or without probable cause, so tax the costs and render judgment therefor. [66GA, ch 1245(2), §1302; Report November 9, 2001, effective February 15, 2002]

**Rule 2.70 Suppression of evidence and disposition of seized property.** Motions to suppress evidence shall proceed in the manner provided for the trial of indictable offenses, and any property seized dealt with in the manner provided in indictable offenses. [66GA, ch 1245(2), §1302; Report November 9, 2001, effective February 15, 2002]

*See also* rule 2.12

**Rule 2.71 Joint trials.** Two or more complaints against one defendant may be tried jointly. Two or more defendants who are alleged to have participated in the same transaction or occurrence or series of transactions or occurrences from which the offense or offenses charged arose may be tried jointly whether the defendants are charged in one or more complaints. Jointly tried complaints or defendants shall be adjudged separately. Complaints or defendants shall not be jointly tried as to a party if the court finds, in its discretion, that prejudice would result to the party. [66GA, ch 1245(2), §1302; amendment 1982; Report November 9, 2001, effective February 15, 2002]

**Rule 2.72 Forfeiture of collateral in lieu of appearance.** In a specified simple misdemeanor other than one charged upon a uniform citation and complaint a court may accept a forfeiture of collateral security in lieu of appearance, as a proper disposition of a case. Each judicial district, by action of a majority of the district judges, may determine the misdemeanors subject to such disposition and promulgate by rule a list of same and disseminate to all magistrates in the district. A copy of such rule shall be transmitted to the clerk of the supreme court. Prior to termination of the case by forfeiture under this rule, the defendant must execute a written request for same. Unless vacated upon application within 30 days of the forfeiture, such forfeiture shall constitute a conviction in satisfaction.

In the event a simple misdemeanor is charged upon the uniform citation and complaint defined in Iowa Code section 805.6, and the defendant either has submitted unsecured appearance bond as provided in that section or has submitted bail as provided in Iowa Code section 805.9, subsection 3, the court or the clerk of the district court may enter a conviction pursuant to the defendant's written appearance and may enter a judgment of forfeiture of the collateral in satisfaction of the judgment and sentence; provided that if the defendant submitted unsecured appearance bond or if bail remains uncollected, execution may issue upon the judgment of the court at any time after entry of the judgment. [66GA, ch 1245(2), §1302; 67GA, ch 147, §54; Report November 9, 2001, effective February 15, 2002]

**Rule 2.73 Appeals.**

**2.73(1)** *Notice of appeal.* An appeal may be taken by the plaintiff only upon a finding of invalidity of an ordinance or statute. In all other cases, an appeal may only be taken by the defendant and only upon a judgment of conviction. Execution of the judgment shall be stayed upon filing with the clerk of the district court an appeal bond with surety approved by the clerk, in the sum specified in the judgment. A party takes an appeal by giving notice orally to the magistrate at the time judgment is rendered that the party appeals or by filing with the clerk of the district court not later than ten days after judgment is rendered a written notice of appeal. When an oral notice of an appeal is given to the magistrate, the magistrate must make an entry on the docket of the giving of such notice. Payment of fine or service of a sentence of imprisonment does not waive the right to appeal, nor render the appeal moot.

**2.73(2)** *Record.* When an appeal is taken, the magistrate shall promptly forward to the appropriate district court clerk a copy of the magistrate's docket entries, together with copies of the complaint, warrant, motions, pleadings, the magistrate's minutes of the witnesses' testimony, the exhibits or the originals thereof, and the other papers in the case. Within ten days after an appeal is taken, unless extended by order of a district judge or district associate judge, any party may file with the clerk, as a part of the record, a transcript of the official report, if any, and, in the event the report was made electronically, the tape or other medium on which the proceedings were preserved.

**2.73(3)** *Procedure if appeal from magistrate.* If the original action was tried by a district judge, district associate judge, or judicial magistrate, the appellant shall file and serve, within 14 days after taking the appeal, a brief in support of the appeal. The brief shall include statements of the specific issues presented for review and the precise relief requested. The appellee may file and serve, within ten days after service of the appellant's brief, a responding brief. Either party may request, at the end of the party's brief, permission to be heard in oral argument. Within 30 days after the filing, or expiration of time for filing, of the appellee's brief, the appeal shall be submitted to the court on the record and any briefs without oral argument, unless otherwise ordered by the court or its designee. If the court, on its own motion or motion of a party, finds the record to be inadequate, it may order the presentation of further evidence. If the original action was tried by a district judge, the appeal shall be decided by a different district judge. If the original action was tried by a district associate judge, the appeal shall be decided by a district judge or a different district associate judge. If the original action was tried by a judicial magis-

trate, the appeal shall be decided by a district judge or district associate judge. Findings of fact in the original action shall be binding on the judge deciding the appeal if they are supported by substantial evidence. The judge deciding the appeal may affirm, or reverse and enter judgment as if the case were being originally tried, or enter any judgment which is just under the circumstances.

**2.73(4)** *Bail.*

*a. Admission to bail.* Admission to bail shall be as provided in Iowa Code chapter 811. Execution of the judgment shall not be stayed unless the defendant is admitted to bail.

*b. Officers authorized to take bail.* Bail may be taken by the magistrate who rendered the judgment or by any magistrate of that county. The magistrate taking bail shall remit it to the clerk of the district court who shall give receipt therefor.

**2.73(5)** *Counsel.* In appropriate cases, the magistrate shall appoint counsel on appeal.

**2.73(6)** *Review by supreme court.* After the decision on appeal the defendant may apply for discretionary review pursuant to Iowa Code section 814.6(2)(*d*), and the plaintiff may apply for discretionary review pursuant to Iowa Code section 814.5(2)(*d*). Procedure on discretionary review shall be as prescribed in Iowa Rs. App. P. 6.201-6.203. [66GA, ch 1245(2), §1302; 67GA, ch 153, §87, 88; amendment 1979; 68GA, ch 1022, §22, effective January 1, 1981; amendment 1982; Report May 7, 1986, effective July 15, 1986; 1987 Iowa Acts, ch 25, §2, 3; Report June 29, 2001, effective September 10, 2001; November 9, 2001, effective February 15, 2002]

**Rule 2.74 New trial.** The magistrate, on motion of a defendant, may grant a new trial pursuant to the grounds set forth in rule 2.24, except that a motion for a new trial based on newly discovered evidence must be made within six months after the final judgment. A motion for a new trial based on any other grounds shall be made within seven days after a finding of guilty or within such further time as the court may fix during the seven-day period. [66GA, ch 1245(2), §1302; 67GA, ch 153, §89; Report November 9, 2001, effective February 15, 2002]

**Rule 2.75 Correction or reduction of sentence.** The magistrate may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The magistrate may reduce a sentence within ten days after the sentence is imposed or within ten days after the receipt by the magistrate of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within ten days after entry of any order or judgment of the appellate court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law. [66GA, ch 1245(2), §1302; 67GA, ch 153, §90; Report November 9, 2001, effective February 15, 2002]

**Rule 2.76 Forms**

**Rule 2.76  Form 1:** ***Complaint.***

State of Iowa Before (Judge, Magistrate) _____
County of _____
Criminal Case No. _____
State of Iowa
vs.
A _____ B _____, Defendant.

The defendant is accused of the crime of (here name the offense and Code or ordinance section), in that the defendant on the _____ day of _____, 20 ___, at the _____ (here locate the city, or township where the offense occurred), in _____ County, did (state the acts or omissions constituting the offense).

/s/_____

[66GA, ch 1245(2), §1302; 67GA, ch 153, §102; Report November 9, 2001, effective February 15, 2002]

**Rule 2.76  Form 2:** ***Consent to Forfeiture of Collateral as Disposition of Misdemeanor.***

State of Iowa
County of _____
Criminal Case No. _____

I, the undersigned, agree to have the amount of $ _____ forfeited as a fine and my case terminated. I do this with the following understanding:

1. I have been charged with the offense of _____ (here name the offense and Code or ordinance section).
2. I understand my rights, including my right to trial before the court on such charge, and voluntarily waive same, understanding that forfeiture of the aforesaid amount terminates my right to a trial and constitutes a conviction of the offense charged.

_____
(Signature of defendant)

[66GA, ch 1245(2), §1302; 67GA, ch 153, §103; Report November 9, 2001, effective February 15, 2002]

**Rule 2.76  Form 3:** ***Notice of Appeal to a District Court Judge From a Judgment or Order.***

State of Iowa
County of _____
Criminal Case No. _____
State of Iowa
vs. Notice of Appeal
C _____ D _____, Defendant.

Notice is hereby given that C _____ D _____, defendant above named, hereby appeals to a district court judge for _____ County (from the final judgment) (from the order) entered in this action on the _____ day of _____, 20 _____.

/s/_____

_____
(Address)

Attorney for C _____ D _____

[66GA, ch 1245(2), §1302; 67GA, ch 153, §104; Report November 9, 2001, effective February 15, 2002]

**Rule 2.76  Form 4:** ***Bail Bond on Appeal to District Court.***

State of Iowa
County of _____
Criminal Case No. _____

A _____ B _____ having been convicted before C _____ D _____ a magistrate of said county, of the crime of (here designate it generally as in the information), by a judgment rendered on the _____ day of _____, A.D. _____, and having appealed from said judgment to a district court judge of said county:

We, A _____ B _____, and E _____ F _____, hereby undertake that the said A _____ B _____ will appear in the district court of said county on the _____ day of _____ (month), 20 ____ (year), (which date shall be not more than 20 days after perfection of the undertaking), and submit to the judgment of said court, and not depart without leave of the same, or that we (or I, as the case may be) will pay to the state of Iowa the sum of _____ dollars (the amount of bail fixed).

A _____ B _____

E _____ F _____

Accepted by me, at _____, in the township of _____, this _____ day of _____, A.D. _____.

C _____ D _____
Judicial Magistrate

[66GA, ch 1245(2), §1302; 67GA, ch 153, §105; Report November 9, 2001, effective February 15, 2002]

# CHAPTER 3
# STANDARD FORMS OF PLEADINGS FOR SMALL CLAIMS ACTIONS

[Pursuant to Iowa Code section 631.15]

**Form 3.1:** ***Original Notice – Action for Money Judgment.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **ORIGINAL NOTICE**<br>**(Action for money judgment)**<br>Small Claim No. _____<br>Date Filed _____ |

TO THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY NOTIFIED that the plaintiff(s) demand(s) from you the amount of $_____ based on _____ (state briefly the basis for the demand).

UNLESS YOU APPEAR by completing and filing the attached appearance and answer form with the clerk of the court at _____ (exact address) in _____ (city), Iowa _____ (zip code), within 20 days after service of this original notice upon you, judgment shall be rendered against you upon plaintiff's claim together with interest and court costs.

IF YOU DENY THE CLAIM AND APPEAR by filing the attached appearance and answer within 20 days after service of this original notice upon you, you will then receive notification from the clerk's office of the place and time assigned for hearing.

_____

_____
Plaintiff(s)

Judgment Entry: _____

[Court Order December 11, 1975, received for publication February 28, 1984; June 29, 1984; Letter May 12, 1987 (obsolete reference to "town" stricken); November 9, 2001, effective February 15, 2002]

**Form 3.2:** ***Original Notice – Action for Forcible Entry and Detainer.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **ORIGINAL NOTICE**<br>**(Action for forcible entry and detainer)**<br>Small Claim No. _____<br>Date Filed _____ |

TO THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY NOTIFIED that the above-named plaintiff(s) demand(s) from you possession of _____ _____(state exact address of real property) for the reason that _____ _____ (state basis of demand).

UNLESS YOU APPEAR before the court to contest this matter at _____ _____ (exact address of court) in _____ (city), Iowa, at _____ o'clock _____ .m. on the _____ day of _____, 20 ____, judgment shall be rendered against you for possession of the property and for court costs.

_____

_____
Plaintiff(s)

Judgment Entry:_____

[Court Order December 11, 1975, received for publication February 28, 1984; Letter May 12, 1987 (obsolete reference to "town" stricken); November 9, 2001, effective February 15, 2002]

**Form 3.3:** ***Original Notice  Action for Forcible Entry and Detainer and Money Judgment.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA
(Small Claims Division)

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **ORIGINAL NOTICE**<br>**(Action for forcible entry and detainer and money judgment)**<br>Small Claim No. _____<br>Date Filed _____ |

TO THE ABOVE-NAMED DEFENDANT(S):

Count I

YOU ARE HEREBY NOTIFIED that the above-named plaintiff(s) demand(s) from you possession of _____ _____ (state exact address of real property) for the reason that _____ _____(state basis of demand).

Count II

YOU ARE HEREBY NOTIFIED that the plaintiff(s) demand(s) from you the amount of $_____ based on _____ (state briefly the basis for the demand).

UNLESS YOU APPEAR before the court to contest this matter at _____ (exact address of the court) in _____ (city), Iowa, at _____ o'clock _____ .m. on the _____ day of _____, 20 _____, judgment shall be rendered against you for possession of the property and for a money judgment together with interest and court costs.

_____

_____
Plaintiff(s) or Plaintiff(s)' Attorney

_____

_____
Address

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 515-286-3394. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

Judgment Entry: _____

[Court Order May 6, 1998; November 9, 2001, effective February 15, 2002]

**Form 3.4:** ***Appearance and Answer of Defendant.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **APPEARANCE AND ANSWER OF DEFENDANT**<br>Small Claim No. _____<br>Date Filed _____ |

I HEREBY enter my appearance and deny the claim of plaintiff(s).

_____
Defendant

[Court Order December 11, 1975, received for publication February 28, 1984; November 9, 2001, effective February 15, 2002]

**Form 3.5:** ***Counterclaim.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **COUNTERCLAIM**<br>Small Claim No. _____<br>Date Filed _____ |

TO: _____, PLAINTIFF(S)

YOU ARE HEREBY NOTIFIED that _____, defendant(s), as counterclaimant(s), demand(s) from you the amount of $ _____based on _____ (state briefly the basis for the demand).

_____

_____
Defendant(s) — Counterclaimant(s)

[Court Order December 11, 1975, received for publication February 28, 1984; November 9, 2001, effective February 15, 2002]

**Form 3.6:** ***Cross-claim Against Coparty.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **CROSS-CLAIM AGAINST COPARTY**<br>Small Claim No. _____<br>Date Filed _____ |

I (We), _____, as cross-claimant(s), hereby demand from _____ (state name(s) of party(ies) against whom the demand is made) the amount of $_____ based on _____ _____ (state briefly the basis for the demand).

_____

_____
Cross-claimant(s)

[Court Order December 11, 1975, received for publication February 28, 1984; November 9, 2001, effective February 15, 2002]

**Form 3.7:** ***Original Notice – Cross-petition Against Third Party.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>Third Party Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **ORIGINAL NOTICE**<br>**(Cross-petition against third party)**<br>Small Claim No. _____<br>Date Filed _____ |

TO:_____, THIRD PARTY DEFENDANT(S):

YOU ARE HEREBY NOTIFIED that, _____, as cross-petitioner(s), demand(s) from you the amount of $_____ based on _____ (state briefly the basis for the demand).

UNLESS YOU APPEAR by completing and filing the attached appearance and answer form with the clerk of the court at _____ (exact address) in _____ (city), Iowa _____ (zip code), within 20 days after service of this original notice upon you, judgment shall be rendered against you upon cross-petitioner's claim together with interest and court costs.

IF YOU DENY THE CLAIM AND APPEAR by filing the attached appearance and answer within 20 days after service of this original notice upon you, you will then receive notification from the clerk's office of the place and time assigned for hearing.

_____

_____
Cross-petitioner(s)

Judgment Entry: _____

[Court Order December 11, 1975, received for publication February 28, 1984; June 29, 1984; Letter May 12, 1987 (obsolete reference to "town" stricken); November 9, 2001, effective February 15, 2002]

**Form 3.8:** ***Appearance and Answer of Third Party Defendant.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>Third Party Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **APPEARANCE AND ANSWER OF THIRD PARTY DEFENDANT**<br>Small Claim No. _____<br>Date Filed _____ |

I HEREBY enter my appearance and deny the claim of _____, cross-petitioner(s).

_____
Third Party Defendant

[Court Order December 11, 1975, received for publication February 28, 1984; November 9, 2001, effective February 15, 2002]

**Form 3.9:** ***Petition of Intervention.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>Intervenor(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **PETITION OF INTERVENTION**<br>Small Claim No. _____<br>Date Filed _____ |

TO THE ABOVE-NAMED PLAINTIFF(S) AND DEFENDANT(S):

I (We), _____, being interested in the subject matter of this litigation now intervene _____ (either "adversely to both parties" or "allied with plaintiff" or "allied with defendant") and demand the amount of $_____ from _____ (state name(s) of party(ies) against whom the demand is made) based on _____ (state briefly the basis for the demand).

_____

_____
Intervenor(s)

[Court Order December 11, 1975, received for publication February 28, 1984; November 9, 2001, effective February 15, 2002]

**Form 3.10:** ***Original Notice Action of Replevin.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA
(Small Claims Division)

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **ORIGINAL NOTICE**<br>**(Action of Replevin)**<br>Small Claim No. _____<br>Date Filed _____ |

TO THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY NOTIFIED that the above-named plaintiff(s) demand(s) possession of property described as:

(insert description)

(1) The actual value of the property is $ _____ (If more than one item is involved, separate values must be stated for each item.) (May not exceed $5,000 in total value.)

(2) Plaintiff(s) is (are) entitled to immediate possession because (check one):

- ☐ Plaintiff(s) own(s) the property;
- ☐ Plaintiff(s) has (have) a security agreement for the property (copy attached) providing that plaintiff(s) is (are) entitled to seize possession on default, and that default(s) as follows has (have) occurred;
- ☐ (State other grounds).

(3) ☐ *(a)* That the property is not in the possession of the defendant(s) under court order or judgment; or

☐ *(b)* That property was taken by the defendant(s) under a court order or judgment but is improperly held, being exempt from such seizure because: (state basis for exemption).

(4) That to the best belief of the plaintiff(s) the property is being held by the defendant(s) because: (state facts constituting the defendant's(s') alleged reason for detaining the property).

(5) That the plaintiff(s) is (are) entitled to damages for such retention in the amount of $_____, based on: (state grounds of alleged damage).

UNLESS YOU APPEAR by completing and filing the attached appearance and answer form with the clerk of the court at _____ (exact address) in _____ (city), Iowa _____ (zip code), within 20 days after service of this original notice upon you, judgment shall be rendered against you upon plaintiff's(s') claim together with interest and court costs.

Original Notice — Action of Replevin *(cont'd)*

IF YOU DENY THE CLAIM AND APPEAR by filing the attached appearance and answer within 20 days after service of this original notice upon you, you will then receive notification from the clerk's office of the place and time assigned for hearing.

_____

_____
Plaintiff(s)

STATE OF IOWA
COUNTY OF _____ } ss:

I (We), _____, do hereby swear or affirm that the above and foregoing statements are true and correct as I (we) verily believe.

_____
(Signature(s) of affiant(s))

Subscribed and sworn to before me by _____, on this _____ day of _____, 20 ____.

_____
Notary Public

[Report March 10, 1987, effective July 1, 1987; Court Order November 25, 1998; November 9, 2001, effective February 15, 2002; June 14, 2002, effective July 1, 2002]

**Form 3.11:** ***Original Notice  Foreign Corporation or Nonresident Defendant.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA
(Small Claims Division)

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **ORIGINAL NOTICE**<br>**(Foreign Corporation or Nonresident Defendant)**<br>Small Claim No. _____<br>Date Filed _____ |

TO THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY NOTIFIED that the plaintiff(s) demand(s) from you the amount of $_____ based on _____ (state briefly the basis for the demand).

UNLESS YOU APPEAR by completing and filing the attached appearance and answer form with the clerk of the court at _____ (exact address) in _____ (city), Iowa _____ (zip code), within 60 days after the filing of this original notice with the secretary of state of the State of Iowa, judgment shall be rendered against you upon plaintiff's(s') claim together with interest and court costs.

IF YOU DENY THE CLAIM AND APPEAR by filing the attached appearance and answer within 60 days after the filing of this original notice with the secretary of state of the State of Iowa, you will then receive notification from the clerk's office of the place and time assigned for hearing.

_____

_____
Plaintiff(s)

Judgment Entry: _____

[Report September 29, 1987, effective December 1, 1987; November 9, 2001, effective February 15, 2002]

**Form 3.12:** ***Original Notice  Nonresident Motor Vehicle Owner or Operator.***

IN THE DISTRICT COURT OF IOWA
IN AND FOR _____ COUNTY, IOWA
(Small Claims Division)

| | |
|---|---|
| Plaintiff(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address)<br>vs.<br>Defendant(s)<br>_____<br>(Name)<br>_____<br>(Address)<br>_____<br>(Name)<br>_____<br>(Address) | **ORIGINAL NOTICE**<br>**(Nonresident Motor Vehicle Owner or Operator)**<br>Small Claim No. _____<br>Date Filed _____ |

TO THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY NOTIFIED that the plaintiff(s) demand(s) from you the amount of $_____ based on _____ (state briefly the basis for the demand).

UNLESS YOU APPEAR by completing and filing the attached appearance and answer form with the clerk of the court at _____ (exact address) in _____ (city), Iowa _____ (zip code), within 60 days after the filing of this original notice with the director of transportation of the State of Iowa, judgment shall be rendered against you upon plaintiff's(s') claim together with interest and court costs.

IF YOU DENY THE CLAIM AND APPEAR by filing the attached appearance and answer within 60 days after the filing of this original notice with the director of transportation of the State of Iowa, you will then receive notification from the clerk's office of the place and time assigned for hearing.

_____

_____
Plaintiff(s)

Judgment Entry: _____

[Report September 29, 1987, effective December 1, 1987; November 9, 2001, effective February 15, 2002]

# CHAPTER 4
# CIVIL AND CRIMINAL STANDARD FORMS FOR DOMESTIC ABUSE, STALKING AND HARASSMENT ORDERS

[Pursuant to Iowa Code sections 236.4(2), 236.5(2), 236.11, and 236.14]

**Form 4.1:** ***Temporary Protective Order (Section 236.3 Petition).***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| _____, Plaintiff (PROTECTED PARTY), | Case No. _____ |
| vs. | **TEMPORARY PROTECTIVE ORDER (Section 236.3 Petition)** |
| _____, Defendant. | Date: _____ |

The court has considered the Petition for Relief from Domestic Abuse and finds that a temporary protective order under Iowa Code section 236.4(2) is necessary to protect the protected party named above.

Therefore, the court ORDERS as follows:

1. Defendant shall not threaten, assault, stalk, molest, attack, harass, or otherwise abuse the protected party.
2. Defendant shall stay away from the protected party and shall not be in that party's presence except in a courtroom during court hearings.
3. Defendant shall not communicate with the protected party in person, by telephone, in writing, through third persons, or otherwise. This restriction shall not prohibit communication through legal counsel.

The protected party shall have exclusive possession of the residence located at _____. Defendant shall not go to, enter, occupy or remain in that residence or any other residence in which the protected party is staying, under any circumstance. Sheriff shall take custody of defendant's keys to the residence upon service of this order. Sheriff will turn residence keys over to the protected party.

4. Defendant may enter the residence once in the company of a peace officer to retrieve defendant's clothing and work-related items.

[ ] 5. If checked, protected party shall have the right to exclusive use and possession of the _____ vehicle until further order of the court, and the sheriff shall take custody of defendant's keys to the vehicle upon service of this order. Sheriff will turn vehicle keys over to the protected party.

6. The protected party is granted temporary custody of these children (list names and ages):_____
_____
_____.

If the children are not presently in the care of protected party, the children shall be returned to the protected party's custody at the following time and in the following manner:_____
_____
_____
_____.

Unless modified by order filed in this proceeding or in a juvenile court proceeding affecting the same children, this temporary order shall prevail over any other existing custody order. The issue of visitation will be addressed at the hearing mentioned below. Until such time, defendant shall not contact these children and shall not contact the protected party about visitation.

7. **A DEFENDANT WHO VIOLATES THIS ORDER FACES IMMEDIATE ARREST.** Violation may occur even if the protected party consents to conduct that is prohibited by this order. Only the court can relieve defendant from the restrictions contained in this order.

8. A hearing will be held on _____, 20 _____, at _____ o'clock ___.m. at the _____ County Courthouse, Room _____, in _____, Iowa, to decide if a permanent protective order should be entered. Failure of the defendant to appear may result in a permanent protective order being entered against the defendant. Failure of the protected party to appear may result in the case being dismissed. Each party has the right to be represented by an attorney at this hearing. The parties shall bring copies of any existing child custody orders to the hearing.

9. This order is effective upon service on defendant. It shall remain in effect until modified, terminated or superseded by a later written order, or until the dismissal of the case, but in no event for more than one year.

Temporary Protective Order (Section 236.3 Petition) *(cont'd)*

10. The court finds, pursuant to Iowa Code section 236.10, that to protect the safety or privacy of the protected party and/or the protected party's children, the clerk of court shall, until further order of the court (check any that apply)

[ ] seal the entire file from public access, other than court orders and child support payment records.

[ ] seal the following portion(s) of the file from public access:_____

_____

_____.

[ ] redact protected party's actual address and location information prior to public dissemination of court orders, child support payment records, and other records available at the clerk's office or through the Iowa Court Information System (ICIS).

Whether or not any boxes are checked above, the indices available at the clerk's office or through the Iowa Court Information System (ICIS) shall remain open.

11. This order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) ____.

_____

**JUDGE, _____ JUDICIAL DISTRICT**

[ ] The _____ County Sheriff shall serve defendant with a copy of the petition/motion and this order, without the prepayment of fees, at least two days before the hearing.

[ ] The clerk of court shall provide copies of this order to the parties and law enforcement agencies, pursuant to Iowa Code section 236.5(5).

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.2:** ***Protective Order Following Adjudication of Domestic Abuse (Section 236.3 Petition).***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| _____, Plaintiff (PROTECTED PARTY), vs. _____, Defendant. | Case No. _____ **PROTECTIVE ORDER FOLLOWING ADJUDICATION OF DOMESTIC ABUSE (Section 236.3 Petition)** Date: _____ |

On the _____ day of _____, 20 ___, a hearing was held on the Petition for Relief from Domestic Abuse. The following persons were present and participated in the hearing:_____

_____.

The court FINDS by a preponderance of the evidence:

(1) Defendant was personally served with a copy of the petition and the temporary protective order containing notice of this hearing.
(2) Defendant committed a domestic abuse assault against the protected party named above.
(3) Defendant represents a credible threat to the physical safety of the protected party.

Therefore, pursuant to Iowa Code chapter 236, the court ORDERS as follows:

1. Defendant shall not threaten, assault, stalk, molest, attack, harass or otherwise abuse the protected party.
2. Defendant shall stay away from the protected party and shall not be in that party's presence, except in a courtroom during court hearings.
3. Defendant shall not communicate with the protected party in person, by telephone, in writing, through third persons, or otherwise. This restriction shall not prohibit communication through legal counsel.
4. The protected party shall have exclusive possession of the residence located at_____

_____.
Defendant shall not go to, enter, occupy or remain in that residence or any other residence in which the protected party is staying, under any circumstance.

5. The _____ (protected party or defendant) is granted temporary custody of these children (list names and ages)

_____.

_____ (protected party or defendant) is granted visitation with these children as follows (specify times, places and method of implementation of visitation):_____

_____

_____

_____.
The defendant shall not otherwise contact these children and shall not contact the protected party about visitation except as provided in this order.

[ ] 6. If checked, defendant shall not possess firearms while this order is in effect. Defendant shall deliver all firearms to the _____ County Sheriff or _____ (law enforcement agency) on or before _____, 20 ____.

7. Whether or not paragraph six is checked, the defendant is advised that the issuance of this protective order may affect the right to possess or acquire a firearm or ammunition under federal law. 18 U.S.C. §§ 922(d)(8), (g)(8).

8. **A DEFENDANT WHO VIOLATES THIS ORDER FACES IMMEDIATE ARREST.** Violation may occur even if the protected party consents to conduct that is prohibited by this order. Only the court can relieve defendant from the restrictions contained in this order.

9. This order shall remain in effect until _____ (not more than one year) unless it is modified, terminated, extended, or superseded by written order of the court, or until the dismissal of the case.

Protective Order Following Adjudication of Domestic Abuse (Section 236.3 Petition) *(cont'd)*

10. This order is effective ( ) immediately.
( ) upon service on defendant. Until such service of this order, the temporary protective order shall remain in full force and effect.

11. Court costs are assessed against _____.

12. The court finds, pursuant to Iowa Code section 236.10, that to protect the safety or privacy of the protected party and/or the protected party's children, the clerk of court shall, until further order of the court (check any that apply)

[ ] seal the entire file from public access, other than court orders and child support payment records.

[ ] seal the following portion(s) of the file from public access: _____
_____.

[ ] redact protected party's actual address and location information prior to public dissemination of court orders, child support payment records, and other records available at the clerk's office or through the Iowa Court Information System (ICIS).

Whether or not any boxes are checked above, the indices available at the clerk's office or through the Iowa Court Information System (ICIS) shall remain open.

13. This order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

_____
**JUDGE, _____ JUDICIAL DISTRICT**

[ ] The _____ County Sheriff shall serve defendant with a copy of this order, without the prepayment of fees.

[ ] Defendant was personally served with a copy of this order by the court.

[ ] The clerk of court shall provide copies of this order to the parties and law enforcement agencies, pursuant to Iowa Code section 236.5(5).

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.3:** ***Protective Order by Consent Agreement (Section 236.3 Petition).***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| _____, Plaintiff (PROTECTED PARTY), vs. _____, Defendant. | Case No. _____ **PROTECTIVE ORDER BY CONSENT AGREEMENT (Section 236.3 Petition)** Date: _____ |

On the _____ day of _____, 20 ____, a hearing was held on the Petition for Relief from Domestic Abuse. The following persons were present and participated in the hearing:_____
_____
_____.

The court FINDS by a preponderance of the evidence:

(1) Defendant was personally served with a copy of the petition and the temporary protective order containing notice of this hearing.

(2) The parties appeared and each consented to the entry of this order.

[ ] (3) If checked, the defendant committed a domestic abuse assault against the protected party.

Therefore, pursuant to Iowa Code chapter 236, the court ORDERS as follows:

1. Defendant shall not threaten, assault, stalk, molest, attack, harass or otherwise abuse the protected party.

2. Defendant shall not communicate with the protected party in person, by telephone, in writing, through third persons, or otherwise. This restriction shall not prohibit communication through legal counsel.

3. The protected party shall have exclusive possession of the residence located at _____ _____. Defendant shall not go to, enter, occupy or remain in that residence or any other residence in which the protected party is staying, under any circumstance.

4. (Insert additional provisions expressly limiting contact, if any, including limitations on access to protected party's school or workplace):_____
_____
_____
_____.

5. The _____ (protected party or defendant) is granted temporary custody of these children (list names and ages) _____.

_____ (protected party or defendant) is granted visitation with these children as follows (specify times, places and method of implementation of visitation): _____
_____
_____
_____.

The defendant shall not otherwise contact these children and shall not contact the protected party about visitation except as provided in this order.

[ ] 6. If checked, defendant shall not possess firearms while this order is in effect. Defendant shall deliver all firearms to the _____ County Sheriff or _____ (law enforcement agency) on or before _____, 20 ____.

7. Whether or not paragraph six is checked, the defendant is advised that the issuance of this protective order may affect the right to possess or acquire a firearm or ammunition under federal law. 18 U.S.C. §§ 922(d)(8), (g)(8).

8. **A DEFENDANT WHO VIOLATES THIS ORDER FACES IMMEDIATE ARREST.** Violation may occur even if the protected party consents to conduct that is prohibited by this order. Only the court can relieve defendant from the restrictions contained in this order.

Protective Order by Consent Agreement (Section 236.3 Petition) *(cont'd)*

9. This order shall remain in effect until _____ (not more than one year) unless it is modified, terminated, extended, or superseded by written order of the court, or until the dismissal of the case.

10. This order is effective immediately.

11. Court costs are assessed against _____.

12. The court finds, pursuant to Iowa Code section 236.10, that to protect the safety or privacy of the protected party and/or the protected party's children, the clerk of court shall, until further order of the court (check any that apply)

[ ] seal the entire file from public access, other than court orders and child support payment records.

[ ] seal the following portion(s) of the file from public access:_____
_____.

[ ] redact protected party's actual address and location information prior to public dissemination of court orders, child support payment records, and other records available at the clerk's office or through the Iowa Court Information System (ICIS).

Whether or not any boxes are checked above, the indices available at the clerk's office or through the Iowa Court Information System (ICIS) shall remain open.

13. This order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

_____

**JUDGE, _____ JUDICIAL DISTRICT**

[ ] The _____ County Sheriff shall serve defendant with a copy of this order, without the prepayment of fees.

[ ] Defendant was personally served with a copy of this order by the court.

[ ] The clerk of court shall provide copies of this order to the parties and law enforcement agencies, pursuant to Iowa Code section 236.5(5).

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.4:** ***Cancellation, Modification or Extension of Chapter 236 Order.***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| _____, Plaintiff (PROTECTED PARTY), vs. _____, Defendant. | Case No. _____ **CANCELLATION, MODIFICATION OR EXTENSION OF CHAPTER 236 ORDER** Date: _____ |

On this _____ day of _____, 20 ____, this matter comes before the court regarding the Temporary or Permanent Chapter 236 Order entered on _____.
The court finds (if checked) that

[ ] defendant received notice regarding the hearing on this matter. As a result, this modified order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

[ ] plaintiff failed to appear for hearing.

[ ] _____.

The court ORDERS as follows (check the appropriate option below):

____ (1) The order is hereby **canceled**. The Petition for Relief from Domestic Abuse is dismissed without prejudice. Any outstanding warrants relating to this case are withdrawn. The clerk of court shall reflect this cancellation on the domestic abuse registry and shall notify law enforcement that the order is canceled. Court costs are assessed against _____.

____ (2) The order is **modified** as follows:_____
_____
_____
_____.
The modification is effective _____. The clerk of court shall reflect this modification on the domestic abuse registry and shall notify law enforcement that the order is modified. Court costs are assessed against _____.

____ (3) The order is hereby **extended** and shall expire on the _____ day of _____, 20 _____. The clerk of court shall reflect this extension on the domestic abuse registry and shall notify law enforcement that the order is extended. Court costs are assessed against _____.

_____
**JUDGE, _____ JUDICIAL DISTRICT**

[ ] The _____ County Sheriff shall serve defendant with a copy of this order, without the prepayment of costs.

[ ] The _____ were personally served with a copy of the order by the court.

[ ] The clerk of court shall provide copies of this order to the parties and law enforcement agencies, pursuant to Iowa Code section 236.5(5).

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; amended March 13, 1998; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.5:** ***Temporary Protective Order (Iowa Code Chapter 598).***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| IN RE THE MARRIAGE OF _____<br>AND _____<br><br>Upon the Petition of<br>_____,<br>Petitioner,<br><br>And Concerning<br>_____,<br>Respondent. | Case No. _____<br><br>**TEMPORARY PROTECTIVE ORDER**<br>**(Iowa Code Chapter 598)**<br><br>Date: _____ |

On this _____ day of _____, 20 _____, in a proceeding under Iowa Code chapter 598, a finding was made that the _____ (petitioner or respondent) _____ (name), hereinafter designated as protected party, should be accorded protection from _____ (petitioner or respondent) _____ (name) hereinafter designated as defendant.

The court further finds that the protection to be accorded to the protected party is of the type and for the reasons that this order should be furnished to the dispatcher designated in Iowa Code section 236.5(5), and violation of this order should be grounds for arrest under Iowa Code section 236.11.

Therefore, the court ORDERS as follows:

1. Defendant shall not threaten, assault, stalk, molest, attack, harass, or otherwise abuse the protected party.
2. Defendant shall stay away from the protected party and shall not be in that party's presence except in a courtroom during court hearings.
3. Defendant shall not communicate with the protected party in person, by telephone, in writing, through third persons, or otherwise. This restriction shall not prohibit communication through legal counsel.
4. The protected party shall have exclusive possession of the residence located at _____ _____. Defendant shall not go to, enter, occupy or remain in that residence or any other residence in which the protected party is staying, under any circumstance. Sheriff shall take custody of defendant's keys to the residence upon service of this order. Sheriff will turn residence keys over to the protected party. Defendant may enter the residence once in the company of a peace officer to retrieve defendant's clothing and work-related items.

[ ] 5. If checked, protected party shall have the right to exclusive use and possession of the _____ vehicle until further order of the court, and the sheriff shall take custody of defendant's keys to the vehicle upon service of this order. Sheriff will turn vehicle keys over to the protected party.

6. The protected party is granted temporary custody of these children (list names and ages): _____ _____ _____ _____.

If the children are not presently in the care of protected party, the children shall be returned to the protected party's custody at the following time and in the following manner: _____ _____ _____.

Unless modified by order filed in this proceeding or in a juvenile court proceeding affecting the same children, this temporary order shall prevail over any other existing custody order. The issue of visitation will be addressed at the hearing mentioned below. Until such time, defendant shall not contact these children and shall not contact the protected party about visitation.

[ ] 7. If checked, defendant shall not possess firearms while this order is in effect. Defendant shall deliver all firearms to the _____ County Sheriff or _____ (law enforcement agency) on or before _____, 20 ____.

8. **A DEFENDANT WHO VIOLATES THIS ORDER FACES IMMEDIATE ARREST.** Violation may occur even if the protected party consents to conduct that is prohibited by this order. Only the court can relieve defendant from the restrictions contained in this order.

Temporary Protective Order (Iowa Code Chapter 598) *(cont'd)*

9. (Check one of the following.)
[ ] This order is entered ex parte. A hearing will be held on _____, 20 _____, at ____ o'clock __.m. at the _____ County Courthouse, Room ____, in _____, Iowa, to decide if this order should remain in effect while this action is pending. Failure of the defendant to appear may result in this order remaining in effect while the dissolution action is pending. Failure of the protected party to appear may result in the cancellation of this order. Each party has the right to be represented by an attorney at this hearing.

or

[ ] This order is entered after both parties received notice and have had an opportunity to be heard. As a result, this order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Whether or not paragraph six above is checked, the defendant is advised that the issuance of this protective order may affect the right to possess or acquire a firearm or ammunition under federal law. 18 U.S.C. §§ 922(d)(8), (g)(8). Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

10. This order is effective ( ) immediately.
( ) upon service on defendant.

The order shall remain in effect until modified, terminated or superseded by a later written order, until the case is dismissed, or until a decree is issued in this dissolution.

_____
**JUDGE, _____ JUDICIAL DISTRICT**

[ ] The _____ County Sheriff shall serve defendant with a copy of the petition/motion and this order, without the prepayment of fees, at least two days before the hearing.

[ ] The defendant was personally served with a copy of this order by the court.

[ ] The clerk of court shall provide copies of this order to the parties and law enforcement agencies, pursuant to Iowa Code section 236.5(5).

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; amended March 13, 1998; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.6:** ***Domestic Abuse Protective Order Accompanying Dissolution Decree (Iowa Code Chapter 598).***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| IN RE THE MARRIAGE OF _____<br>AND _____ | Case No. _____ |
| Upon the Petition of<br>_____,<br>Petitioner,<br><br>And Concerning<br>_____,<br>Respondent. | **DOMESTIC ABUSE PROTECTIVE ORDER ACCOMPANYING DISSOLUTION DECREE**<br><br>**(Iowa Code Chapter 598)**<br><br>Date: _____ |

On the _____ day of _____, 20 ___, a hearing was held in this marriage dissolution action to determine if _____, hereinafter designated as the protected party, should be
(petitioner or respondent)
accorded the type of protection described in Iowa Code chapter 236 from _____,
(petitioner or respondent)
hereinafter designated as defendant. The following persons were present and participated in the hearing:_____
_____.

The court FINDS by a preponderance of the evidence:

(1) The defendant had actual notice of the hearing.
(2) The defendant committed a domestic abuse assault against the protected party.
(3) The defendant represents a credible threat to the physical safety of the protected party.

The court accordingly ORDERS as follows:

1. Defendant shall not threaten, assault, stalk, molest, attack, harass or otherwise abuse the protected party.

2. Defendant shall stay away from the protected party and shall not be in that party's presence, except in a courtroom during court hearings.

3. Defendant shall not communicate with the protected party in person, by telephone, in writing, through third persons, or otherwise. This restriction shall not prohibit communication through legal counsel.

4. Defendant shall not go to, enter, or occupy the protected party's residence or any other residence in which the protected party is staying, under any circumstance.

5. The issues of custody and visitation have been set forth in detail in the dissolution decree. These custody and visitation provisions have been attached and are incorporated in this order by this reference. As a result, custody and visitation shall be treated as a specific provision of this protective order and are enforceable under the provisions of Iowa Code chapter 236.

[ ] 6. If checked, defendant shall not possess firearms while this order is in effect. Defendant shall deliver all firearms to the _____ County Sheriff or _____ (law enforcement agency) on or before _____, 20 ___.

7. Whether or not paragraph six is checked, defendant is advised that the issuance of this protective order may affect the right to possess or acquire a firearm or ammunition under federal law. 18 U.S.C. §§ 922(d)(8), (g)(8).

8. **A DEFENDANT WHO VIOLATES THIS ORDER FACES IMMEDIATE ARREST.** Violation may occur even if the protected party consents to conduct that is prohibited by this order. Only the court can relieve defendant from the restrictions contained in this order.

9. This order shall remain in effect until _____ (not more than one year) unless it is modified, terminated, extended, or superseded by written order of the court, or until the dismissal of the case.

Domestic Abuse Protective Order Accompanying Dissolution Decree (Iowa Code Chapter 598) *(cont'd)*

10. This order is effective ( ) immediately.
( ) upon service on defendant.

11. This order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

_____
**JUDGE, _____ JUDICIAL DISTRICT**

[ ] The _____ County Sheriff shall serve defendant with a copy of this order, without the prepayment of fees.

[ ] Defendant was personally served with a copy of this order by the court.

[ ] The clerk of court shall provide copies of this order to the parties and law enforcement agencies, pursuant to Iowa Code section 236.5(5).

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; amended March 13, 1998; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.7:** ***Domestic Abuse Protective Order by Consent Agreement Accompanying Dissolution Decree (Iowa Code Chapter 598).***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| IN RE THE MARRIAGE OF _____<br>AND _____ | Case No. _____ |
| Upon the Petition of<br>_____,<br>Petitioner,<br><br>And Concerning<br>_____,<br>Respondent. | **DOMESTIC ABUSE PROTECTIVE ORDER BY CONSENT AGREEMENT ACCOMPANYING DISSOLUTION DECREE**<br><br>**(Iowa Code Chapter 598)**<br><br>Date: _____ |

On the _____ day of _____, 20 ___, a hearing was held in this marriage dissolution action to determine if _____, hereinafter designated as the protected party, should be
(petitioner or respondent)
accorded the type of protection described in Iowa Code chapter 236 from _____,
(petitioner or respondent)
hereinafter designated as defendant. The following persons were present and participated in the hearing:_____
_____.

The court FINDS by a preponderance of the evidence:

(1) The defendant had actual notice of the hearing.
(2) The parties appeared and each consented to the entry of this order.
[ ] (3) If checked, the defendant committed a domestic abuse assault against the protected party.

The court accordingly ORDERS as follows:

1. Defendant shall not threaten, assault, stalk, molest, attack, harass or otherwise abuse the protected party.

2. Defendant shall not communicate with the protected party in person, by telephone, in writing, through third persons, or otherwise. This restriction shall not prohibit communication through legal counsel.

3. Defendant shall not go to, enter, or occupy the protected party's residence or any other residence in which the protected party is staying, under any circumstance.

4. (Insert additional provisions expressly limiting contact, if any, including limitations on access to protected party's school or workplace):_____
_____
_____
_____.

5. The issues of custody and visitation have been set forth in detail in the dissolution decree. These custody and visitation provisions have been attached and are incorporated in this order by this reference. As a result, custody and visitation shall be treated as a specific provision of this protective order and are enforceable under the provisions of Iowa Code chapter 236.

[ ] 6. If checked, defendant shall not possess firearms while this order is in effect. Defendant shall deliver all firearms to the _____ County Sheriff or _____ (law enforcement agency) on or before _____, 20 ____.

7. Whether or not paragraph six is checked, the defendant is advised that the issuance of this protective order may affect the right to possess or acquire a firearm or ammunition under federal law. 18 U.S.C. §§ 922(d)(8), (g)(8).

Domestic Abuse Protective Order by Consent Agreement Accompanying Dissolution Decree (Iowa Code Chapter 598) *(cont'd)*

8. **A DEFENDANT WHO VIOLATES THIS ORDER FACES IMMEDIATE ARREST.** Violation may occur even if the protected party consents to conduct that is prohibited by this order. Only the court can relieve defendant from the restrictions contained in this order.

9. This order shall remain in effect until _____ (not more than one year) unless it is modified, terminated, extended, or superseded by written order of the court, or until the dismissal of the case.

10. This order is effective immediately.

11. Court costs are assessed against _____.

12. This order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

_____

**JUDGE, _____ JUDICIAL DISTRICT**

[ ] The _____ County Sheriff shall serve defendant with a copy of this order, without the prepayment of fees.

[ ] Defendant was personally served with a copy of this order by the court.

[ ] The clerk of court shall provide copies of this order to the parties and law enforcement agencies, pursuant to Iowa Code section 236.5(5).

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; amended March 13, 1998; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.8:** ***Cancellation, Modification or Extension of Chapter 598 Order.***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| IN RE THE MARRIAGE OF _____<br>AND _____ | Case No. _____ |
| Upon the Petition of<br>_____,<br>Petitioner,<br><br>And Concerning<br>_____,<br>Respondent. | **CANCELLATION, MODIFICATION OR EXTENSION OF CHAPTER 598 ORDER**<br><br>Date: _____ |

On this _____ day of _____, 20 ____, this matter comes before the court regarding the Temporary or Permanent Chapter 598 Order entered on _____ for the protection of _____ (petitioner or respondent), hereinafter designated as the protected party, and restraining _____ (petitioner or respondent), hereinafter designated as defendant.

The court finds (if checked) that

[ ] defendant received notice regarding the hearing on this matter. As a result, this modified order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

[ ] plaintiff failed to appear for hearing.

The court ORDERS as follows (check the appropriate option below):

____ (1) The order is hereby **canceled**. Any outstanding warrants relating to this case are withdrawn. The clerk of court shall reflect this cancellation on the domestic abuse registry and shall notify law enforcement that the order is canceled.

____ (2) The order is **modified** as follows: _____

_____

_____

_____

_____.

The modification is effective _____. The clerk of court shall reflect this modification on the domestic abuse registry and shall notify law enforcement that the order is modified.

____ (3) The order is hereby **extended** and shall expire on the _____ day of _____, 20 ____. The clerk of court shall reflect this extension on the domestic abuse registry and shall notify law enforcement that the order is extended.

_____

**JUDGE, _____ JUDICIAL DISTRICT**

[ ] The _____ County Sheriff shall serve defendant with a copy of this order, without the prepayment of costs.

[ ] The _____ were personally served with a copy of the order by the court.

[ ] The clerk of court shall provide copies of this order to the parties and law enforcement agencies, pursuant to Iowa Code section 236.5(5).

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; amended March 13, 1998; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.9:** ***Additional Protective Order Under Section 236.14 and Order Setting Contempt Hearing.***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| _____, Plaintiff (PROTECTED PARTY), vs. _____, Defendant. | Case No. _____ **ADDITIONAL PROTECTIVE ORDER UNDER SECTION 236.14 AND ORDER SETTING CONTEMPT HEARING** Date: _____ |

Defendant appears in accordance with Iowa Code section 236.11 and section 236.14. The court FINDS (a) there is probable cause to believe that on _____, 20 _____, defendant violated a domestic abuse order dated _____ entered for the protection of _____(name), herein designated as protected party; (b) the presence of defendant in the protected party's residence poses a threat to the safety of the protected party, persons residing with the protected party, or members of protected party's immediate family; and (c) a no contact order should therefore be entered pursuant to Iowa Code section 236.14.

Therefore, the court ORDERS as follows:

1. Conditions of release, if appropriate under section 236.14(1), will be established by separate order. The terms of this order shall be additional conditions of release.
2. Defendant shall personally appear before the court for a contempt hearing on the _____ day of _____, 20 _____, at _____ o'clock ___.m. at the _____County Courthouse, Room _____, in _____, Iowa, and show cause why he/she should not be held in contempt of court. Defendant has a right to legal counsel at such hearing. Failure of the defendant to appear for this hearing may result in the arrest of defendant. Failure of the protected party to appear may result in the case being dismissed.
3. Defendant shall have no contact with the protected party and shall not harass the protected party, persons residing with the protected party, or members of the protected party's family. To the extent not inconsistent herewith, the prior protective order shall also remain in force.

[ ] 4. If checked, defendant shall not possess firearms while this order is in effect as a condition of release. Defendant shall deliver all firearms to the _____ County Sheriff or _____ (law enforcement agency) on or before _____, 20 _____.

5. This protective order is in effect immediately. This order shall remain in effect until modified or terminated by further written order of the court, until the case is dismissed, or until sentencing. The order may be extended prior to expiration, or at sentencing, for one year pursuant to section 236.14(2).
6. **A DEFENDANT WHO VIOLATES THIS ORDER FACES IMMEDIATE ARREST.** Violation may occur even if the protected party consents to conduct that is prohibited by this order. Only the court can relieve defendant from the restrictions contained in this order.
7. This order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.
8. Bond is set at $_____.

[ ] 9. If checked, defendant qualifies for court-appointed counsel, and attorney _____ is appointed.

_____
**JUDGE, _____ JUDICIAL DISTRICT**

[ ] Defendant was personally served with a copy of this order by the court.

[ ] The _____ County Sheriff shall serve defendant with a copy of this order at least two days prior to hearing. Service shall be made without prepayment of fees.

[ ] The clerk of court shall provide copies of this order to the protected party, county attorney, defendant, counsel of record (if any) and the _____ County Sheriff as required by Iowa Code section 236.5(5).

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; amended March 13, 1998; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.10:** ***No Contact Order (Criminal Prosecution of Domestic Abuse Assault or Misdemeanor Charge of Violating No Contact Order).***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| STATE OF IOWA,<br><br>Plaintiff,<br><br>vs.<br><br>_____,<br>Defendant. | Case No. _____<br><br>**NO CONTACT ORDER (Criminal Prosecution of Domestic Abuse Assault or Misdemeanor Charge of Violating No Contact Order)**<br><br>Date: _____ |

On the basis of the complaint or affidavit(s) submitted to the court at the time of the defendant's appearance, the court finds there is probable cause to believe that

[ ] a domestic abuse assault has occurred or [ ] defendant has violated a prior no contact order or consent agreement;

and the presence of the defendant in the alleged victim's residence poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family.

**Therefore, the court orders as follows:**

1. Defendant shall have no contact of any nature, to include in person, by telephone, in writing, or otherwise, with _____ (protected party) and shall not be on or adjacent to the residence or place of employment of the protected party.

2. The defendant, personally or through third party, shall not threaten, assault, stalk, molest, attack, harass, or otherwise abuse the protected party, persons residing with the protected party, or members of the protected party's family.

[ ] 3. If checked, defendant shall further have no contact of any nature with _____
_____.
(persons residing with protected party or members of the protected party's family)

[ ] 4. If checked, defendant may enter the residence once in the company of a peace officer to retrieve defendant's clothing and work-related items.

[ ] 5. If checked, defendant shall not possess firearms while this order is in effect as a condition of release. Defendant shall deliver all firearms to the _____ County Sheriff or _____ (law enforcement agency) on or before _____, 20 ____.

[ ] 6. If checked, additional directives _____
_____
_____.

7. This protective order is in effect immediately. This order shall remain in effect until modified or terminated by further written order of the court, until the case is dismissed, or until sentencing. The order may be extended prior to expiration, or at sentencing, for one year pursuant to section 236.14(2).

8. **A DEFENDANT WHO VIOLATES THIS ORDER FACES IMMEDIATE ARREST.** Violation may occur even if the protected party(ies) consents to prohibited contact. Only the court may release defendant from restrictions contained in this order.

9. Except as specifically set out herein, this order shall not be construed as an award of personal or real property to either the defendant or the protected party.

No Contact Order (Criminal Prosecution of Domestic Abuse Assault or Misdemeanor Charge of Violating No Contact Order) *(cont'd)*

10. This order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

[ ] 11. Bond is set at $_____.

[ ] 12. If checked, defendant qualifies for court-appointed counsel, and attorney _____ is appointed.

_____
**JUDGE, _____ JUDICIAL DISTRICT**

[ ] Defendant was provided a copy of order upon hearing.

[ ] The clerk of court shall provide copies of this order to the protected party, county attorney, defendant, counsel of record (if any) and the _____ County Sheriff as required by Iowa Code section 236.5(5).

[ ] The _____ County Sheriff shall serve and return service of this order upon defendant without prepayment of costs.

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; amended March 13, 1998; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.11:** ***Modification, Extension, or Cancellation of No Contact Order (Criminal Prosecution of Domestic Abuse Assault or Misdemeanor Charge of Violating No Contact Order).***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| STATE OF IOWA,<br><br>Plaintiff,<br><br>vs.<br><br>_____,<br>Defendant. | Case No. _____<br><br>**MODIFICATION, EXTENSION, OR CANCELLATION OF NO CONTACT ORDER (Criminal Prosecution of Domestic Abuse Assault or Misdemeanor Charge of Violating No Contact Order)**<br><br>Date: _____ |

On the _____ day of _____, 20 ____, this matter is before the court regarding the No Contact Order entered on _____.

The court ORDERS

_____(1) The No Contact Order entered pursuant to Iowa Code section 236.14 is **canceled**. The clerk of court shall reflect this cancellation on the domestic abuse registry and shall notify law enforcement that the order is canceled. This order is effective immediately.

_____(2) There is probable cause to believe that the safety of the protected party is still threatened by the defendant's presence in the home of the protected party. THEREFORE the No Contact Order entered pursuant to Iowa Code section 236.14 is **extended** until _____. The clerk of court shall reflect this extension on the domestic abuse registry and shall notify law enforcement that the order is extended.

_____(3) The prior order entered pursuant to Iowa Code section 236.14 should be **modified** as follows:_____

_____

_____

_____

_____

_____

_____.

The clerk of court shall reflect this modification on the domestic abuse registry and shall notify law enforcement that the order is modified.

(4) This modified order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

_____

**JUDGE, _____ JUDICIAL DISTRICT**

[ ] Defendant was provided a copy of order upon hearing.

[ ] The clerk of court shall provide copies of this order to the protected party, county attorney, defendant, counsel of record (if any) and the _____ County Sheriff as required by Iowa Code section 236.5(5).

[ ] The _____ County Sheriff shall serve and return service of this order upon defendant without prepayment of costs.

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order February 18, 1997, effective March 21, 1997; amended March 13, 1998; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.12:** ***No Contact Order (Criminal Prosecution of Harassment 708.7 or Stalking 708.11).***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| STATE OF IOWA,<br><br>Plaintiff,<br><br>vs.<br><br>_____,<br>Defendant. | Case No. _____<br><br>**NO CONTACT ORDER (Criminal Prosecution of Harassment 708.7 or Stalking 708.11)**<br><br>Date: _____ |

On the basis of the complaint or affidavit(s) submitted to the court at the time of the defendant's appearance, the court finds there is probable cause to believe that a violation of

[ ] Iowa Code section 708.7 or [ ] Iowa Code section 708.11

has occurred and the presence of the defendant in the alleged victim's residence poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family.

[ ] If checked, the court further finds that the defendant and protected party meet the definition of intimate partners as defined in 18 U.S.C. section 922 (g)(8). As a result, this order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

**Therefore, the court orders as follows:**

1. Defendant shall have no contact of any nature, to include in person, by telephone, in writing, or otherwise, with _____ (protected party) and shall not be on or adjacent to the residence or place of employment of the protected party.

2. The defendant, personally or through a third party, shall not threaten, assault, stalk, molest, attack, harass, or otherwise abuse the protected party, persons residing with the protected party, or members of the protected party's family.

[ ] 3. If checked, defendant shall further have no contact of any nature with _____

(Persons residing with protected party or members of the protected party's family. These no contact provisions prevail over any existing custody or visitation orders.)

[ ] 4. If checked, defendant may enter the residence once in the company of a peace officer to retrieve defendant's clothing and work-related items.

[ ] 5. If checked, defendant shall not possess firearms while this order is in effect as a condition of release. Defendant shall deliver all firearms to the _____ County Sheriff or _____ (law enforcement agency) on or before _____, 20 ____.

[ ] 6. If checked, additional directives _____
_____.

7. This protective order is in effect immediately. This order shall remain in effect until modified or terminated by further written order of the court, until the case is dismissed, or until sentencing. The order may be extended prior to expiration or at sentencing for five years pursuant to section 708.12(2).

8. **A DEFENDANT WHO VIOLATES THIS ORDER FACES IMMEDIATE ARREST.** Violation may occur even if the protected party(ies) consents to prohibited contact. Only the court may release defendant from restrictions contained in this order.

No Contact Order (Criminal Prosecution of Harassment 708.7 or Stalking 708.11) *(cont'd)*

9. Except as specifically set out herein, this order shall not be construed as an award of personal or real property to either the defendant or the protected party.

[ ] 10. Bond is set at $_____.

[ ] 11. If checked, defendant qualifies for court-appointed counsel, and attorney _____ is appointed.

_____

**JUDGE, _____ JUDICIAL DISTRICT**

[ ] Defendant was provided a copy of order upon hearing.

[ ] The clerk of court shall provide copies of this order to the protected party, county attorney, defendant, counsel of record (if any) and the _____ County Sheriff as required by Iowa Code section 236.5(5).

[ ] The _____ County Sheriff shall serve and return service of this order upon defendant without prepayment of costs.

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order April 2, 1999; amended January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

**Form 4.13:** ***Modification, Extension, or Cancellation of No Contact Order (Criminal Prosecution of Harassment 708.7 or Stalking 708.11).***

**IN THE IOWA DISTRICT COURT FOR _____ COUNTY**

| | |
|---|---|
| STATE OF IOWA,<br><br>Plaintiff,<br><br>vs.<br><br>_____,<br>Defendant. | Case No. _____<br><br>**MODIFICATION, EXTENSION, OR CANCELLATION OF NO CONTACT ORDER (Criminal Prosecution of Harassment 708.7 or Stalking 708.11)**<br><br>Date: _____ |

On the _____ day of _____, 20 ____, this matter is before the court regarding the No Contact Order entered on _____.

The court ORDERS

_____(1) The No Contact Order is **canceled**. The clerk of court shall reflect this cancellation on the domestic abuse registry and shall notify law enforcement that the order is canceled. This order is effective immediately.

_____(2) There is probable cause to believe that the safety of the protected party is still threatened by the defendant's presence in the home of the protected party. Therefore, the No Contact Order is **extended** until _____.

The clerk of court shall reflect this extension on the domestic abuse registry and shall notify law enforcement that the order is extended.

_____(3) The prior order should be **modified** as follows:_____

_____

_____

_____

_____.

The clerk of court shall reflect this modification on the domestic abuse registry and shall notify law enforcement that the order is modified.

[ ] (4) If checked, defendant and protected party meet the definition of intimate partners as defined in 18 U.S.C. section 922 (g)(8). As a result, this order is enforceable in all fifty states, U.S. territories, tribal lands and the District of Columbia. 18 U.S.C. § 2265. Enforcing jurisdictions may contact the court at the following telephone number: ( ) _____.

_____

**JUDGE, _____ JUDICIAL DISTRICT**

[ ] Defendant was provided a copy of order upon hearing.

[ ] The clerk of court shall provide copies of this order to the protected party, county attorney, defendant, counsel of record (if any) and the _____ County Sheriff as required by Iowa Code section 236.5(5).

[ ] The _____ County Sheriff shall serve and return service of this order upon defendant without prepayment of costs.

**NOTICE:** If you have a disability and need assistance to participate in court proceedings, please call the ADA Coordinator at ( ) _____. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

[Court Order April 2, 1999; January 11, 2001, effective February 15, 2001; November 9, 2001, effective February 15, 2002]

# CHAPTER 5
# RULES OF EVIDENCE

## ARTICLE I

GENERAL PROVISIONS

**Rule 5.101 Scope.** These rules govern proceedings in the courts of this state to the extent and with the exceptions stated in rule 5.1101. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.102 Purpose and construction.** These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.103 Rulings on evidence.**

*a. Effect of erroneous ruling.* Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and either of the following exists:

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context.

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

*b. Record of offer and ruling.* The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

*c. Hearing of jury.* In jury cases, proceedings shall be conducted to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.104 Preliminary questions.**

*a. Questions of admissibility generally.* Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of rule 5.104(*b*). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

*b. Relevancy conditioned on fact.* When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

*c. Hearing of jury.* Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness and so requests.

*d. Testimony by accused.* The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case. Testimony given by the accused upon a preliminary question is not admissible against the accused on the issue of guilt but may be used for impeachment if inconsistent with testimony given by the accused at the trial.

*e. Weight and credibility.* This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.105 Limited admissibility.** When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.106 Remainder of related acts, declarations, conversations, writings, or recorded statements.**

*a.* When an act, declaration, conversation, writing, or recorded statement, or part thereof, is introduced by a party, any other part or any other act, declaration, conversation, writing, or recorded statement is admissible when necessary in the interest of fairness, a clear understanding, or an adequate explanation.

*b.* Upon request by an adverse party, the court may, in its discretion, require the offering party to introduce contemporaneously with the act, declaration, conversation, writing, or recorded statement, or part thereof, any other part or any other act, declaration, conversation, writing, or recorded statement which is admissible under rule 5.106(*a*). This rule, however, does not limit the right of any party to develop further on cross-examination or in the party's case in chief matters admissible under rule 5.106(*a*). [Report 1983; November 9, 2001, effective February 15, 2002]

**Rules 5.107** to **5.200** Reserved.

## ARTICLE II

JUDICIAL NOTICE

**Rule 5.201 Judicial notice of adjudicative facts.**

*a. Scope of rule.* This rule governs only judicial notice of adjudicative facts.

*b. Kinds of facts.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

*c. When discretionary.* A court may take judicial notice, whether requested or not.

*d. When mandatory.* A court shall take judicial notice if requested by a party and supplied with the necessary information.

*e. Opportunity to be heard.* A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

*f. Time of taking notice.* Judicial notice may be taken at any stage of the proceeding.

*g. Instructing jury.* In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rules 5.202** to **5.300** Reserved.

## ARTICLE III

### PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

**Rule 5.301 Presumptions in general in civil actions and proceedings.** Nothing in these rules shall be deemed to modify or supersede existing law relating to presumptions in civil actions and proceedings. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rules 5.302** to **5.400** Reserved.

## ARTICLE IV

### RELEVANCY AND ITS LIMITS

**Rule 5.401 Definition of "relevant evidence."** *"Relevant evidence"* means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.402 Relevant evidence generally admissible; irrelevant evidence inadmissible.** All relevant evidence is admissible, except as otherwise provided by the Constitutions of the United States or the state of Iowa, by statute, by these rules, or by other rules of the Iowa Supreme Court. Evidence which is not relevant is not admissible. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.403 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.** Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.404 Character evidence not admissible to prove conduct; exceptions; other crimes.**

*a. Character evidence generally.* Evidence of a person's character or a trait of the person's character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

(1) *Character of accused.* Evidence of a pertinent trait of the person's character offered by an accused, or by the prosecution to rebut the same.

(2) *Character of victim.*

(A) *In criminal cases.* Subject to rule 5.412, evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in any case where the victim is unavailable to testify due to death or physical or mental incapacity to rebut evidence that the victim was the first aggressor.

(B) *In civil cases.* Evidence of character for violence of the victim of assaultive conduct offered on the issue of self defense by a party accused of the assaultive conduct, or evidence of peaceable character to rebut the same.

(3) *Character of witness.* Evidence of the character of a witness, as provided in rules 5.607, 5.608, and 5.609.

*b. Other crimes, wrongs, or acts.* Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.405 Methods of proving character.**

*a. Reputation or opinion.* In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

*b. Specific instances of conduct.* In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of the person's conduct. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.406 Habit; routine practice.** Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.407 Subsequent remedial measures.** When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered in connection with a claim based on strict liability in tort or breach of warranty or for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.408 Compromise and offers to compromise.** Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.409 Payment of expenses.** Evidence of furnishing or offering or promising to pay expenses occasioned by an injury is not admissible to prove liability for the injury. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.410 Inadmissibility of pleas, plea discussions, and related statements.** Except as otherwise provided in this rule or Iowa R. Crim. P. 2.10(5), evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) A plea of guilty which was later withdrawn.

(2) A plea of nolo contendere in a federal court or criminal proceeding in another state.

(3) Any statement made in the course of any proceedings under Fed. R. Crim. P. 11, Iowa R. Crim. P. 2.10, or comparable procedure in other states regarding either of the foregoing pleas.

(4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible under either of the following circumstances:

*(i)* In any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it.

*(ii)* In a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel. [Report 1983; July 31, 1987, effective October 1, 1987; November 9, 2001, effective February 15, 2002]

**Rule 5.411 Liability insurance.** Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.412 Sexual abuse cases; relevance of victim's past behavior.**

*a.* Notwithstanding any other provision of law, in a criminal case in which a person is accused of sexual abuse, reputation or opinion evidence of the past sexual behavior of an alleged victim of such sexual abuse is not admissible.

*b.* Notwithstanding any other provision of law, in a criminal case in which a person is accused of sexual abuse, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence is either of the following:

(1) Admitted in accordance with rules 5.412(*c*)(1) and 5.412(*c*)(2) and is constitutionally required to be admitted.

(2) Admitted in accordance with rule 5.412(*c*) and is evidence of either of the following:

(A) Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury.

(B) Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which sexual abuse is alleged.

*c.* (1) If the person accused of sexual abuse intends to offer under rule 5.412(*b*) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evi-

dence not later than 15 days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

(2) The motion described in rule 5.412(*c*)(1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in rule 5.412(*b*), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding rule 5.104(*b*), if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in rule 5.412(*c*)(2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

*d.* For purposes of this rule, the term *"past sexual behavior"* means sexual behavior other than the sexual behavior with respect to which sexual abuse is alleged. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rules 5.413** to **5.500** Reserved.

## ARTICLE V

## PRIVILEGES

**Rule 5.501 General rule.** Nothing in these rules shall be deemed to modify or supersede existing law relating to the privilege of a witness, person, government, state or political subdivision. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rules 5.502** to **5.600** Reserved.

## ARTICLE VI

## WITNESSES

**Rule 5.601 General rule of competency.** Unless otherwise provided by statute or rule, every person is competent to be a witness. [Report 1983; 1985 Iowa Acts, ch 174, §16; 1990 Iowa Acts, ch 1015; November 9, 2001, effective February 15, 2002]

**Rule 5.602 Lack of personal knowledge.** A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of rule 5.703 relating to opinion testimony by expert witnesses. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.603 Oath or affirmation**. Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the witness's duty to do so. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.604 Interpreters.** An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true translation. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.605 Competency of judge as witness.** The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.606 Competency of juror as witness.**

*a. At the trial.* A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

*b. Inquiry into validity of verdict or indictment.* Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.607 Who may impeach.** The credibility of a witness may be attacked by any party, including the party calling the witness. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.608 Evidence of character and conduct of witness.**

*a. Opinion and reputation evidence of character.* The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to the following limitations:

(1) The evidence may refer only to character for truthfulness or untruthfulness.

(2) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

*b. Specific instances of conduct.* Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of crime as provided in rule 5.609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness's character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the witness's privilege against self-incrimination when examined with respect to matters which relate only to credibility. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.609 Impeachment by evidence of conviction of crime.**

*a. General rule.* For the purpose of attacking the credibility of a witness:

(1) Evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to rule 5.403, if the crime was punishable by death or imprisonment in excess of one year pursuant to the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

*b. Time limit.* Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

*c. Effect of pardon.* Evidence of a conviction is not admissible under this rule if the conviction has been the subject of a pardon.

*d. Juvenile adjudications.* Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

*e. Pendency of appeal.* The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible. [Report 1983; Court Order December 7, 1995, effective March 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 5.610 Religious beliefs or opinions.** Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.611 Mode and order of interrogation and presentation.**

*a. Control by court.* The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

*b. Scope of cross-examination.* Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

*c. Leading questions.* Leading questions should not be used on the direct examination of a witness except as may be necessary to develop that witness's testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. [Report 1983; amended February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 5.612 Writing used to refresh memory.** Except as otherwise provided in criminal proceedings by Iowa R. Crim. P. 2.14, if a witness uses a writing to refresh the witness's memory for the purpose of testifying, either:

(1) While testifying, or

(2) Before testifying, if the court in its discretion finds a necessity in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion, determines that the interests of justice so require, declaring a mistrial. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.613 Prior statements of witnesses.**

*a. Examining witness concerning prior statement.* In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

*b. Extrinsic evidence of prior inconsistent statement of witness.* Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This rule does not apply to admissions of a party-opponent as defined in rule 5.801(*d*)(2). [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.614 Calling and interrogation of witnesses by court.**

*a. Calling by court.* For good cause in exceptional cases, the court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

*b. Interrogation by court.* When necessary in the interest of justice, the court may interrogate witnesses, whether called by the court or by a party.

*c. Objections.* Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.615 Exclusion of witnesses.** At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of any of the following:

(1) A party who is a natural person.

(2) An officer or employee of a party which is not a natural person designated as its representative by its attorney.

(3) A person whose presence is shown by a party to be essential to the presentation of the party's cause. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rules 5.616** to **5.700** Reserved.

## ARTICLE VII

## OPINIONS AND EXPERT TESTIMONY

**Rule 5.701 Opinion testimony by lay witnesses.** If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (*a*) rationally based on the perception of the witness and (*b*) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.702 Testimony by experts.** If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.703 Bases of opinion testimony by experts.** The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the trial or hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.704 Opinion on ultimate issue.** Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.705 Disclosure of facts or data underlying expert opinion.** The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-

examination. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.706 Court-appointed experts.**

*a. Appointment.* The court may on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness's duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's findings, if any; the witness's deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

*b. Compensation.* Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. Except as otherwise provided by law, the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

*c. Disclosure of appointment.* In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

*d. Parties' experts of own selection.* Nothing in this rule limits the parties in calling expert witnesses of their own selection. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rules 5.707** to **5.800** Reserved.

## ARTICLE VIII

## HEARSAY

**Rule 5.801 Definitions.** The following definitions apply under this article:

*a. Statement.* A *"statement"* is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

*b. Declarant.* A *"declarant"* is a person who makes a statement.

*c. Hearsay. "Hearsay"* is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

*d. Statements which are not hearsay.* The following statements are not hearsay:

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) *Admission by party-opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.802 Hearsay rule.** Hearsay is not admissible except as provided by the Constitution of the state of Iowa, by statute, by the rules of evidence, or by other rules of the Iowa Supreme Court. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.803 Hearsay exceptions; availability of declarant immaterial.** The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *Present sense impression.* A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) *Excited utterance.* A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) *Then existing mental, emotional, or physical condition.* A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) *Statements for purposes of medical diagnosis or treatment.* Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) *Recorded recollection.* A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the mat-

ter was fresh in the witness's memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and the regular practice of that business activity was to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this subrule includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) *Absence of entry in records kept in accordance with the provisions of rule 5.803(6).* Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of rule 5.803(6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) *Public records and reports.*

(A) To the extent not otherwise provided in rule 5.803(8)(B), records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to a duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

(B) The following are not within this exception to the hearsay rule:

*(i)* Investigative reports by police and other law enforcement personnel.

*(ii)* Investigative reports prepared by or for a government, a public office or an agency when offered by it in a case in which it is a party.

*(iii)* Factual findings offered by the state or political subdivision in criminal cases.

*(iv)* Factual findings resulting from special investigation of a particular complaint, case, or incident.

*(v)* Any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.

Rule 5.803(8)(B), however, shall not supersede specific statutory provisions regarding the admissibility of particular public records and reports.

(9) *Records of vital statistics.* Records or data compilations, in any form, of births, fetal deaths, adoptions, deaths, marriages, divorces, dissolutions and annulments, if the report thereof was made to a public office pursuant to requirements of law.

(10) *Absence of public record or entry.* To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 5.902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) *Records of religious organizations.* Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Marriage, baptismal, and similar certificates.* Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) *Family records.* Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) *Records of documents affecting an interest in property.* The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) *Statements in documents affecting an interest in property.* A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in ancient documents.* Statements in a document in existence 30 years or more the authenticity of which is established.

(17) *Market reports, commercial publications.* Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) *Learned treatises.* To the extent called to the attention of an expert witness upon cross-examination or relied upon by that witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) *Reputation concerning personal or family history.* Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, dissolution, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) *Reputation concerning boundaries or general history.* Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) *Reputation as to character.* Reputation of a person's character among the person's associates or in the community.

(22) *Judgment of previous conviction.* Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the state or political subdivision in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) *Judgment as to personal, family or general history, or boundaries.* Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) *Other exceptions. A* statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant. [Report 1983; amended February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 5.804 Hearsay exceptions; declarant unavailable.**

*a. Definition of unavailability*. "Unavailability as a witness" includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) Testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) Is unable to be present or to testify at the trial or hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the trial or hearing and the proponent of a statement has been unable to procure the declarant's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

*b. Hearsay exceptions.* The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former testimony.* Testimony given as a witness at another trial or hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) *Statement under belief of impending death.* A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death.

(3) *Statement against interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of personal or family history.*

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, dissolution, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions but having

equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.805 Hearsay within hearsay**. Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in this chapter. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.806 Attacking and supporting credibility of declarant**. When a hearsay statement, or a statement defined in rule 5.801(*d*)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rules 5.807** to **5.900** Reserved.

## ARTICLE IX

## AUTHENTICATION AND IDENTIFICATION

**Rule 5.901 Requirement of authentication or identification.**

*a. General provision.* The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

*b. Illustrations.* By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) *Testimony of witness with knowledge.* Testimony that a matter is what it is claimed to be.

(2) *Nonexpert opinion on handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by trier or expert witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) *Distinctive characteristics and the like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone conversations.* Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public records or reports.* Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient documents or data compilation.* Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 30 years or more at the time it is offered.

(9) *Process or system.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) *Methods provided by statute or rule.* Any method of authentication or identification provided by statute or by rules prescribed by the Iowa Supreme Court. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.902 Self-authentication**. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic public documents under seal.* A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *Domestic public documents not under seal.* A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in rule 5.902(1), having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) *Foreign public documents.* A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) *Certified copies of public records.* A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with rule 5.902(1), (2), or (3) or complying with any Act of Congress or rule prescribed by the United States Supreme Court pursuant to statutory authority, or statutes of Iowa or any other state or territory of the United States, or rule prescribed by the Iowa Supreme Court.

(5) *Official publications.* Books, pamphlets, or other publications purporting to be issued by public authority.

(6) *Newspapers and periodicals.* Printed materials purporting to be newspapers or periodicals.

(7) *Trade inscriptions and the like.* Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) *Acknowledged documents.* Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) *Commercial paper and related documents.* Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) *Presumptions under Acts of Congress or statute of Iowa or any other state or territory of the United States.* Any signature, document or other matter declared by Act of Congress or statute of Iowa or any other state or territory of the United States to be presumptively or prima facie genuine or authentic. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.903 Subscribing witness's testimony unnecessary.** The testimony of a subscribing witness is not necessary to authenticate a writing unless required by laws of the jurisdiction whose laws govern the validity of the writing. Nothing in this rule shall affect the admission of a foreign will into probate in this state. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rules 5.904** to **5.1000** Reserved.

## ARTICLE X

### CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

**Rule 5.1001 Definitions.** For purposes of this article the following definitions are applicable:

(1) *Writings and recordings. "Writings"* and *"recordings"* consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) *Photographs. "Photographs"* include still photographs, X-ray films, video tapes, and motion pictures.

(3) *Original.* An *"original"* of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) *Duplicate.* A *"duplicate"* is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.1002 Requirement of original.** To prove the content of a writing, recording, or photograph, an original is required, except as otherwise provided in these rules or by statute. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.1003 Admissibility of duplicates.** A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) under the circumstances, admission of the duplicate would be unfair. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.1004 Admissibility of other evidence of contents.** The original is not required and other evidence of the contents of a writing, recording, or photograph is admissible if:

(1) *Originals lost or destroyed.* All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) *Original not obtainable.* No original can be obtained by any available judicial process or procedure; or

(3) *Original in possession of opponent.* At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the trial or hearing, and that party does not produce the original at the trial or hearing; or

(4) *Collateral matters.* The writing, recording, or photograph is not closely related to a controlling issue. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.1005 Public records.** The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 5.902, or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.1006 Summaries.** The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.1007 Testimony or written admission of party.** Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.1008 Functions of court and jury.** When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 5.104. When, however, an issue is raised *(a)* whether the asserted writing ever existed, or *(b)* whether another writing, recording, or photograph produced at the trial is the original, or *(c)* whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rules 5.1009** to **5.1100** Reserved.

## ARTICLE XI

## MISCELLANEOUS RULES

**Rule 5.1101 Applicability of rules.**

*a. General applicability.* These rules apply in all proceedings in the courts of this state, including proceedings before magistrates and court-appointed referees and masters, except as otherwise provided by statute, by this rule, or other rules of the Iowa Supreme Court.

*b. Rules of privilege.* Rule 5.501, with respect to privilege, applies at all stages of all actions, cases, and proceedings.

*c. Rules inapplicable.* These rules, other than rule 5.501, with respect to privilege, do not apply in the following situations:

(1) *Preliminary questions of fact.* The determination of questions of fact preliminary to the admissibility of evidence when the issue is to be determined by the court under rule 5.104(*a*).

(2) *Grand jury.* Proceedings before grand juries.

(3) *Summary contempt.* Contempt proceedings in which an adjudication is made without prior notice and a hearing.

(4) *Miscellaneous proceedings.* Proceedings for extradition or rendition; preliminary hearings in criminal cases, sentencing, and granting or revoking probation; issuance of warrants for arrest, criminal complaints, and search warrants; and proceedings with respect to release on bail or otherwise. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 5.1102** Reserved.

**Rule 5.1103 Title.** The rules in this chapter shall be known as the Iowa Rules of Evidence and may be cited as Iowa R. Evid. [Report 1983; November 9, 2001, effective February 15, 2002]

# CHAPTER 6
# RULES OF APPELLATE PROCEDURE

## DIVISION I

APPEALS IN CIVIL CASES

**Rule 6.1 From final judgment.**

**6.1(1)** All final judgments and decisions of the district court and any final adjudication in the district court under Iowa R. Civ. P. 1.444, involving the merits or materially affecting the final decision, may be appealed to the supreme court, except as provided in this rule and in rule 6.3. For the purpose of this rule any order granting a new trial (not including an order setting aside a judgment by default other than in actions for dissolution of marriage or annulment) and any order denying a new trial shall be deemed a final decision. Any order setting aside a default decree of dissolution of marriage or annulment shall also be deemed a final decision.

**6.1(2)** A final order or judgment on an application for attorney fees entered after the final order or judgment in the underlying action is separately appealable. Notwithstanding appeal of a final order or judgment in the underlying action, the district court retains jurisdiction to consider an application for attorney fees in that action. If the final order or judgment in the underlying case is also appealed, the appellant on any appeal of the order or judgment on the attorney fees application shall file a motion to consolidate the two appeals so that they may be submitted and decided together.

**6.1(3)** No interlocutory ruling or decision may be appealed except as provided in rule 6.2 until after the final judgment or order. No error in such interlocutory ruling or decision is waived by pleading over or proceeding to trial. On appeal from the final judgment, appellant may assign as error such interlocutory ruling or decision or any final adjudication in the district court under Iowa R. Civ. P. 1.444, from which no appeal has been taken, where such ruling, decision or final adjudication is shown to have substantially affected the rights of the complaining party.

**6.1(4)** If an appeal to the supreme court is improvidently taken because the order from which appeal is taken is interlocutory, this alone shall not be ground for dismissal. The papers upon which the appeal was taken shall be regarded and acted upon as an application for interlocutory appeal under rule 6.2, as if duly presented to the supreme court at the time the appeal was taken. [Report 1977; amendment 1980; amendment December 10, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 6.2 From interlocutory orders.**

**6.2(1)** Any party aggrieved by an interlocutory ruling or decision, including a party whose objections to jurisdiction have been overruled, may apply to the supreme court or any justice thereof to grant an appeal in advance of final judgment. Such appeal may be granted, after service of the application and hearing as provided in rules 6.22 and 6.31, on finding that such ruling or decision involves substantial rights and will materially affect the final decision and that a determination of its correctness before trial on the merits will better serve the interests of justice. No such application is necessary where the appeal is, pursuant to rule 6.1, from a final adjudication in the district court under Iowa R. Civ. P. 1.444.

**6.2(2)** The order granting such appeal may be on terms advancing it for prompt submission. It shall stay further proceedings below and may require bond. [Report 1977; amendments May 13 and 17, 1993, effective January 3, 1994; November 9, 2001, effective February 15, 2002]

**Rule 6.3 Amount in controversy.** Except where the action involves an interest in real estate, no appeal shall be taken in any case, not originally tried as a small claim, where the amount in controversy, as shown by the pleadings, is less than $5000 unless the supreme court or a justice thereof certifies that the cause is one in which appeal should be allowed. An application to certify an appeal shall comply with rule 6.16(2), be filed with the clerk of the supreme court and served pursuant to rule 6.31, and, unless otherwise ordered by the supreme court or a justice or the clerk thereof, may be resisted and will be ruled upon pursuant to rules 6.22(3) and 6.22(4). The right of appeal is not affected by any remission of any part of the verdict or judgment. An action originally tried as a small claim may be reviewed by the supreme court only as provided in Iowa Code section 631.16 and rules 6.201 to 6.203. [Report 1977; amendment 1981; October 11, 1991, effective January 2, 1992; November 9, 2001, effective February 15, 2002]

**Rule 6.4 Scope of review.** Review in equity cases shall be de novo. In all other cases the appellate courts shall constitute courts for correction of errors at law, and findings of fact in jury-waived cases shall have the effect of a special verdict. [Report 1977; November 9, 2001, effective February 15, 2002]

**Rule 6.5 Time for appeal.**

**6.5(1)** Except as provided by rules 6.5(2) (appeals in chapter 232 termination cases) and 6.20(2) (shortening or enlarging time), appeals to the supreme court must be taken within, and not after, 30 days from the entry of the order, judgment, or decree, unless a motion for new trial or judgment notwithstanding the verdict as provided in Iowa R. Civ. P. 1.1007, or a motion as provided in Iowa R. Civ. P. 1.904(2), is filed, and then within 30 days after the entry of the ruling on such motion; provided however that where an application to the supreme court or any justice thereof to grant or certify an appeal under rule 6.2 or 6.3 is made within 30 days from the date of the ruling, de-

cision, or judgment sought to be reviewed, any appeal allowed or certified upon such application shall be deemed timely taken.

Provided further that if the supreme court or any justice determines that the order or decision from which application to appeal under rule 6.2 is timely made is a final judgment or decision from which appeal would lie under rule 6.1, an appeal therefrom shall also be deemed timely taken and perfected when the order making such determination is filed with the clerk of the supreme court, and rule 6.6(2) shall apply.

Provided further that if the supreme court or any justice thereof determines that a case, for which a timely application has been made for certification under rule 6.3, is appealable as a matter of right without such certification, the appeal shall be deemed timely and perfected when the order making such determination is filed with the clerk of the supreme court. Rule 6.6(2) shall then apply.

A cross-appeal may be taken within the 30 days for taking an appeal or in any event within 5 days after the appeal is taken.

**6.5(2)** A notice of appeal from a juvenile court order terminating the parent-child relationship or dismissing a petition to terminate the parent-child relationship pursuant to Iowa Code section 232.117 must be filed within, and not after, 15 days from the entry of the order, unless a motion for new trial as provided in Iowa R. Civ. P. 1.1007 or a motion as provided in Iowa R. Civ. P. 1.904(2) is filed, and then within 15 days after the entry of a ruling on such motion. An appeal under this subrule is not perfected until both the notice of appeal and the petition on appeal as provided in rule 6.6(4) are timely filed.

A notice of cross-appeal may be filed within the 15 days for taking an appeal or in any event within 5 days after the appeal is taken. A cross-appeal is not perfected until both the notice of cross-appeal and the petition on appeal as provided in rule 6.6(4) are timely filed.

**6.5(3)** Notwithstanding these rules, an order disposing of an action as to fewer than all of the parties to the suit, even if their interests are severable, or finally disposing of fewer than all the issues in the suit, even if the issues are severable, may be appealed within the time for an appeal from the order, judgment, or decree finally disposing of the action as to remaining parties or issues.

**6.5(4)** No appeal from a judgment, ruling, or order taken after it has actually been made by the district court shall be held insufficient because the clerk of the district court has not recorded such judgment, ruling, or order upon the court records at the time the appeal is taken, if it shall appear that such record has been made prior to ten days after the date on which the appeal is docketed. [Report 1977; amendment 1980; amendment 1981; amendment 1983; February 11, 1986, effective July 1, 1986; August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

**Rule 6.6 How taken.**

**6.6(1)** An appeal other than those allowed or certified by order under rule 6.2, 6.3, or 6.5(1), or an appeal in a chapter 232 termination case filed pursuant to rule 6.5(2), is taken and perfected by filing a notice with the clerk of the court where the order, judgment, or decree was entered, signed by appellant or appellant's attorney. It shall specify the parties taking the appeal and the decree, judgment, order, or part thereof appealed from. The appellant shall serve a copy of the notice on each other party or the other party's counsel in the manner prescribed in Iowa R. Civ. P. 1.442. The notice presented to the clerk of the district court for filing shall be accompanied by a proof of service in the form prescribed in Iowa R. Civ. P. 1.442. Promptly after filing the notice of appeal with the clerk of the district court, appellant shall mail or deliver an informational copy of the notice to the clerk of the supreme court.

**6.6(2)** An interlocutory appeal under rule 6.2, or an appeal certified under rule 6.3, shall be deemed taken and perfected when the order allowing or certifying it is filed with the clerk of the supreme court. No notice of such appeal is necessary. The time for any further proceeding on such appeal which would run from the notice of appeal shall run from the date such order is so filed. The clerk of the supreme court shall promptly transmit a copy of such order to the attorneys of record and the clerk of the district court. The clerk of the district court shall timely comply with rule 6.11(1).

**6.6(3)** A notice of appeal filed pursuant to rule 6.5(2) must be filed with the clerk of court where the order, judgment, or decree was entered. The notice cannot be filed unless signed by appellant's counsel and appellant.* The notice of appeal shall substantially comply with the Notice of Appeal form that accompanies these rules. The notice shall specify the parties taking the appeal and the decree, judgment, order, or part thereof from which an appeal is taken. The appellant shall serve a copy of the notice on each other party or counsel in the manner prescribed in Iowa R. Civ. P. 1.442(2). The notice of appeal presented to the clerk of the district court for filing shall be accompanied by proof of service in the form prescribed in Iowa R. Civ. P. 1.442(7). Promptly after filing the notice of appeal with the clerk of the district court, the appellant shall mail or deliver an informational copy of such notice to the clerk of the supreme court.

**6.6(4)** To perfect an appeal filed pursuant to rule 6.5(2), the appellant must also file with the clerk of the supreme court a petition on appeal in conformance with rule 6.151. The petition on appeal must be filed with the clerk of the supreme court within, and not after, 15 days from the filing of the notice of appeal. The appellant shall file an informational copy of the petition on appeal with the district court and serve a copy on each other party or the other party's counsel in the manner prescribed in Iowa R. Civ. P. 1.442(2). The petition on appeal shall be accompanied by proof of service in the form prescribed in Iowa R. Civ. P. 1.442(7). The petition on appeal shall be prepared by appellant's trial counsel. Trial counsel may only be relieved of this obligation by the district court upon a showing of extraordinary circumstances. If, after the filing of a notice of appeal, no petition on appeal has been filed with the clerk of the supreme court within 15 days, the appeal is not perfected and shall be dismissed and the parties shall proceed as if no notice of appeal had been filed. [Report 1977; amendment 1981; August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

*Counsel who is unable to file a notice of appeal because of the unavailability of the appellant to sign the notice may file with the clerk of the district court a certification of diligent search that substantially complies with the Counsel's Certification of Diligent Search form which accompanies these rules.

**Rule 6.7 Supersedeas bond.**

**6.7(1)** Except upon order entered by the supreme court, pursuant to a procedural, appellate, or court rule, no appeal shall stay proceedings under a judgment or order unless appellant executes a bond with sureties, to be filed with and approved by the clerk of the court where the judgment or order was entered. The condition of such bond shall be that appellant will satisfy and perform the judgment if affirmed, or any judgment or order, not exceeding in amount or value the obligation of the judgment or order appealed from, which an appellate court may render or order to be rendered by the district court; and also all costs and damages adjudged against appellant on the appeal, and all rents of or damage to property during the pendency of the appeal of which appellee is deprived by reason of the appeal.

**6.7(2)** If the judgment or order appealed from be for money, the penalty of such bond shall be 125 percent of the amount thereof, including costs, unless, in exceptional cases, the district court fixes a larger amount; in all other cases, an amount sufficient to save appellee harmless from the consequences of the appeal; but in no event less than $300.

**6.7(3)** No appeal shall vacate or affect the judgment or order appealed from; but the clerk shall issue a written order requiring appellee and all others to stay proceedings under it or such part of it as has been appealed from, when the appeal bond is filed and approved.

**6.7(4)** An appeal bond secured by cash, a certificate of deposit, or government security, in a form and in an amount approved by the clerk may be filed in lieu of other bond. If a cash bond is filed, the cash shall be deposited at interest with interest earnings being paid into the general fund of the state in accordance with Iowa Code section 602.8103(5). The cash bond shall be disbursed pursuant to court order upon termination of the appeal.

**6.7(5)** A supersedeas bond filed pursuant to this rule shall not stay an order, judgment, decree, or portion thereof affecting the custody of a child. Requests for stays involving child custody are governed by rule 6.22(11). [Report 1977; March 27, 1987, effective July 1, 1987; May 24, 1989, effective August 1, 1989; August 31, 2001, effective January 2002; November 9, 2001, effective February 15, 2002]

**Rule 6.8 Bond—hearing on sufficiency.** If any party to an appeal is aggrieved by the clerk's approval of, or refusal to approve, a supersedeas bond tendered by appellant, the party may apply to the district court, on at least three days' notice to the adverse party, to review the clerk's action. Pending such hearing, the court may recall or stay all proceedings under the order or judgment appealed from. On such hearing, the district court shall determine the sufficiency of the bond, and if the clerk has not approved the bond, the court shall, by written order, fix its conditions and determine the sufficiency of the security; or if the court determines that a bond approved by the clerk is insufficient in security or defective in form, it shall discharge such bond and fix a time for filing a new one, all as appears by the circumstances shown at the hearing. [Report 1977; November 9, 2001, effective February 15, 2002]

**Rule 6.9 Judgment on bond.** If an appellate court affirms the judgment appealed from, it may, on motion of appellee, render judgment against appellant and the sureties on the appeal bond for the amount of the judgment, with damages and costs; or it may remand the cause to the district court for the determination of such damages and costs and entry of judgment on the bond. [Report 1977; November 9, 2001, effective February 15, 2002]

**Rule 6.10 Record on appeal.**

**6.10(1)** *Composition of record on appeal.* The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket and court calendar entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

**6.10(2)** *Transcript; duty of appellant to order and to file combined certificate.*

*a.* Within four days after filing the notice of appeal, appellant shall order in writing from the reporter a transcript of such parts of the proceedings not already on file as appellant deems necessary for inclusion in the record. Appellant shall certify that the transcript has been ordered by using the combined certificate form found in rule 6.751, Form 1. Within four days after filing the notice of appeal, appellant shall complete the combined certificate, serve it on all parties to the appeal and on the reporter from whom the transcript was ordered, and file it with the clerks of both the district and the supreme court. The combined certificate shall be filed in all cases, regardless of whether a transcript is ordered.

*b.* The combined certificate shall be deemed a professional statement by any attorney signing it that the transcript has been ordered in good faith, that no arrangements have been made or suggested to delay the preparation thereof, and that payment therefor will be made in accordance with these rules.

*c.* If appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless all of the proceedings are to be transcribed, appellant shall describe the parts of the proceedings ordered transcribed and state the issues appellant intends to present on appeal, by using the combined certificate found in rule 6.751, Form 1.

*d.* If appellee deems a transcript of other parts of the proceedings to be necessary, appellee shall, within ten days after the service of the combined certificate, serve on all parties and the reporter, and file with the clerk of the district court a designation of additional parts to be included. The parties are encouraged to agree on which parts of the proceedings are to be transcribed. Any disputes concerning which parts of the proceedings are to be transcribed and which party is to advance payment therefor to the reporter are to be submitted to the district court.

If appellant shall within four days fail or refuse to order such parts, appellee shall either order the parts or apply to the district court to compel appellant to do so. The ordering party must make satisfactory arrangements with the reporter for payment of the transcript costs.

*e.* Within four days after appellee has served a designation of additional parts of the proceedings requested to be transcribed, the party ordering additional proceedings shall complete the supplemental certificate found in rule 6.751, Form 2, serve it on all parties to the appeal and on the reporter, and file the supplemental certificate with the clerks of both the district and the supreme court.

*f.* Pursuant to Iowa Code section 602.3202, the compensation of shorthand reporters for transcribing their official notes is hereby fixed at $2.75 per page for the original and 25 cents per page for each copy. These rates of compensation shall apply to each separate page of transcript even if they are produced in a condensed transcript format.

*g.* A page of transcript shall consist of no fewer than 25 lines typewritten on paper 8 1/2 by 11 inches in size, prepared for binding on the left side, with margins of not less than 1 1/8 inches on the left and on the right. Typed matter shall be 6 by not less than 8 1/8 nor more than 9 1/4 inches. Type shall be standard pica with ten letters to the inch. A transcript may be produced in a condensed format which includes four pages of transcript on a single page of 8 1/2 by 11 inch paper. A condensed transcript shall be legible, in portrait format, and the font size shall be not less than ten points. The pages of transcript shall be formatted with page one in the top left, page two in the bottom left, page three in the top right, and page four in the bottom right.

Questions and answers shall each begin a new line of transcript. Indentations for speakers or paragraphs shall not be more than ten spaces from the left margin. Pages shall be numbered consecutively in the upper right-hand corner. Testimony of a new witness may be started on a new page where the prior witness's testimony ends below the center of the preceding page. Transcripts shall be indexed as to witnesses and exhibits. All transcripts shall contain a certificate by the reporter showing the date the transcript was ordered, the name of the attorney or other person ordering the transcript, and the date it was delivered.

*h.* The reporter shall file the original of the completed transcript with the clerk of the district court within the time fixed or allowed for docketing the appeal. These rules relative to such transcript shall also apply to bills of exceptions under Iowa R. Civ. P. 1.1001. The cost of the transcript shall be taxed in the district court.

**6.10(3)** *Statement of the evidence or proceedings when no report was made or when the transcript is unavailable.* If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be filed with the clerk of the district court and served on appellee within 20 days after the filing of the notice of appeal. Appellee may file with the clerk of the district court and serve on appellant objections or proposed amendments to the statement within 10 days after service of appellant's statement. Thereupon the statement and any objections or proposed amendments shall be submitted to the district court for settlement and approval and as settled and approved shall be included in the record on appeal.

**6.10(4)** *Correction or modification of the record.* If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation or the district court, either before or after the record is transmitted to the supreme court, or the appropriate appellate court on proper suggestion or on its own initiative, may direct that the omission or misstatement be corrected and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court, unless the questions arise after the case has been transferred to the court of appeals, in which event, they shall be presented to that court. [Report 1977; amendment by Court Order November 19, 1981, effective January 1, 1982; November 29, 1984, effective January 1, 1985; May 27, 1988, effective July 1, 1988; July 7, 1994, effective September 1, 1994; November 2, 1995, effective July 1, 1996; November 24, 1999; November 9, 2001, effective February 15, 2002]

**Rule 6.11 Transmission of record.**

**6.11(1)** *Time for transmission of notice of appeal, and docket and calendar entries.* Within four days after the filing of the notice of appeal or a notice of cross-appeal, if any, the clerk of the district court shall transmit certified copies of the notice of appeal, the notice of cross-appeal, if any, and the docket and calendar entries in the proceeding in the district court to the clerk of the supreme court and all parties or their attorneys, and to the attorney general in juvenile cases and other cases in which the State of Iowa is an interested party although the attorney general has not appeared in the district court. The clerk of the supreme court shall thereupon prepare a docket page and assign a number to the case.

**6.11(2)** *Transmission of remaining record.* With the exception of appeals in chapter 232 termination cases governed by rule 6.153, the appellant, within seven days after all final briefs have been served or the times for serving them have expired, or at such earlier time as the parties may agree or the supreme court may order, shall request the clerk of the district court to transmit immediately to the clerk of the supreme court the remaining record not already transmitted, including the original papers and exhibits filed in the district court and any reporter's transcript of proceedings. Appellant shall take all action necessary to enable the clerk of the district court to assemble and timely transmit the remaining record. If more

than one appeal is taken, each appellant shall comply with the provisions of rules 6.10(2) and 6.11(2).

When request is made by either party for transmission to the supreme court of portions of the record in addition to the certified copy of the docket and calendar entries, the clerk of the district court shall number the documents comprising the remaining record and shall transmit the same to the clerk of the supreme court. The clerk of the district court shall transmit with the remaining record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless so directed by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the clerk of the supreme court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which the record is transmitted to the supreme court.

**6.11(3)** *Retention of trial record in district court.* If the record or any part thereof is required in the district court for use pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record or parts thereof subject to the request of an appellate court, and shall transmit a copy of the order and of the docket and calendar entries together with such parts of the original record as the parties may designate and as the district court shall allow. The parts of the record not transmitted to the clerk of the supreme court shall nevertheless be part of the record on appeal for all purposes.

**6.11(4)** *Portions of record not transmitted.* Any parts of the record which have not been transmitted to the clerk of the supreme court shall, on the order or request of an appellate court or its clerk, or on the request of any party, be transmitted by the clerk of the district court to the clerk of the supreme court.

**6.11(5)** *Certification of confidential record.* Whenever the clerk of the district court transmits to the clerk of the supreme court or to a party a district court record or any portion of a district court record that is declared by any statute or rule of the supreme court to be confidential, the clerk of the district court shall certify its confidential nature. The certificate shall cite the applicable statute or rule, be signed by the clerk of the district court, and be affixed on top of the cover page of the record or portion of the record. [Report 1977; amendment by Court Order November 19, 1981, effective January 1, 1982; Court Order January 14, 1983, effective February 1, 1983; May 27, 1988, effective July 1, 1988; January 27, 1993, effective July 1, 1993; November 9, 2001, effective February 15, 2002]

**Rule 6.12 Docketing appeal.**

**6.12(1)** *Docketing the appeal.* Within 40 days after the filing of the notice of appeal, unless the time is shortened or extended by an order under rule 6.20(1) or shortened by rule 6.12(2), appellant shall pay the docket fee to the clerk of the supreme court, and the clerk shall thereupon enter the appeal upon the docket. If appellant is the State of Iowa, the clerk shall enter the appeal upon the docket at the written request of the attorney general within such 40 days. If an applicant appeals to the supreme court under Iowa Code section 822.9 of the Uniform Postconviction Procedure Act, and the district court has found applicant to be indigent, the clerk shall enter the appeal upon the docket at the request of the applicant within such 40 days. Applicant's request to docket without payment of the fee shall be in writing and accompanied by a copy of the district court's order finding applicant indigent. If appellant is authorized by order of the district court or supreme court to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at the request of the party within such 40 days. An appeal shall be docketed under the title given to the action in the district court, with appellant identified as such, but if such title does not contain the name of appellant, the name identified as appellant shall be added to the title. The clerk of the supreme court shall immediately give notice to all parties or their attorneys of the date on which the appeal is entered on the docket.

**6.12(2)** *Cases in which docketing time is reduced:*

*a. Termination of parent child relationship.* If the appeal involves a termination of a parent-child relationship, the time for docketing is reduced to within 30 days after the notice of appeal is filed.

*b. Guilty plea or sentence only.* If the appeal is from conviction and sentence upon a plea of guilty or from a sentence only under rule 6.105, the time for docketing is reduced to within 20 days after the notice of appeal is filed.

*c. Certiorari.* If the matter is an original certiorari proceeding under rule 6.303, the time for docketing is reduced to within 20 days after the order granting the writ is filed.

*d. Certified question.* If the matter is a certified question of law proceeding under rule 6.453, the time for docketing is reduced to within ten days after the certification order is filed.

*e. Lawyer discipline.* If the appeal involves a lawyer disciplinary matter under Iowa Ct. R. 35.11, the time for docketing is reduced to within ten days after the notice of appeal or the order granting permission to appeal is filed.

*f. Case involving no transcript.* If the appeal involves a matter where the appellant certifies that there is no report of the evidence or proceeding or when the transcript is unavailable, the time for docketing is reduced to within ten days after the notice of appeal is filed.

*g. Administrative action.* If the appeal involves judicial review of an administrative action pursuant to Iowa Code chapter 17A, where no additional testimony was introduced in district court, the time for docketing is reduced to within ten days after the notice of appeal is filed.

**6.12(3)** *Dismissal for failure to docket.* If appellant shall fail to pay the docket fee when required, any appellee may file a motion in the supreme court to dismiss the

appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken and the date on which the notice of appeal was filed. Appellant may respond by written resistance within 14 days of service of the motion by appellee. The clerk shall docket the appeal for the purpose of permitting the supreme court to entertain the motion without requiring payment of the docket fee, but appellant shall not be permitted to respond without payment of the fee unless appellant is otherwise exempt from prepayment.

**6.12(4)** *Dismissal for failure to transmit remaining record.* If appellant shall fail to cause transmission of the remaining portions of the record as required by rule 6.11(2), any appellee may file a motion in the supreme court to dismiss the appeal. The motion shall state on what dates required briefs and the appendix were served on the parties and filed with the clerk of the supreme court. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order retaining the record or parts thereof in district court or of any order extending the time for transmitting the record or parts thereof. Appellant may respond by written resistance within 14 days of service of the motion by appellee.

**6.12(5)** *Restoring district court jurisdiction.* After an appeal is taken, the filing with the clerk of the district court of a stipulation in which all parties agree to a dismissal of an appeal shall restore jurisdiction to the district court for the entry of an order of dismissal of the appeal, which will be a final adjudication. The clerk of the district court shall forward a copy of such stipulation and order to the clerk of the supreme court.

**6.12(6)** *Voluntary dismissal.* A party may voluntarily dismiss that party's appeal without order of the court at any time before a decision is filed by either the supreme court or the court of appeals. Upon the filing of a voluntary dismissal with the clerk of the supreme court and payment of the docket fee if it has not already been paid, the clerk shall issue procedendo forthwith unless there is another appeal or cross-appeal in the matter still pending. The issuance of procedendo shall constitute a final adjudication with prejudice.

**6.12(7)** *Limited remand.* The appropriate appellate court during appeal or pending application for appeal may remand the cause to the district court, which shall have jurisdiction for such specific proceedings as may be directed by the appellate court. Notwithstanding such remand, jurisdiction of the appeal shall remain in the appellate court which ordered the remand. [Report 1977; amendment by Court Order November 19, 1981, effective January 1, 1982; Court Order May 23, 1983, effective July 1, 1983; May 27, 1988, effective July 1, 1988; January 9, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 6.13 Filing and service of briefs and amendments.**

**6.13(1)** *Time for serving and filing proof briefs.* Except in those cases expedited under rule 6.17 or 6.105, appellant shall serve and file a proof copy of appellant's brief within 50 days after the date on which the appeal is docketed. In appeals in chapter 232 termination cases filed pursuant to rule 6.5(2), the expedited time for filing under rule 6.17 shall run from the date on which full briefing is ordered. Appellee (cross-appellant in the event of a cross-appeal) shall serve and file a proof copy of appellee's (cross-appellant's) brief within 30 days after service of appellant's proof brief. Appellate counsel for a criminal defendant or postconviction applicant shall serve a copy of counsel's proof brief and designation of parts upon the defendant or applicant. Counsel shall indicate such service in the proof of service on the proof brief and on the designation of parts. The proofs of service shall include the address at which the defendant or applicant was served.

Where a cross-appeal has not been filed, appellant may serve and file a proof copy of a reply brief within 21 days after service of appellee's proof brief. In the event of a cross-appeal, appellant (cross-appellee) shall respond within 21 days after service of appellee's (cross-appellant's) proof brief in one of two ways: by filing either a proof copy of a responsive reply brief; or a statement waiving any further proof brief. If appellant (cross-appellee) serves and files a responsive reply brief, appellee (cross-appellant) may serve and file a final reply brief under rule 6.14(3) within 14 days after service of appellant's (cross-appellee's) reply brief.

**6.13(2)** *Pro se supplemental proof briefs.* Any criminal defendant or applicant for postconviction relief who wishes to file a pro se supplemental brief or designate additional parts of the district court record for inclusion in the appendix may do so within 15 days of service of the proof brief filed by their counsel. Any pro se supplemental brief or designation filed beyond this period by a properly served defendant or applicant will not be considered by the court and no response by the State will be required or allowed. The pro se supplemental brief cannot exceed 25 pages in length unless otherwise ordered by the court for good cause shown. Defendant or applicant must serve counsel and the State with copies of the supplemental brief or designation.

If the defendant or applicant is the appellant, the State's proof brief must be served and filed within 30 days of service of the pro se supplemental brief and the State must serve a copy of its proof brief upon the defendant or applicant. Within the time provided for appellant's counsel to file a reply brief, the defendant or applicant may also file a pro se supplemental reply brief. A pro se supplemental reply brief cannot exceed ten pages in length unless otherwise ordered by the court for good cause shown. Defendant or applicant must serve counsel and the State with copies of the supplemental reply brief. Counsel for the defendant or applicant shall be responsible for including any additional designated parts in the appendix.

If the State is the appellant, the State shall serve and file the appendix and a reply brief, if any, within 21 days of service of the pro se supplemental brief, and the State shall be responsible for including any additional designated parts in the appendix.

Counsel for the defendant or applicant shall serve and file the final copies of the pro se supplemental briefs.

**6.13(3)** *Time for serving and filing briefs in final form.* Within 14 days after the appendix is served pursuant to rule 6.15(1), each party shall serve and file the party's brief or briefs in the final form prescribed by rule 6.16(1). No other changes may be made in the proof briefs as initially served and filed, except that typographical errors may be corrected. The supreme court may shorten the periods for serving and filing proof and final briefs.

**6.13(4)** *Multiple adverse parties.* If the time for doing any act prescribed by these rules is measured from the date of service of a paper by an adverse party, then in the case of multiple adverse parties the time for doing such act shall be measured from the date of service of the last timely served paper by an adverse party or the date of expiration of time within which the adverse parties had to serve the paper.

**6.13(5)** *Amendments.* An appellant may amend a required brief once within 15 days after serving the brief, provided no brief has been served in response to it. The time for serving and filing of appellee's brief shall be measured from the date of service of the amendment to appellant's brief. An appellee's brief may be amended once within 10 days after service, provided no brief has been served in reply to it. The time for serving and filing appellant's reply brief shall be measured from the date of service of the amendment to appellee's brief. A reply brief may be amended at any time prior to 7 days before submission of the appeal to the appellate court. Any other or further amendments to the briefs may be made only with leave of the appropriate appellate court. An amendment may be conditionally filed with a motion for leave.

**6.13(6)** *Number of copies to be filed and served.* Two copies of proof briefs and 18 copies of each brief in final form or amendment thereto shall be filed with the clerk of the supreme court, and one proof brief and two copies of briefs in final form shall be served on counsel for each party separately represented.

**6.13(7)** *Consequence of failure to file briefs.* If appellant fails to file the appellant's brief within the time provided by this rule, or within the time as extended, appellee may move for dismissal of the appeal. If appellee fails to file a timely brief, appellee will not be heard at oral argument except by special permission of the appropriate appellate court. In the event of a cross-appeal, the appellee shall file a timely brief in support of it; a failure to do so shall render the cross-appeal subject to dismissal on appellant's motion. [Report 1977; amendment by Court Order November 19, 1981, effective January 1, 1982; May 27, 1988, effective July 1, 1988; January 27, 1993, effective July 1, 1993; October 18, 2000, effective January 2, 2001; November 9, 2001, effective February 15, 2002; May 21, 2002]

**Rule 6.14 Briefs.**

**6.14(1)** *Appellant's brief.* The brief of appellant shall contain under appropriate headings and in the following order:

*a. A table of contents.* The table of contents shall contain page references.

*b. A table of authorities.* The table of authorities shall contain cases (alphabetically arranged), statutes and other authorities cited, with references to all pages of the brief where they are cited.

*c. A statement of the issues presented for review.* Under each issue separately stated shall be a list of all cases, statutes and other authorities referred to in the argument covering that issue. The authorities which are considered to be the most pertinent and convincing shall be indicated by underlining. Not less than one nor more than four authorities under each separately stated issue shall be so indicated. Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.

*d. A statement of the case.* The statement shall first indicate briefly the nature of the case, the course of proceedings and the disposition of the case in the district court. It shall then recite the facts relevant to the issues presented for review. All portions of the statement shall be supported by appropriate references to the record or the appendix in accordance with rule 6.14(7).

*e. A routing statement.* The statement shall indicate whether the case should be retained by the supreme court or transferred to the court of appeals and shall refer to the applicable criteria in rule 6.401.

*f. An argument.* The argument may be preceded by a summary. The argument shall contain in separately numbered divisions corresponding to the separately stated issues the contentions of appellant with respect to the issues presented and the reasons therefor, with citations to the authorities relied on and to the pertinent parts of the record in accordance with rule 6.14(7). Each division of the argument shall begin with a discussion, citing relevant authority, concerning the scope or standard of appellate review (e.g., "on error," "abuse of discretion," "de novo") and shall state how the issue was preserved for review, with references to the places in the record where the issue was raised and decided.

*g. A short conclusion.* The conclusion shall state the precise relief sought.

**6.14(2)** *Appellee's brief.* The brief of appellee shall conform to the requirements of rule 6.14(1), except that a statement of the case need not be made unless appellee is dissatisfied with the statement of appellant. Each division of appellee's argument shall begin with a discussion of whether appellee agrees with appellant's statements regarding the scope of review and preservation of the issue for appellate review.

**6.14(3)** *Reply brief.* Appellant may file a brief in reply to the brief of appellee, and if appellee has cross-appealed, appellee (cross-appellant) may serve and file a brief in reply to the reply brief of appellant responding to the issues presented by the cross-appeal. No further briefs may be filed except with leave of the appropriate appellate court.

**6.14(4)** *References in briefs to parties.* In their briefs and oral arguments counsel should minimize references to parties by such designations as "appellant" and "appellee" and should use the actual names of the parties or descriptive terms such as "plaintiff," "defendant," "the employee," "the injured person," "the taxpayer," "the decedent."

**6.14(5)** *References in briefs to legal authorities.* In citing cases the names of parties must be given. In citing Iowa cases, reference must be made to the volume and page where the case may be found in the Iowa Reports, if reported therein, and in the North Western Reporter, if reported therein. In citing cases reference must be made to

the court that rendered the opinion and the volume and page where the same may be found in the National Reporter System, if reported therein. E.g., _ Iowa _, _N.W._ (20_); _ N.W.2d_ (Iowa 20_); _N.W.2d_ (Iowa Ct. App. 20_); _ S.W.2d_ (Mo. Ct. App. 20_); _ U.S._, _ S.Ct._, _L. Ed. 2d_ (20_); _ F. 2d_ (_Cir. 20_); _ F. Supp._ (S.D. Cal. 20_). When quoting from authorities or referring to a specific point within an authority, the specific page or pages quoted or relied upon shall be given in addition to the required page references.

When citing the Iowa Court Rules parties shall use the following:

*a.* "Iowa R. Civ. P."; "Iowa R. Crim. P."; "Iowa R. Evid."; "Iowa R. App. P."; "Iowa Code of Prof'l Responsibility"; and "Iowa Code of Judicial Conduct" when citing those rules.

*b.* "Iowa Ct. R." when citing all other rules.

An unpublished opinion of the Iowa appellate courts or of any other appellate court may be cited in a brief; however, unpublished opinions shall not constitute controlling legal authority. A copy of the unpublished opinion shall be attached to the brief and shall be accompanied by a certification that counsel has conducted a diligent search for, and fully disclosed, any subsequent disposition of the unpublished opinion. For purposes of these rules, an "unpublished" opinion means an opinion the text of which is not included or designated for inclusion in the National Reporter System. When citing an unpublished appellate opinion, a party shall include, when available, an electronic citation indicating where the opinion may be readily accessed on line.

When treatises or textbooks are cited, the edition must be designated. In citing authorities other than cases, references shall be made as follows: Codes, to section number; treatises, textbooks and encyclopedias, to section and page; all others, to page or pages. Use of the "supra" and "infra" forms of citation is discouraged.

**6.14(6)** *References in briefs to legal propositions.* The following propositions are deemed so well established that authorities need not be cited in support of any of them:

*a.* Findings of fact in a law action, which means generally any action triable by ordinary proceedings, are binding upon the appellate court if supported by substantial evidence.

*b.* In considering the propriety of a motion for directed verdict the court views the evidence in the light most favorable to the party against whom the motion was made.

*c.* In ruling upon motions for new trial the district court has a broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties.

*d.* The court is slower to interfere with the grant of a new trial than with its denial.

*e.* Ordinarily the burden of proof on an issue is upon the party who would suffer loss if the issue were not established.

*f.* In civil cases the burden of proof is measured by the test of preponderance of the evidence.

*g.* In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them.

*h.* The party who so alleges must, unless otherwise provided by statute, prove negligence and proximate cause, by a preponderance of the evidence.

*i.* A motorist upon a public highway has a right to assume that others using the road will obey the law, including statutes, rules of the road and necessity for due care, at least until the motorist knows or in the exercise of due care should have known otherwise.

*j.* Generally questions of negligence, contributory negligence and proximate cause are for the jury; it is only in exceptional cases that they may be decided as matters of law.

*k.* Reformation of written instruments may be granted only upon clear, satisfactory and convincing evidence of fraud, deceit, duress or mutual mistake.

*l.* Written instruments affecting real estate may be set aside only upon evidence that is clear, satisfactory and convincing.

*m.* In construing statutes the court searches for the legislative intent as shown by what the legislature said, rather than what it should or might have said.

*n.* In the construction of written contracts, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says.

*o.* In child custody cases the first and governing consideration of the courts is the best interest of the child.

*p.* Direct and circumstantial evidence are equally probative.

*q.* Even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them a jury question is engendered.

**6.14(7)** *References in briefs to the record.* Proof briefs shall contain appropriate references to the pages of the parts of the record involved, e.g., Petition p. 6, Judgment p. 5, Transcript p. 298. References in the final briefs to portions of the record shall be to the pages of the appendix at which those parts appear. References to condensed transcript shall refer to both the appendix page and the specific page of transcript being cited, e.g., App. __, Tr. __. If references are made in the final briefs to parts of the record not reproduced in the appendix, the references shall be to the pages of the parts of the record involved, e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence, the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered and received or rejected.

**6.14(8)** *Length of briefs.* Except by permission of the supreme court, required briefs shall not exceed 50 numbered pages exclusive of the table of contents and table of authorities and reply briefs shall not exceed 25 numbered pages. Such permission may be granted ex parte. For purposes of this rule Arabic numbering should begin with the statement of the issues presented for review. In the

event of a cross-appeal, appellant (cross-appellee's) responsive reply brief shall be considered a required brief.

**6.14(9)** *Briefs in cross-appeals.* If a cross-appeal is filed, the party who first filed a notice of appeal shall be deemed appellant for the purposes of this rule and rules 6.13 and 6.15, unless the parties otherwise agree or the supreme court otherwise orders. The brief of appellee shall contain the issues and argument involved in the cross-appeal as well as a response to the brief of appellant.

**6.14(10)** *Multiple appellants or appellees.* In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs. [Report 1977; amendment by Court Order July 24, 1980; May 3, 1989, effective July 3, 1989; June 19, 1989, effective August 1, 1989; April 17, 1990, effective July 2, 1990; June 29, 1990, effective October 1, 1990; September 18, 1990, effective December 3, 1990; January 27, 1993, effective July 1, 1993; November 24, 1999; January 11, 2001; August 31, 2001; November 9, 2001, effective February 15, 2002; February 22, 2002]

**Rule 6.15 Appendix to briefs.**

**6.15(1)** *Duty of appellant; content; time; number.*

*a.* Appellant shall prepare and file an appendix to the briefs which shall contain: (1) the relevant docket entries in the district court proceeding; (2) any relevant portions of the pleadings, transcript, instructions, findings, conclusions, and opinion; (3) a file-stamped copy of the judgment, order or decision in question; (4) a file-stamped copy of any notices of appeal or cross-appeal, including any certificate(s) of service; (5) the text of any agency rule that is cited in the parties' briefs; and (6) any other parts of the record to which the parties wish to direct the particular attention of the court. Portions of the record shall be set out verbatim in the appendix. Any portion of a transcript or deposition included in the appendix shall be accompanied by a copy of the cover sheet which indicates the date(s) of the proceedings and the participants. Summaries, abstracts or narratives shall not be used. Trial briefs shall not be included in the appendix except when necessary to establish that error has been preserved on an issue argued on appeal. When used for this purpose, trial briefs, if not filed at the time of the district court proceeding, shall be made a part of the record pursuant to rule 6.10(4). The fact that parts of the record are not included in the appendix shall not prevent the parties or the courts from relying on such parts.

*b.* Appellant shall serve and file the appendix within 21 days after service or expiration of the time for service of appellee's (cross-appellant's) proof brief. Eighteen copies of the appendix, and of any amendments thereto, shall be filed with the clerk of the supreme court and two copies shall be served on counsel for each party separately represented. The appendix may be amended by agreement of all the parties at any time prior to assignment of the appeal for submission to an appellate court. The written consent of all the parties must be filed with the amendment. In absence of agreement or after assignment, the appendix may be amended only with leave of the appropriate appellate court. An amendment to the appendix may be conditionally filed with a motion for leave.

**6.15(2)** *Designation of contents.* The parties are encouraged to agree as to the contents of the appendix. Designations of parts of the district court record to be included in the appendix shall be served and filed by each party at the time the proof copy of required briefs, other than appellant's (cross-appellee's) reply brief, are served and filed, except that an appellee need not designate additional parts if appellee is satisfied with appellant's designation. Appellant shall include in the appendix the parts designated by appellee. In designating parts of the record for inclusion in the appendix, the parties shall consider the fact that the entire record is available to the appellate courts for examination and shall not engage in unnecessary designation.

**6.15(3)** *Cost of producing.* Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by appellant, but if appellant considers that parts of the record designated by appellee for inclusion are unnecessary for the determination of the issues presented, appellant may so advise appellee and appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case, but if either party shall cause matters to be unnecessarily included in the appendix the appropriate appellate court may impose the cost of producing such parts on that party.

**6.15(4)** *Arrangement of the appendix.* The appendix shall begin with a table of contents with references to the pages of the appendix at which each part begins. The pages of the appendix shall be consecutively numbered. When the appendix contains portions of the reporter's transcript, the name of each witness whose testimony is included in the appendix shall be indicated in the list of contents with a reference to the page of the appendix at which the witness's testimony begins. The relevant docket entries shall be set out following the list of contents. Thereafter, other parts of the record shall be set out in chronological order. Portions of the reporter's transcript of proceedings shall be inserted in chronological order based on the date the transcribed proceedings took place rather than on the date the completed transcript was filed. When matter contained in the transcript is set out in the appendix, the original pagination of that matter shall be indicated in the appendix by placing in brackets the number of each page of the transcript at the place in the appendix where that transcript page begins, and the name of each witness whose testimony is included in the appendix shall be indicated at the place in the appendix where the witness's testimony begins. A condensed version of the transcript which complies with the requirements of rule 6.10(2) may be used in the appendix. Omissions in the text of papers, of exhibits or of the transcript, regardless of size, must be indicated by a set of three asterisks. Except as provided in rule 6.15(1), immaterial formal matter, such as captions, subscriptions and acknowledgments, shall be omitted. A question and its answer may be contained in a single paragraph.

**6.15(5)** *Reproduction of exhibits.* Exhibits or relevant portions thereof designated for inclusion in the appendix may be contained in a separate volume or volumes, suitably indexed. Eighteen copies thereof shall be filed with the appendix and two copies shall be served on counsel for each party separately represented. Rele-

vant portions of the transcript of a proceeding before an administrative agency, board, commission or officer, used in an action in the district court, may be regarded as an exhibit for the purpose of this subrule. [Report 1977; Court Order November 19, 1981, effective January 1, 1982; December 23, 1985, effective February 3, 1986; November 4, 1986, effective December 1, 1986; January 27, 1993, effective July 1, 1993; July 1, 1998; November 24, 1999; June 1, 2000, effective August 1, 2000; September 21, 2000, effective October 16, 2000; November 9, 2001, effective February 15, 2002]

**Rule 6.16 Form of briefs, appendix, and other papers.**

**6.16(1)** *Form of briefs and appendix.* Briefs and the appendix may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. The appendix and briefs shall be printed or duplicated on both sides of the sheet. All printed or duplicated matter must appear on opaque, unglazed paper, and be legible. Such matter must appear in no smaller than pica type (averaging no more than ten characters per inch) or in a 12 point Arrus BT, 12 point Arial, 12 point Courier New, 13 point Times New Roman, or substantially equivalent typeface. Lines of typewritten text shall be double-spaced. Briefs and the appendix shall be bound on the left in volumes having pages 8 1/2 by 11 inches and type matter 6 by not less than 8 1/8 inches nor more than 9 1/4 inches.

Margins on the bound side of the sheets shall be not less than 1 1/8 inches suitable for permanent binding procedures. Copies of legal-sized pleadings and other papers may be reduced or enlarged to 8 1/2 by 11 inches by standard photocopying methods and inserted in the appendix. All such copies must be legible. Copies of the reporter's transcript of proceedings and other papers reproduced in a manner authorized by this rule may be inserted in the appendix, but not in such manner as to prevent subsequent uniform permanent binding. Such papers may be informally renumbered and asterisks may be added informally if necessary.

The cover of the brief of appellant should be blue; that of appellee, red; that of an intervenor or amicus curiae who is not an appellant or appellee, green; that of a reply brief, gray. The cover of the appendix should be white. The cover of an application for further review and resistance should be yellow. The cover of an amendment should be the same color as the document which it amends. The front covers of the briefs, appendix, and amendments thereto, shall contain: (1) the name of the court and the appellate number of the case; (2) the title of the case (*see* rule 6.12(1)); (3) the nature of the proceeding in court (e.g., Appeal, Certiorari) and the name of the court (and judge), agency, or board whose decision is under review; (4) the title of the document (e.g., Brief for Appellant, Appendix); and (5) the name, address, telephone number, e-mail address, and fax number of counsel representing the party on whose behalf the document is filed.

**6.16(2)** *Form of other papers.* Motions and other papers may be produced in the manner prescribed by rule 6.16(1), or they may be typewritten upon opaque, unglazed paper 8½ by 11 inches in size. Lines of typewritten text shall be double-spaced. Consecutive sheets shall be attached at the left margin.

A motion or other paper addressed to an appellate court shall contain a caption setting forth the name of the court, the title of the case, the file number, a brief descriptive title indicating the purpose of the paper, the name, address, telephone number, e-mail address and fax number of counsel representing the party on whose behalf the document is filed. Four copies of motions and other papers addressed to the appropriate appellate court shall be filed with the clerk of the supreme court and one copy shall be served on each party separately represented unless the appropriate appellate court by order directs otherwise.

**6.16(3)** *Printing taxed as costs.* The amount actually paid for printing or otherwise producing necessary copies of briefs in final form, appendix, or copies of records authorized by these rules, exclusive of stenographic expense, shall be certified by the attorney, and to the extent reasonable, shall be taxed in the appellate court as costs. Reasonable printing or duplicating costs shall not exceed $4 per page unless otherwise ordered by the appropriate appellate court. [Report 1977; amendment by Court Order October 1, 1980, effective January 1, 1981; December 8, 1981, effective January 1, 1982; February 1, 1982, effective February 1, 1982; November 12, 1986, effective January 5, 1987; May 27, 1988, effective July 1, 1988; June 19, 1989, effective August 1, 1989; January 27, 1993, effective July 1, 1993; September 22, 1999; November 9, 2001, effective February 15, 2002]

**Rule 6.17 Cases involving expedited times for filings.** The times prescribed in rule 6.13 for serving and filing briefs, other than reply briefs, and the times prescribed in rule 6.15(2) for determining the contents of the appendix shall be reduced by one-half in appeals involving the following: (1) a contest as to custody of children; (2) adoption; (3) an order on a petition to terminate parental rights under Iowa Code chapter 600A; (4) an order granting or dismissing a petition to terminate parental rights under Iowa Code section 232.117 when full briefing has been granted pursuant to rule 6.154(1); (5) juvenile proceedings affecting child placement; or (6) lawyer disciplinary matters.* Each case subject to this rule shall be given the highest priority at all stages of the appellate process, and the litigants will not be given extensions of time in which to comply with the expedited docketing and briefing schedules except upon a verified showing of the most unusual and compelling circumstances.

The appendix and reply briefs, except an appellee's (cross-appellant's) reply brief, shall be served and filed not more than 15 days after service or expiration of the time for service of appellee's proof brief, and printed or duplicated copies of all the briefs in final form shall be

served and filed within 7 days after service of the appendix. An appellee's (cross-appellant's) reply brief, if filed, shall be served and filed not more than 7 days after service of appellant's (cross-appellee's) reply brief. Court reporters shall give priority to transcription of proceedings in these cases over other civil transcripts. These appeals shall be accorded submission precedence over other civil cases. [Report 1977; amendment by Court Order November 19, 1981, effective January 1, 1982; May 27, 1988, effective July 1, 1988; January 27, 1993, effective July 1, 1993; November 9, 2001, effective February 15, 2002]

* *See* rule 6.105 for criminal appeals.

**Rule 6.18 Brief of amicus curiae.** A brief of an amicus curiae may be served and filed only by leave of the appropriate appellate court granted on motion served on all parties, at the request of the appropriate appellate court or when accompanied by the written consent of all parties. The brief may be conditionally served and filed with a motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons a brief of an amicus curiae is desirable. Any amicus curiae shall serve and file a brief within the time allowed the party whose position as to affirmance or reversal the brief will support. The appropriate appellate court for cause shown may grant leave for later filing, specifying the period within which an opposing party may respond. A request by an amicus curiae to participate in oral argument will not be granted except for extraordinary reasons. [Report 1977; amendment by Court Order July 11, 1983; November 9, 2001, effective February 15, 2002]

**Rule 6.19 Failure to prosecute and penalty.**

**6.19(1)** When an appellant fails to comply with an appellate rule, the clerk shall notify appellant and appellant's counsel in accordance with rule 6.31(3), that upon the expiration of 15 days from service of notification the appeal will be dismissed for want of prosecution unless appellant remedies the default within such period. Should the appellant fail to comply, the clerk shall enter an order dismissing the appeal for want of prosecution and shall issue a certified copy thereof to the clerk of the district court as the procedendo. Appellant shall not be entitled to remedy the default after a dismissal under this rule, unless by order of the appropriate appellate court. The dismissal of an appeal shall not limit the authority of the supreme court to take disciplinary action against defaulting counsel.

An appeal may be dismissed, with or without notice of default, for failure to comply with an appellate rule, upon the motion of a party or of the appropriate appellate court.

**6.19(2)** When a party's attorney fails to comply with the filing deadlines provided by the appellate rules, the attorney shall be assessed a penalty of $50 by the clerk. Any appellee's counsel who fails to meet the time requirements for such filing shall be, in order to become eligible for late filing, subject to the same penalty. Such penalties are to be paid by the attorney individually and are not to be charged to the client. If penalties so assessed are not paid within 15 days, then the attorney so assessed may be ordered to show cause why that attorney should not be found in contempt of the supreme court. [Report 1977; Court Order July 9, 1986, effective September 2, 1986; November 9, 2001, effective February 15, 2002]

**Rule 6.20 Shortening or enlarging time.**

**6.20(1)** The supreme court, and the court of appeals as to appeals transferred to it, may upon its own motion or on motion of a litigant shorten or enlarge the time prescribed by the rules of appellate procedure or by the rules of the court or its order for doing any act, or may permit an act to be done after the expiration of such time, but such courts may not enlarge the time for filing a notice of appeal except as provided in rule 6.20(2). In cases where rule 6.17 applies the motion shall so state. A motion to enlarge time which is based on the court reporter's inability to file the transcript within the time specified by the Iowa Rules of Appellate Procedure or an order of an appellate court shall be served on the court reporter in addition to the other parties.

**6.20(2)** The supreme court or a justice thereof may extend the time for filing of a notice of appeal if the supreme court or justice determines that a failure to file a timely notice of appeal was due to the failure of the clerk of the district court to notify the prospective appellant of the entry of the appealable final judgment or decision. Any motion for such an extension of time must be filed with the clerk of the supreme court and served not later than 60 days after the expiration of the time prescribed by rule 6.5(1) for taking an appeal. The motion and any resistance thereto may be supported by copies of relevant portions of the record and by affidavits which shall be the only form of evidence received. An informational copy of any such motion shall be filed by the moving party with the clerk of district court. No such extension shall exceed 60 days past the time prescribed in rule 6.5(1), or 10 days from the date of entry of the order granting the motion, whichever occurs later. [Report 1977; amendment by Court Order May 23, 1983, effective July 1, 1983; April 17, 1990, effective July 2, 1990; November 9, 2001, effective February 15, 2002]

**Rule 6.21 Oral argument; submission.**

**6.21(1)** A party desiring to be heard orally shall so state at the end of the party's brief; and unless so requested, the party will not be heard orally except by special permission or order of the appropriate appellate court.

**6.21(2)** The time allotted for oral argument shall be fixed by the court prior to submission, and the parties so advised. The chief justice or chief judge of the appropriate appellate court may alter the time allotted for good cause shown.

**6.21(3)** The appropriate appellate court may conclude, prior to submission, that even though a substantial issue exists, oral argument would not be of assistance or should be shortened. In such event counsel will be advised accordingly before submission.

**6.21(4)** Failure to argue orally points properly made in the briefs shall not be deemed waiver thereof.

**6.21(5)** If a party intends to cite during oral argument an authority not previously included in its brief, it shall file a notice of additional authority giving a citation for each additional authority upon which the party relies. The party shall serve one copy of the notice on counsel for each party and file twelve copies with the clerk of the supreme court prior to oral argument. If the notice includes a citation to an unpublished opinion, a copy of that opinion shall be attached to the notice.

**6.21(6)** Appeals shall be submitted to the supreme court or transferred to the court of appeals substantially in the order they are made ready except when advance sub-

mission is accorded by statute, rule or order of the supreme court.

**6.21(7)** If an appeal involves questions of public importance or rights which are likely to be lost or greatly impaired by delay, the supreme court may upon the motion of a party or on its own motion order the submission or transfer of the cause in advance of the time at which it would otherwise be submitted or transferred. [Report 1977; Court Order August 31, 2001; November 9, 2001, effective February 15, 2002]

**Rule 6.22 Writs, motions, orders.**

**6.22(1)** *Writs and process, supreme court.* The supreme court shall issue all writs and process necessary for the exercise and enforcement of its appellate jurisdiction and in the furtherance of its supervisory and administrative control over all inferior judicial tribunals and officers thereof throughout the state; and may enforce its mandates by fine and imprisonment, and imprisonment may be continued until obeyed.

**6.22(2)** *Writs and process, court of appeals.* The court of appeals shall issue writs and other process necessary for the exercise and enforcement of its jurisdiction, but a writ, order or other process in any appeal not transferred to the court of appeals by the supreme court shall be of no effect.

**6.22(3)** *Motions in supreme court and court of appeals.* Unless another form is prescribed by these rules, all motions, including motions to dismiss, affirm, or reverse, shall be served on all other parties to the appeal and filed with the clerk of the supreme court. A motion shall:

*a.* Include any matter required by a specific provision of these rules governing such motion.

*b.* Be accompanied by a copy of any ruling from which a party seeks appellate review.

*c.* State with particularity the grounds on which it is based, including citations to relevant authorities.

*d.* Set forth the order or precise relief sought.

A motion, a resistance to a motion, and a reply to the resistance may be supported by other relevant portions of the record, but such attachments shall not exceed 25 pages unless otherwise ordered by an appellate court. Any application for the inclusion of attachments beyond the 25-page limitation shall not include such attachments. Any briefs, affidavits or other papers supporting a motion shall be served and filed with the motion. Except as to motions under rule 6.22(5), any party may serve and file a resistance to a motion within 14 days after service of the motion, unless otherwise ordered by the appropriate appellate court. A reply to the resistance may be served and filed within 3 days after the service of the resistance.

**6.22(4)** *Rulings, hearings.* Resisted motions will be ruled on by the appropriate appellate court or a justice or judge thereof after the expiration of at least seven days from serving the resistance, unless such court, justice or judge orders a different time for submission of the motion. Unresisted motions will be ruled on after the expiration of at least three days from the last day for filing a resistance unless a different time for submission is ordered. Motions in which all parties join may be ruled on at any time. The court, justice or judge may require briefs to be filed with respect to a motion, and may set any motion for hearing and prescribe notice to be given.

**6.22(5)** *Motions for procedural or temporary orders.* Notwithstanding the provisions of rules 6.22(3) and 6.22(4) as to motions generally, motions for procedural orders, including any motion under rule 6.20(1), and motions for temporary orders in which it appears that rights would be lost or greatly impaired by delay, may be ruled upon at any time without awaiting a resistance thereto. Any party adversely affected by such ruling may within 14 days request reconsideration, vacation or modification of the ruling.

**6.22(6)** *Authority of a single justice to entertain motions.* In addition to any authority expressly conferred by rule or by statute, a single justice of the supreme court may entertain any motion in an appeal or original proceeding in the supreme court and grant or deny any relief which may properly be sought by motion, except that a single justice may not dismiss, affirm, reverse, or otherwise determine an appeal or original proceeding. The action of a single justice may be reviewed by the supreme court upon its own motion or a motion of a party. A motion by a party for review of the action of a single justice shall be served and filed within ten days after the date of filing the challenged order.

**6.22(7)** *Authority of court of appeals and its judges to entertain motions.* The court of appeals and its judges may entertain motions only in appeals which the supreme court has transferred to that court. In such appeals, a single judge of the court of appeals may entertain any motion and grant or deny any relief which may properly be sought by motion, except that a single judge may not dismiss, affirm, reverse, or otherwise determine an appeal. The action of a single judge may be reviewed by the court of appeals upon its own motion or a motion of a party. A motion by a party for review of the action of a single judge shall be served and filed within ten days after the date of filing the challenged order.

**6.22(8)** *Authority of clerk to entertain motions for procedural orders.* The clerk of the supreme court or the clerk's deputy is authorized, in the clerk's discretion and subject to review by the supreme court, to take appropriate action for the supreme court on motions for procedural orders upon which the court pursuant to rule 6.22(5) could rule without awaiting a resistance. Such motions include, but are not limited to, the following: A motion to authorize prosecution of an appeal without payment of fees pursuant to rule 6.12(1); a motion for leave to amend a brief pursuant to rule 6.13(5); a motion for permission to file an overlength brief pursuant to rule 6.14(8); a motion for leave to amend the appendix pursuant to rule 6.15(1); a motion for leave to file an amicus curiae brief pursuant to rule 6.18; and a motion to shorten or enlarge time pursuant to rule 6.20(1), except in cases governed by rule 6.17. The clerk may grant a motion only for good cause shown and when the prejudice to the nonmoving party is not great. Good cause for an extension of time includes the illness of counsel, the unavailability of counsel due to unusual and compelling circumstances, the unavailability of a necessary transcript or other portion of

the record due to circumstances beyond the control of counsel, and a reasonably good possibility of settlement within the time as extended. The clerk may grant not more than one extension of time of not more than 30 days for any act (other than filing notice of appeal) required to be done within a certain time by the rules of appellate procedure, except in cases governed by rule 6.17. An order of the clerk entered under this subrule shall state it is entered pursuant to rule 6.22(8). An order of the clerk entered pursuant to this subrule may be reviewed by the supreme court or a justice thereof upon the motion of an adversely affected party filed within 14 days after the entry of the order.

**6.22(9)** *Authority of clerk to set motions for hearing.* The clerk or deputy clerk of the supreme court is authorized, subject to the control and direction of the supreme court, to set any motion or similar paper pending in the supreme court for hearing or nonoral consideration and set the time allowed for resistance to the motion.

**6.22(10)** *Filing deadlines not extended.* With the exception of motions subject to rule 6.23, the filing of a motion will not suspend or stay the filing deadlines established under these rules unless so ordered by the court.

**6.22(11)** *Stays involving child custody.*

*a.* A supersedeas bond filed pursuant to rule 6.7 shall not stay an order, judgment, decree, or portion thereof affecting the custody of a child. Upon application in a pending appeal, the appellate court may, in its discretion, stay any district court order, judgment, decree, or portion thereof affecting the custody of a child and provide for the custody of the child during the pendency of the appeal. The application for such a stay order and any briefs or other papers in support thereof shall be filed with the clerk of the supreme court and served in the manner provided in rule 6.31.

*b.* An application for a stay pending appeal of any order, judgment, or decree affecting the custody of a child may be resisted and will be ruled upon without oral argument as provided in rules 6.22(3) and 6.22(4), unless otherwise ordered. Pending consideration of the application for a stay pending appeal, the appellate court may immediately order a temporary stay pursuant to rule 6.22(5).

*c.* The best interests of the child shall be the primary consideration in deciding whether to grant the application for a stay order. The best interests of the child likewise shall be paramount in determining where to place custody of the child during the pendency of the appeal. Additional considerations include, but are not limited to, the following factors when they appear:

(1) The circumstances giving rise to the adjudication being appealed.

(2) The safety and protection of the child.

(3) The safety and protection of the community and the likelihood of serious violence.

(4) The need to quickly begin treatment or rehabilitation of the child.

(5) The likelihood of the child fleeing or being removed from the jurisdiction during the pendency of the appeal or not appearing at further court proceedings.

(6) The availability of custody placement alternatives.

(7) The child's family ties, employment, school attendance, character, length of residence in the community, and juvenile court record.

(8) The likelihood of a reversal of the district court order, judgment, or decree on appeal.

*d.* The applicant seeking the stay order shall have the burden of showing that such a stay or alternative custody placement of the child pending appeal is in the affected child's best interests. [Report 1977; amendment by Court Order October 13, 1978; May 23, 1983, effective July 1, 1983; July 19, 1984; April 16, 1986, effective May 1, 1986; April 17, 1990, effective July 2, 1990; July 12, 1991, effective August 1, 1991; November 9, 2001, effective February 15, 2002; February 22, 2002; June 14, 2002]

**Rule 6.23 Motions to dismiss or affirm.**

**6.23(1)** *Motions to dismiss.* A motion to dismiss may be served and filed without payment of the docket fee, but appellant shall not be permitted to respond without payment of the fee unless the appellant is otherwise exempt from payment. After consideration, the appropriate appellate court may rule on the motion or may order the motion submitted with the appeal.

**6.23(2)** *Motions to affirm.* Appellee may file a motion with the appropriate appellate court to affirm the appeal on the ground that the issues raised by the appeal are frivolous. The motion shall be served and filed within seven days after service of appellant's brief and shall comply with the requirements of rule 6.22(3). One judge or justice may overrule, but only the court may sustain, a motion to affirm.

**6.23(3)** *Motions to reverse.* Any party may file a motion with the appropriate appellate court to summarily reverse the appeal on the grounds the result is controlled by an indistinguishable recently decided case or where error has been confessed. The motion shall comply with the requirements of rule 6.22(3). In response to a motion to reverse the appropriate appellate court will order the nonmoving party to show cause why the case should not be reversed. A similar show cause order may be entered by the appropriate appellate court acting on its own initiative. One justice of the supreme court may overrule, but only a quorum of that court may sustain, a motion to reverse. If the appeal has been transferred to the court of appeals, one judge of the court of appeals may overrule, but only a quorum of that court may sustain, a motion to reverse.

**6.23(4)** *Excluding time.* With the exception of cases subject to rule 6.17, the time between the service of a motion to dismiss, affirm, or reverse and an order overruling the motion or ordering its submission with the appeal shall be excluded in measuring the time within which subsequent acts required by these rules must be done. [Report 1977; amendment by Court Order July 19, 1984; September 26, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; February 22, 2002]

**Rule 6.24 Affirmed or enforced without opinion.** A judgment or order may be affirmed or enforced without opinion if the appellate court determines that the questions presented are not of sufficient importance to justify an opinion, that an opinion would not have precedential value, and that any of the following circumstances exists and is dispositive:

**6.24(1)** A judgment of the district court is correct.

**6.24(2)** The evidence in support of a jury verdict is sufficient.

**6.24(3)** The order of an administrative agency is supported by substantial evidence.

**6.24(4)** No error of law appears. [Report 1977; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.25 Quarterly publication.** A list indicating the disposition of all decisions rendered by the supreme court per curiam or under rule 6.24 shall be published quarterly in the North Western Reporter, except for such of those decisions as the supreme court specially orders to be published in the regular manner. [Report 1977; Court Order August 31, 2001; November 9, 2001, effective February 15, 2002]

**Rule 6.26 Remands.** When a judgment is reversed for error in overruling a motion to direct a verdict, a motion for judgment under Iowa R. Civ. P. 1.1003(2), or a motion to withdraw an issue from the consideration of the jury, and the granting of the motion would have terminated the case in favor of appellant, the appellate court may enter or direct the district court to enter final judgment as if such motion had been initially sustained; provided that if it appears from the record that the material facts relating thereto were not fully developed at the trial or if in the opinion of the appellate court the ends of justice will be served thereby, a new trial shall be awarded of such issue or of the whole case. [Report 1977; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.27 Petition for rehearing in supreme court.**

**6.27(1)** *Time for filing; content; answer; action by supreme court if granted.* Except as stated in rule 6.402(6), a petition for rehearing may be filed within 14 days after the filing of an opinion by the supreme court unless the time is shortened or enlarged by order of that court. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the supreme court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the supreme court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted, the supreme court may make a final disposition of the cause without reargument, may order reargument or resubmission or may make such other order as is deemed appropriate under the circumstances.

**6.27(2)** *Form of petition; length.* The petition shall be in the form prescribed by rule 6.16(1), and copies shall be served and filed as prescribed by rules 6.13(6) and 6.31 for the service and filing of briefs. Except by permission of the court, a petition for rehearing shall not exceed ten pages. [Report 1977; Court Order May 29, 1986, effective July 1, 1986; November 9, 2001, effective February 15, 2002]

**Rule 6.28 Petition for rehearing in court of appeals.**

**6.28(1)** *Caveat.* The filing of a petition for rehearing with the court of appeals does not toll the 20-day period provided in Iowa Code section 602.4102(4) for filing an application for further review of a court of appeals decision with the supreme court. Nothing in these rules prohibits any party from filing both a petition for rehearing with the court of appeals and an application for further review with the supreme court.

**6.28(2)** *Time for filing; content; answer; action by court of appeals if granted.* Any petition for rehearing must be filed within seven days after the filing of an opinion by the court of appeals. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court of appeals has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court of appeals. If the petition for rehearing is not expressly granted or denied by the court of appeals within seven days after the petition is filed, the petition will be deemed denied. If the chief judge of the court of appeals so requests within the seven-day period, however, the supreme court may grant an extension of time, not to exceed seven days, for the court of appeals to rule upon the petition. If the petition for rehearing is granted, the decision of the court of appeals shall be vacated and the court of appeals shall retain jurisdiction of the case. The court of appeals may then make a final disposition of the cause without reargument or may make such other order as is deemed appropriate under the circumstances. Upon motion of a party or request of the chief judge of the court of appeals, the supreme court may stay any pending application for further review for consecutive periods of up to 30 days during the pendency of a petition for rehearing. The decision on rehearing shall be subject to further review as provided in Iowa Code section 602.4102(4).

**6.28(3)** *Form of petition; length.* The petition shall be in the form prescribed by rule 6.16(1), and copies shall be served and filed as prescribed by rules 6.13(6) and 6.31 for the service and filing of briefs. Except by permission of the court of appeals, a petition for rehearing shall not exceed ten pages. [Court Order February 1, 1982; May 16, 1984; March 21, 1989, effective May 1, 1989; January 24, 1997; (Prior to January 24, 1997, Court Rule 3.5); July 2, 1999; November 9, 2001, effective February 15, 2002]

**Rule 6.29 Costs.** All fees and costs shall abide the result of the appeal and be taxed to the unsuccessful party, unless otherwise ordered by the appropriate appellate court. [Report 1977; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.30 Procedendo.** Unless otherwise ordered by the supreme court, no procedendo shall issue for 15 days after an opinion of the supreme court is filed, nor thereafter while a petition for rehearing, filed according to these rules, is pending. Unless otherwise ordered by the court of appeals, no procedendo shall issue for 21 days after an opinion of the court of appeals is filed, nor thereafter while an application for further review by the supreme court is pending. [Report 1977; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.31 Filing and service.**

**6.31(1)** *Filing.*

*a.* Papers required or permitted to be filed in the supreme court or in the court of appeals shall be filed with the clerk of the supreme court. Filing may be accomplished by mail addressed to the clerk of the supreme court, and shall be deemed filed on the day of mailing. To be deemed filed on the day of mailing a paper must contain or be accompanied by a certificate signed by the person who will actually mail the paper. The certificate shall specify the paper filed, the number of copies filed and the date the paper will be deposited in the United States mail addressed to the clerk. Papers received by the clerk of the supreme court without a certificate of filing shall be deemed filed when received by that clerk.

*b.* Filing of some papers may also be accomplished by facsimile (fax) transmission. A paper shall not be filed by facsimile transmission when these rules or an order of an appellate court requires 18 copies of the paper to be filed. A paper longer than five pages shall not be filed by facsimile transmission without prior leave of the clerk. Each facsimile transmission shall be accompanied by a facsimile cover page which states the date of the transmission, the name and facsimile telephone number of the person to whom the paper is being transmitted, the name and telephone number of the person transmitting the paper, the docket number and title of the case in which the paper is to be filed, the name of the paper, and the number of pages, excluding the cover page, being transmitted. A facsimile fee of $3 per page, excluding the cover page, shall be required for filing a paper by facsimile transmission. The person transmitting the paper shall certify that the facsimile fee and any required filing fee have been mailed to the clerk contemporaneously with the facsimile transmission. Only one copy of the paper shall be transmitted; the clerk will provide any additional copies required by these rules or an order of an appellate court. Papers filed by facsimile transmission shall be deemed filed when the transmission is received by the clerk. Failure to comply with the facsimile requirements of this rule may result in the imposition of sanctions: the paper transmitted may be stricken or deemed not filed, the appeal or review may be dismissed, or other appropriate action may be taken.

*c.* Except as provided above, when these rules or an order of an appellate court requires multiple copies of a paper to be filed, filing shall not be complete until all required copies are filed. If a motion requests relief which may be granted by a single justice of the supreme court, the justice may permit the motion to be filed with that justice, in which event the justice shall note thereon the date of filing and shall thereafter forward it to the clerk of the supreme court.

**6.31(2)** *Service of all papers required.* Copies of all papers filed by any party and not expressly required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for that party on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

**6.31(3)** *Manner of service.* Service may be personal, by mail, or, in limited circumstances, by facsimile transmission. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing. A paper may be served by facsimile transmission only if it can be filed by facsimile transmission and only if the person to be served is an attorney who has consented to receive facsimile transmissions. An attorney may consent by including the attorney's facsimile telephone number in the letterhead or signature/address block of a paper the attorney files in the case. Consent may be rescinded by serving and filing notice to the other parties to the appeal or review and the clerk of the supreme court. Service of a paper by facsimile transmission is complete when the person transmitting the paper receives confirmation of receipt of the transmission by the facsimile machine of the person served.

**6.31(4)** *Proof of service.* Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names and addresses of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk of the supreme court may permit papers to be filed without acknowledgment or proof of service but shall require such proof to be filed promptly thereafter. The proof of service for a paper served by facsimile transmission shall state the facsimile telephone number of the person to whom the paper was transmitted.

**6.31(5)** *Additional time after service by mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, three days shall be added to the prescribed period. Such additional time shall not be applicable where the deadline runs from entry or filing of a judgment, order, decree or opinion.

**6.31(6)** *Applicability.* This rule shall govern filing and service of papers required or permitted to be filed with the clerk of the supreme court under the rules of appellate procedure. [Report 1977; amendment by Court Order November 19, 1981, effective January 1, 1982; February 16, 1990, effective July 2, 1990; December 20, 1996; November 9, 2001, effective February 15, 2002]

**Rule 6.32 Attorneys and guardians ad litem.**

**6.32(1)** The attorneys and guardians ad litem of the respective parties in the district court shall be deemed the attorneys and guardians ad litem of the same parties respectively in the appellate court until others are retained or appointed and notice thereof is given the other parties and the clerk of the supreme court; but the authority of an attorney appointed pursuant to Iowa Code section 598.12 terminates when an appeal is taken unless the district court appoints the attorney, or a successor, to appear on appeal. Before trial counsel for an indigent criminal defendant may withdraw, the court file must contain proof that counsel's duties under Iowa R. Crim. P. 2.29(6) have been completed. Every motion to withdraw shall also include the client's last known address in the proof of service statement.

**6.32(2)** An attorney may not withdraw from representation of a party before an appellate court without permission of that court unless another attorney is appearing or simultaneously appears for the party. [Amendment by Court Order September 19, 1979; October 27, 1999, effective January 3, 2000; November 9, 2001, effective February 15, 2002]

**Rule 6.33 Frivolous appeals; withdrawal of counsel.** With the exception of appeals in chapter 232 termination cases filed pursuant to rule 6.5(2), rule 6.104 applies to appeals to the supreme court under Iowa Code section 822.9 of the Uniform Postconviction Procedure Act, and to all cases for which appellate review is sought by court-appointed counsel. [Amendment by Court Order January 10, 1980; August 1, 1997; November 9, 2001, effective February 15, 2002]

**Rule 6.34 Confidential papers.**

**6.34(1)** *Certification by party.* Whenever a party files a notice, motion, appendix, record, or other similar paper, except a brief, which contains material or a reproduction, quotation, or extensive paraphrase of material which is declared by any statute or rule of the supreme court to be confidential, the party shall certify its confidential nature. The certificate shall cite the applicable statute or rule, be signed by the party or counsel, and be affixed on top of the cover page of each copy of the notice, motion, appendix, record, or other paper which is filed or served.

**6.34(2)** *Clerk to maintain confidentiality.* Upon receipt by the clerk of the supreme court of a notice, motion, appendix, district court record, portion of district court record or other paper which has been certified by a party or the clerk of the district court as confidential, the supreme court shall review the certification to assure that it is warranted. If it is not warranted, the court shall direct the clerk to file the document as a public record. If it is warranted, the court shall direct the clerk to place the document in a confidential file and mark the docket "confidential." Confidential papers may be inspected only by persons authorized by statute, rule, or court order to inspect such papers.

**6.34(3)** *Briefs not confidential.* Briefs filed with the clerk of the supreme court shall not be confidential; provided, however, in an appeal in a juvenile case in which the juvenile court record is confidential under Iowa Code section 232.147, briefs shall refer to the parties in the caption and text by first name or initial only. A brief should not contain a reproduction, quotation, or extensive paraphrase of material which is declared by any statute or rule of the supreme court to be confidential. Instead, a brief may include general statements of fact supported by references pursuant to rule 6.14(7), to pages of the appendix or parts of the record which are confidential. [Amendment by Court Order November 19, 1981, effective January 1, 1982; June 1, 1982; November 9, 2001, effective February 15, 2002]

**Rule 6.35 Filing fees.** The fees to be charged by the clerk of the supreme court shall be as follows:

**6.35(1)** The fee for filing an application for permission to appeal or petition for certiorari shall be $30. If an application for permission to appeal is granted, the applicant shall pay a docketing fee of $50 within 40 days. If a petition for certiorari is granted, the petitioner shall pay a docketing fee of $50 within 20 days.

**6.35(2)** The fee for filing an original proceeding other than certiorari shall be $50. No docketing fee shall be charged in such cases.

**6.35(3)** The fee for docketing an appeal from a final judgment or decree shall be $50.

**6.35(4)** The fee for providing copies of papers shall be 40 cents for each page, except that copies of opinions of the court shall be furnished to the trial judge, counsel of record, and to an unrepresented party in the case without cost. [Court Order March 21, 1985, effective July 1, 1985; February 17, 1988, effective April 1, 1988; November 9, 2001, effective February 15, 2002]

**Rules 6.36** to **6.100** Reserved.

## DIVISION II

### APPEALS IN CRIMINAL CASES

**Rule 6.101 Perfecting appeal.** Appeal in a criminal action shall be taken and perfected within 30 days of final judgment in the manner prescribed by the rules of appellate procedure relating to appeals in civil cases. In addition, the appellant shall promptly mail or deliver an informational copy of the notice of appeal to the attorney general. [Report 1977; Court Order June 5, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 6.102 Procedure.** All procedure after the perfection of an appeal in a criminal case shall be governed by the Iowa Rules of Appellate Procedure. Within four days after filing notice of appeal, appellant shall file with the clerk of the supreme court and serve on appellee a statement of whether the appeal is from a conviction and sentence upon a plea of guilty or from sentence only to which rule 6.105 applies. In addition to complying with rule 6.11(1), the clerk of the court in which the judgment or order was entered shall simultaneously transmit a certified copy of the same entries to the attorney general. Upon request, the clerk of district court shall transmit to the attorney general a copy of the record as defined in rule 6.10(1). Papers required to be served on the state shall be served upon the attorney general. [Report 1977; Court Order November 19, 1981, effective January 1, 1982; June 5, 1985, effective July 1, 1985; December 23, 1985, effective February 3, 1986; October 11, 1991, effective January 2, 1992; January 27, 1993, effective July 1, 1993; November 9, 2001, effective February 15, 2002]

**Rule 6.103 Docketing criminal appeals.** Criminal appeals shall be docketed as provided in rule 6.12(1). If a defendant appeals and there has been a district court finding of indigency, the appeal shall be docketed upon defendant's request without payment of the docket fee. Defendant's request to docket without payment of the fee shall be in writing and accompanied by a copy of the district court's finding of indigency. If the state appeals, the appeal shall be docketed upon the attorney general's written request without payment of the docket fee. [Report 1977; amendment by Court Order December 16, 1977; November 19, 1981, effective January 1, 1982; amended June 5, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 6.104 Frivolous appeals; withdrawal of counsel.**

**6.104(1)** If counsel appointed to represent a convicted indigent defendant in an appeal to the supreme court is convinced after conscientious investigation of the entire record as defined in rule 6.10(1) that the appeal is frivolous and that counsel cannot, in good conscience, proceed with the appeal, counsel may move the supreme court in writing to withdraw. The motion must be accompanied by a brief referring to anything in the record that might arguably support the appeal. The motion and brief shall be in the form specified in rule 6.16(2). Within 14 days after filing the motion, counsel shall request the clerk of the district court to transmit immediately to the clerk of the supreme court the remaining record not already transmitted, including the original papers and exhibits filed in the district court and any reporter's transcript of proceedings.

**6.104(2)** Prior to filing any motion to withdraw from an appeal, counsel shall advise the defendant in writing of the decision as to frivolousness accompanied by a copy of counsel's motion and brief, and counsel shall attach to the filed motion a copy of the written advice and a certificate showing service of the advice, motion, and brief upon the client and the attorney general. Counsel's notice to the defendant shall further advise the defendant that if the defendant agrees with counsel's decision and does not desire to proceed further with the appeal, the defendant shall within 30 days from service of the motion and brief clearly and expressly communicate such desire, in writing, to the supreme court.

**6.104(3)** Receipt of such communication shall result in the appeal being forthwith dismissed.

**6.104(4)** Counsel's notice to the defendant shall advise that if the defendant desires to proceed with the appeal the defendant shall within 30 days communicate that fact to the supreme court, raising any points chosen. The notice shall further advise the defendant that the failure to file a response with the supreme court could result in the waiver of the defendant's claims in any subsequent postconviction action. The supreme court will then proceed, after a full examination of all the record, to decide whether the appeal is wholly frivolous. If it so finds, it may grant counsel's motion to withdraw and dismiss the appeal.

**6.104(5)** The filing of a motion to withdraw pursuant to this rule, when accompanied by the required brief and a copy of counsel's written advice to the defendant, shall extend the times for further proceedings on appeal until the court rules on the motion to withdraw.

**6.104(6)** If however, the supreme court finds the legal points to be arguable on their merits and therefore not frivolous, it may grant counsel's motion to withdraw but will prior to submission of the appeal afford the indigent the assistance of new counsel, to be appointed by the district court. Such new counsel shall proceed with the appeal pursuant to the rules of appellate procedure. Appellant's brief shall raise any issues counsel believes to be meritorious after a conscientious examination of the record. Counsel shall also inform the court in appellant's brief of the issues the defendant raises and otherwise cause the case to be reviewed in accordance with the rules of appellate procedure.

**6.104(7)** Defendant's failure to challenge counsel's decision that the appeal is frivolous, in accordance with these rules, shall be deemed an election to agree with counsel's decision. [Report 1977; amendment by Court Order November 19, 1981, effective January 1, 1982; September 21, 2000, effective October 16, 2000; November 9, 2001, effective February 15, 2002]

**Rule 6.105 Appeals from conviction and sentence on a plea of guilty or from sentence only.** In appeals from conviction and sentence upon a plea of guilty or from sentence only, the time for docketing an appeal under rule 6.12(1) shall be reduced by one-half, and the abbreviated time periods specified in rule 6.17 shall apply. [Amendment by Court Order November 22, 1977; November 19, 1981, effective January 1, 1982; November 9, 2001, effective February 15, 2002]

**Rule 6.106 Appeals from forfeiture actions.** Appeals from the disposition of seizable and forfeitable property arising under Iowa Code chapter 809 shall be taken and perfected within 30 days of final judgment in the manner prescribed by the rules of appellate procedure relating to appeals in civil cases. In addition, the appellant shall promptly mail and serve all motions, pleadings, and briefs upon the attorney general. [Court Order October 11, 1991, effective January 2, 1992; November 9, 2001, effective February 15, 2002]

**Rules 6.107** to **6.150** Reserved.

## DIVISION III

### APPEALS IN TERMINATION CASES

For ease of reference, the text of jurisdictional rules 6.5(2), 6.6(3), 6.6(4), and a portion of rule 6.10(2) are repeated herein.

**Rule 6.5 Time for appeal.**

**6.5(2)** A notice of appeal from a juvenile court order terminating the parent-child relationship or dismissing a petition to terminate the parent-child relationship pursuant to Iowa Code section 232.117 must be filed within, and not after, 15 days from the entry of the order, unless a motion for new trial as provided in Iowa R. Civ. P. 1.1007 or a motion as provided in Iowa R. Civ. P. 1.904(2) is filed, and then within 15 days after the entry of a ruling on such motion. An appeal under this subrule is not perfected until both the notice of appeal and the petition on appeal as provided in rule 6.6(4) are timely filed.

A notice of cross-appeal may be filed within the 15 days for taking an appeal or in any event within 5 days after the appeal is taken. A cross-appeal is not perfected until both the notice of cross-appeal and the petition on appeal as provided in rule 6.6(4) are timely filed.

**Rule 6.6 How taken.**

**6.6(3)** A notice of appeal filed pursuant to rule 6.5(2) must be filed with the clerk of court where the order, judgment, or decree was entered. The notice cannot be filed unless signed by appellant's counsel and appellant.* The notice of appeal shall substantially comply with the Notice of Appeal form that accompanies these rules. The notice shall specify the parties taking the appeal and the decree, judgment, order, or part thereof from which an appeal is taken. The appellant shall serve a copy of the notice on each other party or counsel in the manner prescribed in Iowa R. Civ. P. 1.442(2). The notice of appeal presented to the clerk of the district court for filing shall be accompanied by proof of service in the form prescribed in Iowa R. Civ. P. 1.442(7). Promptly after filing the notice of appeal with the clerk of the district court, the appellant shall mail or deliver an informational copy of such notice to the clerk of the supreme court.

**6.6(4)** To perfect an appeal filed pursuant to rule 6.5(2), the appellant must also file with the clerk of the supreme court a petition on appeal in conformance with rule 6.151. The petition on appeal must be filed with the clerk of the supreme court within, and not after, 15 days from the filing of the notice of appeal. The appellant shall file an informational copy of the petition on appeal with the district court and serve a copy on each other party or counsel in the manner prescribed in Iowa R. Civ. P. 1.442(2). The petition on appeal shall be accompanied by proof of service in the form prescribed in Iowa R. Civ. P. 1.442(7). The petition on appeal shall be prepared by appellant's trial counsel. Trial counsel may only be relieved of this obligation by the district court upon a showing of extraordinary circumstances. If, after the filing of a notice of appeal, no petition on appeal has been filed with the clerk of the supreme court within 15 days, the appeal is not perfected and shall be dismissed and the parties shall proceed as if no notice of appeal had been filed.

*Counsel who is unable to file a notice of appeal because of the unavailability of the appellant to sign the notice may file with the clerk of the district court a certification of diligent search that substantially complies with the Counsel's Certification of Diligent Search form which accompanies these rules.

**Rule 6.10 Record on appeal.**

**6.10(2)** *Transcript; duty of appellant to order and to file combined certificate.*

*a.* Within four days after filing the notice of appeal, appellant shall order in writing from the reporter a transcript of such parts of the proceedings not already on file as appellant deems necessary for inclusion in the record. Appellant shall certify that the transcript has been ordered by using the combined certificate form found in rule 6.751, Form 1. Within four days after filing the notice of appeal, appellant shall complete the combined certificate, serve it on all parties to the appeal and on the reporter from whom the transcript was ordered, and file it with the clerks of both the district and the supreme court. The combined certificate shall be filed in all cases, regardless of whether a transcript is ordered.

*b.* The combined certificate shall be deemed a professional statement by any attorney signing it that the transcript has been ordered in good faith, that no arrangements have been made or suggested to delay the preparation thereof, and that payment therefor will be made in accordance with these rules.

**Rule 6.151 Petition on appeal.** The appellant shall file with the clerk of the supreme court seven copies of the petition on appeal.

**6.151(1)** *Format.* All petitions on appeal shall substantially comply with the Petition on Appeal form that accompanies these rules. The petition shall not exceed 15 pages, excluding the attachments required by rule 6.151(2)(*f*), and shall be in the form prescribed by rule 6.16(1), except that it may be printed or duplicated on one side of the sheet. The petition shall include a blue cover which shall contain: (1) the caption of the case; (2) the title of the document (Petition on Appeal pursuant to Iowa R. App. P. 6.6(4)); (3) the name of the court and judge whose decision is under review; and (4) the name, address, e-mail address, telephone number, and fax number of counsel representing the party on whose behalf the appeal is filed. The front cover shall contain a certificate of confidentiality in accordance with rule 6.34.

**6.151(2)** *Elements.* The petition on appeal shall include all of the following elements:

*a.* A statement of the nature of the case and the relief sought.

*b.* The date the judgment or order for which review is sought was entered.

*c.* A concise statement of the material facts as they relate to the issues presented in the petition on appeal.

*d.* A statement of the legal issues presented for appeal, including a statement of how the issues arose and how they were preserved for appeal. The issue statements should be concise in nature setting forth specific legal questions. General, conclusory statements such as "the juvenile court's ruling is not supported by law or the facts" are not acceptable.

*e.* The petition should include supporting statutes, case law, and other legal authority for each issue raised, including authority contrary to appellant's case, if known.

*f.* The petition on appeal shall have attached to it: (1) a copy of the petition (and any amendments) for termination of parental rights filed in the juvenile court proceedings; (2) a copy of the order, judgment, or decree terminating parental rights or dismissing the termination petition; and (3) a copy of any rulings on a motion for new trial as provided in Iowa R. Civ. P. 1.1007 or a motion as provided in Iowa R. Civ. P. 1.904(2). [Court Order August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

**Rule 6.152 Response.**

**6.152(1)** *Time for filing.* Any potential appellee may file a response to the petition on appeal. An appellee wishing to file a response to the petition on appeal must file seven copies with the clerk of the supreme court within 15 days of service of the appellant's petition on appeal. The appellee shall serve a copy of the response on each other party or counsel in the manner prescribed in Iowa R. Civ. P. 1.442(2).

**6.152(2)** *Format.* Appellee's response shall substantially comply with the Response to Petition on Appeal form that accompanies these rules. The response shall not exceed 15 pages, and shall be in the form prescribed by rule 6.16(1), except that it may be printed or duplicated on one side of the sheet. The response shall include a red cover which shall contain: (1) the caption of the case; (2) the title of the document (Response to Petition on Appeal); (3) the name of the court and judge whose decision is under review; and (4) the name, address, e-mail address, telephone number, and fax number of counsel representing the party on whose behalf the response is filed. The front cover shall contain a certificate of confidentiality in accordance with rule 6.34. [Court Order August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

**Rule 6.153 Docketing, record for review, and transmission of record.** Within 30 days after the filing of the notice of appeal, the appellant shall docket the case pursuant to rule 6.12(2)(*a*) and request the clerk of the district court to transmit the record to the clerk of the supreme court. The record for review shall be certified by the clerk of the district court who shall also certify its confidential nature. The record for review of a petition on appeal shall include all of the following:

**6.153(1)** The termination of parental rights court file, including all exhibits.

**6.153(2)** Those portions of the child in need of assistance court file, either received as exhibits or judicially noticed in the termination proceedings.

**6.153(3)** The transcript of the termination hearing. [Court Order August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

**Rule 6.154 Ruling.**

**6.154(1)** After reviewing the petition on appeal, any response, and the record, the appellate court may, by opinion in conformity with Iowa Ct. R. 21.29, affirm the juvenile court decision, reverse the juvenile court decision, remand the case to the juvenile court, or set the case for full briefing pursuant to rules 6.13 and 6.17 or as directed by the court.

**6.154(2)** If the court of appeals affirms, reverses, or remands the juvenile court order, judgment, or decree, further review pursuant to rule 6.402 may be sought. The refusal of the court of appeals to grant full briefing shall not be a ground for further review. [Court Order August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

**Rules 6.155** to **6.200** Reserved.

## DIVISION IV

DISCRETIONARY REVIEW

**Rule 6.201 Application.**

**6.201(1)** An application for discretionary review in a civil or criminal case shall be filed in writing with the clerk of the supreme court within 30 days after the entry of the judgment or order of the district court of which review is sought. An extension of such time, however, may be allowed upon a showing that failure to file the application within the time provided was due to a failure of the district court clerk to notify the applicant of the action complained of. Any motion for extension of time shall be filed as prescribed in rule 6.20(2).

**6.201(2)** The rules of appellate procedure relating to the form, content, number of copies, filing, and serving of motions in the supreme court shall apply to applications for discretionary review. The applicant shall attach to the application copies of relevant portions of the docket and court calendar entries, court papers, exhibits, and transcript, if any. In criminal cases the applicant shall also promptly mail or deliver an informational copy of the application, including attachments, to the attorney general. In criminal cases, the clerk of district court, upon request, shall transmit to the attorney general a copy of the record as defined in rule 6.10(1).

**6.201(3)** The applicant shall pay to the clerk of the supreme court a filing fee in the amount prescribed by the supreme court for filing an application for permission to appeal. If defendant in a criminal proceeding applies for discretionary review and the district court has found defendant to be indigent, the application shall be filed by the clerk of the supreme court upon defendant's request without payment of the filing fee. Defendant's request to file the application for discretionary review without payment of the filing fee shall be in writing and accompanied by a copy of the district court's finding of indigency. If the state applies for discretionary review, the application shall be filed by the clerk of the supreme court upon the attorney general's written request without payment of the filing fee. [Report 1977; amendment by Court Order November 19, 1981, effective January 1, 1982; amended June 5, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 6.202 Resistance; ruling.** The application may be resisted and ruled on in the manner prescribed in the rules of appellate procedure relating to motions unless otherwise ordered by the supreme court or a justice thereof. An application shall not be denied for an informality or defect if corrected as directed by the supreme court. The supreme court or a justice thereof may deny the application upon determining that substantial justice has been accorded the applicant or, when pertinent, that no substantial grounds are presented which justify a hearing in advance of final judgment. [Report 1977; Court Order June 5, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 6.203 Procedure; docketing.**

**6.203(1)** If an application for discretionary review is granted, further proceedings shall be had pursuant to the rules of appellate procedure. The clerk of the supreme court shall promptly transmit a copy of the order granting the application to the parties or their attorneys of record, the clerk of the district court wherein the judgment or order was rendered, and, in criminal cases, the attorney general. Within 14 days after the filing with the supreme court clerk of the order granting the application, the clerk of the district court shall transmit a certified copy of the docket and calendar entries in the proceeding in the district court to the clerk of the supreme court, all parties or their attorneys of record, and, in criminal cases, to the attorney general.

**6.203(2)** The time for any further proceeding which would run from the notice of appeal shall run from the filing date of the order granting the application for discretionary review. Within 40 days after the filing of such order appellant shall pay the docket fee or, if the fee has been waived, request that the proceeding be docketed. If defendant in a criminal proceeding has been granted discretionary review and the district court has found defendant to be indigent, the proceeding shall be docketed upon defendant's request without payment of the docket fee. Defendant's request to docket without payment of the docket fee shall be in writing and accompanied by a copy of the district court's finding of indigency. If the state has been granted discretionary review, the proceeding shall be docketed upon the attorney general's written request without payment of the docket fee. [Report 1977; amendment by Court Order November 19, 1981, effective January 1, 1982; amended June 5, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rules 6.204** to **6.300** Reserved.

## DIVISION V

ORIGINAL CERTIORARI PROCEEDINGS

**Rule 6.301 Petition for writ of certiorari.** A petition for a writ of certiorari directed to the district court shall be filed with the clerk of the supreme court or a justice thereof within the time prescribed by Iowa R. Civ. P. 1.1402. Copies of the petition shall be filed and served in the manner prescribed by the rules of appellate procedure for the filing and serving of motions. The petition for certiorari shall state whether the plaintiff raised the issue in district court, identify the interest of the plaintiff in the challenged decision, and state the grounds that justify issuance of the writ. Plaintiff shall serve copies of the petition on the clerk of the district court and all the parties, or their counsel, in the underlying proceeding in district court. [Report 1977; amendment by Court Order June 1, 1979; November 19, 1981, effective January 1, 1982; May 12, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 6.302 Resistance; ruling.** The petition may be resisted and ruled on in the manner prescribed in the rules of appellate procedure relating to motions unless otherwise ordered by the supreme court or a justice thereof. [Report 1977; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.303 Original certiorari procedure.**

**6.303(1)** The procedure under writs of certiorari granted by the supreme court or a justice thereof shall be as prescribed by these rules. The proceeding shall be entitled in the name of the petitioner as plaintiff and the district court, though not any judge thereof, as defendant. Parties before the district court other than the certiorari plaintiff shall be deemed defendants for all purposes and shall make all filings required of the defendant under these rules, unless permitted to withdraw by a justice of the supreme court. An application to withdraw shall state whether the applicant raised the issue in district court, identify the interest of the applicant in the challenged decision, and state the grounds that justify withdrawal. The application to withdraw shall be served on all parties, the district court, and the attorney general. Any response shall be filed within ten days of the service of the application to withdraw.

**6.303(2)** The rules of appellate procedure applicable to appellants shall apply to plaintiffs and those applicable to appellees shall apply to defendants. The times specified in those rules which in appeals run from the filing of notice of appeal shall run from the filing of the order granting the writ, except that plaintiff shall cause the proceeding to be docketed within 20 days after the writ is granted. Defendant shall make full return to the writ when requested to do so by plaintiff. Such request shall be made by plaintiff within seven days after all required briefs and the appendix have been served or the times for serving them have expired, or at such earlier date as the parties may agree or the supreme court or a justice thereof may order. [Report 1977; amendment by Court Order November 19, 1981, effective January 1, 1982; May 12, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 6.304 Form of review.** If any case is brought by appeal, certiorari, or discretionary review, and the appellate court is of the opinion that another of these remedies was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been sought. Any one of the foregoing remedies may under this rule be treated by the appellate court as the one it deems appropriate.

Nothing in this rule shall operate to extend the time within which an appeal may be taken. [Report 1977; Court Order September 8, 1987, effective December 1, 1987; November 9, 2001, effective February 15, 2002]

**Rules 6.305** to **6.400** Reserved.

## DIVISION VI

## TRANSFER AND FURTHER REVIEW

**Rule 6.401 Transfer of cases to court of appeals.**

**6.401(1)** The supreme court may by order, on its own motion, transfer to the court of appeals for decision any case filed in the supreme court except a case in which provisions of the Iowa Constitution or statutes grant exclusive jurisdiction to the supreme court.

**6.401(2)** The supreme court shall ordinarily retain the following types of cases:

*a.* Cases involving substantial constitutional questions as to the validity of a statute, ordinance or court or administrative rule.

*b.* Cases involving substantial issues in which there is or is claimed to be a conflict with a published decision of the court of appeals or supreme court.

*c.* Cases involving substantial issues of first impression.

*d.* Cases involving fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court.

*e.* Cases involving lawyer discipline.

*f.* Cases appropriate for summary disposition.

**6.401(3)** Other cases shall ordinarily be retained by the supreme court or be transferred to the court of appeals as follows:

*a.* Cases which involve substantial questions of enunciating or changing legal principles shall be retained.

*b.* Cases which involve questions of applying existing legal principles shall be transferred. [Report 1977; amendment by Court Order October 22, 1984, effective November 2, 1984; November 9, 2001, effective February 15, 2002]

**Rule 6.402 Application for further review.**

**6.402(1)** *Fee.* A fee of $25 shall be required for filing an application to the supreme court for further review of a decision of the court of appeals.

**6.402(2)** *Time for filing.* An application for further review shall be filed within the 20-day period provided in Iowa Code section 602.4102(4).

**6.402(3)** *Grounds.* An application to the supreme court for further review shall allege precisely and in what manner the court of appeals has done any of the following:

*a.* Made an error of law.

*b.* Rendered a decision which is in conflict with a prior holding of a published court of appeals decision or published supreme court decision.

*c.* Failed to consider a potentially controlling constitutional provision in rendering its opinion.

*d.* Decided a case which should have been retained by the supreme court.

**6.402(4)** *Form and length of application and resistance and number to be filed.* Each copy of the application for further review shall contain or be accompanied by a copy of the opinion of the court of appeals, showing the date of its filing. The application shall be a single document including a brief in support of the request for review.

All contentions in support of the application shall be included therein, including all legal authorities and argument. A party who desires to file a resistance shall do so within ten days after service of the application. The resistance shall be a single document which includes all contentions in opposition to the application. The cover of the application for further review and resistance should be yellow. The cover of the application or resistance thereto shall contain: (1) the name of the court and the appellate number of the case; (2) the title of the case (*see* rule 6.12(1)); (3) the date of filing of the court of appeals' opinion under review; (4) the title of the document; and (5) the name, address, and telephone number of counsel representing the party on whose behalf the document is filed. No authorities or argument may be incorporated into the application or the resistance by reference to another document. An application or resistance shall be in the form prescribed by rule 6.16(1), except that it may be printed or duplicated on one side of the sheet. The application or resistance shall not exceed 20 pages exclusive of the court of appeals opinion, table of contents, table of authorities and permitted evidentiary exhibits and district court orders. No materials shall be annexed to or filed with an application or resistance other than the opinion of the court of appeals, except that, if it is of unusual significance, an evidentiary exhibit not exceeding ten pages and a district court order not exceeding that length may be annexed. Eighteen copies of an application or a resistance shall be filed. In addition, two copies shall be served on each other party separately represented.

**6.402(5)** *Supplemental briefs.* If an application for further review is granted, the supreme court may require the parties to file supplemental briefs on the merits of all or some of the issues to be reviewed.

**6.402(6)** *Procedendo.* When an application for further review is denied by order of the supreme court or by operation of law, the clerk of the supreme court shall immediately issue procedendo. [Report 1977; Court Order December 23, 1985, effective February 3, 1986; May 29, 1986, effective July 1, 1986; September 22, 1999; November 9, 2001, effective February 15, 2002]

**Rules 6.403** to **6.450** Reserved.

## DIVISION VII

## CERTIFICATION OF QUESTIONS OF LAW

**Rule 6.451 Procedure for certification of question of law.** The procedure for answering and certifying questions of law shall be as provided in the Uniform Certification of Questions of Law Act, Iowa Code chapter 684A, and this division of the rules of appellate procedure. [Report 1980; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.452 Contents of certification order.** The certification order shall contain the matter required by Iowa Code section 684A.3 and shall be captioned as the matter was in the certifying court with the party, if any, who moved for certification of the question identified as the "movant." If the question is certified on the court's own motion, the certification order shall specify which party is to file a brief first. The certification order shall contain the names and addresses of the interested parties or their counsel if they are represented by counsel. [Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 6.453 Docketing.** Upon receipt of a certified question the clerk of the supreme court shall prepare a docket page and assign a number to the matter. Within ten days after the filing of the certification order the movant or party who is to file a brief first shall pay to the clerk of the supreme court the docket fee in the amount prescribed pursuant to Iowa Code section 602.4303, for docketing an appeal from a final judgment or decree. Upon receipt of the docket fee, the clerk of the supreme court shall enter the matter upon the docket and give notice to the certifying court and all parties or their attorneys of the date on which the matter is entered on the docket. [Report 1980; 1983 Iowa Acts, ch 186, §10150; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.454 Briefs.** The parties shall file and serve all briefs within the expedited times for filings prescribed by rule 6.17 in the manner outlined by rule 6.13(1). Rules 6.13(6), 6.14, and 6.16(1) shall apply to briefs with those portions applicable to appellant's briefs applying to briefs of the movant or the party who is to file a brief first and those portions applicable to appellee's brief applying to the brief of the responding party. [Report 1980; Court Order January 27, 1993, effective July 1, 1993; November 9, 2001, effective February 15, 2002]

**Rule 6.455 Appendix.** The movant or party who is to file a brief first shall file and serve the briefs and appendix in the manner of an appellant. The appendix shall contain the certification order and such portions of the record relevant to the question as the parties by agreement or the certifying court by order may determine. Rules 6.15(1), 6.15(3), 6.15(4), 6.15(5), and 6.16(1) shall apply to the appendix to the greatest extent possible. [Report 1980; Court Order January 27, 1993, effective July 1, 1993; November 9, 2001, effective February 15, 2002]

**Rule 6.456 Record.** The certifying court shall attach to its certification order a copy of the portions of the record made in that court which it deems necessary for a full understanding of the question. If the entire record is not included, the supreme court may, in its discretion, order that a copy of all or any portion of the remaining record be filed with its clerk. [Report 1980; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.457 Submission and oral argument.** The matter shall be considered ready for submission after the certification order, initial brief, appendix, and responding brief have been filed. Rule 6.21 shall apply. [Report 1980; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.458 Opinion and rehearing.** Upon the filing of an opinion on a certified question the clerk of the supreme court shall comply with Iowa Code section 684A.7. A petition for rehearing shall not be allowed. [Report 1980; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.459 Costs and fees.** Printing costs shall be certified by the parties as provided in rule 6.16(3). Upon the filing of the supreme court's opinion on a certified question, its clerk shall prepare and transmit to the clerk of the certifying court a bill of costs indicating the docket fee and reasonable printing costs and the parties who paid them. The clerk of the certifying court shall be responsible for collecting and apportioning the fee and costs pursuant to Iowa Code section 684A.5. [Report 1980; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.460 State as amicus curiae.** When the constitutionality of an Act of the legislature of this state affecting the public interest is drawn in question in a certification to which the state of Iowa or an officer, agency, or employee thereof is not a party, the supreme court shall notify the attorney general and shall permit the state of Iowa to file an amicus curiae brief pursuant to rule 6.18, on the question of constitutionality. [Report 1980; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.461 Changes in rules.** Rules of procedure concerning the answering and certification of questions of law may be revoked, changed, or supplemented as provided in rule 6.701. [Report 1980; Court Order November 9, 2001, effective February 15, 2002]

**Rules 6.462** to **6.500** Reserved.

## DIVISION VIII

## OTHER PROCEEDINGS

**Rule 6.501 Procedure in other proceedings.** Procedure in all other proceedings in the appellate courts shall, unless otherwise ordered, be the procedure prescribed in the rules of appellate procedure to the full extent not inconsistent with rules specifically prescribing the procedure or with a statute. An appendix under the rules of appellate procedure shall be deemed an abstract of record. [Report 1977; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.502 Procedure in abortion notification appeals.**

**6.502(1)** *Notice of appeal.* A pregnant minor may appeal from a district court order denying a petition for waiver of notification regarding abortion. The notice of appeal shall be filed within 24 hours of issuance of the district court order. The notice of appeal shall be filed with the clerk of the district court where the order was entered in person or by facsimile transmission if available in the clerk's office. The notice shall also be filed with the clerk of the supreme court in person or by facsimile transmission at (515) 242-6164. The notice of appeal shall contain the date the petition was filed. A notice of appeal is filed for purposes of this rule when it is date and time stamped if filed in person or when it is received if transmitted by facsimile.

**6.502(2)** *Procedure on appeal.* Within 24 hours after the filing of a notice of appeal, the court reporter shall file the original of the completed transcript with the clerk of the district court. Within 48 hours after the filing of a notice of appeal, the clerk shall transmit to the supreme court any relevant district court papers, including the district court decision and the transcript. The minor shall file a written argument supporting her appeal with the clerk of the supreme court within 48 hours of filing the notice of appeal. The written argument shall include a statement designating the method by which the minor chooses to receive notice of the supreme court's final decision.

**6.502(3)** *Decision on appeal.* The appeal shall be considered by a three-justice panel of the supreme court. It shall be considered without oral argument unless the supreme court or a justice thereof orders otherwise. A single justice may conduct a hearing, but any decision on the appeal must be rendered by a majority of the three-justice panel. The court shall consider the appeal de novo and render its decision as soon as is reasonably possible. In no event shall the court's decision be made later than ten calendar days from the day after filing of the petition for waiver in the district court, or the ten calendar days plus the period of time granted by the district court for any extension under Iowa Ct. R. 8.27. The court's decision may be rendered by order or opinion, and may simply state that the district court's order is affirmed or reversed. Any decision affirming the denial of waiver of notification shall inform the minor of her right to request appointment of a therapist by the district court on remand. Notwithstanding any other rule, the panel's decision shall not be subject to review or rehearing. The clerk of the supreme court shall promptly issue procedendo once an order or opinion is filed. The minor shall be notified of the final decision in the manner designated in the written argument submitted to the court.

**6.502(4)** *Confidentiality.* Notwithstanding any other rule or statute, all documents filed in the appeal and the supreme court's docket card shall be confidential. Any hearing held on an appeal under this rule shall be confidential. The minor may use the same pseudonym that she used in the juvenile court proceedings. Identifying information, including address, parents' names, or social security number, shall not appear on any court papers. All papers shall contain the juvenile court docket number for identification purposes. The only persons who may have access to the court papers and admission to any hearing are the justice(s), court staff who must have access to the records for administrative purposes, the minor, her attorney, her guardian ad litem and the person(s) designated in writing by the minor, her attorney or guardian ad litem to have such access or admission. In no case may the minor's parent(s) have access to her papers or admission to any hearing.

**6.502(5)** *Computation of time.* For the purpose of this rule, any duty of filing or of issuance of a decision or order which falls on a Saturday, Sunday, or legal holiday is extended to 9 a.m. on the next business day. [Court Order December 27, 1996; June 26, 1997, effective July 1, 1997; November 9, 2001, effective February 15, 2002]

**Rules 6.503** to **6.600** Reserved.

## DIVISION IX

AMENDMENTS TO RULES

**Rule 6.601 Amendments.** The supreme court shall have power, by order, to revoke, change or supplement the rules of appellate procedure, except for rules 6.1 to 6.9, inclusive. Such changes or additions shall take effect at such time as the supreme court shall prescribe. [Report 1977; Court Order November 9, 2001, effective February 15, 2002]

**Rules 6.602** to **6.700** Reserved.

## DIVISION X

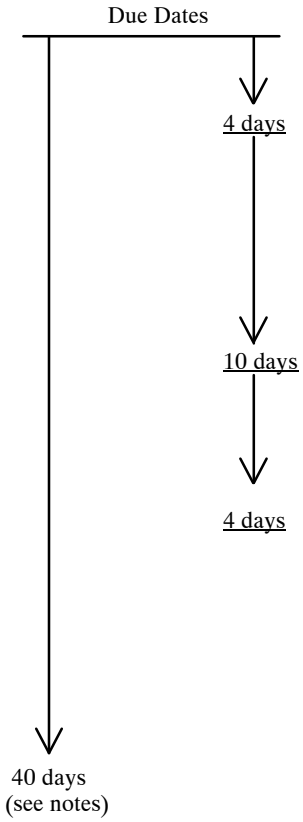
APPELLATE PROCEDURE TIMETABLES

**Rule 6.701 Appellate Procedure Timetables.**
**Rule 6.701 Table 1:** ***Pre-Docketing Procedure.***

### APPELLATE PROCEDURE TIMETABLE NO. 1

**(NOT FOR USE IN CHAPTER 232 TERMINATION CASES)**

PRE-DOCKETING PROCEDURE




1. **Notice of appeal.** Appellant files notice of appeal with district court clerk, serves all parties, and sends copy to supreme court clerk. *See* rule 6.6(1).

2. **Ordering transcript and filing combined certificate.** Appellant orders transcript from court reporter, completes combined certificate, and serves certificate on reporter and all parties. Appellant files combined certificate with district and supreme court clerks. *See* rule 6.10(2). District court clerk transmits certified copy of notice of appeal and docket and calendar entries to supreme court clerk and all parties. *See* rule 6.11(1).

3. **Designating additional transcript.** If appellee deems other parts of the proceedings necessary, appellee designates additional transcript, serves designation on all parties and the reporter, and files it with clerk of district court. *See* rule 6.10(2).

4. **Ordering additional transcript and supplemental certificate.** Appellant orders additional transcript from court reporter. Disputes concerning additional transcript are addressed to district court if appellant fails to, and appellee does not, order transcript. *See* rule 6.10(2). Party ordering additional transcript completes supplemental certificate, serves certificate on all parties and the reporter, and with clerks of district and supreme court. *See* rule 6.10(2).

5. **Docketing and filing of transcript.** Appellant dockets appeal by either:
   (A) paying $50 fee to supreme court clerk, OR
   (B) requesting waiver of fee and filing copy of district court order of indigency. *See* rule 6.12(1).

   Court reporter files transcript with district court clerk. *See* rule 6.10(2).

NOTES

(A) The Iowa Rules of Appellate Procedure govern procedure in all appeals. These timetables are merely illustrative and may not cover every procedural situation.

(B) See rules 6.12(2) and 6.105 for cases in which docketing time is reduced:

| | |
|---|---|
| Termination of parental-child relationship | 30 days |
| Guilty plea or sentence only | 20 days |
| Certiorari | 20 days |
| Certified question | 10 days |
| Lawyer discipline | 10 days |
| Case involving no transcript | 10 days |
| Administrative action where no additional testimony was introduced in district court | 10 days |

[Court Order May 27, 1988, effective July 1, 1988; November 9, 2001, effective February 15, 2002]

**Rule 6.701 — Table 2:** ***Post-Docketing Procedure.***

## APPELLATE PROCEDURE TIMETABLE NO. 2*

**(NOT FOR USE IN CHAPTER 232 TERMINATION CASES)**

POST-DOCKETING PROCEDURE

| Due Dates | |
|---|---|
| | 1. **Docketing date.** *See* rule 6.12(1). |
| 50 days | 2. **Appellant's proof brief and designation.** Appellant files 2 proof copies and serves 1 proof copy of brief and designation of parts of record to be included in appendix. *See* rules 6.13(1), 6.17, and 6.105. |
| 30 days | 3. **Appellee's proof brief and designation.** Appellee files 2 proof copies and serves 1 proof copy of brief and designation of any additional parts of record to be included in appendix. *See* rules 6.13(1), 6.17, and 6.105. |
| 21 days | 4. **Appendix and appellant's proof reply brief.** If appellee has served proof brief, or if time for serving has expired, appellant files 18 copies and serves 2 copies of appendix. *See* rules 6.15(1), 6.17, and 6.105. Appellant files a proof reply brief which is mandatory only if cross-appeal is involved. *See* rule 6.13(1). |
| 14 days | 5. **Final briefs and appellee's responsive reply brief.** All parties file 18 copies and serve 2 copies of all briefs in final form. *See* rule 6.13(3). Appellee may file a responsive brief to appellant's reply brief if cross-appeal is involved. *See* rules 6.13(1), 6.13(6), 6.17, and 6.105. |
| 7 days | 6. **Transmission of record.** Appellant requests transmission and ensures that district court clerk transmits remaining record to supreme court clerk. *See* rule 6.11(2) and note (C) below. |

NOTES

(A) The Iowa Rules of Appellate Procedure govern procedure in all appeals. These timetables are merely illustrative and may not cover every procedural situation.

(B) If rule 6.17 (priority cases) or 6.105 (guilty plea or sentence only cases) applies, the times for filing the above are reduced by one-half, except step 4, which is reduced to 15 days, and step 6 which remains 7 days.

(C) Suggestion: Document the request for transmission of the remaining record by sending a letter to the district court clerk with a copy to the supreme court clerk.

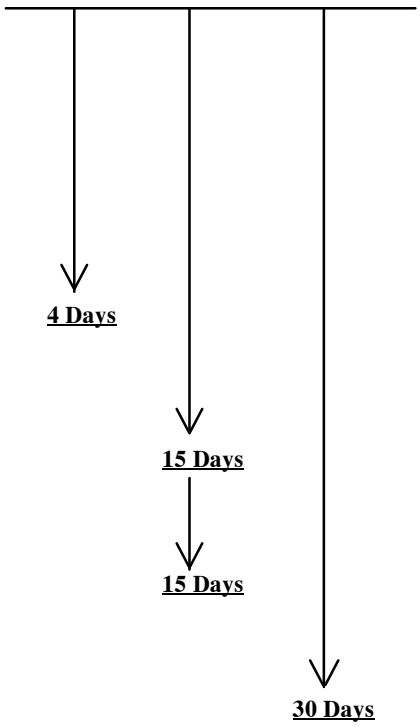
*Prior to July 1, 1993, numbered as "3."

[Court Order May 27, 1988, effective July 1, 1988; January 27, 1993, effective July 1, 1993; November 9, 2001, effective February 15, 2002]

**Rule 6.701 Table 3:** ***Chapter 232 Termination Cases.***

## APPELLATE PROCEDURE TIMETABLE NO. 3

**(FOR USE IN CHAPTER 232 TERMINATION CASES ONLY)**




DUE DATES

1. **Notice of appeal.** A notice of appeal must be filed within, and not after, 15 days from the entry of the juvenile court order. *See* rule 6.5(2). Notice of appeal cannot be filed unless signed by both appellant's counsel and appellant. *See* rule 6.6(3).

2. **Combined certificate.** Within four days after filing notice of appeal appellant shall certify the transcript has been ordered by using the combined certificate form. *See* rule 6.10(2). District court clerk transmits certified copy of notice of appeal and docket entries to supreme court clerk and all parties. *See* rule 6.11(1).

3. **Petition on appeal.** Appellant must file petition on appeal within 15 days from filing of notice of appeal in order to perfect appeal. *See* rules 6.6(4) and 6.151.

4. **Response to petition.** Response to petition may be filed within 15 days of service of petition. *See* rule 6.152.

5. **Docketing and request for record.** Appellant dockets appeal and requests transmission of record. *See* rules 6.12(2)(*a*) and 6.153.

6. **Full briefing.** Briefing is done only in cases in which the appellate court orders full briefing. *See* rule 6.154. In such cases appellant shall file two proof copies and serve one proof copy of brief and designation of parts of record to be included in appendix within 25 days from the date on which full briefing is ordered. All further deadlines shall be as provided in rules 6.13 and 6.17.

[Court Order August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

**Rules 6.702** to **6.750** Reserved.

## DIVISION XI

FORMS

**Rule 6.751 Forms.** The supreme court may by order prescribe forms for use under the rules of appellate procedure. [Report 1977; Court Order November 9, 2001, effective February 15, 2002]

**Rule 6.751  Form 1:** ***Combined Certificate.***

IN THE SUPREME COURT OF IOWA

No. _____

_____ County No. _____

} COMBINED CERTIFICATE

[*See* Iowa R. App. P. 6.10(2)]

---

1. Notice of appeal was filed in district court on _____ (Date), from a judgment or ruling filed on _____ (Date).

2A. I hereby certify that I ( _____ now order)* ( _____ have ordered) on the _____ day of _____, 20 _____, a transcript, or portions thereof, from:

(1) _____ (Court Reporter Name) _____ (Address)

(2) _____ _____

No arrangements have been made or suggested to delay the preparation thereof.

I will pay for the transcript in accordance with Iowa R. App. P. 6.10(2). The following proceedings ( ____ are)* ( ____ were) ordered:

(1) _____ (Describe parts ordered)

before _____ (Judge) on _____ (Date)

(2) _____

before _____ on _____

–OR–

2B. I need not order a transcript under Iowa R. App. P. 6.10(3) because:

_____

_____

_____.

I ( _____ will) ( _____ will not) prepare a statement of the evidence or proceedings pursuant to Iowa R. App. P. 6.10(3).

*This certificate may be used as an order form.

Combined Certificate *(cont'd)*

2C. [To be completed by appellant if less than full transcript is ordered] The issues appellant(s) intends to present on appeal are:

I.

II.

III.

3. If Iowa R. App. P. 6.12(2), 6.17, or 6.105 applies to this case, check category:

_____ a contest as to custody of children, an adoption, or a juvenile proceeding affecting child placement;

_____ a termination of a parent-child relationship;

_____ a conviction and sentence on a plea of guilty or a sentence only;

_____ an original certiorari proceeding;

_____ a certified question of law;

_____ a lawyer disciplinary matter;

_____ proceedings which have not been recorded in such a manner that a transcript of those proceedings can be made;

_____ judicial review of an administrative action pursuant to Iowa Code chapter 17A, where no additional testimony was introduced in district court.

4. I assert in good faith that this appeal meets jurisdictional requirements and is from:

_____ a final judgment, order, or decree and a timely notice of appeal has been filed;

–OR–

_____ an interlocutory ruling where permission for appeal has been requested and granted by the supreme court.

5. The names of the parties involved in this appeal and their designations in district court are shown below under column A. Their respective attorneys' names, law firms, addresses, and telephone numbers are shown below under column B:

| Column A<br>Parties | Column B<br>Attorneys |
|---|---|
| Appellant(s): | |
| Appellee(s): | |

Appellant's Name _____
By _____
_____
_____

(Name, address, and telephone number of attorney or, if none, of appellant.)

Combined Certificate *(cont'd)*

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on _____, 20 _____, I served this document by ( _____ personally delivering) ( _____ mailing) a copy to all other parties in this matter and to the court reporter(s) from whom the transcript has been ordered at their respective addresses as shown below:

I further certify that on _____, 20 ____, I will file this document by ( _____ personally delivering) ( _____ mailing) a copy of it to the Clerk of the District Court for _____ County.

I further certify that on _____, 20 ____, I will file this document by ( _____ personally delivering) ( _____ mailing) 3 copies of it to the Clerk of the Supreme Court, Statehouse, Des Moines, Iowa 50319.

_____
SIGNATURE OF PERSON SERVING AND FILING

[Court Order May 27, 1988, effective July 1, 1988; November 9, 2001, effective February 15, 2002]

**Rule 6.751  Form 2:** ***Supplemental Certificate*.**

IN THE SUPREME COURT OF IOWA

No. _____

_____ County No. _____

} SUPPLEMENTAL CERTIFICATE

[See Iowa R. App. P. 6.10(2)]

---

I hereby certify that I ( _____ now order)* ( _____ have ordered) on the _____ day of _____, 20 _____, the following additional transcript which I believe is necessary for proper determination of this appeal from:

(1) _____ _____
(Court Reporter Name) (Address)

(2) _____ _____

No arrangements have been made or suggested to delay the preparation thereof.

I will pay for the additional transcript in accordance with Iowa R. App. P. 6.10(2). The following additional parts of the proceedings ( _____ are)* ( _____ were) ordered:

(1) _____
(Describe parts ordered)

before _____ on _____
(Judge) (Date)

(2) _____

before _____ on _____

Party's Name _____
By _____
_____
_____
(Name, address, and telephone number of attorney or, if none, of appellant.)

Supplemental Certificate *(cont'd)*

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on _____, 20 _____, I served this document by ( _____ personally delivering) ( _____ mailing) a copy to all other parties in this matter and to the court reporter(s) from whom the transcript has been ordered at their respective addresses as shown below:

I further certify that on _____, 20 ____, I will file this document by ( _____ personally delivering) ( _____ mailing) a copy of it to the Clerk of the District Court for _____ County.

I further certify that on _____, 20 ____, I will file this document by ( _____ personally delivering) ( _____ mailing) 3 copies of it to the Clerk of the Supreme Court, Statehouse, Des Moines, Iowa 50319.

_____
SIGNATURE OF PERSON SERVING AND FILING

*This certificate may be used as an order form.
[Court Order May 27, 1988, effective July 1, 1988; November 9, 2001, effective February 15, 2002]

**Rule 6.751 Form 3:** ***Notice of Appeal (Cross-Appeal) from Termination or Dismissal Entered Pursuant to Iowa Code Section 232.117.***

IN THE DISTRICT COURT FOR _____ COUNTY

| IN THE INTEREST OF<br><br>_____, CHILD(REN) | Juvenile No. _____<br><br>**NOTICE OF APPEAL (CROSS-APPEAL) FROM TERMINATION OR DISMISSAL ENTERED PURSUANT TO IOWA CODE SECTION 232.117** |
|---|---|

TO: Clerk of the District Court for _____ County and

(Insert names of parties)

_____

_____

_____

and

Clerk of the Iowa Supreme Court

NOTICE is hereby given that _____ as counsel for _____ hereby appeals the termination or dismissal order entered pursuant to Iowa Code section 232.117 on the _____ day of _____, 20 _____, and all adverse rulings made therein.

_____
Signature, attorney for appellant.
Name, address, telephone.

_____
Signature of appellant.*
Name, address, telephone.

*The signature of the appellant is required by Iowa Rule of Appellate Procedure 6.6(3).

Notice of Appeal (Cross-Appeal) from Termination or Dismissal Entered Pursuant to Iowa Code Section 232.117 *(cont'd)*

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the _____ day of _____, 20 _____, I served this document by ( _____ personally delivering) ( _____ mailing) a copy to all other parties or attorneys whose names and addresses are shown below.

I further certify that on the _____ day of _____, 20 _____, I will file this document by ( _____ personally delivering) ( _____ mailing) a copy of it to the Clerk of the District Court for _____ County.

_____
Signature of person serving and filing notice of appeal.
Name, address, telephone.

Persons served:

[Court Order August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

**Rule 6.751 Form 4:** ***Petition on Appeal (Cross Appeal) from Termination or Dismissal Entered Pursuant to Iowa Code Section 232.117.***

IN THE SUPREME COURT OF IOWA

| IN THE INTEREST OF<br><br>_____, CHILD(REN) | Supreme Court No. _____<br>Juvenile Court No. _____<br><br>**PETITION ON APPEAL (CROSS APPEAL) FROM TERMINATION OR DISMISSAL ENTERED PURSUANT TO IOWA CODE SECTION 232.117** |
|---|---|

County _____ Judge _____

The names of the parties involved in this appeal and their designations in juvenile court are shown below in column A. Their respective attorneys' names, law firms, addresses, and telephone numbers are shown below in column B.

| | Column A<br>Parties | Column B<br>Attorneys |
|---|---|---|
| Appellant(s): | | |
| Appellee(s): | | |

1. This Petition on Appeal is filed on behalf of _____, the mother/father/child/ State/Intervenor/other _____, in the above-identified termination of parental rights proceeding, with respect to child(ren):

| Child(ren)'s Name(s) | Date(s) of Birth |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

2. Parental rights were terminated by the juvenile court pursuant to Iowa Code section(s) 232.116 (_____)
(Insert specific subsection(s))

as to the mother and Iowa Code section(s) 232.116 (_____) as to the father.
(Insert specific subsection(s))

3. Appellant's attorney, _____, is/is not the attorney who represented appellant at trial.

4. Are there any other pending appeals involving the child(ren)?_____

   If so, list:

   Case Name:_____

   Supreme Court No.:_____

   Type of Appeal: (e.g., appeal from adjudication/disposition, dissolution) _____

Petition on Appeal (Cross-Appeal) from Termination or Dismissal Entered Pursuant to Iowa Code Section 232.117 *(cont'd)*

5. The relevant dates regarding this appeal are the following:
   a. Date of adjudication _____
   b. Date of last removal (excluding any trial period at home of less than 30 days)
   _____
   c. Date of disposition _____
   d. Date(s) of any review hearings _____
   e. Date of any permanency hearing _____
   f. Date(s) termination petition filed/amended _____
   g. Date(s) of termination hearing _____
   h. Date of termination order or dismissal _____
   i. Date notice of appeal filed _____
   j. Any other date(s)/hearing(s) material to appeal _____

6. Nature of case and relief sought: The appellant seeks a reversal of the juvenile court order:
   a. terminating the parental rights of _____ with respect to the child(ren)
   _____; OR
   (Insert name(s))
   b. dismissing a petition to terminate the parental rights of _____ with respect to the child(ren), _____; OR
   (Insert name(s))
   c. OTHER _____

7. State the material facts as they relate to the issues presented for appeal:

_____
_____
_____
_____
_____
_____
_____
_____

8. State the legal issues presented for appeal, including a statement of how the issues arose and how they were preserved for appeal:

*The issue statement should be concise in nature setting forth specific legal questions. General conclusions, such as "the trial court's ruling is not supported by law or the facts" are not acceptable. Include supporting legal authority for each issue raised, including authority contrary to appellant's case, if known.*

   a. Issue I:
   _____
   _____
   _____

Petition on Appeal (Cross-Appeal) from Termination or Dismissal Entered Pursuant to Iowa Code Section 232.117 *(cont'd)*

Was error preserved?_____ yes _____ no. If yes, state how:

_____

_____

Supporting legal authority for Issue I:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

b. Issue II:

_____

_____

_____

Was error preserved?_____ yes _____ no. If yes, state how:

_____

_____

Supporting legal authority of Issue II:

_____

_____

_____

_____

_____

(Additional issues may be added)

9. I hereby certify I will request within 30 days after the filing of the notice of appeal that the clerk of the trial court transmit immediately to the clerk of the supreme court:

_____ the termination of parental rights court file, including all exhibits;

_____ the child in need of assistance court file, including all exhibits, if received as an exhibit or judicially noticed in the termination of parental rights proceeding;

_____ the transcript of the termination of parental rights hearing.

Petition on Appeal (Cross-Appeal) from Termination or Dismissal Entered Pursuant to Iowa Code Section 232.117 *(cont'd)*

The undersigned requests that the appellate court issue an opinion reversing the order of the juvenile court in this matter, or, in the alternative, enter an order setting this case for full briefing.

_____
Attorney for appellant.
Name, address, telephone.

ATTACHMENTS:

- petition to terminate parental rights and any amendments
- order, judgment or decree terminating parental rights
- any post trial motions and rulings

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the _____ day of _____, 20 _____, I served this document by ( _____ mailing) ( _____ personally delivering) a copy to the clerk of the district court and to all parties or attorneys whose names and addresses are shown below.

I further certify that on the _____ day of _____, 20 _____, I filed this Petition for Appeal by ( _____ mailing) ( _____ personally delivering) seven copies of it to the Clerk of the Iowa Supreme Court, Statehouse, Des Moines, Iowa 50319.

_____
Signature of person filing and serving petition.
Name, address, telephone.

Persons served:

[Court Order August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002; February 22, 2002]

**Rule 6.751 Form 5:** ***Response to Petition on Appeal (Cross-Appeal).***

IN THE SUPREME COURT OF IOWA

| IN THE INTEREST OF<br><br>_____, CHILD(REN) | Supreme Court No. _____<br>Juvenile Court No. _____<br><br>**RESPONSE TO PETITION ON APPEAL (CROSS-APPEAL)** |
|---|---|

1. This Response to the Petition on Appeal is filed on behalf of _____, the mother/father/child/ State/Intervenor/other _____, in the above-identified termination of parental rights proceeding.

2. The appellee's attorney, _____, is/is not the attorney who represented appellee at trial.

3. The relevant date(s) regarding this appeal:

_____ are correctly stated in the Petition on Appeal.

_____ are corrected by appellee as follows: _____

_____

4. The statement of material facts as they relate to the issues presented for appeal is:

_____ accurate as set forth by appellant and accepted by the undersigned appellee; OR

_____ requires additions/corrections, as follows:

_____

_____

_____

_____

_____

5. Appellee's response to the legal issues presented for appeal are as follows:

a. Issue I:

_____

_____

_____

Appellee states that:

_____ error was preserved as alleged in the Petition on Appeal.

_____ error was not preserved. If so, please explain briefly:

_____

_____

Legal authority for Issue I supporting appellee's response:

_____

_____

_____

_____

Response to Petition on Appeal (Cross-Appeal) *(cont'd)*

b. Issue II:

_____

_____

_____

Appellee states that:

_____ error was preserved as alleged in the Petition on Appeal.

_____ error was not preserved. If so, please explain briefly:

_____

_____

Legal authority for Issue II supporting appellee's response:

_____

_____

_____

_____

6. The undersigned requests the appellate court issue an opinion affirming the order of the juvenile court in this matter.

_____
Attorney for appellee.
Name, address, telephone.

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the _____ day of _____, 20 _____, I served this document by ( _____ mailing) ( _____ personally delivering) a copy to all parties or attorneys whose names and addresses are shown below.

I further certify that on the _____ day of _____, 20 _____, I filed this Response to Petition on Appeal by ( _____ mailing) ( _____ personally delivering) seven copies of it to the Clerk of the Iowa Supreme Court, Statehouse, Des Moines, Iowa 50319.

_____
Signature of person filing and serving response.
Name, address, telephone.

Persons served:

[Court Order August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

**Rule 6.751  Form 6:** ***Counsel's Certification of Diligent Search.***

IN THE DISTRICT COURT FOR _____ COUNTY

| IN THE INTEREST OF<br><br>_____, CHILD(REN) | Juvenile No. _____<br><br>**COUNSEL'S CERTIFICATION OF DILIGENT SEARCH** |
|---|---|

1. I, _____, was counsel for (_____) in the above-captioned case.

2. Since the time of filing of the order for termination of my client's parental rights, I have attempted to ascertain the whereabouts of my client:

_____ a) to discuss the merits of an appeal.

_____ b) to retain his/her signature on the Notice of Appeal.

3. I have made the following efforts:

_____ a. Sent a letter with proper postage affixed to the last-known address of my client and:

_____ received no response.

_____ the letter has been returned to me.

_____ b. Ascertained through the main post office in _____ that my client has not filed a forwarding address.

_____ c. Telephoned my client with no response.

_____ d. Checked with the _____ telephone company, and there is no new telephone listing on file for my client.

_____ e. Undertaken the following additional inquiry into the whereabouts of my client:

_____

_____

4. I am unable to determine the whereabouts of my client.

I hereby certify that the above stated facts are true and correct.

Dated this _____ day of _____, 20 _____

_____
Signature.
Name, address, telephone.

Counsel for _____.

[Court Order August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

# CHAPTER 7
# RULES OF PROBATE PROCEDURE

**Rule 7.1 Effective removal order – turnover.** When the court orders the removal of a fiduciary under Iowa Code section 633.65, such order, unless expressly providing otherwise, shall be effective as a turnover order under Iowa Code section 633.70, and without further order the fiduciary so removed shall turn over all personal property, money or securities to or for the fiduciary's successor at the clerk's office within five days after such order is filed. [Court Order November 16, 1965; November 14, 1979; Report November 9, 2001, effective February 15, 2002]

**Rule 7.2 Fees in probate.**

**7.2(1)** Every report or application requesting an allowance of fees for personal representatives or their attorneys shall be written and verified as provided in Iowa Code section 633.35.

**7.2(2)** When fees for ordinary services are sought pursuant to Iowa Code sections 633.197 and 633.198, proof of the nature and extent of responsibilities assumed and services rendered shall be required. Unless special circumstances should be called to the court's attention, the contents of the court probate file may be relied upon as such proof. In determining the value of gross assets of the estate for purposes of Iowa Code section 633.197, the court shall not include the value of joint tenancy property excluded from the taxable estate pursuant to Iowa Code section 450.3(5) or the value of life insurance payable to a designated beneficiary.

**7.2(3)** When an allowance for extraordinary expenses or services is sought pursuant to Iowa Code section 633.199, the request shall include a written statement showing the necessity for such expenses or services, the responsibilities assumed, and the amount of extra time or expense involved. In appropriate cases, the statement shall also explain the importance of the matter to the estate and describe the results obtained. The request may be made in the final report or by separate application. It shall be set for hearing upon reasonable notice, specifying the amounts claimed, unless waivers of notice identifying the amounts claimed are filed by all interested persons. The applicant shall have the burden of proving such allowance should be made.

**7.2(4)** One half of the fees for ordinary services may be paid when the federal estate tax return, if required, and Iowa inheritance tax return, if required, are prepared. When an inheritance tax return is not required, an inheritance tax clearance must be filed. When a federal estate tax return is not required, the one-half fee may be paid when the Iowa inheritance tax return is prepared or, when it is not required, when the inheritance tax clearance is filed. The remainder of the fees may be paid when the final report is filed and the costs have been paid. The schedule for paying fees may be different when so provided by order of the court for good cause.

**7.2(5)** Every report or application requesting compensation for other fiduciaries and their attorneys pursuant to Iowa Code section 633.200 shall be written and verified.

**7.2(6)** When compensation has been allowed to a person employed by the fiduciary or attorney to assist the estate pursuant to Iowa Code section 633.84, the request for fees by the fiduciary shall disclose the identity of such person and the amount allowed, for consideration by the court in determining fees for the fiduciary pursuant to Iowa Code section 633.86. [Court Order November 14, 1979; Report September 5, 1985, effective November 15, 1985; November 9, 2001, effective February 15, 2002]

**Rule 7.3 District court rules in probate.** A district court rule of probate and administration shall not be valid until it has been filed with the clerk of the supreme court and approved by that court. [Court Order November 14, 1979; Report November 9, 2001, effective February 15, 2002]

**Rule 7.4 Report of referee.** A report of a referee in probate shall substantially comply with the form that accompanies these rules. [Report November 9, 2001, effective February 15, 2002]

**Rule 7.5 Referees in probate.**

**7.5(1)** *Duties.*

*a. Referees as masters.* Unless otherwise directed by the court, a referee in probate appointed by the district court pursuant to Iowa Code section 633.20, and determined by the court to be qualified to serve as a master, shall have the powers to perform all the duties required of masters appointed by the court in civil actions (Iowa R. Civ. P. 1.935 – 1.942) and shall examine all reports, applications and petitions in probate and in trusts requiring action by the court.

*b. Other referees.* A referee in probate not determined by the court to be qualified to serve as a master shall have authority to examine probate files to make the report provided by rule 7.4.

*c. Referee reports.* The report of the referee shall be in writing on a form which substantially complies with the form that accompanies these rules and shall contain such matters as the court may request as shown by the files and reports in the clerk's office. If the referee is authorized to act as a master, the report shall also contain recommendations of the referee as to what ought to be done relative to the reports when considered by the court. No final report will be approved until the report of the referee is presented to the court, it being contemplated that such presentation shall be made expeditiously and without delay.

*d. Other duties.* In addition to the powers and duties of the referee in probate prescribed by this rule, the referee shall perform such duties as the court may require.

**7.5(2)** *Fees.*

*a.* The referee shall be paid a fee for services as permitted under a schedule established under Iowa Code section 633.21, unless a referee and any assistant are appointed for the county for all matters in probate in the county and are paid an annual compensation.

*b.* Referee fees shall be taxed and collected by the clerk as other costs, and such fees shall be in addition to all other fees charged and collected by the clerk in probate matters as required by Iowa Code section 633.31.

*c.* In such cases where a referee and any assistant are paid an annual compensation, any excess of fees remaining after payment of such other expenses as are approved by the court shall be disbursed pursuant to the Code. [Court Order December 18, 1980, effective January 1, 1981; Report November 9, 2001, effective February 15, 2002]

**Rule 7.6 Reports of delinquent inventories or reports.**

**7.6(1)** The clerk's report to the presiding judge required by Iowa Code section 633.32, of all delinquent inventories or reports in estates, trusts, guardianships or conservatorships shall contain, in addition to the information required by Iowa Code section 633.32(3), a copy of each delinquency notice and, if they do not appear on the face of the delinquency notice, the following information for each delinquent inventory or report:

*a.* The probate number of the matter.

*b.* The title of the matter.

*c.* An indication of whether the matter is an estate, trust, guardianship, or conservatorship.

*d.* The name and address of the fiduciary.

*e.* The name and address of the attorney, if any, for the fiduciary.

*f.* The type of delinquent inventory or report.

*g.* The date notice of delinquency was given.

*h.* A statement that the required report or inventory or an order extending time for a specified period was not filed within 60 days after the giving of notice of delinquency.

*i.* The date the matter was opened.

*j.* The name of the last paper filed by the fiduciary or attorney and the date of filing such paper.

*k.* The number, including "zero" if appropriate, of previous delinquency notices given in the matter and ignored.

**7.6(2)** The clerk shall submit a copy of the report to the chief judge of the judicial district and administrator of the judicial department in addition to the presiding judge as required by Iowa Code section 633.32(2). If an order extending time for a specified period was filed but not complied with, the clerk shall proceed as in instances in which an order is not filed.

**7.6(3)** The court administrator of the judicial department shall utilize the reports in the discharge of the duties prescribed in Iowa Code section 602.1209, and, in addition, shall prepare a list of the attorneys for fiduciaries who have received and ignored a notice of delinquency. The court administrator shall transmit the list of attorneys, together with other relevant information, to the Iowa Supreme Court Board of Professional Ethics and Conduct and to the client security and attorney disciplinary commission.

**7.6(4)** The Iowa Supreme Court Board of Professional Ethics and Conduct, as a commission of the supreme court of Iowa pursuant to court rule 35.2, shall communicate with each attorney licensed to practice law in Iowa whose name appears on the list transmitted to the board pursuant to rule 7.6(3). If the board determines there is reasonable cause to believe an attorney for fiduciary has violated DR 6-101(A)(3) or other provision of the Iowa Code of Professional Responsibility for Lawyers for failure to file a required inventory or report within 60 days after receiving notice of delinquency, or within an extension of time for a specified period granted by order, the board shall initiate appropriate disciplinary action. The board chairperson shall include the number of attorneys investigated and complaints initiated and processed pursuant to this rule, a synopsis of each such complaint, and the disposition thereof, in the annual board report to the supreme court required by court rule 35.23.

**7.6(5)** The assistant court administrator of the disciplinary system is authorized to inquire into the status of any delinquent probate inventory or report. [Court Order March 13, 1980; October 20, 1981; 1983 Iowa Acts, chapter 186, §10151; January 17, 1995, effective April 3, 1995; Report November 9, 2001, effective February 15, 2002]

**Rule 7.7 Interlocutory report.** If the final report of the personal representative required by Iowa Code section 633.477 is not filed within 18 months after the date of the second publication of the notice to creditors, the personal representative shall at that time file an interlocutory report in accordance with Iowa Code section 633.469. The report shall identify the work remaining to be done in the estate and shall include an estimate of the period within which the work will be completed. The personal representative shall provide copies of the report to all interested parties by mailing, and proof of mailing shall be filed with the clerk. An order of the court approving the report shall not be required unless hearing on the report is held upon request of the personal representative or an interested party. The provisions of Iowa Code section 633.32 and rule 7.6 shall apply to the report required by this rule. [Report August 22, 1985, effective November 1, 1985; November 9, 2001, effective February 15, 2002]

**Rules 7.8** to **7.10** Reserved.

**Rule 7.11 Forms.**
**Rule 7.11 Form 1:** ***Report of Referee.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| IN THE MATTER OF THE ESTATE OF _____, Deceased. | **REPORT OF REFEREE** Probate No. _____ |
|---|---|

COMES NOW the duly appointed Referee and reports to the Court as follows:
The _____ Report has been filed in this Estate. The Referee has examined said Report and reports to the Court as follows: (All questions must be answered. If "yes" or "no" is not appropriate, check "N/A".)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Notice of Appointment published: | YES | _____ | NO | _____ | N/A | _____ |
| 2. Affidavit of mailing notice required by Iowa Code sections 633.230 and 633.304: | YES | _____ | NO | _____ | N/A | _____ |
| 3. Fiduciaries fees ordered or waived and affidavit of compensation filed: | YES | _____ | NO | _____ | N/A | _____ |
| 4. Attorney fees ordered and affidavit of compensation filed: | YES | _____ | NO | _____ | N/A | _____ |
| (A) Itemization was requested and provided: | YES | _____ | NO | _____ | N/A | _____ |
| (B) If not, statement required by Iowa Code section 633.477(11) was made: | YES | _____ | NO | _____ | N/A | _____ |
| 5. Income tax acquittance filed: | YES | _____ | NO | _____ | N/A | _____ |
| 6. Inheritance tax clearance filed: | YES | _____ | NO | _____ | N/A | _____ |
| 7. A list of distributees is shown: | YES | _____ | NO | _____ | N/A | _____ |
| 8. A description of real estate is shown: | YES | _____ | NO | _____ | N/A | _____ |
| 9. Certificates of change of title to real estate, as required, to be issued by the Clerk of Court: | YES | _____ | NO | _____ | N/A | _____ |
| 10. All claims filed have been paid or released: | YES | _____ | NO | _____ | N/A | _____ |
| 11. Notice of hearing on this Report waived: | YES | _____ | NO | _____ | N/A | _____ |
| (A) If not waived, proper proof of service of notice is on file: | YES | _____ | NO | _____ | N/A | _____ |
| 12. Accounting is waived: | YES | _____ | NO | _____ | N/A | _____ |
| 13. Court costs have been paid: | YES | _____ | NO | _____ | N/A | _____ |
| 14. If estate is testate and spouse is not personal representative, spouse has filed an election to take under or against the Will: | YES | _____ | NO | _____ | N/A | _____ |
| | WHICH _____ | | | | | |
| 15. Receipts for all specific bequests: | YES | _____ | NO | _____ | N/A | _____ |
| 16. Federal estate tax closing letter and proof of payment is on file (not required for closing): | YES | _____ | NO | _____ | N/A | _____ |

17. Remarks: _____

_____

_____

Dated this _____ day of _____, 20 _____.

_____
Referee in Probate

[Court Order November 14, 1979; December 3, 1981; November 14, 1984, effective November 26, 1984; Report September 5, 1985, effective November 15, 1985; February 18, 1987, effective July 1, 1987; September 23, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 7.11 Form 2:** ***Initial/Annual/Final Report of Guardian and Order.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>_____ | Probate No. _____<br>(check one)<br>_____ **INITIAL REPORT**<br>_____ **ANNUAL REPORT**<br>_____ **FINAL REPORT**<br><br>**AND ORDER** |

The undersigned duly appointed and qualified guardian in the above-entitled matter, states to the court:

1. This report covers the period from _____, 20 _____, to _____, 20 _____.
2. The current mental and physical condition of the ward is:
3. The present living arrangement of the ward, including a description of residence where the ward has resided during the reporting period is (indicate with whom ward resided at each residence):
4. The following is a summary of the medical, educational, vocational, and other professional services provided for the ward:
5. The following is a description of the guardian's visits with and activities on behalf of the ward:
6. (On initial report only.) The ward's date of birth is: _____.
7. The ward is: Single _____ Married _____ Divorced _____.
8. If the ward is a minor, names and addresses of parents:
9. It is recommended the guardianship be: continued _____; terminated _____. If termination is recommended, give reason: (A hearing may be required on the matter of termination.)
10. Other information requested by the court or useful in the opinion of the guardian:
11. Final court costs (have) (have not) been paid.

_____
Guardian

_____
Address

_____
Telephone Number

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

_____ _____
Date Guardian

_____
Address

(NOTE: Bank statements, checks, receipts, stubs, and other items evidencing receipt of funds and payment must be available to the court on demand.)

ORDER

The above (initial) (annual) (final) report is approved and the guardianship of said ward shall be (continued) (terminated, guardian discharged, bond released) (set for hearing on matter of termination).

Hearing date is: _____, 20 _____ at _____ o'clock _____ .m., at_____.

Dated: _____, 20 _____.

_____
Judge of the _____ Judicial District
Referee in Probate

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; March 10, 1987, effective July 1, 1987; Report November 9, 2001, effective February 15, 2002]

**Rule 7.11 Form 3:** ***Initial Report of Conservator and Inventory.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| IN THE MATTER OF THE CONSERVATORSHIP OF<br><br>_____ | Probate No. _____<br><br>**INITIAL REPORT OF CONSERVATOR AND INVENTORY** |
|---|---|

The undersigned duly appointed and qualified conservator states as follows:

1. The ward's real and personal property as of the date your conservator was appointed and the valuation of each item is itemized on the schedules attached hereto, and a summary of such schedules is as follows:

| Conservatorship Assets | Total Value |
|---|---|
| (Attach Descriptions) | |
| A. Real Estate | $_____ |
| B. Stocks and Bonds | $_____ |
| C. Mortgages, Notes, Deposits and Cash | $_____ |
| D. Life Insurance | $_____ |
| E. Jointly Owned Property | $_____ |
| F. Miscellaneous Property | $_____ |
| TOTAL OF ALL SCHEDULES | $_____ |

2. The ward resides at: _____
   Street City State Zip
   and (check one):
   ____ A. Does not have a guardian.
   ____ B. Has a natural guardian whose name is: _____
   and whose address is: _____
   Street City State Zip
   ____ C. Has a court-appointed guardian whose name is: _____
   and whose address is: _____
   Street City State Zip
3. Your conservator (has) (has not) established a (noninterest bearing) (interest bearing) conservatorship checking account at: _____
   Name of Financial Institution
   located at _____
   Street City State Zip
   The account number is: _____.
4. A conservatorship savings account (has) (has not) been established at the _____
   _____
   Name of Financial Institution
   located at _____
   Street City State Zip
   The account number is: _____.
5. Other assets (have) (have not) been changed into conservatorship's name.
6. The ward's sources of income and monthly or annual amounts are:

_____
Conservator

_____
Address

_____
Telephone Number

Initial Report of Conservator and Inventory *(cont'd)*

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

_____ _____
Date Conservator

_____
Address

(NOTE: Bank statements, checks, receipts, stubs and other items evidencing receipt of funds and payment must be available to the court on demand.)

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; Report November 9, 2001, effective February 15, 2002]

**Rule 7.11 Form 4:** ***Annual Report of Conservator.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| IN THE MATTER OF THE CONSERVATORSHIP OF<br><br>_____ | Probate No. _____<br><br>**ANNUAL REPORT** |
|---|---|

1. This report is for the period from _____, 20 _____, to _____, 20 ____. (Use ending date of last accounting where applicable.)
2. Total cash on hand at close of the last accounting was $ _____.
3. Total sum of funds received during this report period was $ _____. (Attach as Exhibit "A" itemization showing date received, source of funds and amount.)
4. Total sum of disbursements made during this report period was $ _____. (Attach as Exhibit "B" itemization showing date, who was paid and amount paid for item or service.)
5. The balance of cash on hand at the close of this report period is $ _____.
6. The other assets of the ward at the close of this report are: (Attach listing of assets held and the value or remaining balances marked Exhibit "C". If assets remained the same as of the last report, a copy of the last listing may be used.)
7. Changes (were) (were not) made in investment during this report period. (Attach as Exhibit "D" itemized list of changes when applicable.)
8. The total value of assets of the ward at the close of this report period is $ _____.
9. Amount of conservator's bond is: $ _____. Surety is: _____.
10. (Check one)

    ___The ward has no guardian.

    ___The name of the ward's guardian is: _____.
11. (Answer Number 11 only if ward has no guardian.)

    A. The residence and physical location of the ward is:

    _____.

    B. The ward's general physical and mental condition is:

    _____.
12. Other information relating to affairs of the conservatorship: (If conservatorship has special circumstances which do not adapt to this form, add Exhibit "F" setting out special circumstances in detail.)
13. Fees for conservator are (hereby applied for) (waived).

    (Attach Affidavit per Iowa Code section 633.202.)
14. Fees for conservator's attorney (check one): _____ should be set by the court; _____ no fees requested; _____ waived or not applicable.

    (Attach Affidavit per Iowa Code section 633.202, if fees requested.)

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

_____ _____

Date Conservator

_____

Address

(NOTE: Bank statements, checks, receipts, stubs and other items evidencing receipt of funds and payment must be available to the court on demand.)

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; Report November 9, 2001, effective February 15, 2002]

**Rule 7.11 Form 5:** ***Final Report of Conservator.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| IN THE MATTER OF THE CONSERVATORSHIP OF<br><br>_____ | Probate No. _____<br><br>**FINAL REPORT** |
|---|---|

1. This report is for the period from _____, 20 _____, to _____, 20 ____. (Use ending date of last accounting where applicable.)
2. Total cash on hand at close of the last accounting was $ _____.
3. Total sum of funds received during this report period was $ _____. (Attach as Exhibit "A" itemization showing date received, source of funds and amount.)
4. Total sum of disbursements made during this report period was $ _____. (Attach as Exhibit "B" itemization showing date, who was paid and amount paid for item or service.)
5. The balance of cash on hand at the close of this report period is $ _____.
6. The other assets of the ward at the close of this report are: (Attach listing of assets held and the value or remaining balances marked Exhibit "C". If assets remained the same as of the last report, a copy of the last listing may be used.)
7. Changes (were) (were not) made in investment during this report period. (Attach as Exhibit "D" itemized list of changes when applicable.)
8. The total value of assets of the ward at the close of this report period is $ _____.
9. (Check one) (Attach as Exhibit "E" statement of reasons for termination.)

   ___The court on the _____ day of _____, 20 _____ ordered termination.

   ___The termination is concurrently being sought along with approval of final report.
10. On termination funds and assets of this conservatorsip will be distributed to (name, address, relationship to ward, if any):

    _____.
11. Notice of hearing on final report (has) (has not) been waived. (If waived attach copy of waiver.)
12. Amount of conservator's bond is: $ _____. Surety is: _____. Order approving final report and termination should discharge surety and release bond.
13. (Check one)

    ___The conservator is also the guardian and has filed final guardian's report on _____, 20 ___.

    ___The ward has no guardian.

    ___The name of the ward's guardian is: _____.
14. (Answer Number 14 only if ward has no guardian.)

    A. The residence and physical location of the ward is:

    _____.

    B. The ward's general physical and mental condition is:

    _____.
15. Other information relating to affairs of the conservatorship: (If conservatorship has special circumstances which do not adapt to this form, add Exhibit "F" setting out special circumstances in detail.)
16. Final court costs (have) (have not) been paid.
17. Fees for conservator are (hereby applied for) (waived).

    (Attach Affidavit per Iowa Code section 633.202.)

Final Report of Conservator *(cont'd)*

18. Fees for conservator's attorney (check one): _____ should be set by the court; _____ no fees requested; _____ waived or not applicable.

    (Attach Affidavit per Iowa Code section 633.202, if fees requested.)

19. Receipt(s) of the distributee(s) for the funds and assets of the conservatorship (check one):

    ____ Are attached.

    ____ Will be attached to supplemental report after court approves final report.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

_____ _____
Date Conservator

_____
Address

(NOTE: Bank statements, checks, receipts, stubs and other items evidencing receipt of funds and payment must be available to the court on demand.)

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; Report November 9, 2001, effective February 15, 2002]

# CHAPTER 8
# RULES OF JUVENILE PROCEDURE

## DISCOVERY AND NOTICE OF DEFENSES

**Rule 8.1 Scope of discovery.** In order to provide adequate information for informed decision making and to expedite trials, minimize surprise, afford opportunity for effective cross-examination and meet the requirements of due process, discovery prior to trial and other judicial hearings should be as full and free as possible consistent with protection of persons and effectuation of the goals of the juvenile justice system. [Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 8.2 Delinquency proceedings.**

**8.2(1)** *Access to records.* Upon the request of counsel for a juvenile who has been referred for intake screening on a delinquency complaint, the state shall give the juvenile's counsel access to all documents, reports and records within or which come within its possession or control that concern the juvenile or the alleged offense.

**8.2(2)** *Informal discovery sufficient.* Although informal discovery methods are preferred, upon good cause shown, depositions and interrogatories by any party may be permitted by the court in delinquency proceedings except where they conflict with these rules or with statutes. Ordinarily, however, depositions and interrogatories shall not be permitted for issues arising under Iowa Code section 232.45(6)(b) after filing of a motion to waive jurisdiction.

**8.2(3)** *Affirmative defenses.* If a juvenile alleged to have committed a delinquent act intends to rely upon the affirmative defenses of insanity, diminished responsibility, intoxication, entrapment, or self-defense [justification], the juvenile shall file written notice of the intention not later than the time set by the court for said filing and in any event not less than ten calendar days prior to the adjudicatory hearing, except for good cause shown.

**8.2(4)** *State's right to expert examination.* Where a juvenile has given notice of the use of the defense of insanity or diminished responsibility and intends to call an expert witness or witnesses on that issue at trial, the juvenile shall, within the time provided for the filing of pretrial motions, file written notice of the name of such witness. Upon such notice or as otherwise appropriate the court may upon application order the examination of the juvenile by a state-named expert or experts whose names shall be disclosed to the juvenile prior to examination.

**8.2(5)** *Notice of alibi.* If a juvenile alleged to have committed a delinquent act intends to offer an alibi defense, the juvenile shall file written notice of such intention not later than the time set by the court for the filing of pretrial motions or at such later time as the court directs. The notice of alibi defense shall state the specific place or places the juvenile claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the juvenile intends to rely to establish such alibi. In the event that a juvenile shall file such notice the prosecuting attorney shall file written notice of the names and addresses of the witnesses the state proposes to offer in rebuttal to discredit the alibi. Such notice shall be filed within ten days after the filing of the juvenile's witness list, or within such other time as the court may direct.

**8.2(6)** *Failure to comply.* If either party fails to abide with the notice requirements of rule 8.2(3), 8.2(4), or 8.2(5), such party may not offer evidence on the issue of alibi, insanity, diminished responsibility, intoxication, entrapment, or self-defense without leave of court for good cause shown. In granting leave, the court may impose terms and conditions including a delay or continuance of trial. The right of a juvenile to give evidence of alibi, insanity, diminished responsibility, intoxication, entrapment, or self-defense in his or her own testimony is not limited by this rule.

**8.2(7)** *Multiple offenses.* Two or more delinquent acts which arise from the same transaction or occurrence or from two or more transactions or occurrences constituting parts of a common scheme or plan, when alleged and prosecuted contemporaneously, shall be alleged and prosecuted as separate counts in a single delinquency petition unless, for good cause shown, the juvenile court in its discretion determines otherwise.

**8.2(8)** *Separate petition(s).* In cases not subject to rule 8.2(7), a separate delinquency petition shall be filed for each delinquent act. [Report February 21, 1985, effective July 1, 1985; April 7, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002; February 22, 2002, effective May 1, 2002]

**Rule 8.3 Child in need of assistance and termination proceedings.** Although informal discovery methods are preferred, Iowa R. Civ. P. divisions V and VII, governing discovery, depositions and perpetuation of testimony, shall apply to proceedings under Iowa Code chapter 232, divisions III and IV, where not otherwise inconsistent with these rules or applicable statutes. [Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

## MOTION PRACTICE

**Rule 8.4 General rule.** Any motion filed with the juvenile court shall be promptly brought to the attention of the judge or referee by the moving party. [Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 8.5 Motions for continuance in all proceedings.** A motion for continuance shall not be granted except for good cause. Any order granting a continuance shall state the grounds therefor. [Report February 21, 1985, effec-

tive July 1, 1985; November 9, 2001, effective February 15, 2002]

PRETRIAL CONFERENCES

**Rule 8.6 Pretrial conferences discretionary.** In all actions the juvenile court may in its discretion order all parties to the action to appear for a pretrial conference to consider such matters as will promote a fair and expeditious trial. [Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

SPEEDY HEARING

**Rule 8.7 General rule.** It is the public policy of the state of Iowa that proceedings involving delinquency or child in need of assistance be concluded at the earliest possible time consistent with a fair hearing to all parties. [Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 8.8 Delinquency.** If a child against whom a delinquency petition has been filed has not waived the right to a speedy adjudicatory hearing, the hearing must be held within 60 days after the petition is filed or the court shall order the petition dismissed unless good cause to the contrary is shown.

**8.8(1)** Entry of a consent decree shall be deemed a waiver of the child's right to a speedy hearing.

**8.8(2)** The provisions contained herein shall be applicable notwithstanding a motion or hearing to waive jurisdiction pursuant to rule 8.9 or 8.10. [Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 8.9 Motion to waive jurisdiction.** A motion under Iowa Code section 232.45 must be filed within ten days of the filing of the petition. [Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 8.10 Hearings regarding waiver.** A hearing on a motion to waive jurisdiction filed pursuant to Iowa Code section 232.45 shall be held within 30 days of the filing of said motion unless good cause to the contrary is shown. [Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 8.11 Child in need of assistance adjudicatory hearings.** The adjudicatory hearing on a child in need of assistance petition shall be held within 60 days of the filing of said petition unless good cause to the contrary is shown. Failure to comply with this rule shall not result in automatic dismissal, but any such failure may be urged as grounds for discretionary dismissal. [Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 8.12 Temporary removal hearings.** Whenever a child has been removed pursuant to Iowa Code section 232.78 or 232.79, a hearing under Iowa Code section 232.95 shall be held within ten days of such removal. [Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

DELINQUENCY PROCEEDINGS

**Rule 8.13 Corroboration of accomplice or solicited person.** An adjudication of delinquency shall not be entered against a juvenile based upon the testimony of an accomplice or a solicited person unless corroborated by other evidence which tends to connect the juvenile with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. Corroboration of the testimony of victims shall not be required. [Report April 7, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002]

**Rule 8.14 Suppression of evidence.** Motions to suppress evidence shall be raised by motion of the juvenile specifying the ground upon which the juvenile claims the search and seizure to be unlawful. Motions to suppress evidence shall be filed not later than the time set by the court for said filing and in any event not less than ten calendar days prior to the adjudicatory hearing, except for good cause shown. [Report April 7, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002]

**Rule 8.15 Multiple juvenile defendants.** Two or more juveniles may be tried jointly if in the discretion of the court a joint trial will not result in prejudice to one or more of the parties. Otherwise, the juvenile defendants shall be tried separately. When tried jointly, the juvenile defendants shall be adjudged separately on each count. [Report April 7, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002]

**Rule 8.16 Evidence at detention, shelter care, and waiver hearings.** The probable cause finding made at a shelter or detention hearing under Iowa Code section 232.44 and at waiver of jurisdiction hearings under Iowa Code section 232.45 shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. The juvenile defendant may cross-examine witnesses and may introduce evidence in his or her own behalf. [Report April 7, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002]

**Rule 8.17 Venue in delinquency cases where child has been placed in another judicial district.** Where a juvenile has been placed in another judicial district and is alleged to have committed a delinquent act or acts during such placement, venue, for the purpose of conducting the adjudicatory hearing, shall be in the judicial district where the delinquent act or acts are alleged to have occurred. However, the juvenile court which originally placed the juvenile shall have the option of requesting that venue be transferred to it for the purpose of conducting the adjudicatory proceedings. If the juvenile is adjudicated of committing a delinquent act or acts in the judicial district of the juvenile's placement, venue of the matter shall be transferred to the juvenile court which previously placed the child pursuant to the original dispositional order for the purpose of conducting any dispositional and subsequent review hearings. [Report April 7, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002]

CINA PROCEEDINGS

**Rule 8.18 Child abuse reports.** The juvenile court shall retain founded child protective assessment reports for ten years. Notwithstanding the foregoing, when notified by the Department of Human Services that the report shall be expunged, the juvenile court shall destroy the report pursuant to Iowa Code section 235A.18. The juvenile court shall retain all other child protective assessment reports for five years from the date of intake at which time the clerk shall destroy the reports. Notwithstanding the foregoing, child protective assessment reports which are received into evidence in a juvenile proceeding shall be retained for so long as the case file is retained and shall not be destroyed pursuant to this rule. [Report April 7, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002; February 22, 2002, effective May 1, 2002]

**Rule 8.19 Admissibility of evidence at temporary removal hearings, hearings for removal of sexual offenders and physical abusers from the residence, and examination hearings.** The finding of imminent risk of harm allowing for the temporary removal of a child from his or her parent, guardian or custodian under Iowa Code section 232.95, the finding that probable cause exists to believe that a sexual or physical abuse has occurred and that the presence of the alleged sexual offender or physical abuser in the child's residence presents a danger to the child's life or physical, emotional or mental health under Iowa Code section 232.82, and the finding that probable cause exists to believe a child is a child in need of assistance pursuant to section 232.2(6)(e) or (f) for purposes of establishing grounds for examination of the child pursuant to Iowa Code section 232.98 shall be made by substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. [Report April 7, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002; February 22, 2002, effective May 1, 2002]

TERMINATION PROCEEDINGS

**Rule 8.20 Motions to vacate an order for termination of parental rights.** Any request by a biological or putative parent to vacate an order terminating parental rights pursuant to Iowa Code chapter 600A must be filed within 30 days from the entry of said order. The 30-day period for filing a motion to vacate such order shall not be waived or extended. [Report April 7, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002]

**Rule 8.21 Termination of parental rights, informational notice regarding appeal.** If a court enters an order under Iowa Code section 232.117 terminating parental rights or dismissing a petition to terminate parental rights, unless the dismissal was stipulated to by all parties, the order shall contain a written notice that an appeal by an aggrieved party must be taken pursuant to Iowa R. App. P. 6.5(2), the notice of appeal must be filed within 15 days of the entry of the order, and a petition on appeal must be filed within 15 days thereafter. The absence of such language from an order will not affect the time for filing a notice of appeal or a petition on appeal. [Report August 31, 2001, effective January 1, 2002; November 9, 2001, effective February 15, 2002]

PROCEDURE FOR JUDICIAL WAIVER OF PARENTAL NOTIFICATION

**Rule 8.22 General principles.**

**8.22(1)** These rules shall be interpreted to provide expeditious and confidential proceedings in accordance with Iowa Code chapter 135L.

**8.22(2)** All references in these rules to the clerk shall mean the clerk of the district court and shall include the clerk's designee. [Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.23 Petition for waiver.**

**8.23(1)** *Form.* A minor who seeks waiver of parental notification prior to obtaining an abortion shall petition the court in a manner substantially complying with the form that accompanies these rules. This form, along with other forms that accompany these rules for use in waiver proceedings, shall be available at the offices of all clerks of court. All petitions shall state the manner by which the minor desires to receive notification of the court's decision and whether a similar petition has previously been presented to and refused by any court.

**8.23(2)** *Assistance.* The clerk shall assist the minor in completing and filing the petition.

**8.23(3)** *Filing.* A petition is filed for the purposes of these rules when it is date and time stamped in the clerk's office. The clerk shall present the petition to the court immediately upon filing.

**8.23(4)** *Anonymity and confidentiality.* The minor may file a petition using a pseudonym and the petition shall not contain any information, such as social security number, address, or name of parents, by which the minor may be identified. A sworn statement containing the case number, and the minor's true name, date of birth, and address shall be filed simultaneously with the pseudonymous petition. The clerk of court shall issue to the minor a certified copy of the sworn statement, which shall identify her to the provider of abortion services as the minor for whom a petition to waive notification was granted or denied. The clerk shall then place the original sworn statement under seal. Notwithstanding any other provision of Iowa law or these rules, the seal on the statement containing the minor's true name may not be broken except upon court order in exigent circumstances or at the minor's request. [Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.24 Appointment of counsel.** The clerk shall inform the minor that she has a right to a court-appointed attorney without cost to her. The court shall appoint an attorney for the minor upon her request. The attorney shall serve as counsel on appeal. [Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.25 Appointment of guardian ad litem.** The court may appoint a guardian ad litem, and shall appoint a guardian ad litem if the minor is not accompanied by a responsible adult, as that term is defined in the statute, or has not viewed the video under Iowa Code section 135L.2. [Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.26 Advisory notice to minor.**

**8.26(1)** Upon the filing of any petition for waiver of parental notification, the clerk shall provide the minor a copy of the Advisory Notice to Minor form that accompanies these rules.

**8.26(2)** The clerk shall document in the court file that a copy of the advisory notice has been provided to the minor. [Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.27 Scheduling.** Immediately upon filing the petition, the clerk shall set or secure the date for the hearing and so advise the minor if she is present. Otherwise, notice of hearing shall follow the procedures of rule 8.28. The hearing shall be held within 48 hours of the filing of the petition unless the minor or her attorney requests an extension of time within which a hearing shall be held. If the request for extension of time is granted, the deadline for filing any decision on appeal shall be extended for a like period of time. [Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.28 Notice of hearing.** If the court determines that a guardian ad litem and/or an attorney for the minor should be appointed in accordance with Iowa Code section 135L.3(3)(b), the clerk shall notify said person(s) as well as any other person(s) designated by the minor not less than eight hours before the time fixed for a hearing, unless there is a waiver of the notice requirement by said person(s), or the time is reduced or extended by the court. Service of notice may be by acceptance of service. The only notice provided to the minor shall be by the minor making inquiry of the clerk of court following the entry of the order scheduling the hearing. Notice shall be provided by the clerk only to the above-named person(s). [Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.29 Burden of proof and standard of evidence.** The minor shall have the burden of proving the allegations of her petition by a preponderance of the evidence. [Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.30 Record required.** In accordance with Iowa Code section 624.9, and consistent with the confidentiality requirements of rule 8.32, stenographic notes or electronic recordings shall be taken of all hearings held pursuant to Iowa Code chapter 135L and said record shall not be waived. [Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.31 Order granting or denying petition.**

**8.31(1)** *Time for granting or denying waiver.* An order either granting or denying waiver of parental notification with findings of fact and conclusions of law shall be filed immediately following the hearing and in no event later than 48 hours from the filing of the petition or from the hearing if an extension is granted under rule 8.27.

**8.31(2)** *Procedure in default of hearing and order.* If the court fails to hold the hearing and rule on the petition within the time provided by these rules, the petition is deemed granted and the waiver is deemed authorized. In the event the petition is deemed authorized, the clerk shall immediately issue the certification form that accompanies these rules to the minor or her attorney.

**8.31(3)** *Delivery of order or certification.* The clerk shall deliver the order under rule 8.31(1), or the certification under rule 8.31(2), in the manner requested by the minor in the petition. The order or certification shall specify the person(s) to whom the clerk shall provide a copy. A copy shall be available to the minor at the clerk's office.

**8.31(4)** *Notification of appeal rights.* If the petition is denied, the order shall include notice of the right to appeal to the Iowa supreme court, the time period within which appeal must be filed and a copy of the applicable rules of appellate procedure. [Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.32 Confidentiality of documents and hearings.**

**8.32(1)** *Records.* In accordance with Iowa Code chapter 135L and these rules, all records of parental notification proceedings are confidential. All confidential records shall be kept sealed and opened only as necessary for the conduct of proceedings for waiver of parental notification, an appeal of the district court decision, or as ordered by a court.

**8.32(2)** *Hearings.* The hearing shall be held in a confidential manner, preferably in chambers. Only the minor, her attorney, her guardian ad litem, and the person(s) whose presence is specifically requested by the minor, her attorney, or her guardian ad litem may attend the hearing on the petition.

**8.32(3)** *Purging of files.* The clerk shall destroy all records and files in the case when one year has elapsed from any of the following, as applicable:

*a.* The date that the court issues an order waiving the notification requirement or the date the waiver is deemed authorized under rule 8.31(2).

*b.* The date after which the court denies the petition for waiver of notification and the decision is not appealed.

*c.* The date after which the court denies the petition for waiver of notification, the decision is appealed, and all appeals are exhausted.

[Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.33 Juvenile Procedure Forms  General.** The following forms are illustrative and not mandatory, but any particular instrument shall substantially comply with the form illustrated. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 8.33 Form 1:** ***Petition for Family in Need of Assistance.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
JUVENILE COURT

| | |
|---|---|
| IN RE THE FAMILY OF<br>_____;<br>UPON THE PETITION OF<br>_____<br>A CHILD/CHILDREN or A PARENT, GUARDIAN or CUSTODIAN | JUVENILE NO. _____<br><br>**PETITION FOR FAMILY IN NEED OF ASSISTANCE** |

The petitioner respectfully states to the court that _____[child/children]_____ and _____[parent, guardian or custodian]_____ are a family in need of assistance within the purview of Iowa Code sections 232.122 through 232.127, in that there has been a breakdown in the familial relationship. In support thereof, petitioner states as follows:

[STATE BRIEFLY FACTS RELIED ON TO SUSTAIN PETITION.]

Petitioner has sought services from _____, a private or public agency, to maintain and improve the familial relationship, but the relationship has not improved and petitioner now requests the aid of the court.

The name(s) and residence(s) of the child/children are _____.

The age(s) of the child/children is/are _____.

The names and residences of the living parents, guardian or custodian are _____.

The name and address of the guardian ad litem are _____.

WHEREFORE, the undersigned prays that the court set a time and place for hearing on the petition, appoint counsel for the child, order that notice be directed to all parties in interest in a manner provided by law, and upon hearing adjudicate this family to be a family in need of assistance and make such order or orders as may maintain and improve the familial relationship.

_____
Petitioner

_____
Address

VERIFICATION

State of Iowa }
_____County } ss

I, _____, being duly sworn, depose and say that I have read and signed the foregoing petition and that the allegations therein made are true to the best of my information and belief.

_____
Petitioner

Subscribed and sworn to before me this _____ day of _____, 20 _____.

_____
Notary Public or Deputy Clerk

SOURCE: Iowa Code §232.125, 232.126, 232.127; 8.33, Form 1. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 8.33 Form 2:** ***Order Setting Hearing, Appointing Counsel and Giving Notice (Family in Need of Assistance).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
JUVENILE COURT

| | |
|---|---|
| IN RE THE FAMILY OF<br>_____;<br>UPON THE PETITION OF<br>_____<br>A CHILD/CHILDREN or A PARENT, GUARDIAN or CUSTODIAN | JUVENILE NO. _____<br>**ORDER SETTING HEARING, APPOINTING COUNSEL AND GIVING NOTICE (FAMILY IN NEED OF ASSISTANCE)** |

To: _____

You are hereby notified that there is presently on file in this court a verified petition alleging the above-named family to be a family in need of assistance; a copy of the petition is attached. An adjudicatory hearing on the merits of the petition is set for the time and place stated below.

You are further notified that the court shall appoint counsel or a guardian ad litem to represent the interests of the child at the adjudicatory hearing unless the child already has such counsel or guardian and that the court shall appoint counsel for the parent, guardian, or custodian if that person desires but is financially unable to employ counsel.

You are further notified that if you wish to state your views, you must appear or in your absence the court may order you to comply with any other reasonable orders designed to maintain and improve the familial relationship.

The court having found that a hearing on this matter should be set, IT IS HEREBY ORDERED:

1. That the above matter is set for adjudicatory hearing at o'clock _____.m., on the _____ day of _____, 20 _____, before this court at the _____ County Courthouse at _____, in the city of _____, _____ County, Iowa.

2. That _____, an attorney practicing before this court, is appointed to represent the child, _____, in this matter as guardian ad litem.*

3. That the clerk of the juvenile court is directed to send by certified mail a copy of this order with the attached petition to the above-named child, child's counsel and said child's parent, guardian or custodian no less than _____ days prior to the time set out above, said mailing to serve as notice of said hearing.

Dated this _____ day of _____, 20 _____.

_____
Judge

* Delete this paragraph if the child is already represented by counsel.

SOURCE: Iowa Code §232.126, 232.127; 8.33, Form 2. [Report 1983; November 9, 2001, effective February 15, 2002]

**Rule 8.33  Form 3:** ***Application for Appointment of Counsel and Financial Statement (Juvenile Proceedings).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| IN THE INTERESTS OF<br><br>_____,<br>A Child. | No. _____<br><br>**APPLICATION FOR APPOINTMENT OF COUNSEL AND FINANCIAL STATEMENT (Juvenile Proceedings)** |
|---|---|

I, _____, state that I am the (parent) (guardian) (custodian) of _____, a child, and request that the court appoint counsel to represent (me) (the child) at public expense. I realize that I may be required to repay in whole or in part any public funds
expended for this purpose. The following financial statement is submitted in support of my application:

Current mailing address: _____

Age: _____ Telephone number(s): _____

Martial status: Single _____ Married _____ Divorced _____ Widow(er) _____

Name of husband/wife: _____ Live with husband/wife: Yes _____ No _____

If no, length of physical separation from husband/wife: _____

Number and ages of dependents: _____

_____

How long a resident of this county: _____

Occupation: _____

Present employer: _____

Address: _____

Former employer: _____

Address: _____

Weekly take-home (net) earnings: $_____ Weekly gross earnings: $_____

Total gross income for past 12 months: $_____

Bank with: _____ Address: _____

Balance personal banking account: $_____

Balance account in name of husband/wife: $_____

Balance joint account with husband/wife: $_____

Balance joint account with any other person(s): $_____

What is your average monthly living expense (clothing, food, housing, transportation, other)? $_____

Does any person pay all or any portion of these expenses: Yes _____ No ____ If yes, who pays these costs and how
much do they contribute? _____

Motor vehicles: Give make, year, present value, amount owing thereon, if any, and whether registered or titled in your name, name of husband/wife or jointly with another: _____

_____

_____

List all sources of income, in your name, name of husband/wife or jointly shared with another, including salary (net wages),
pensions, bonds, stocks, securities, private business, farming, insurance, retirement benefits, social security benefits, lawsuits or settlements or others: _____

_____

_____

ADC or welfare relief, if any, in your name, name of husband/wife or jointly shared with another: _____

_____

List all sources of public assistance, if any, including ADC, unemployment compensation, heating assistance, food stamps: _____

Real estate owned in your name, name of husband/wife or jointly shared with another (describe): _____

_____

Other assets in your name, name of husband/wife or jointly shared with another (stereo, TV, furniture, trust funds, notes, bonds, stocks, savings certificates, life insurance, other):_____

_____

_____ Value: $ _____

Application for Appointment of Counsel and Financial Statement (Juvenile Proceedings) *(cont'd)*

Are you a beneficiary or heir in an estate of a person deceased? _____
List all debts or unpaid bills, including money owned for such things as: Housing, food, clothing, transportation (car, gas), utility costs, medical and dental services and other items, be specific: _____
_____
_____
Does anyone owe you money or have any property belonging to you? _____
_____
Give details in full: _____
_____
Do you have a judgment against anyone: Yes _____ No _____ If yes, give name, date, court and amount: _____
_____
Have you or anyone else employed or offered to employ an attorney for (you) (the child) in this matter? Yes _____
No ____ If so, how much has the attorney been paid by you or for you? $_____
Who can verify this information: _____
Telephone number: _____ Address: _____
I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the foregoing statements are true and correct to the best of my knowledge, and are made in support of my request that the court appoint legal counsel for (me) (the child) because I am financially unable to employ counsel.

_____

_____

The State of Iowa:

_____does not object to the appointment of counsel.
_____objects to the appointment of counsel and requests a hearing on the application.

Dated: _____, 20 _____.

(Assistant_____County Attorney)

[Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 8.33 Form 4:** ***Order on Application for Appointment of Counsel and Financial Statement (Juvenile Proceedings).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| IN THE INTERESTS OF<br><br>_____,<br>A Child. | No. _____<br><br>**ORDER ON APPLICATION FOR APPOINTMENT OF COUNSEL AND FINANCIAL STATEMENT (Juvenile Proceedings)** |
|---|---|

ORDER

Application is set for hearing at _____ o'clock a.m./p.m., the _____ day of _____, 20 _____, at _____.
Dated: _____, 20 _____.

_____
Judge/Magistrate

---

ORDER

Applicant's request for appointment of counsel is approved/denied.
_____ is appointed to serve as counsel for _____.
Dated: _____, 20 _____.

_____
Judge/Magistrate

[Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 8.34 Juvenile Procedure Forms  Judicial Waiver of Parental Notification.** The following forms are illustrative and not mandatory, but any particular instrument shall substantially comply with the form illustrated.

**Rule 8.34  Form 1:** ***Petition for Waiver of Parental Notification of Minor's Abortion.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
(JUVENILE DIVISION)

| IN THE INTEREST OF<br><br>_____,<br>A Minor. | Juvenile No. _____<br><br>**PETITION FOR WAIVER OF PARENTAL NOTIFICATION OF MINOR'S ABORTION PURSUANT TO IOWA CODE SECTION 135L.3** |
|---|---|

I, the above-named minor, state:

1. I am under 18 years of age.

2. I am approximately _____ weeks pregnant and seek an abortion by a licensed physician, without notification of a parent.

3. (Check one)

_____ a. I am accompanied by a responsible adult (a responsible adult is a person who is 18 or over and who is not associated with the clinic or physician who will perform the abortion).

_____ b. I am not accompanied by a responsible adult.

4. (Check one)

_____ a. I have viewed the video prepared by the Iowa Department of Public Health that explains my options as a pregnant minor, including parenting, adoption, and abortion.

_____ b. I have not viewed the video.

5. (Check one)

_____ a. I understand that I have the right to a court-appointed attorney at no cost to me. Please appoint an attorney to represent me.

_____ b. I have an attorney to represent me. The attorney's name, address, and telephone number is _____
_____.

6. I understand that this proceeding will be kept secret from my parents and the public. The only persons who may attend any hearing on the petition are myself, my attorney, my guardian ad litem (if one is appointed) and those whose presence I, my attorney, or my guardian ad litem specifically request. I request that the following person(s) be notified of and admitted to all hearings in my case:
Name(s) and address(es):_____
_____.

7. I understand court personnel will not send any papers to my home or try to call me. I would like to be informed of the court's decision in the following way: _____
_____.

I request the following person(s), in addition to my attorney, be contacted and given papers in my case:
Name(s) and address(es): _____
_____.

Petition for Waiver of Parental Notification of Minor's Abortion *(cont'd)*

8. (Check one or both)

_____ a. I am mature and capable of providing informed consent for the performance of an abortion.

_____ b. It would not be in my best interests to notify a parent of my abortion for the following reasons: _____
_____
_____.

9. I state on oath that (check one)

_____ a. I am presenting this request to a court for the first time.

_____ b. I have made this request to a court before and was refused.

10. The name, business address, and business telephone number (if these are known) of the physician who will perform the abortion is _____
_____
_____.

**THEREFORE**, I request that the court grant my application to obtain an abortion without notifying a parent.

Signed on this _____ day of _____, 20 _____.

_____
Petitioner (You may sign a name other than your true name, such as Jane Doe)

NOTICE: If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at _____. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

[Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.34 Form 2:** ***Declaration of Minor who has Filed Pseudonymous Petition to Waive Parental Notification.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
(JUVENILE DIVISION)

| IN THE INTEREST OF<br><br>_____,<br>A Minor. | Juvenile No. _____<br><br>**DECLARATION OF MINOR WHO HAS FILED PSEUDONYMOUS PETITION TO WAIVE PARENTAL NOTIFICATION UNDER IOWA CODE CHAPTER 135L** |
|---|---|

NOTICE TO THE CLERK OF COURT: A CERTIFIED COPY OF THIS DECLARATION, WITH THE FILE NUMBER NOTED ON IT, SHOULD BE GIVEN TO THE MINOR AFTER SHE SIGNS IT.

THE ORIGINAL SHOULD IMMEDIATELY BE PLACED IN A SEALED ENVELOPE, WHICH SHOULD BE FILED UNDER SEAL AND KEPT UNDER SEAL AT ALL TIMES.

1. My true name is _____, and my address is
(print your name)
_____.
(print your address)
2. My date of birth is _____.
3. I have filed a petition to waive parental notification, under the name _____
_____ on _____.
(date)

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: _____ Signed: _____
(You must sign your true name)

[Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.34 Form 3:** ***Order Appointing Counsel for a Minor.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
(JUVENILE DIVISION)

| IN THE INTEREST OF<br><br>_____,<br>A Minor. | Juvenile No. _____<br><br>**ORDER APPOINTING COUNSEL FOR A MINOR UNDER IOWA CODE SECTION 135L.3(3)(b)** |
|---|---|

**THIS MATTER** is before the court upon the minor's request to waive parental notification of an abortion under Iowa Code chapter 135L. The court finds that counsel should be appointed.

**IT IS ORDERED** that [*name*] _____, [*address*] _____, [*telephone number*] _____ is appointed counsel for the minor at public expense.

The clerk shall provide a copy of this order as specified in Iowa R. Juv. P. 8.28.

Dated this _____ day of _____, 20 _____.

_____
**JUDGE**
_____ **JUDICIAL DISTRICT OF IOWA**

[Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.34 Form 4:** ***Order Appointing a Guardian Ad Litem for a Minor.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
(JUVENILE DIVISION)

| IN THE INTEREST OF<br><br>_____,<br>A Minor. | Juvenile No. _____<br><br>**ORDER APPOINTING A GUARDIAN AD LITEM FOR A MINOR UNDER IOWA CODE SECTION 135L.3(3)(b)** |
|---|---|

**THIS MATTER** is before the court upon the minor's request to waive parental notification of an abortion under Iowa Code chapter 135L. The court finds that a guardian ad litem should be appointed.

**IT IS ORDERED** that [*name*] _____, [*address*] _____, [*telephone number*] _____ be appointed as the guardian ad litem for the minor at public expense.

The clerk shall provide a copy of this order as specified in Iowa R. Juv. P. 8.28.

Dated this _____ day of _____, 20 _____.

_____
**JUDGE**
_____ **JUDICIAL DISTRICT OF IOWA**

[Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.34 Form 5:** ***Advisory Notice to Minor.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
(JUVENILE DIVISION)

| IN THE INTEREST OF<br><br>_____,<br>A Minor. | Juvenile No. _____<br><br>**ADVISORY NOTICE TO MINOR** |
|---|---|

**YOU ARE NOTIFIED as follows:**

All information in your case is confidential. No papers will be sent to your home, and you will not be contacted by this court. Your name will not be on your court papers.

Your lawyer and your guardian ad litem (if one is appointed) will receive notices about your case. You may also name someone else to get notices. That person's name should be on your petition.

YOUR CASE NUMBER APPEARS AT THE TOP OF THIS SHEET. KEEP IT IN A SAFE PLACE. YOU CANNOT GET INFORMATION FROM THE CLERK WITHOUT YOUR CASE NUMBER.

YOU HAVE BEEN GIVEN A COPY OF THE STATEMENT YOU SIGNED WITH YOUR TRUE NAME. KEEP IT IN A SAFE PLACE. YOU MAY NEED TO SHOW IT TO YOUR DOCTOR TO OBTAIN AN ABORTION WITHOUT NOTIFYING A PARENT.

Clerk: Complete information below:

1. (a) Your hearing is scheduled for _____,
   at the _____ County Courthouse in _____, Iowa.

   **OR**

   (b) You must call the clerk at (____) _____ to obtain the date of the hearing.

2. (a) Your lawyer is _____, telephone number _____.

   **OR**

   (b) You must call the clerk at the above number to get the name of your lawyer.

3. (a) Your guardian ad litem is _____,
   telephone number _____.

   **OR**

   (b) You may call the clerk at the above number to obtain the name of your guardian ad litem.

You may be told of the court's decision immediately after the hearing. If not, you may contact your lawyer or the clerk soon after the hearing to find out if the court has ruled on your petition.

You have a right to a hearing and a decision within 48 hours unless you or your attorney asks for an extension of time. Any extension of time granted for the hearing shall extend the deadline for filing any decision on appeal for a like period of time. If these deadlines are not met you have a right to ask the clerk for a paper that will allow your doctor to perform the abortion without notifying a parent.

If the court does not grant your petition, you will be able to appeal.

Advisory Notice to Minor *(cont'd)*

If the court does not grant your petition and you decide not to appeal, or if your appeal is not granted, you may request that the court appoint a licensed therapist to help you tell your family of your decision and deal with any family problems. The cost of the therapist will be paid for by the court.

I certify that I have given a copy of this advisory notice to the minor.

_____
Clerk of the Court
_____ County Courthouse
_____, Iowa_____

[Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.34 Form 6:** ***Order Setting Hearing on Petition for Waiver of Parental Notification of Minor's Abortion.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
(JUVENILE DIVISION)

| IN THE INTEREST OF<br><br>_____,<br>A Minor. | Juvenile No. _____<br><br>**ORDER SETTING HEARING ON PETITION FOR WAIVER OF PARENTAL NOTIFICATION OF MINOR'S ABORTION** |
|---|---|

**THIS MATTER** came before the court upon the petition of _____ that a hearing be held in this matter. The court finds that such a hearing should be scheduled and proper notice should be given in accordance with Iowa R. Juv. P. 8.28.

**IT IS THEREFORE ORDERED** that a hearing on the Petition to Waive Parental Notification of a Minor's Abortion be held pursuant to Iowa Code section 135L.3 on the _____ day of _____, 20 ____, at _____ o'clock ____. m. at the _____ County Courthouse in _____, Iowa.

The clerk shall provide a copy of this order as specified in Iowa R. Juv. P. 8.28.

Dated this _____ day of _____, 20 _____.

_____
**JUDGE**
_____ **JUDICIAL DISTRICT OF IOWA**

[Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.34  Form 7:** ***Findings of Fact, Conclusions of Law and Order.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
(JUVENILE DIVISION)

| IN THE INTEREST OF<br><br>_____,<br>A Minor. | Juvenile No. _____<br><br>**FINDINGS OF FACT,<br>CONCLUSIONS OF LAW AND ORDER** |
|---|---|

This matter came before the court on _____, 20 ____, for hearing held pursuant to Iowa Code section 135L.3 on waiver of parental notification of a minor's abortion. Present for the hearing were the following:

_____, the minor;

_____, the minor's attorney;

_____, the minor's guardian ad litem; and

_____, _____.

The proceeding was reported [tape recorded]. The following exhibits and testimony were received into evidence:
_____
_____
_____.

The court now makes the following **FINDINGS OF FACT**:

1. Notice of this hearing and a copy of the petition were served in accordance with Iowa R. Juv. P. 8.28.

2. The petitioner is a pregnant minor, _____ years of age. She is approximately _____ weeks pregnant and seeks an abortion but objects to the notification of a parent.

3. (Check one)

____ a. The petitioner is mature and capable of providing informed consent for the performance of an abortion. This decision is based upon the following facts: _____
_____
_____.

**OR**

____ b. The petitioner is not mature or does not claim to be mature, but notification to the petitioner's parent is not in the petitioner's best interest. This decision is based upon the following facts: _____
_____
_____.

**OR**

____ c. The petitioner has not shown she is mature and capable of providing informed consent, nor has she shown that notification to a parent is <u>not</u> in her best interest. This decision is based upon the following facts: _____
_____
_____
_____
_____.

Findings of Fact, Conclusions of Law and Order *(cont'd)*

**CONCLUSIONS OF LAW**

1. The court has jurisdiction of the petitioner and the subject matter as provided in Iowa Code chapter 135L.

2. The burden of proof is on the petitioner by a preponderance of the evidence.

3. (Check one)

____ a. A preponderance of the evidence shows that the petitioner is mature and capable of providing informed consent for the performance of the abortion within the scope and meaning of Iowa Code section 135L.3(3)(e)(1).

**OR**

____ b. A preponderance of the evidence shows that the petitioner is not mature or does not claim to be mature, but notification of the abortion to a parent is not in the best interest of the petitioner within the scope and meaning of Iowa Code section 135L.3(3)(e)(2).

**OR**

____ c. The evidence does not support a judicial waiver of parental notification.

4. The notification requirements as provided in Iowa Code section 135L.3 should [should not] be waived.

**IT IS ORDERED, ADJUDGED AND DECREED** that the petition for waiver of parental notification is granted [denied].

The clerk shall provide a copy of this order to the petitioner's attorney, guardian ad litem, if any, physician, and the following person(s) designated by the petitioner: _____
_____
_____.

The clerk shall provide notice of this decision to the petitioner as requested in the following manner: _____
_____.

Notice: (Delete if petition is granted). You have the right to appeal this ruling to the Iowa Supreme Court. You must file a notice of appeal with the district court clerk within 24 hours of this ruling. The rules you must follow for the appeal are attached to this order.

Dated this _____ day of _____, 20 _____.

_____
**JUDGE**
_____ **JUDICIAL DISTRICT OF IOWA**

[Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.34 Form 8:** ***Certification that Waiver of Parental Notification is Deemed Authorized.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
(JUVENILE DIVISION)

| IN THE INTEREST OF<br><br>_____,<br>A Minor. | Juvenile No. _____<br><br>**CERTIFICATION THAT WAIVER OF PARENTAL NOTIFICATION IS DEEMED AUTHORIZED** |
|---|---|

Pursuant to Iowa Code section 135L.3 the clerk certifies that:

1. The minor's petition for waiver of parental notification was filed on _____.

2. ___ (a) A ruling was not made within 48 hours of the filing of said petition,

   **OR**

   ___ (b) The date for the hearing was extended at the request of the minor to _____, and a ruling was not made within 48 hours of the extended hearing date.

**THEREFORE**, pursuant to Iowa Code section 135L.3(3)(l), the petition is deemed granted and the waiver of notification requirements is deemed authorized.

Dated: _____

_____
Clerk of the Court
_____ County Courthouse

_____, Iowa _____

Copies to: (Clerk, *see* Iowa R. Juv. P. 8.31(3))

[Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

**Rule 8.34  Form 9:** ***Notice of Appeal.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY
(JUVENILE DIVISION)

| IN THE INTEREST OF<br><br>_____,<br>A Minor. | Juvenile No. _____<br>Supreme Court No._____<br><br>**NOTICE OF APPEAL** |
|---|---|

**TO THE CLERK OF THE DISTRICT COURT, _____ COUNTY, AND TO THE CLERK OF THE SUPREME COURT:**
You are notified that _____, the minor, who filed her petition for
waiver of parental notification on _____, hereby appeals the order dated _____, which denied her petition.

Dated this _____ day of _____, 20 _____.

_____
Attorney for_____

Address: _____
_____
_____

[Court Order June 26, 1997, temporary rules effective July 1, 1997; Court Order June 26, 1997, permanent rules effective September 8, 1997; Report November 9, 2001, effective February 15, 2002]

# CHAPTER 9
# CHILD SUPPORT GUIDELINES

**Rule 9.1 Guidelines adopted.** The supreme court has undertaken to prescribe uniform child support guidelines and criteria pursuant to the federal Family Support Act of 1988, Pub. L. No. 100-485 and Iowa Code section 598.21(4). The child support guidelines contained in this chapter are hereby adopted, effective August 1, 2000. The guidelines shall apply to cases pending on August 1, 2000. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 9.2 Charts.** The charts contained in this chapter are established as guidelines for use by the courts of this state in determining the amount of child support. The charts are applicable to modification of child support orders as provided in Iowa Code section 598.21(9). [Court Order November 9, 2001, effective February 15, 2002]

**Rule 9.3 Purpose.** The purpose of the guidelines is to provide for the best interests of the children by recognizing the duty of both parents to provide adequate support for their children in proportion to their respective incomes. While the guidelines cannot take into account the specific facts of individual cases, they will normally provide reasonable support. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 9.4 Guidelines rebuttable presumption.** In ordering child support, the court should determine the amount of support specified by the guidelines. There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. That amount may be adjusted upward or downward, however, if the court finds such adjustment necessary to provide for the needs of the children and to do justice between the parties under the special circumstances of the case. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 9.5 Net monthly income.** In the guidelines the term "net monthly income" means gross monthly income less deductions for the following:

**9.5(1)** Federal income tax (properly calculated withholding or estimated payments).

**9.5(2)** State income tax (properly calculated withholding or estimated payments).

**9.5(3)** Social security deductions.

**9.5(4)** Mandatory pension deductions.

**9.5(5)** Union dues.

**9.5(6)** Health insurance premium either deducted from wages or paid by a parent for health insurance so long as the child is covered by the policy.

**9.5(7)** Actual medical support paid pursuant to court order or administrative order.

**9.5(8)** Parent's unreimbursed medical expenses, not to exceed $25 per month.

**9.5(9)** Prior obligation of child support and spouse support actually paid pursuant to court or administrative order.

**9.5(10)** Qualified additional dependent deductions.

**9.5(11)** Actual child care expense while custodial parent is employed, less the appropriate income tax credit.

Other items, such as credit union payments, charitable deductions, savings or thrift plans, and voluntary pension plans, are not to be deducted from a parent's income, since the needs of the children must have a higher priority than voluntary savings or payment of indebtedness.

Gross monthly income does not include public assistance payments. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 9.6 Qualified additional dependent deduction.** To establish a qualified additional dependent deduction, the requesting party must demonstrate a legal obligation to the child(ren) through one of the following actions:

**9.6(1)** By order of a court of competent jurisdiction or by administrative order when authorized by state law.

**9.6(2)** By the statement of the person admitting paternity in court and upon concurrence of the mother. If the mother was married, at the time of birth or conception of the child, to an individual other than the person admitting paternity, the individual to whom the mother was married at the time of birth or conception must deny paternity in order to establish the paternity of the person admitting paternity upon the sole basis of the admission.

**9.6(3)** By the filing of an affidavit of paternity executed on or after July 1, 1993, as provided in Iowa Code section 252A.3A, provided that the mother of the child was unmarried at the time of birth and conception of the child or if the mother was married at the time of birth or conception of the child, a court of competent jurisdiction has determined that the individual to whom the mother was married at the time is not the father of the child.

**9.6(4)** By a child being born during the marriage unless the paternity has been determined otherwise by a court of competent jurisdiction. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 9.7 Deduction amount and use.**

**9.7(1)** The monthly deduction for qualified additional dependents (custodial or noncustodial) shall be:

*a.* $135 for one (1) child.

*b.* $213 for two (2) children.

*c.* $279 for three (3) children.

*d.* $330 for four (4) children.

*e.* $383 for five (5) or more children.

**9.7(2)** The qualified additional dependent deduction can be used for the establishment of original orders or in proceedings to modify an existing order. However, the deduction cannot be used to affect the threshold determination of eligibility for a downward modification of an existing order. After the threshold determination has been met, the deduction shall be used in the determination of the net monthly income. A deduction may be taken for a prior obligation for support actually paid (rule 9.5(9)) or a qualified additional dependent deduction (rule 9.5(10)) but both deductions cannot be used for the same child. A qualified additional dependency deduction cannot be claimed for a child for whom there is a prior court or administrative support order.

If the noncustodial parent's court-ordered visitation exceeds 127 days per year, the noncustodial parent shall receive a credit to the guideline amount of child support in accordance with the following table:

| Days | Credit |
|---|---|
| 128-147 | 25% |
| 148-166 | 30% |
| 167 or more | 35% |

For the purposes of this credit, "days" means overnights spent caring for the child. Failure to exercise court-ordered visitation may be a basis for modification. The credit for extraordinary visitation shall not reduce a child support obligation below the minimum amount required by the guidelines ($50 for one child, $75 for two children, $100 for three children, or $125 for four or more children). [Court Order November 9, 2001, effective February 15, 2002]

**Rule 9.8 Child support guidelines worksheet.** All parties shall file a child support guidelines worksheet prior to a support hearing or the establishment of a support order. The parties shall use Form 1 that accompanies these rules, unless both parties agree to use Form 2. The Child Support Recovery Unit (CSRU) shall use Form 2. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 9.9 Variance from guidelines.** The court shall not vary from the amount of child support which would result from application of the guidelines without a written finding that the guidelines would be unjust or inappropriate as determined under the following criteria:

**9.9(1)** Substantial injustice would result to the payor, payee, or child.

**9.9(2)** Adjustments are necessary to provide for the needs of the child and to do justice between the parties, payor, or payee under the special circumstances of the case.

**9.9(3)** Circumstances contemplated in Iowa Code section 234.39. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 9.10 Medical support order.** In addition, the court shall enter an order for medical support as required by statute.

"Uncovered medical expenses" means all medical expenses for the child not paid by insurance. The custodial parent shall pay the first $250 per year per child of uncovered medical expenses up to a maximum of $500 per year for all children. Uncovered medical expenses in excess of $250 per child or a maximum of $500 per year for all children shall be paid by the parents in proportion to their respective net incomes. "Medical expenses" shall include, but not be limited to, costs for reasonably necessary medical, orthodontia, dental treatment, physical therapy, eye care, including eye glasses or contact lenses, mental health treatment, substance abuse treatment, prescription drugs, and any other uncovered medical expense. Uncovered medical expenses are not to be deducted in arriving at net income. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 9.11 Stipulation for child and medical support court review.** A stipulation of the parties establishing child support and medical support shall be reviewed by the court to determine if the amount stipulated and the medical support provisions are in substantial compliance with the guidelines. A proposed order to incorporate the stipulation shall be reviewed by the court to determine its compliance with these guidelines. If a variance from the guidelines is proposed, the court must determine whether it is justified and appropriate, and, if so, include the stated reasons for the variance in the order. [Court Order November 9, 2001, effective February 15, 2002]

## Rule 9.12 Child Support Guidelines.

### CHART 1. IOWA CHILD SUPPORT GUIDELINES — ONE CHILD

| | | Noncustodial Parent's Net Monthly Income | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 0-500 | 501-600 | 601-700 | 701-800 | 801-900 | 901-1000 | 1001-2000 | 2001-3000 | 3001-4000 | 4001-5000 | 5001-6000 | 6001 & Over |
| Custodial Parent's Net Monthly Income | $0- 100 | | 14.0 | 19.0 | 23.0 | 25.3 | 25.6 | 25.8 | 24.3 | 21.9 | 19.9 | 19.4 | |
| | 101- 200 | | 14.0 | 19.0 | 23.0 | 24.9 | 25.3 | 25.5 | 24.1 | 21.7 | 19.9 | 19.3 | |
| | 201- 300 | * | 14.0 | 19.0 | 23.0 | 24.6 | 25.1 | 25.1 | 23.8 | 21.5 | 19.8 | 19.2 | ** |
| | 301- 400 | | 14.0 | 19.0 | 23.0 | 24.4 | 24.6 | 24.8 | 23.6 | 21.3 | 19.8 | 19.2 | |
| | 401- 500 | | 14.0 | 19.0 | 23.0 | 24.1 | 24.3 | 24.5 | 23.3 | 21.1 | 19.7 | 19.1 | |
| | 501- 600 | | 14.0 | 19.0 | 23.0 | 23.9 | 24.1 | 24.2 | 23.1 | 20.9 | 19.7 | 19.0 | |
| | 601- 700 | | 14.0 | 19.0 | 22.8 | 23.6 | 23.7 | 23.8 | 22.9 | 20.7 | 19.6 | 18.9 | |
| | 701- 800 | * | 14.0 | 19.0 | 22.5 | 23.4 | 23.5 | 23.5 | 22.6 | 20.5 | 19.6 | 18.8 | ** |
| | 801- 900 | | 14.0 | 19.0 | 22.2 | 23.1 | 23.2 | 23.2 | 22.4 | 20.3 | 19.5 | 18.8 | |
| | 901-1000 | | 14.0 | 19.0 | 21.9 | 22.6 | 22.8 | 22.8 | 22.1 | 20.1 | 19.5 | 18.7 | |
| | 1001-1100 | | 14.0 | 19.0 | 21.6 | 22.4 | 22.5 | 22.5 | 21.9 | 19.9 | 19.4 | 18.6 | |
| | 1101-1200 | | 14.0 | 19.0 | 21.2 | 22.4 | 22.5 | 22.5 | 21.7 | 19.9 | 19.3 | 18.5 | |
| | 1201-1300 | * | 14.0 | 19.0 | 20.9 | 22.1 | 22.4 | 22.5 | 21.5 | 19.8 | 19.2 | 18.4 | ** |
| | 1301-1400 | | 14.0 | 19.0 | 20.6 | 21.9 | 22.4 | 22.5 | 21.3 | 19.8 | 19.2 | 18.3 | |
| | 1401-1500 | | 14.0 | 18.9 | 20.3 | 21.6 | 22.4 | 22.5 | 21.1 | 19.7 | 19.1 | 18.2 | |
| | 1501-1600 | | 14.0 | 18.6 | 19.9 | 21.4 | 22.4 | 22.5 | 20.9 | 19.7 | 19.0 | 18.1 | |
| | 1601-1700 | | 14.0 | 18.2 | 19.6 | 21.1 | 22.4 | 22.5 | 20.7 | 19.6 | 18.9 | 18.0 | |
| | 1701-1800 | * | 14.0 | 17.8 | 19.3 | 20.8 | 22.4 | 22.5 | 20.5 | 19.6 | 18.8 | 17.9 | ** |
| | 1801-1900 | | 14.0 | 17.4 | 19.0 | 20.6 | 22.2 | 22.5 | 20.3 | 19.5 | 18.8 | 17.8 | |
| | 1901-2000 | | 14.0 | 17.0 | 18.7 | 20.3 | 22.0 | 22.5 | 20.1 | 19.5 | 18.7 | 17.7 | |
| | 2001-2100 | | 14.0 | 16.6 | 18.3 | 20.1 | 21.8 | 21.9 | 19.9 | 19.4 | 18.6 | 17.6 | |
| | 2101-2200 | | 14.0 | 16.2 | 18.0 | 19.8 | 21.7 | 21.7 | 19.9 | 19.3 | 18.5 | 17.4 | |
| | 2201-2300 | * | 13.9 | 15.8 | 17.7 | 19.6 | 21.5 | 21.5 | 19.8 | 19.2 | 18.4 | 17.3 | ** |
| | 2301-2400 | | 13.4 | 15.4 | 17.4 | 19.3 | 21.3 | 21.4 | 19.8 | 19.2 | 18.3 | 17.1 | |
| | 2401-2500 | | 13.0 | 15.0 | 17.1 | 19.1 | 21.1 | 21.2 | 19.7 | 19.1 | 18.2 | 16.9 | |
| | 2501-2600 | | 12.5 | 14.6 | 16.7 | 18.8 | 21.0 | 21.0 | 19.7 | 19.0 | 18.1 | 16.8 | |
| | 2601-2700 | | 12.1 | 14.2 | 16.4 | 18.6 | 20.8 | 20.8 | 19.6 | 18.9 | 18.0 | 16.6 | |
| | 2701-2800 | * | 11.6 | 13.8 | 16.1 | 18.3 | 20.6 | 20.6 | 19.6 | 18.8 | 17.9 | 16.4 | ** |
| | 2801-2900 | | 11.1 | 13.4 | 15.8 | 18.1 | 20.4 | 20.4 | 19.5 | 18.8 | 17.8 | 16.2 | |
| | 2901-3000 | | 10.7 | 13.1 | 15.4 | 17.8 | 20.2 | 20.2 | 19.5 | 18.7 | 17.7 | 16.1 | |
| | 3001-3100 | | 10.2 | 12.7 | 15.1 | 17.6 | 20.0 | 20.0 | 19.4 | 18.6 | 17.6 | 15.9 | |
| | 3101-3200 | | 9.7 | 12.3 | 15.1 | 17.6 | 19.7 | 19.9 | 19.3 | 18.5 | 17.5 | 15.9 | |
| | 3201-3300 | * | 9.2 | 11.9 | 15.1 | 17.6 | 19.5 | 19.9 | 19.2 | 18.4 | 17.4 | 15.9 | ** |
| | 3301-3400 | | 8.7 | 11.5 | 15.1 | 17.6 | 19.3 | 19.8 | 19.2 | 18.3 | 17.3 | 15.9 | |
| | 3401-3500 | | 8.3 | 11.1 | 15.1 | 17.6 | 19.1 | 19.8 | 19.1 | 18.2 | 17.2 | 15.9 | |
| | 3501-3600 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.9 | 19.7 | 19.0 | 18.1 | 17.1 | 15.9 | |
| | 3601-3700 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.7 | 19.6 | 18.9 | 18.0 | 17.0 | 15.9 | |
| | 3701-3800 | * | 8.3 | 11.1 | 15.1 | 17.6 | 18.5 | 19.6 | 18.8 | 17.9 | 16.9 | 15.9 | ** |
| | 3801-3900 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.3 | 19.5 | 18.8 | 17.8 | 16.8 | 15.9 | |
| | 3901-4000 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 19.5 | 18.7 | 17.7 | 16.7 | 15.9 | |
| | 4001-4100 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 19.4 | 18.6 | 17.6 | 15.9 | 15.9 | |
| | 4101-4200 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 19.3 | 18.5 | 17.5 | 15.9 | 15.9 | |
| | 4201-4300 | * | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 19.2 | 18.4 | 17.4 | 15.9 | 15.9 | ** |
| | 4301-4400 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 19.2 | 18.3 | 17.3 | 15.9 | 15.9 | |
| | 4401-4500 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 19.1 | 18.2 | 17.2 | 15.9 | 15.9 | |
| | 4501-4600 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 19.0 | 18.1 | 17.1 | 15.9 | 15.9 | |
| | 4601-4700 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.9 | 18.0 | 17.0 | 15.9 | 15.9 | |
| | 4701-4800 | * | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.8 | 17.9 | 16.9 | 15.9 | 15.9 | ** |
| | 4801-4900 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.8 | 17.8 | 16.8 | 15.9 | 15.9 | |
| | 4901-5000 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.7 | 17.7 | 16.7 | 15.9 | 15.9 | |
| | 5001-5100 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.6 | 17.6 | 15.9 | 15.9 | 15.9 | |
| | 5101-5200 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.5 | 17.4 | 15.9 | 15.9 | 15.9 | |
| | 5201-5300 | * | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.5 | 17.2 | 15.9 | 15.9 | 15.9 | ** |
| | 5301-5400 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.4 | 17.0 | 15.9 | 15.9 | 15.9 | |
| | 5401-5500 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.4 | 16.8 | 15.9 | 15.9 | 15.9 | |
| | 5501-5600 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.1 | 16.7 | 15.9 | 15.9 | 15.9 | |
| | 5601-5700 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.1 | 16.5 | 15.9 | 15.9 | 15.9 | |
| | 5701-5800 | * | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.1 | 16.3 | 15.9 | 15.9 | 15.9 | ** |
| | 5801-5900 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.1 | 16.1 | 15.9 | 15.9 | 15.9 | |
| | 5901-6000 | | 8.3 | 11.1 | 15.1 | 17.6 | 18.1 | 18.1 | 15.9 | 15.9 | 15.9 | 15.9 | |

To determine the monthly child support payments, multiply the noncustodial parent's net monthly income at the point where it intersects the custodial parent's net monthly income by the percentage shown on the chart.

*It is the policy of this state that every parent contribute to the support of his or her children in accordance with the means available. In this range the appropriate figure is $50 per month for one child, $75 for two children, $100 for three children, or $125 for four or more children.

**In this range the appropriate figure is deemed to be within the sound discretion of the court or the agency fixing support by administrative order. The amount of support payable by a noncustodial parent with a monthly net income of $6,001 or more shall be no less than the dollar amount as provided for in the guidelines for a noncustodial parent with a monthly net income of $6,000.

## CHART 2. IOWA CHILD SUPPORT GUIDELINES — TWO CHILDREN

| | | Noncustodial Parent's Net Monthly Income | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 0-500 | 501-600 | 601-700 | 701-800 | 801-900 | 901-1000 | 1001-2000 | 2001-3000 | 3001-4000 | 4001-5000 | 5001-6000 | 6001 & Over |
| Custodial Parent's Net Monthly Income | $0- 100 | | 20.0 | 27.0 | 32.0 | 36.8 | 37.1 | 37.2 | 35.7 | 32.2 | 29.2 | 28.5 | |
| | 101- 200 | | 20.0 | 27.0 | 32.0 | 36.1 | 36.5 | 36.5 | 35.4 | 31.9 | 29.1 | 28.4 | |
| | 201- 300 | * | 20.0 | 27.0 | 32.0 | 35.7 | 35.8 | 35.8 | 35.0 | 31.6 | 29.1 | 28.3 | ** |
| | 301- 400 | | 20.0 | 27.0 | 32.0 | 34.8 | 34.9 | 35.0 | 34.7 | 31.3 | 29.0 | 28.2 | |
| | 401- 500 | | 20.0 | 27.0 | 32.0 | 34.2 | 34.3 | 34.3 | 34.3 | 31.0 | 28.9 | 28.1 | |
| | 501- 600 | | 20.0 | 27.0 | 32.0 | 33.6 | 33.6 | 33.6 | 34.0 | 30.7 | 28.9 | 28.0 | |
| | 601- 700 | | 20.0 | 27.0 | 32.0 | 32.7 | 32.8 | 32.9 | 33.6 | 30.4 | 28.8 | 27.8 | |
| | 701- 800 | * | 20.0 | 27.0 | 31.9 | 32.0 | 32.1 | 32.2 | 33.3 | 30.1 | 28.7 | 27.7 | ** |
| | 801- 900 | | 20.0 | 27.0 | 31.2 | 31.3 | 31.4 | 31.4 | 32.9 | 29.8 | 28.6 | 27.6 | |
| | 901-1000 | | 20.0 | 27.0 | 30.5 | 30.6 | 30.7 | 30.7 | 32.6 | 29.5 | 28.6 | 27.5 | |
| | 1001-1100 | | 20.0 | 27.0 | 29.9 | 30.0 | 30.0 | 30.0 | 32.2 | 29.2 | 28.5 | 27.4 | |
| | 1101-1200 | | 20.0 | 27.0 | 29.7 | 30.0 | 30.0 | 30.0 | 31.9 | 29.1 | 28.4 | 27.2 | |
| | 1201-1300 | * | 20.0 | 27.0 | 29.7 | 30.0 | 30.0 | 30.0 | 31.6 | 29.1 | 28.3 | 27.1 | ** |
| | 1301-1400 | | 20.0 | 27.0 | 29.2 | 30.0 | 30.0 | 30.0 | 31.3 | 29.0 | 28.2 | 26.9 | |
| | 1401-1500 | | 20.0 | 27.0 | 28.6 | 30.0 | 30.0 | 30.0 | 31.0 | 28.9 | 28.1 | 26.8 | |
| | 1501-1600 | | 20.0 | 26.7 | 28.1 | 29.5 | 29.9 | 30.0 | 30.7 | 28.9 | 28.0 | 26.6 | |
| | 1601-1700 | | 20.0 | 26.1 | 27.6 | 29.0 | 29.8 | 30.0 | 30.4 | 28.8 | 27.8 | 26.4 | |
| | 1701-1800 | * | 20.0 | 25.5 | 27.0 | 28.5 | 29.7 | 30.0 | 30.1 | 28.7 | 27.7 | 26.3 | ** |
| | 1801-1900 | | 20.0 | 24.9 | 26.5 | 28.1 | 29.7 | 30.0 | 29.8 | 28.6 | 27.6 | 26.1 | |
| | 1901-2000 | | 20.0 | 24.2 | 25.9 | 27.6 | 29.2 | 30.0 | 29.5 | 28.6 | 27.5 | 26.0 | |
| | 2001-2100 | | 20.0 | 23.6 | 25.4 | 27.1 | 28.8 | 30.0 | 29.2 | 28.5 | 27.4 | 25.8 | |
| | 2101-2200 | | 20.0 | 23.0 | 24.8 | 26.6 | 28.4 | 30.0 | 29.1 | 28.4 | 27.2 | 25.6 | |
| | 2201-2300 | * | 20.0 | 22.4 | 24.3 | 26.2 | 28.0 | 30.0 | 29.1 | 28.3 | 27.1 | 25.3 | ** |
| | 2301-2400 | | 19.3 | 21.8 | 23.7 | 25.7 | 27.6 | 30.0 | 29.0 | 28.2 | 26.9 | 25.1 | |
| | 2401-2500 | | 18.6 | 21.2 | 23.2 | 25.2 | 27.2 | 30.0 | 28.9 | 28.1 | 26.8 | 24.8 | |
| | 2501-2600 | | 17.9 | 20.5 | 22.6 | 24.7 | 26.8 | 29.9 | 28.9 | 28.0 | 26.6 | 24.6 | |
| | 2601-2700 | | 17.2 | 19.9 | 22.1 | 24.3 | 26.4 | 29.7 | 28.8 | 27.8 | 26.4 | 24.3 | |
| | 2701-2800 | * | 16.4 | 19.3 | 21.5 | 23.8 | 26.0 | 29.6 | 28.7 | 27.7 | 26.3 | 24.1 | ** |
| | 2801-2900 | | 15.7 | 18.7 | 21.0 | 23.3 | 25.6 | 29.5 | 28.6 | 27.6 | 26.1 | 23.8 | |
| | 2901-3000 | | 15.0 | 18.1 | 20.4 | 22.8 | 25.2 | 29.3 | 28.6 | 27.5 | 26.0 | 23.6 | |
| | 3001-3100 | | 14.3 | 17.4 | 19.9 | 22.4 | 25.0 | 29.2 | 28.5 | 27.4 | 25.8 | 23.3 | |
| | 3101-3200 | | 13.6 | 16.8 | 19.9 | 22.4 | 25.0 | 29.1 | 28.4 | 27.2 | 25.6 | 23.3 | |
| | 3201-3300 | * | 12.9 | 16.2 | 19.9 | 22.4 | 25.0 | 29.1 | 28.3 | 27.1 | 25.3 | 23.3 | ** |
| | 3301-3400 | | 12.2 | 15.6 | 19.9 | 22.4 | 25.0 | 29.0 | 28.2 | 26.9 | 25.1 | 23.3 | |
| | 3401-3500 | | 11.5 | 15.0 | 19.9 | 22.4 | 25.0 | 28.9 | 28.1 | 26.8 | 24.8 | 23.3 | |
| | 3501-3600 | | 10.8 | 14.4 | 19.9 | 22.4 | 25.0 | 28.9 | 28.0 | 26.6 | 24.6 | 23.3 | |
| | 3601-3700 | | 10.1 | 13.8 | 19.9 | 22.4 | 25.0 | 28.8 | 27.8 | 26.4 | 24.3 | 23.3 | |
| | 3701-3800 | * | 9.4 | 13.2 | 19.9 | 22.4 | 25.0 | 28.7 | 27.7 | 26.3 | 24.1 | 23.3 | ** |
| | 3801-3900 | | 8.7 | 12.6 | 19.9 | 22.4 | 25.0 | 28.6 | 27.6 | 26.1 | 23.8 | 23.3 | |
| | 3901-4000 | | 8.3 | 12.0 | 19.9 | 22.4 | 25.0 | 28.6 | 27.5 | 26.0 | 23.6 | 23.3 | |
| | 4001-4100 | | 8.3 | 11.4 | 19.9 | 22.4 | 25.0 | 28.5 | 27.4 | 25.8 | 23.3 | 23.3 | |
| | 4101-4200 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 28.4 | 27.2 | 25.6 | 23.3 | 23.3 | |
| | 4201-4300 | * | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 28.3 | 27.1 | 25.3 | 23.3 | 23.3 | ** |
| | 4301-4400 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 28.2 | 26.9 | 25.1 | 23.3 | 23.3 | |
| | 4401-4500 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 28.1 | 26.8 | 24.8 | 23.3 | 23.3 | |
| | 4501-4600 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 28.0 | 26.6 | 24.6 | 23.3 | 23.3 | |
| | 4601-4700 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 27.8 | 26.4 | 24.3 | 23.3 | 23.3 | |
| | 4701-4800 | * | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 27.7 | 26.3 | 24.1 | 23.3 | 23.3 | ** |
| | 4801-4900 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 27.6 | 26.1 | 23.8 | 23.3 | 23.3 | |
| | 4901-5000 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 27.5 | 26.0 | 23.6 | 23.3 | 23.3 | |
| | 5001-5100 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 27.4 | 25.8 | 23.3 | 23.3 | 23.3 | |
| | 5101-5200 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 27.2 | 25.5 | 23.3 | 23.3 | 23.3 | |
| | 5201-5300 | * | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 27.0 | 25.2 | 23.3 | 23.3 | 23.3 | ** |
| | 5301-5400 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 26.9 | 25.0 | 23.3 | 23.3 | 23.3 | |
| | 5401-5500 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 26.7 | 24.7 | 23.3 | 23.3 | 23.3 | |
| | 5501-5600 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 26.5 | 24.4 | 23.3 | 23.3 | 23.3 | |
| | 5601-5700 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 26.3 | 24.1 | 23.3 | 23.3 | 23.3 | |
| | 5701-5800 | * | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 26.2 | 23.9 | 23.3 | 23.3 | 23.3 | ** |
| | 5801-5900 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 26.0 | 23.6 | 23.3 | 23.3 | 23.3 | |
| | 5901-6000 | | 8.3 | 11.3 | 19.9 | 22.4 | 25.0 | 25.8 | 23.3 | 23.3 | 23.3 | 23.3 | |

To determine the monthly child support payments, multiply the noncustodial parent's net monthly income at the point where it intersects the custodial parent's net monthly income by the percentage shown on the chart.

*It is the policy of this state that every parent contribute to the support of his or her children in accordance with the means available. In this range the appropriate figure is $50 per month for one child, $75 for two children, $100 for three children, or $125 for four or more children.

**In this range the appropriate figure is deemed to be within the sound discretion of the court or the agency fixing support by administrative order. The amount of support payable by a noncustodial parent with a monthly net income of $6,001 or more shall be no less than the dollar amount as provided for in the guidelines for a noncustodial parent with a monthly net income of $6,000.

## CHART 3. IOWA CHILD SUPPORT GUIDELINES — THREE CHILDREN

| | | Noncustodial Parent's Net Monthly Income | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 0-500 | 501-600 | 601-700 | 701-800 | 801-900 | 901-1000 | 1001-2000 | 2001-3000 | 3001-4000 | 4001-5000 | 5001-6000 | 6001 & Over |
| Custodial Parent's Net Monthly Income | $0- 100 | | 25.0 | 33.0 | 38.0 | 43.0 | 43.2 | 43.5 | 42.7 | 38.5 | 34.9 | 34.0 | |
| | 101- 200 | | 25.0 | 33.0 | 38.0 | 42.1 | 42.6 | 42.7 | 42.3 | 38.1 | 34.8 | 33.9 | |
| | 201- 300 | * | 25.0 | 33.0 | 38.0 | 41.5 | 41.7 | 41.8 | 41.9 | 37.8 | 34.7 | 33.7 | ** |
| | 301- 400 | | 25.0 | 33.0 | 38.0 | 40.9 | 41.0 | 41.0 | 41.4 | 37.4 | 34.6 | 33.6 | |
| | 401- 500 | | 25.0 | 33.0 | 38.0 | 39.9 | 40.0 | 40.1 | 41.0 | 37.1 | 34.5 | 33.4 | |
| | 501- 600 | | 25.0 | 33.0 | 38.0 | 39.1 | 39.2 | 39.3 | 40.6 | 36.7 | 34.5 | 33.3 | |
| | 601- 700 | | 25.0 | 33.0 | 38.0 | 38.4 | 38.4 | 38.4 | 40.2 | 36.3 | 34.4 | 33.2 | |
| | 701- 800 | * | 25.0 | 33.0 | 37.0 | 37.1 | 37.4 | 37.6 | 39.8 | 36.0 | 34.3 | 33.0 | ** |
| | 801- 900 | | 25.0 | 33.0 | 36.3 | 36.5 | 36.6 | 36.7 | 39.3 | 35.6 | 34.2 | 32.9 | |
| | 901-1000 | | 25.0 | 33.0 | 35.6 | 35.7 | 35.8 | 35.9 | 38.9 | 35.3 | 34.1 | 32.7 | |
| | 1001-1100 | | 25.0 | 33.0 | 34.8 | 35.0 | 35.0 | 35.0 | 38.5 | 34.9 | 34.0 | 32.6 | |
| | 1101-1200 | | 25.0 | 33.0 | 34.5 | 35.0 | 35.0 | 35.0 | 38.1 | 34.8 | 33.9 | 32.4 | |
| | 1201-1300 | * | 25.0 | 33.0 | 34.4 | 35.0 | 35.0 | 35.0 | 37.8 | 34.7 | 33.7 | 32.2 | ** |
| | 1301-1400 | | 25.0 | 32.4 | 33.7 | 35.0 | 35.0 | 35.0 | 37.4 | 34.6 | 33.6 | 32.1 | |
| | 1401-1500 | | 25.0 | 31.7 | 33.0 | 34.4 | 34.9 | 35.0 | 37.1 | 34.5 | 33.4 | 31.9 | |
| | 1501-1600 | | 25.0 | 30.9 | 32.4 | 33.8 | 34.8 | 35.0 | 36.7 | 34.5 | 33.3 | 31.7 | |
| | 1601-1700 | | 25.0 | 30.2 | 31.7 | 33.2 | 34.7 | 35.0 | 36.3 | 34.4 | 33.2 | 31.5 | |
| | 1701-1800 | * | 25.0 | 29.5 | 31.0 | 32.6 | 34.1 | 35.0 | 36.0 | 34.3 | 33.0 | 31.3 | ** |
| | 1801-1900 | | 25.0 | 28.7 | 30.3 | 32.0 | 33.6 | 35.0 | 35.6 | 34.2 | 32.9 | 31.2 | |
| | 1901-2000 | | 25.0 | 28.0 | 29.7 | 31.4 | 33.1 | 35.0 | 35.3 | 34.1 | 32.7 | 31.0 | |
| | 2001-2100 | | 24.6 | 27.2 | 29.0 | 30.8 | 32.5 | 35.0 | 34.9 | 34.0 | 32.6 | 30.8 | |
| | 2101-2200 | | 23.8 | 26.5 | 28.3 | 30.2 | 32.0 | 35.0 | 34.8 | 33.9 | 32.4 | 30.5 | |
| | 2201-2300 | * | 22.9 | 25.8 | 27.7 | 29.6 | 31.5 | 35.0 | 34.7 | 33.7 | 32.2 | 30.2 | ** |
| | 2301-2400 | | 22.1 | 25.0 | 27.0 | 29.0 | 31.0 | 35.0 | 34.6 | 33.6 | 32.1 | 29.9 | |
| | 2401-2500 | | 21.2 | 24.3 | 26.3 | 28.4 | 30.6 | 35.0 | 34.5 | 33.4 | 31.9 | 29.6 | |
| | 2501-2600 | | 20.4 | 23.6 | 25.7 | 27.8 | 30.2 | 35.0 | 34.5 | 33.3 | 31.7 | 29.3 | |
| | 2601-2700 | | 19.5 | 22.8 | 25.0 | 27.2 | 29.8 | 35.0 | 34.4 | 33.2 | 31.5 | 28.9 | |
| | 2701-2800 | * | 18.7 | 22.1 | 24.3 | 26.6 | 29.4 | 35.0 | 34.3 | 33.0 | 31.3 | 28.6 | ** |
| | 2801-2900 | | 17.8 | 21.4 | 23.7 | 26.0 | 29.0 | 35.0 | 34.2 | 32.9 | 31.2 | 28.3 | |
| | 2901-3000 | | 17.0 | 20.6 | 23.0 | 25.4 | 28.6 | 35.0 | 34.1 | 32.7 | 31.0 | 28.0 | |
| | 3001-3100 | | 16.1 | 19.9 | 22.3 | 24.8 | 28.2 | 34.9 | 34.0 | 32.6 | 30.8 | 27.7 | |
| | 3101-3200 | | 15.2 | 19.2 | 22.3 | 24.8 | 28.2 | 34.8 | 33.9 | 32.4 | 30.5 | 27.7 | |
| | 3201-3300 | * | 14.3 | 18.5 | 22.3 | 24.8 | 28.2 | 34.7 | 33.7 | 32.2 | 30.2 | 27.7 | ** |
| | 3301-3400 | | 13.4 | 17.8 | 22.3 | 24.8 | 28.2 | 34.6 | 33.6 | 32.1 | 29.9 | 27.7 | |
| | 3401-3500 | | 12.5 | 17.1 | 22.3 | 24.8 | 28.2 | 34.5 | 33.4 | 31.9 | 29.6 | 27.7 | |
| | 3501-3600 | | 11.6 | 16.4 | 22.3 | 24.8 | 28.2 | 34.5 | 33.3 | 31.7 | 29.3 | 27.7 | |
| | 3601-3700 | | 10.7 | 15.7 | 22.3 | 24.8 | 28.2 | 34.4 | 33.2 | 31.5 | 28.9 | 27.7 | |
| | 3701-3800 | * | 9.8 | 15.0 | 22.3 | 24.8 | 28.2 | 34.3 | 33.0 | 31.3 | 28.6 | 27.7 | ** |
| | 3801-3900 | | 8.9 | 14.3 | 22.3 | 24.8 | 28.2 | 34.2 | 32.9 | 31.2 | 28.3 | 27.7 | |
| | 3901-4000 | | 8.3 | 13.6 | 22.3 | 24.8 | 28.2 | 34.1 | 32.7 | 31.0 | 28.0 | 27.7 | |
| | 4001-4100 | | 8.3 | 12.9 | 22.3 | 24.8 | 28.2 | 34.0 | 32.6 | 30.8 | 27.7 | 27.7 | |
| | 4101-4200 | | 8.3 | 12.2 | 22.3 | 24.8 | 28.2 | 33.9 | 32.4 | 30.5 | 27.7 | 27.7 | |
| | 4201-4300 | * | 8.3 | 11.5 | 22.3 | 24.8 | 28.2 | 33.7 | 32.2 | 30.2 | 27.7 | 27.7 | ** |
| | 4301-4400 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 33.6 | 32.1 | 29.9 | 27.7 | 27.7 | |
| | 4401-4500 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 33.4 | 31.9 | 29.6 | 27.7 | 27.7 | |
| | 4501-4600 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 33.3 | 31.7 | 29.3 | 27.7 | 27.7 | |
| | 4601-4700 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 33.2 | 31.5 | 28.9 | 27.7 | 27.7 | |
| | 4701-4800 | * | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 33.0 | 31.3 | 28.6 | 27.7 | 27.7 | ** |
| | 4801-4900 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 32.9 | 31.2 | 28.3 | 27.7 | 27.7 | |
| | 4901-5000 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 32.7 | 31.0 | 28.0 | 27.7 | 27.7 | |
| | 5001-5100 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 32.6 | 30.8 | 27.7 | 27.7 | 27.7 | |
| | 5101-5200 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 32.4 | 30.5 | 27.7 | 27.7 | 27.7 | |
| | 5201-5300 | * | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 32.2 | 30.1 | 27.7 | 27.7 | 27.7 | ** |
| | 5301-5400 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 32.0 | 29.8 | 27.7 | 27.7 | 27.7 | |
| | 5401-5500 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 31.8 | 29.4 | 27.7 | 27.7 | 27.7 | |
| | 5501-5600 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 31.6 | 29.1 | 27.7 | 27.7 | 27.7 | |
| | 5601-5700 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 31.4 | 28.7 | 27.7 | 27.7 | 27.7 | |
| | 5701-5800 | * | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 31.2 | 28.4 | 27.7 | 27.7 | 27.7 | ** |
| | 5801-5900 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 31.0 | 28.0 | 27.7 | 27.7 | 27.7 | |
| | 5901-6000 | | 8.3 | 11.4 | 22.3 | 24.8 | 28.2 | 30.8 | 27.7 | 27.7 | 27.7 | 27.7 | |

To determine the monthly child support payments, multiply the noncustodial parent's net monthly income at the point where it intersects the custodial parent's net monthly income by the percentage shown on the chart.

*It is the policy of this state that every parent contribute to the support of his or her children in accordance with the means available. In this range the appropriate figure is $50 per month for one child, $75 for two children, $100 for three children, or $125 for four or more children.

**In this range the appropriate figure is deemed to be within the sound discretion of the court or the agency fixing support by administrative order. The amount of support payable by a noncustodial parent with a monthly net income of $6,001 or more shall be no less than the dollar amount as provided for in the guidelines for a noncustodial parent with a monthly net income of $6,000.

# CHART 4. IOWA CHILD SUPPORT GUIDELINES — FOUR CHILDREN

| | | Noncustodial Parent's Net Monthly Income | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 0-500 | 501-600 | 601-700 | 701-800 | 801-900 | 901-1000 | 1001-2000 | 2001-3000 | 3001-4000 | 4001-5000 | 5001-6000 | 6001 & Over |
| Custodial Parent's Net Monthly Income | $0- 100 | | 32.0 | 41.0 | 47.0 | 50.8 | 51.2 | 51.5 | 47.2 | 42.5 | 38.6 | 37.6 | |
| | 101- 200 | | 32.0 | 41.0 | 47.0 | 49.7 | 50.3 | 50.4 | 46.7 | 42.1 | 38.5 | 37.5 | |
| | 201- 300 | * | 32.0 | 41.0 | 47.0 | 49.0 | 49.1 | 49.2 | 46.3 | 41.7 | 38.4 | 37.3 | ** |
| | 301- 400 | | 32.0 | 41.0 | 47.0 | 47.7 | 47.9 | 48.1 | 45.8 | 41.3 | 38.3 | 37.2 | |
| | 401- 500 | | 32.0 | 41.0 | 46.7 | 46.8 | 46.9 | 46.9 | 45.3 | 40.9 | 38.2 | 37.0 | |
| | 501- 600 | | 32.0 | 41.0 | 45.3 | 45.5 | 45.7 | 45.8 | 44.9 | 40.6 | 38.1 | 36.9 | |
| | 601- 700 | | 32.0 | 41.0 | 44.3 | 44.4 | 44.5 | 44.6 | 44.4 | 40.2 | 38.0 | 36.7 | |
| | 701- 800 | * | 32.0 | 41.0 | 44.3 | 43.4 | 43.5 | 43.5 | 43.9 | 39.8 | 37.9 | 36.6 | ** |
| | 801- 900 | | 32.0 | 41.0 | 41.5 | 41.8 | 42.1 | 42.3 | 43.4 | 39.4 | 37.8 | 36.4 | |
| | 901-1000 | | 32.0 | 39.9 | 40.0 | 40.4 | 40.8 | 41.2 | 43.0 | 39.0 | 37.7 | 36.3 | |
| | 1001-1100 | | 32.0 | 39.9 | 40.0 | 40.0 | 40.0 | 40.0 | 42.5 | 38.6 | 37.6 | 36.1 | |
| | 1101-1200 | | 32.0 | 39.8 | 39.9 | 40.0 | 40.0 | 40.0 | 42.1 | 38.5 | 37.5 | 35.9 | |
| | 1201-1300 | * | 32.0 | 38.9 | 39.7 | 40.0 | 40.0 | 40.0 | 41.7 | 38.4 | 37.3 | 35.7 | ** |
| | 1301-1400 | | 32.0 | 38.1 | 39.4 | 40.0 | 40.0 | 40.0 | 41.3 | 38.3 | 37.2 | 35.5 | |
| | 1401-1500 | | 32.0 | 37.2 | 38.6 | 40.0 | 40.0 | 40.0 | 40.9 | 38.2 | 37.0 | 35.3 | |
| | 1501-1600 | | 32.0 | 36.3 | 37.8 | 39.3 | 39.8 | 40.0 | 40.6 | 38.1 | 36.9 | 35.1 | |
| | 1601-1700 | | 32.0 | 35.4 | 37.0 | 38.5 | 39.6 | 40.0 | 40.2 | 38.0 | 36.7 | 34.9 | |
| | 1701-1800 | * | 32.0 | 34.6 | 36.2 | 37.8 | 39.4 | 40.0 | 39.8 | 37.9 | 36.6 | 34.7 | ** |
| | 1801-1900 | | 31.0 | 33.7 | 35.4 | 37.1 | 38.7 | 40.0 | 39.4 | 37.8 | 36.4 | 34.5 | |
| | 1901-2000 | | 30.0 | 32.8 | 34.6 | 36.3 | 38.1 | 40.0 | 39.0 | 37.7 | 36.3 | 34.3 | |
| | 2001-2100 | | 29.0 | 31.9 | 33.8 | 35.6 | 37.4 | 40.0 | 38.6 | 37.6 | 36.1 | 34.1 | |
| | 2101-2200 | | 28.0 | 31.1 | 32.9 | 34.8 | 36.7 | 39.9 | 38.5 | 37.5 | 35.9 | 33.8 | |
| | 2201-2300 | * | 27.0 | 30.2 | 32.1 | 34.1 | 36.0 | 39.7 | 38.4 | 37.3 | 35.7 | 33.4 | ** |
| | 2301-2400 | | 26.0 | 29.3 | 31.3 | 33.3 | 35.3 | 39.6 | 38.3 | 37.2 | 35.5 | 33.1 | |
| | 2401-2500 | | 25.0 | 28.0 | 30.5 | 32.6 | 35.1 | 39.4 | 38.2 | 37.0 | 35.3 | 32.7 | |
| | 2501-2600 | | 24.0 | 27.6 | 29.7 | 31.8 | 34.6 | 39.3 | 38.1 | 36.9 | 35.1 | 32.4 | |
| | 2601-2700 | | 23.0 | 26.7 | 28.9 | 31.1 | 34.1 | 39.2 | 38.0 | 36.7 | 34.9 | 32.1 | |
| | 2701-2800 | * | 22.0 | 25.8 | 28.1 | 30.4 | 33.6 | 39.0 | 37.9 | 36.6 | 34.7 | 31.7 | ** |
| | 2801-2900 | | 21.0 | 24.9 | 27.3 | 29.6 | 33.1 | 38.9 | 37.8 | 36.4 | 34.5 | 31.4 | |
| | 2901-3000 | | 20.0 | 24.1 | 26.5 | 28.9 | 32.6 | 38.7 | 37.7 | 36.3 | 34.3 | 31.0 | |
| | 3001-3100 | | 19.0 | 23.2 | 25.7 | 28.1 | 32.1 | 38.6 | 37.6 | 36.1 | 34.1 | 30.7 | |
| | 3101-3200 | | 18.0 | 22.3 | 25.7 | 28.1 | 32.1 | 38.5 | 37.5 | 35.9 | 33.8 | 30.7 | |
| | 3201-3300 | * | 17.0 | 21.4 | 25.7 | 28.1 | 32.1 | 38.4 | 37.3 | 35.7 | 33.4 | 30.7 | ** |
| | 3301-3400 | | 16.0 | 20.5 | 25.7 | 28.1 | 32.1 | 38.3 | 37.2 | 35.5 | 33.1 | 30.7 | |
| | 3401-3500 | | 15.0 | 19.6 | 25.7 | 28.1 | 32.1 | 38.2 | 37.0 | 35.3 | 32.7 | 30.7 | |
| | 3501-3600 | | 14.0 | 18.7 | 25.7 | 28.1 | 32.1 | 38.1 | 36.9 | 35.1 | 32.4 | 30.7 | |
| | 3601-3700 | | 13.0 | 17.8 | 25.7 | 28.1 | 32.1 | 38.0 | 36.7 | 34.9 | 32.1 | 30.7 | |
| | 3701-3800 | * | 12.0 | 16.9 | 25.7 | 28.1 | 32.1 | 37.9 | 36.6 | 34.7 | 31.7 | 30.7 | ** |
| | 3801-3900 | | 11.0 | 16.0 | 25.7 | 28.1 | 32.1 | 37.8 | 36.4 | 34.5 | 31.4 | 30.7 | |
| | 3901-4000 | | 10.0 | 15.1 | 25.7 | 28.1 | 32.1 | 37.7 | 36.3 | 34.3 | 31.0 | 30.7 | |
| | 4001-4100 | | 9.0 | 14.2 | 25.7 | 28.1 | 32.1 | 37.6 | 36.1 | 34.1 | 30.7 | 30.7 | |
| | 4101-4200 | | 8.3 | 13.3 | 25.7 | 28.1 | 32.1 | 37.5 | 35.9 | 33.8 | 30.7 | 30.7 | |
| | 4201-4300 | * | 8.3 | 12.4 | 25.7 | 28.1 | 32.1 | 37.3 | 35.7 | 33.4 | 30.7 | 30.7 | ** |
| | 4301-4400 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 37.2 | 35.5 | 33.1 | 30.7 | 30.7 | |
| | 4401-4500 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 37.0 | 35.3 | 32.7 | 30.7 | 30.7 | |
| | 4501-4600 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 36.9 | 35.1 | 32.4 | 30.7 | 30.7 | |
| | 4601-4700 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 36.7 | 34.9 | 32.1 | 30.7 | 30.7 | |
| | 4701-4800 | * | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 36.6 | 34.7 | 31.7 | 30.7 | 30.7 | ** |
| | 4801-4900 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 36.4 | 34.5 | 31.4 | 30.7 | 30.7 | |
| | 4901-5000 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 36.3 | 34.3 | 31.0 | 30.7 | 30.7 | |
| | 5001-5100 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 36.1 | 34.1 | 30.7 | 30.7 | 30.7 | |
| | 5101-5200 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 35.9 | 33.7 | 30.7 | 30.7 | 30.7 | |
| | 5201-5300 | * | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 35.7 | 33.3 | 30.7 | 30.7 | 30.7 | ** |
| | 5301-5400 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 35.4 | 33.0 | 30.7 | 30.7 | 30.7 | |
| | 5401-5500 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 35.2 | 32.6 | 30.7 | 30.7 | 30.7 | |
| | 5501-5600 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 35.0 | 32.2 | 30.7 | 30.7 | 30.7 | |
| | 5601-5700 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 34.8 | 31.8 | 30.7 | 30.7 | 30.7 | |
| | 5701-5800 | * | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 34.5 | 31.5 | 30.7 | 30.7 | 30.7 | ** |
| | 5801-5900 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 34.3 | 31.1 | 30.7 | 30.7 | 30.7 | |
| | 5901-6000 | | 8.3 | 11.6 | 25.7 | 28.1 | 32.1 | 34.1 | 30.7 | 30.7 | 30.7 | 30.7 | |

To determine the monthly child support payments, multiply the noncustodial parent's net monthly income at the point where it intersects the custodial parent's net monthly income by the percentage shown on the chart.

*It is the policy of this state that every parent contribute to the support of his or her children in accordance with the means available. In this range the appropriate figure is $50 per month for one child, $75 for two children, $100 for three children, or $125 for four or more children.

**In this range the appropriate figure is deemed to be within the sound discretion of the court or the agency fixing support by administrative order. The amount of support payable by a noncustodial parent with a monthly net income of $6,001 or more shall be no less than the dollar amount as provided for in the guidelines for a noncustodial parent with a monthly net income of $6,000.

## CHART 5. IOWA CHILD SUPPORT GUIDELINES — FIVE OR MORE CHILDREN

| | | Noncustodial Parent's Net Monthly Income | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 0-500 | 501-600 | 601-700 | 701-800 | 801-900 | 901-1000 | 1001-2000 | 2001-3000 | 3001-4000 | 4001-5000 | 5001-6000 | 6001 & Over |
| Custodial Parent's Net Monthly Income | $0- 100 | | 32.0 | 41.0 | 47.0 | 50.8 | 51.2 | 51.5 | 51.1 | 46.1 | 41.8 | 40.7 | |
| | 101- 200 | | 32.0 | 41.0 | 47.0 | 49.7 | 50.3 | 50.8 | 50.6 | 45.7 | 41.7 | 40.5 | |
| | 201- 300 | * | 32.0 | 41.0 | 47.0 | 49.0 | 49.7 | 50.2 | 50.1 | 45.2 | 41.6 | 40.4 | ** |
| | 301- 400 | | 32.0 | 41.0 | 47.0 | 48.3 | 49.0 | 49.5 | 49.6 | 44.8 | 41.5 | 40.2 | |
| | 401- 500 | | 32.0 | 41.0 | 46.8 | 47.6 | 48.4 | 48.9 | 49.1 | 44.4 | 41.4 | 40.1 | |
| | 501- 600 | | 32.0 | 41.0 | 46.1 | 46.9 | 47.7 | 48.2 | 48.6 | 44.0 | 41.3 | 39.9 | |
| | 601- 700 | | 32.0 | 41.0 | 45.3 | 46.2 | 47.1 | 47.6 | 48.1 | 43.5 | 41.1 | 39.7 | |
| | 701- 800 | * | 32.0 | 41.0 | 44.5 | 45.5 | 46.5 | 47.0 | 47.6 | 43.1 | 41.0 | 39.6 | ** |
| | 801- 900 | | 32.0 | 41.0 | 43.7 | 44.8 | 45.8 | 46.3 | 47.1 | 42.7 | 40.9 | 39.4 | |
| | 901-1000 | | 32.0 | 41.0 | 43.0 | 44.1 | 45.2 | 45.7 | 46.6 | 42.2 | 40.8 | 39.3 | |
| | 1001-1100 | | 32.0 | 41.0 | 42.2 | 43.3 | 44.5 | 45.0 | 46.1 | 41.8 | 40.7 | 39.1 | |
| | 1101-1200 | | 32.0 | 40.2 | 41.4 | 42.6 | 43.9 | 45.0 | 45.7 | 41.7 | 40.5 | 38.9 | |
| | 1201-1300 | * | 32.0 | 39.3 | 40.6 | 41.9 | 43.2 | 45.0 | 45.2 | 41.6 | 40.4 | 38.7 | ** |
| | 1301-1400 | | 32.0 | 38.5 | 39.9 | 41.2 | 42.6 | 45.0 | 44.8 | 41.5 | 40.2 | 38.4 | |
| | 1401-1500 | | 32.0 | 37.7 | 39.1 | 40.5 | 42.0 | 45.0 | 44.4 | 41.4 | 40.1 | 38.2 | |
| | 1501-1600 | | 32.0 | 36.8 | 38.3 | 39.8 | 41.6 | 45.0 | 44.0 | 41.3 | 39.9 | 38.0 | |
| | 1601-1700 | | 32.0 | 36.0 | 37.5 | 39.1 | 41.1 | 45.0 | 43.5 | 41.1 | 39.7 | 37.8 | |
| | 1701-1800 | * | 32.0 | 35.1 | 36.7 | 38.4 | 40.6 | 45.0 | 43.1 | 41.0 | 39.6 | 37.6 | ** |
| | 1801-1900 | | 31.0 | 34.3 | 36.0 | 37.7 | 40.2 | 45.0 | 42.7 | 40.9 | 39.4 | 37.3 | |
| | 1901-2000 | | 30.0 | 33.4 | 35.2 | 36.9 | 39.6 | 45.0 | 42.2 | 40.8 | 39.3 | 37.1 | |
| | 2001-2100 | | 29.0 | 32.6 | 34.4 | 36.2 | 39.2 | 45.0 | 41.8 | 40.7 | 39.1 | 36.9 | |
| | 2101-2200 | | 28.0 | 31.8 | 33.6 | 35.5 | 38.7 | 44.7 | 41.7 | 40.5 | 38.9 | 36.5 | |
| | 2201-2300 | * | 27.0 | 30.9 | 32.9 | 34.8 | 38.2 | 44.4 | 41.6 | 40.4 | 38.7 | 36.2 | ** |
| | 2301-2400 | | 26.0 | 30.1 | 32.1 | 34.1 | 37.8 | 44.0 | 41.5 | 40.2 | 38.4 | 35.8 | |
| | 2401-2500 | | 25.0 | 29.2 | 31.3 | 33.4 | 37.2 | 43.7 | 41.4 | 40.1 | 38.2 | 35.4 | |
| | 2501-2600 | | 24.0 | 28.4 | 30.5 | 32.7 | 36.8 | 43.4 | 41.3 | 39.9 | 38.0 | 35.1 | |
| | 2601-2700 | | 23.0 | 27.6 | 29.8 | 32.0 | 36.4 | 43.1 | 41.1 | 39.7 | 37.8 | 34.7 | |
| | 2701-2800 | * | 22.0 | 26.7 | 29.0 | 31.3 | 35.9 | 42.8 | 41.0 | 39.6 | 37.6 | 34.3 | ** |
| | 2801-2900 | | 21.0 | 25.9 | 28.2 | 30.6 | 35.4 | 42.4 | 40.9 | 39.4 | 37.3 | 33.9 | |
| | 2901-3000 | | 20.0 | 25.0 | 27.4 | 30.0 | 35.0 | 42.1 | 40.8 | 39.3 | 37.1 | 33.6 | |
| | 3001-3100 | | 19.0 | 24.2 | 26.7 | 29.4 | 34.6 | 41.8 | 40.7 | 39.1 | 36.9 | 33.2 | |
| | 3101-3200 | | 18.0 | 23.3 | 26.7 | 29.4 | 34.6 | 41.7 | 40.5 | 38.9 | 36.5 | 33.2 | |
| | 3201-3300 | * | 17.0 | 22.4 | 26.7 | 29.4 | 34.6 | 41.6 | 40.4 | 38.7 | 36.2 | 33.2 | ** |
| | 3301-3400 | | 16.0 | 21.5 | 26.7 | 29.4 | 34.6 | 41.5 | 40.2 | 38.4 | 35.8 | 33.2 | |
| | 3401-3500 | | 15.0 | 20.6 | 26.7 | 29.4 | 34.6 | 41.4 | 40.1 | 38.2 | 35.4 | 33.2 | |
| | 3501-3600 | | 14.0 | 19.7 | 26.7 | 29.4 | 34.6 | 41.3 | 39.9 | 38.0 | 35.1 | 33.2 | |
| | 3601-3700 | | 13.0 | 18.8 | 26.7 | 29.4 | 34.6 | 41.1 | 39.7 | 37.8 | 34.7 | 33.2 | |
| | 3701-3800 | * | 12.0 | 17.9 | 26.7 | 29.4 | 34.6 | 41.0 | 39.6 | 37.6 | 34.3 | 33.2 | ** |
| | 3801-3900 | | 11.0 | 17.0 | 26.7 | 29.4 | 34.6 | 40.9 | 39.4 | 37.3 | 33.9 | 33.2 | |
| | 3901-4000 | | 10.0 | 16.1 | 26.7 | 29.4 | 34.6 | 40.8 | 39.3 | 37.1 | 33.6 | 33.2 | |
| | 4001-4100 | | 9.0 | 15.2 | 26.7 | 29.4 | 34.6 | 40.7 | 39.1 | 36.9 | 33.2 | 33.2 | |
| | 4101-4200 | | 8.3 | 14.3 | 26.7 | 29.4 | 34.6 | 40.5 | 38.9 | 36.5 | 33.2 | 33.2 | |
| | 4201-4300 | * | 8.3 | 13.4 | 26.7 | 29.4 | 34.6 | 40.4 | 38.7 | 36.2 | 33.2 | 33.2 | ** |
| | 4301-4400 | | 8.3 | 12.5 | 26.7 | 29.4 | 34.6 | 40.2 | 38.4 | 35.8 | 33.2 | 33.2 | |
| | 4401-4500 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 40.1 | 38.2 | 35.4 | 33.2 | 33.2 | |
| | 4501-4600 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 39.9 | 38.0 | 35.1 | 33.2 | 33.2 | |
| | 4601-4700 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 39.7 | 37.8 | 34.7 | 33.2 | 33.2 | |
| | 4701-4800 | * | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 39.6 | 37.6 | 34.3 | 33.2 | 33.2 | ** |
| | 4801-4900 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 39.4 | 37.3 | 33.9 | 33.2 | 33.2 | |
| | 4901-5000 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 39.3 | 37.1 | 33.6 | 33.2 | 33.2 | |
| | 5001-5100 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 39.1 | 36.9 | 33.2 | 33.2 | 33.2 | |
| | 5101-5200 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 38.9 | 36.4 | 33.1 | 33.1 | 33.1 | |
| | 5201-5300 | * | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 38.6 | 35.9 | 33.0 | 33.0 | 33.0 | ** |
| | 5301-5400 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 38.4 | 35.3 | 32.9 | 32.9 | 32.9 | |
| | 5401-5500 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 38.1 | 34.8 | 32.8 | 32.8 | 32.8 | |
| | 5501-5600 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 37.9 | 34.3 | 32.6 | 32.6 | 32.6 | |
| | 5601-5700 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 37.6 | 33.8 | 32.5 | 32.5 | 32.5 | |
| | 5701-5800 | * | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 37.4 | 33.2 | 32.4 | 32.4 | 32.4 | ** |
| | 5801-5900 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 37.1 | 32.7 | 32.3 | 32.3 | 32.3 | |
| | 5901-6000 | | 8.3 | 11.7 | 26.7 | 29.4 | 34.6 | 36.9 | 32.2 | 32.2 | 32.2 | 32.2 | |

To determine the monthly child support payments, multiply the noncustodial parent's net monthly income at the point where it intersects the custodial parent's net monthly income by the percentage shown on the chart.

*It is the policy of this state that every parent contribute to the support of his or her children in accordance with the means available. In this range the appropriate figure is $50 per month for one child, $75 for two children, $100 for three children, or $125 for four or more children.

**In this range the appropriate figure is deemed to be within the sound discretion of the court or the agency fixing support by administrative order. The amount of support payable by a noncustodial parent with a monthly net income of $6,001 or more shall be no less than the dollar amount as provided for in the guidelines for a noncustodial parent with a monthly net income of $6,000.

[Administrative Directive September 29, 1987; adopted as permanent guidelines, effective October 12, 1989, by Court Order September 29, 1989 (received for publication November 6, 1990); Court Order October 16, 1990, effective December 31, 1990; Court Order April 28, 1995, (received for publication June 28, 1995) effective July 1, 1995; Court Order May 9, 2000, effective August 1, 2000; November 9, 2001, effective February 15, 2002]

**Rule 9.13 Child Support Guidelines Worksheets.**
**Rule 9.13 Form 1:** ***Child Support Guidelines Worksheet.***

**FORM 1**
**CHILD SUPPORT GUIDELINES WORKSHEET**

Docket No: _____

**I. NET MONTHLY INCOME OF PETITIONER,** _____
(claiming _____ child/children as tax dependents)

**A. Sources and Amounts of Annual Income:**

| | | |
|---|---|---|
| _____ | $ _____ | |
| _____ | $ _____ | |
| _____ | $ _____ | |
| | TOTAL: | $ _____ |

**B. Federal Tax Deduction:**

| | | |
|---|---|---|
| Gross Annual Taxable Income (_____ untaxed) | $ _____ | |
| less ½ self employment (FICA) tax | < _____ > | |
| less federal adjustments to income | < _____ > | |
| less personal exemptions, self + ___ dep. | < _____ > | |
| less standard deduction | | |
| single [ ] h of h [ ] mfs [ ] mfj [ ] | < _____ > | |
| Net taxable income - federal | $ _____ | |
| Federal tax liability (from tax table) | | < _____ > |
| Federal Tax Credit for Dependent Children (nonrefundable) | | + _____ |
| Federal Earned Income Credit (refundable) | | + _____ |

**C. State Tax Deduction:**

| | | |
|---|---|---|
| Gross Annual Taxable Income | $ _____ | |
| less ½ self employment (FICA) tax | < _____ > | |
| less state adjustments to income | < _____ > | |
| less federal tax liability (adjusted for dependent tax credit) | < _____ > | |
| less standard deduction | | |
| single [ ] h of h [ ] mfs [ ] mfj [ ] | < _____ > | |
| Net taxable income - state | $ _____ | |
| State tax liability (from tax table) $ _____ | | |
| less personal and dependent credits < _____ > | | |
| plus school district surtax (____%) + _____ | | |
| less Iowa Earned Income Credit < _____ > | | < _____ > |

**D. Social Security and Medicare Tax Deduction:**

| | | |
|---|---|---|
| Annual earned income | $ _____ | |
| Applicable rate (7.65% or 15.3%, as adjusted) | × _____ % | |
| Annual Social Security and Medicare tax liability | | < _____ > |

**E. Other Deductions (Annual)**

| | | |
|---|---|---|
| 1. Union dues | | < _____ > |
| 2. Mandatory pension | | < _____ > |
| 3. Medical insurance premium | | < _____ > |
| 4. Affiant's unreimbursed medical expenses (up to $300) | | < _____ > |
| 5. Prior court-ordered child support obligations | | < _____ > |
| 6. Court-ordered spousal support obligations | | < _____ > |
| 7. Deduction for _____ additional qualified dependents (from tables) | | < _____ > |
| 8. Child care expenses (present action) | $ _____ | |
| less federal child care tax credit | < _____ > | |
| less state child care tax credit | < _____ > | |
| Net child care expenses | | < _____ > |
| **Net Annual Income** | | $ _____ |
| **Average Monthly Income (Petitioner)** | | $ _____ |

Child Support Guidelines Worksheet *(cont'd)*

**II. NET MONTHLY INCOME OF RESPONDENT, _____**

(claiming _____ child/children as tax dependents)

**A. Sources and Amounts of Annual Income:**

| | | |
|---|---|---|
| _____ | $ _____ | |
| _____ | $ _____ | |
| _____ | $ _____ | |
| TOTAL | | $ _____ |

**B. Federal Tax Deduction:**

| | | |
|---|---|---|
| Gross Annual Taxable Income (_____ untaxed) | $ _____ | |
| less ½ self employment (FICA) tax | < _____ > | |
| less federal adjustments to income | < _____ > | |
| less personal exemptions, self + ___ dep. | < _____ > | |
| less standard deduction | | |
| single [ ] h of h [ ] mfs [ ] mfj [ ] | < _____ > | |
| Net taxable income - federal | $ _____ | |
| Federal tax liability (from tax table) | | < _____ > |
| Federal Tax Credit for Dependent Children (nonrefundable) | | + _____ |
| Federal Earned Income Credit (refundable) | | + _____ |

**C. State Tax Deduction:**

| | | |
|---|---|---|
| Gross Annual Taxable Income | $ _____ | |
| less ½ self employment (FICA) tax | < _____ > | |
| less state adjustments to income | < _____ > | |
| less federal tax liability (adjusted for dependent tax credit) | < _____ > | |
| less standard deduction | | |
| single [ ] h of h [ ] mfs [ ] mfj [ ] | < _____ > | |
| Net taxable income - state | $ _____ | |
| State tax liability (from tax table) $ _____ | | |
| less personal and dependent credits < _____ > | | |
| plus school district surtax (_____%) + _____ | | |
| less Iowa Earned Income Credit < _____ > | | < _____ > |

**D. Social Security and Medicare Tax Deduction:**

| | | |
|---|---|---|
| Annual earned income | $ _____ | |
| Applicable rate (7.65% or 15.3%, as adjusted) | × _____ % | |
| Annual Social Security and Medicare tax liability | | < _____ > |

**E. Other Deductions (Annual)**

| | | |
|---|---|---|
| 1. Union dues | | < _____ > |
| 2. Mandatory pension | | < _____ > |
| 3. Medical insurance premium | | < _____ > |
| 4. Affiant's unreimbursed medical expenses (up to $300) | | < _____ > |
| 5. Prior court-ordered child support obligations | | < _____ > |
| 6. Court-ordered spousal support obligations | | < _____ > |
| 7. Deduction for _____ additional qualified dependents (from tables) | | < _____ > |
| 8. Child care expenses (present action) | $ _____ | |
| less federal child care tax credit | < _____ > | |
| less state child care tax credit | < _____ > | |
| Net child care expenses | | < _____ > |
| **Net Annual Income** | | $ _____ |
| **Average Monthly Income (Respondent)** | | $ _____ |

Child Support Guidelines Worksheet *(cont'd)*

**III. CALCULATION OF THE GUIDELINE AMOUNT OF SUPPORT**

A. Custodial parent's net monthly income $ _____
Noncustodial parent's net monthly income $ _____

B. Number of children for whom support is sought _____
Guideline percentage: _____%

C. Guideline amount of child support $ _____

**IV. EXTRAORDINARY VISITATION ADJUSTMENT** (only if court-ordered visitation exceeds 127 overnights per year)

A. Guideline amount of child support $ _____
B. Number of court-ordered visitation overnights with noncustodial parent _____
C. Extraordinary Visitation Adjustment Percentage: _____%
If Line B above is 128-147 overnights 25% credit
If Line B above is 148-166 overnights 30% credit
If Line B above is 167 or more overnights 35% credit
D. Extraordinary Visitation Adjustment (Line A times Line C) $ _____
E. Guideline Amount Adjusted for Extraordinary Visitation (Line A minus Line D) $ _____

**V. SPECIAL FINDINGS**

A. Income imputed to Petitioner/Respondent

B. Estimated income of Petitioner/Respondent

C. Deviations made from Child Support Guidelines

D. Requested amount of child support $ _____ per month

STATE OF IOWA, COUNTY OF _____: ss:

I, _____, do hereby swear or affirm that the foregoing statement is true, complete and correct as I verily believe from all information available to me at this time.

Date: _____ _____
(Petitioner/Respondent)

The undersigned attorney for the (Petitioner/Respondent) hereby certifies that the foregoing Child Support Guidelines Worksheets were prepared by me or at my direction in good faith reliance upon information available to me at this time.

_____
(Attorney for Petitioner/Respondent)

[Report November 9, 2001, effective February 15, 2002]

**Rule 9.13 Form 2:** ***Child Support Guidelines Worksheet.***

**FORM 2**
**CHILD SUPPORT GUIDELINES WORKSHEET**
Date: _____

Docket No: _____ Dependents: _____

| Noncustodial Parent's Income: | Custodial Parent's Income: |
|---|---|
| Name: _____ | Name: _____ |
| Method(s) Used to Determine Income | Method(s) Used to Determine Income |
| ( ) Parent's Financial Statement | ( ) Parent's Financial Statement |
| ( ) Other Sources (Net) | ( ) Other Sources (Net) |
| Total Gross Monthly Income: $ _____ | Total Gross Monthly Income: $ _____ |
| Deductions: | Deductions: |
| Federal Income Tax: $ _____ | Federal Income Tax: $ _____ |
| State Income Tax: $ _____ | State Income Tax: $ _____ |
| Social Security: $ _____ | Social Security: $ _____ |
| Union Dues: $ _____ | Union Dues: $ _____ |
| Mandatory Pension: $ _____ | Mandatory Pension: $ _____ |
| Health Insurance Premium $ _____ | Health Insurance Premium $ _____ |
| Parent's unreimbursed medical expenses not to exceed $25 per month: $ _____ | Parent's unreimbursed medical expenses not to exceed $25 per month: $ _____ |
| Prior Court-Ordered Child Support or Alimony Obligation (if paid): $ _____ | Prior Court-Ordered Child Support or Alimony Obligation (if paid): $ _____ |
| Prior Court-Ordered Medical Support (if paid): $ _____ | Prior Court-Ordered Medical Support (if paid): $ _____ |
| *Qualif. Add. Depend. Deduct: $ _____ | Actual Child Care Expense Due to Employment (less the appropriate income tax credit): $ _____ |
| | *Qualif. Add. Depend. Deduct: $ _____ |
| Total Net Monthly Income: $ _____ | Total Net Monthly Income: $ _____ |

I. Noncustodial Parent's Total Net Monthly Income: $ _____

Custodial Parent's Total Net Monthly Income: $ _____

II. Number of Children for Whom Support is Sought: _____

III. Guideline Percentage/Specified Dollar Amount: $ _____

IV. _____ (Percentage) × $ _____ (Noncustodial Parent's Net Monthly Income) = $ _____ (Guideline Amount of Child Support)

Child Support Guidelines Worksheet *(cont'd)*

V. EXTRAORDINARY VISITATION ADJUSTMENT: Complete only if noncustodial parent's court-ordered visitation exceeds 127 overnights per year.

| | | |
|---|---|---|
| A. | Guideline Amount of Child Support (Line IV above) | $ |
| B. | Number of court-ordered visitation overnights with the noncustodial parent | |
| C. | Extraordinary Visitation Adjustment Percentage:<br>If Line B above is 128-147 overnights 25% credit (0.25)<br>If Line B above is 148-166 overnights 30% credit (0.30)<br>If Line B above is 167 or more overnights 35% credit (0.35) | |
| D. | Extraordinary Visitation Adjustment (Line A times Line C) | $ |
| E. | Guideline Amount Adjusted for Extraordinary Visitation (Line A minus Line D) | $ |

VI. Deviations: _____

_____

VII. Recommended Amount of Support: $_____ per _____

VII-a. Recommended Amount of Accrued Support: $_____ See attachment _____

VIII. Changes in Support Obligation as Number of Children Entitled to Support Changes (Based on present income and guidelines):

Number of Children: _____

VIII-a. Guideline Percentage/Specified Dollar Amount: $_____ _____%

VIII-b. _____ (Percentage) × $_____ (Noncustodial Parent's Net Monthly Income) = $_____ (Guideline Amount of Child Support)

VIII-b(1). EXTRAORDINARY VISITATION ADJUSTMENT: Complete only if noncustodial parent's court-ordered visitation exceeds 127 overnights per year.

| | | |
|---|---|---|
| A. | Guideline Amount of Child Support (Line VIII-b above) | $ |
| B. | Number of court-ordered visitation overnights with the noncustodial parent | |
| C. | Extraordinary Visitation Adjustment Percentage:<br>If Line B above is 128-147 overnights 25% credit (0.25)<br>If Line B above is 148-166 overnights 30% credit (0.30)<br>If Line B above is 167 or more overnights 35% credit (0.35) | |
| D. | Extraordinary Visitation Adjustment (Line A times Line C) | $ |
| E. | Guideline Amount Adjusted for Extraordinary Visitation (Line A minus Line D) | $ |

Number of Children: _____

VIII-c. Guideline Percentage/Specified Dollar Amount: $_____ _____%

VIII-d. _____ (Percentage) × $_____ (Noncustodial Parent's Net Monthly Income) = $_____ (Guideline Amount of Child Support)

Child Support Guidelines Worksheet *(cont'd)*

VIII-d(1). EXTRAORDINARY VISITATION ADJUSTMENT: Complete only if noncustodial parent's court-ordered visitation exceeds 127 overnights per year.

| | | |
|---|---|---|
| A. | Guideline Amount of Child Support (Line VIII-c above) | $ |
| B. | Number of court-ordered visitation overnights with the noncustodial parent | |
| C. | Extraordinary Visitation Adjustment Percentage:<br>If Line B above is 128-147 overnights 25% credit (0.25)<br>If Line B above is 148-166 overnights 30% credit (0.30)<br>If Line B above is 167 or more overnights 35% credit (0.35) | |
| D. | Extraordinary Visitation Adjustment (Line A times Line C) | $ |
| E. | Guideline Amount Adjusted for Extraordinary Visitation (Line A minus Line D) | $ |

IX. *Qualified Additional Dependent Deduction:

| Child's Name | Whose Child | Date of Birth | Court/ Admin. Order | In Court Stmt. & Consent | Paternity Affidavit | Child Born During Marriage |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

STATE OF IOWA, COUNTY OF _____: ss:

I, _____, do hereby swear or affirm that the foregoing statement is true, complete and correct as I verily believe from all information available to me at this time.

Date: _____ _____
(Petitioner/Respondent)**

The undersigned attorney for the (Petitioner/Respondent) hereby certifies that the foregoing Child Support Guidelines Worksheets were prepared by me or at my direction in good faith reliance upon information available to me at this time.

Date: _____ _____
(Attorney for the Petitioner/Respondent)**

Prepared by:

_____ Date: _____

_____ Date: _____

*See guidelines for the definition of this term.
**Child Support Recovery Unit is not required to obtain signatures.

[Court Order November 9, 2001, effective February 15, 2002]

# CHAPTER 10
# GUIDELINES FOR THE FORFEITURE AND RESTORATION OF A BOND POSTED PURSUANT TO IOWA CODE SECTION 598.21(8A)

**Rule 10.1 Cash bond.** If, during a modification action subject to the provisions of Iowa Code section 598.21(8A), the district court makes a finding that the parent awarded physical care of the child has previously interfered with the minor child's access to the other parent, the court may order the posting of a cash bond to assure future compliance with the visitation provisions of the decree. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 10.2 Return of bond.** The court's order requiring the bond may include terms upon which the parent might apply for return of the bond after a reasonable period of compliance with the decree's visitation provisions. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 10.3 Hearing.** Upon application of the parent in whose favor the bond was posted, the court may schedule a hearing to determine whether the parent with physical care has continued to interfere with visitation and if the bond should be forfeited. Reasonable notice and an opportunity to be heard shall be given to all parties. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 10.4 Forfeiture of bond.** If the court finds the parent with the physical care of the child has continued to interfere with visitation, it may order the bond forfeited to the other parent and a new cash bond posted. [Court Order October 27, 1999] [Court Order November 9, 2001, effective February 15, 2002]

# CHAPTER 11
# RULES GOVERNING STANDARDS OF PRACTICE FOR LAWYER MEDIATORS IN FAMILY DISPUTES

**Rule 11.1 Family mediation – definition.** For the purpose of these standards, family mediation is defined as a process in which a lawyer alone or with individuals from other disciplines helps family members resolve their disputes in an informal and consensual manner. This process requires that an impartial mediator be qualified by training, experience, and temperament. The participants should reach decisions voluntarily, with decisions being based on sufficient factual data and understanding. While family mediation may be viewed as an alternative means of conflict resolution, it is not a substitute for the benefit of independent legal advice. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 11.2 Pre-mediation orientation session.** The mediator has a duty to define and describe the process of mediation and its costs before the parties reach an agreement to mediate.

Before the actual mediation sessions begin, the mediator shall conduct an orientation session to give an overview of the process and to assess the appropriateness of mediation for the participants. Among the topics covered during the orientation session, the mediator shall discuss the following:

**11.2(1)** The mechanics of the process, so that the participants understand the differences between mediation and other available means of conflict resolution. In defining the process, the mediator also shall distinguish mediation from therapy or marriage counseling.

**11.2(2)** The issues to be resolved in mediation as mutually defined by the participants.

**11.2(3)** The alternative ways of resolving problems, with the caveat that all decisions are to be made voluntarily by the participants, since the mediator's views are to be given no independent weight or credence.

**11.2(4)** The duties and responsibilities agreed to by the mediator and participants in the mediation process. If the mediator or one of the parties is not able or willing to participate in good faith, then either participant, or the mediator, has the right to suspend or terminate the process at any time.

**11.2(5)** The fees for mediation. It is inappropriate for a mediator to charge a contingency fee or to base the fee on the outcome of the mediation process.

**11.2(6)** The need to employ independent legal counsel for advice throughout the mediation process. The mediator shall inform the participants that the mediator cannot represent either or both of them in any other legal matter during the mediation process or for a period of three years after termination of the mediation process. The mediator cannot undertake the mediation if either of the participants previously has been a client, or a client of the mediator's law firm.

**11.2(7)** The issue of separate sessions and under which circumstances the mediator may meet alone with either participant or with any third party.

**11.2(8)** The emotions which play a part in the decision-making process. The mediator shall attempt to elicit from each participant a confirmation that each understands the connection between one's own emotions and the bargaining process. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 11.3 Disclosure limitations for mediators.** The mediator shall not voluntarily disclose information obtained through the mediation process without the prior consent of both participants.

**11.3(1)** At the outset of mediation, the parties should agree in writing to require the mediator not to disclose to any third party any statements made in the course of mediation, unless such disclosure is required by law, without the prior consent of the participants. The mediator shall also inform the parties of the limitations of confidentiality such as statutory or judicially mandated reporting.

**11.3(2)** If subpoenaed or otherwise notified to testify, the mediator shall inform the participants immediately so as to afford them an opportunity to undertake action to quash the process.

**11.3(3)** The mediator shall inform the participants of the mediator's inability to bind third parties to an agreement. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 11.4 Mediator – impartiality.** The mediator has a duty to be impartial.

**11.4(1)** The mediator shall disclose to the participants any biases or strong views relating to the issues to be mediated, both in the orientation session, and also before the issues are discussed in mediation.

**11.4(2)** The mediator must be impartial as between the participants. The mediator's task is to facilitate the ability of the participants to negotiate their own agreement, while raising questions as to the fairness, equity, and feasibility of proposed options for settlement.

**11.4(3)** The mediator has a duty to ensure that the participants consider fully the best interests of any affected child and that they understand the consequences of any decision they reach concerning the child, apart from a desire for any particular parenting arrangement. If the mediator believes that any proposed agreement does not protect the best interests of any affected child, the mediator has a duty to inform the participants of this belief and its basis.

**11.4(4)** The mediator shall not communicate with either party alone, or with any third party, to discuss mediation issues without the prior consent of the participants.

**11.4(5)** The mediator shall obtain an agreement from the participants during the orientation session as to whether, and under what circumstances, the mediator may speak directly and separately with each participant's lawyer during the mediation process. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 11.5 Assuring full disclosure by participants.** The mediator has a duty to assure that the participants make decisions based upon sufficient information and knowledge.

**11.5(1)** The mediator shall assure that there is full financial and factual disclosure, such as each would reasonably receive in the discovery process, or that the participants have sufficient information to waive intelligently the right to such disclosure.

**11.5(2)** In addition to requiring this disclosure, the mediator shall promote the equal understanding of such information before any agreement is reached. This consideration shall require the mediator to recommend expert or legal consultation in the event it appears that additional knowledge or understanding is necessary for balanced negotiations. The mediator shall assure that each participant has had the opportunity to fully understand the implications and ramifications of all available options. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 11.6 Termination of mediation.** The mediator has a duty to suspend or terminate mediation whenever continuation of the process would harm one or more of the participants.

**11.6(1)** If the mediator believes that the participants are unable or unwilling to meaningfully participate in the process or that reasonable agreement is unlikely, the mediator may suspend or terminate mediation and should encourage the parties to seek appropriate professional help. The mediator shall not participate in a process that the mediator believes will result in harm to a participant.

**11.6(2)** The mediator has a duty to assure a balanced dialogue and must attempt to diffuse any manipulative or intimidating negotiation techniques utilized by either of the participants. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 11.7 Mediator's duty to advise participants to obtain legal advice.** The mediator has a continuing duty to advise each of the participants to obtain legal review prior to reaching any agreement.

**11.7(1)** At the beginning of the mediation process, the mediator shall inform the participants that each should employ independent legal counsel for advice and that counsel should be consulted throughout the process. In order to promote the integrity of the process, the mediator shall not refer either of the participants to any particular lawyer. When an attorney referral is requested, the parties should be referred to the Iowa State Bar Association's Lawyer Referral Service.

**11.7(2)** The mediator shall obtain an agreement from the participants that their lawyer, upon request, shall be entitled to review all the factual documentation provided by the participants in the mediation process.

**11.7(3)** Any proposed agreement which is prepared in the mediation process should be reviewed separately by independent counsel before it is signed. If the participants, or either of them, choose to proceed without independent counsel, the mediator shall warn them of the risks involved in not being represented, and shall provide them with the following statement in writing:

WARNING

Without review and advice by your own independent legal counsel, you may be giving up legal rights to which you are entitled, or running certain risks of which you are not aware, with respect to the following types of issues:

(1) Real and personal property division.

(2) Income tax consequences resulting from an agreement regarding division of property, alimony, or child support.

(3) Accurate documenting and recording of conveyances and proper title to real estate or personal property.

(4) Alimony.

(5) Child custody, visitation, and support.

(6) Court costs and attorney fees.

(7) Subsequent modifications and substantial changes in circumstances.

(8) Court disapproval of any submitted agreement which is contrary to the parties', or an affected child's, legal rights.

The above is not a complete list of legal rights and is not meant to be. There may be other considerations unique to the circumstances of your individual case. You should consult a lawyer for advice.

[Court Order November 9, 2001, effective February 15, 2002]

**Rule 11.8 Mediator's compliance with rules.** The mediator shall comply with these Standards of Practice at all times.

**11.8(1)** The mediator shall not offer any services in connection with a mediation process or to any participant if the mediator would be unable to comply fully with these Standards of Practice. Under such circumstances, the mediator shall promptly suspend the process until compliance is achieved, or terminate the process.

**11.8(2)** Notice of complaints about, or violations of, any of the provisions of this chapter shall be initiated or received by the Iowa Supreme Court Board of Professional Ethics and Conduct and processed pursuant to chapters 35 and 36. [Court Order December 31, 1986, effective February 2, 1987; November 9, 2001, effective February 15, 2002]

# CHAPTER 12
# RULES FOR INVOLUNTARY HOSPITALIZATION OF MENTALLY ILL PERSONS

[Forms included at rule 12.36]
*See* Iowa Code section 229.40

**Rule 12.1 Application – forms obtained from clerk.** A form for application seeking the involuntary hospitalization or treatment of any person on grounds of serious mental impairment may be obtained from the clerk of court in a county in which the person whose hospitalization is sought resides or is presently located. Such application may be filled out and presented to the clerk by any person who has an interest in the treatment of another for serious mental impairment and who has sufficient contact with or knowledge about that person to provide the information required on the face of the application and by Iowa Code section 229.6. The clerk or clerk's designee shall provide the forms required by Iowa Code section 229.6 to the person who desires to file the application for involuntary commitment. The clerk shall see that all the necessary information required by Iowa Code section 229.6 accompanies the application. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]
*See rule* 12.36, Forms 1, 2

**Rule 12.2 Termination of proceedings – insufficient grounds.** If the judge or referee determines that insufficient grounds to warrant a hearing on the respondent's serious mental impairment appear on the face of the application and supporting documentation, the judge or referee shall order the proceedings terminated, so notify the applicant, and all papers and records pertaining thereto shall be confidential and subject to the provisions of Iowa Code section 229.24. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.3 Notice to respondent – requirements.**

**12.3(1)** If the judge or referee determines that sufficient grounds to warrant a hearing on the respondent's serious mental impairment appear on the face of the application and supporting documentation, the sheriff or sheriff's deputy shall immediately serve notice, personally and not by substitution, on the respondent. Pursuant to Iowa Code section 229.9, notice shall also be served on respondent's attorney as soon as the attorney is identified or appointed by the judge or referee.

**12.3(2)** If the respondent is being taken into immediate custody pursuant to Iowa Code section 229.11, the notice shall include a copy of the order required by section 229.11 and rule 12.14.
*See rule* 12.36, Form 4

**12.3(3)** The notice of procedures required under Iowa Code section 229.7 shall inform the respondent of the following:

*a.* The respondent's immediate right to counsel, at county expense if necessary.

*b.* The right to request an examination by a physician of the respondent's choosing, at county expense if necessary.

*c.* The right to be present at the hearing.

*d.* The right to a hearing within five days if the respondent is taken into immediate custody pursuant to Iowa Code section 229.11.

*e.* The right not to be forced to hearing sooner than forty-eight hours after notice, unless respondent waives such minimum prior notice requirement.

*f.* The respondent's duty to remain in the jurisdiction and the consequences of an attempt to leave.

*g.* The respondent's duty to submit to examination by a physician appointed by the court. [Supreme Court Report 1979; amendment 1982; November 9, 2001, effective February 15, 2002]
*See* 12.36, Form 3

**Rule 12.4 Notice requirement – waiver.** The respondent may waive the minimum prior notice requirement only in writing and only if the judge or referee determines that the respondent's best interests will not be harmed by such waiver. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.5 Hearings – continuance.** At the request of the respondent or the respondent's attorney, the hearing provided in Iowa Code section 229.12 may be continued beyond the statutory limit in order that the respondent's attorney has adequate time to prepare for the case, and in such instances custody pursuant to Iowa Code section 229.11 may be extended by court order until the hearing is held. The continuance shall be no longer than five days beyond the statutory limit, unless respondent gives written consent to the longer continuance. [Supreme Court Report 1979; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.6 Attorney conference with respondent – location – transportation.** If the respondent is involuntarily confined prior to the hearing pursuant to a determination under Iowa Code section 229.11, the respondent's attorney may apply to the judge or referee for an opportunity to confer with the respondent, in a place other than the place of confinement, in advance of the hearing provided for in Iowa Code section 229.12. The order shall provide for transportation and the type of custody and responsibility therefor during the period the respondent is away from the place of confinement under this rule. [Supreme Court Report 1979; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.7 Service, other than personal.** If personal service as defined in rule 12.3 cannot be made, any respondent may be served as provided by court order, consistent with due process of law. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.8 Return of service.** Returns of service of notice shall be made as provided in Iowa R. Civ. P. 1.308. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.9 Amendment of proof of service.** Amendment of process or proof of service shall be allowed in the manner provided in Iowa R. Civ. P. 1.309. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.10 Attorney evidence and argument – predetermination.** If practicable the court should allow the respondent's attorney to present evidence and argument prior to the judge's determination under Iowa Code section 229.11. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.11 Attorney evidence and argument – after confinement.** If the respondent's attorney is afforded no opportunity to present evidence and argument prior to the determination under Iowa Code section 229.11, the attorney shall be entitled to do so after the determination during the course of respondent's confinement pursuant to an order issued under that section. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.12 Examination report to attorney.** The clerk shall furnish the respondent's attorney with a copy of the examination report filed pursuant to Iowa Code section 229.10(2), as soon as possible after receipt. In ruling on any request for an extension of time under Iowa Code section 229.10(4), the court shall consider the time available to the respondent's attorney after receipt of the examination report to prepare for the hearing and to prepare responses from physicians engaged by the respondent, where relevant. Respondent's attorney shall promptly file a copy of a report of any physician who has examined respondent and whose evidence the attorney expects to use at the hearing. The clerk shall provide the court and the county attorney with a copy thereof when filed. [Supreme Court Report 1979; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.13 Physician's report.** The court-designated physician shall submit a written report of the examination as required by Iowa Code section 229.10(2) on the form designated for use by the supreme court. The report shall contain the following information, or as much thereof as is available to the physician making the report:

(1) Respondent's name;
(2) Address;
(3) Date of birth;
(4) Place of birth;
(5) Sex;
(6) Occupation;
(7) Marital status;
(8) Number of children, and names;
(9) Nearest relative's name, relationship, and address; and
(10) The physician's diagnosis and recommendations with a detailed statement of the facts, symptoms and overt acts observed or described to the physician, which led to the diagnosis. [Supreme Court Report 1979; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.14 Probable cause.** The judge's or referee's immediate custody order under Iowa Code section 229.11 shall include a finding of probable cause to believe that the respondent is seriously mentally impaired and is likely to inflict self-injury or injure others if allowed to remain at liberty. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.15 Hearing – county location.** The hearing provided in Iowa Code section 229.12 shall be held in the county where the application was filed unless the judge or referee finds that the best interests of the respondent would be served by transferring the proceedings to a different location. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.16 Hearing – location at hospital or treatment facility.** The hearing required by Iowa Code section 229.12 may be held at a hospital or other treatment facility, provided a proper room is available and provided such a location would not be detrimental to the best interests of the respondent. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.17 Respondent's rights explained before hearing.** The respondent's rights as set out in rule 12.3(3) and the possible consequences of the procedures shall be explained to the respondent by the respondent's attorney to the extent possible. Prior to the commencement of the hearing under Iowa Code section 229.12, the judge or referee shall ascertain whether the respondent has been so informed. [Supreme Court Report 1979; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.18 Subpoenas.** Subpoena power shall be available to all parties participating in the proceedings, and subpoenas or other investigative demands may be enforced by the judge or referee. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.19 Presence at hearing – exceptions.**

**12.19(1)** The person(s) filing the application and any physician or mental health professionals who have examined respondent and have submitted a written examination of the respondent in connection with the hospitalization proceedings must be present at the hearing conducted under Iowa Code section 229.12 unless their presence is waived by the respondent's attorney, the judge or referee finds their presence is not necessary, or their testimony can be taken through telephonic means and the respondent's attorney does not object.

**12.19(2)** The respondent must be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing to respondent's absence, such stipulation to state that the attorney has conversed with the respondent, that in the attorney's judgment the respondent can make no meaningful contribution to the hearing, and the basis for such conclusions. A stipulation to the respondent's absence shall be reviewed by the judge or referee before the hearing, and may be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by respondent's absence. [Supreme Court Report 1979; amendment 1980; October 11, 1991, effective January 2, 1992; November 9, 2001, effective February 15, 2002]

**Rule 12.20 Hearing – electronic recording.** An electronic recording or other verbatim record of the hearing provided in Iowa Code section 229.12 shall be made and retained for three years or until the respondent has been discharged from involuntary custody for 90 days, whichever is longer. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.21 Transfer from county of confinement.** If the respondent is in custody in another county prior to the hearing provided in Iowa Code section 229.12, respondent's attorney may request that the respondent be delivered to the county in which the hearing will be held prior thereto in order to facilitate preparation by respondent's attorney. Such requests should be denied only if they are unreasonable and if the denial would not harm respondent's interests in representation by counsel. This rule is not intended to authorize permanent transfer of the respondent to another facility without conformance to appropriate statutory procedures. [Supreme Court Report 1979; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.22 Evaluation and treatment.** If the respondent is found by the court to be seriously mentally impaired following a hearing under Iowa Code section 229.12, evaluation and treatment shall proceed as set out in Iowa Code section 229.13. [Supreme Court Report 1979; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.23 Evaluation – time extension.** If, pursuant to Iowa Code section 229.13, the chief medical officer requests an extension of time for evaluation beyond 15 days, the chief medical officer shall file application in the form prescribed by this chapter with the clerk of court in the county in which the hearing was held. The application shall contain a statement by the chief medical officer or the officer's designee identifying with reasonable particularity the facts and reasons in support of the request for extension. The clerk shall immediately notify the respondent's attorney of the request and shall furnish a copy of the application to the attorney. The clerk shall also immediately furnish a copy of the application to the respondent's advocate, if one has been appointed. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

*See* rule 12.36, Form 17

**Rule 12.24 Evaluation report.** The findings of the chief medical officer pursuant to Iowa Code section 229.14 must state with reasonable particularity on the form prescribed by this chapter the facts and basis for the diagnostic conclusions concerning the respondent's serious mental impairment and recommended treatment, including but not limited to: The basis for the chief medical officer's conclusion as to respondent's mental illness, judgmental capacity concerning need for treatment, treatability, and dangerousness; and the basis for the chief medical officer's conclusions concerning recommended treatment including the basis for the judgment that the chief medical officer's treatment recommendation is the least restrictive alternative treatment pursuant to options (1), (2), (3), or (4) of Iowa Code section 229.14. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

*See* rule 12.36, Form 18

**Rule 12.25 Reports issued by clerk.** The clerk shall promptly furnish copies of all reports issued under Iowa Code section 229.15 to the patient's attorney or advocate or to both if they both are serving in their respective capacities at the same time, and such reports shall comply substantially with the requirements of rule 12.24. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.26 Clerk's filing system.** The clerk shall institute an orderly system for filing periodic reports required under Iowa Code section 229.15 and shall in timely fashion ascertain when a report is overdue. In the event a report is not filed, the clerk shall contact the chief medical officer of the treatment facility and obtain a report. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.27 Emergency detention – magistrate's approval.** If the magistrate does not immediately proceed to the facility where a person is detained pursuant to Iowa Code section 229.22, the magistrate shall verbally communicate approval or disapproval of the detention and such communication shall be duly noted by the chief medical officer of the facility on the form prescribed by this chapter. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]
*See* rule 12.36, Form 27

**Rule 12.28 Emergency detention – medical officer absent from facility.** If the facility to which the respondent is delivered pursuant to Iowa Code section 229.22 lacks a chief medical officer, the person then in charge of the facility shall, if treatment appears necessary to protect the respondent, immediately notify a physician. The person in charge of the facility shall then immediately notify the magistrate. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]
*See* rule 12.36, Forms 27, 28

**Rule 12.29 Attorney appointed.** As soon as practicable after the respondent's delivery to a facility under Iowa Code section 229.22, the magistrate shall identify or appoint an attorney for the respondent and shall immediately notify such attorney of respondent's emergency detention. If counsel can be identified at the time of respondent's arrival at a facility, or if legal services are available through a legal aid or public defender office, the magistrate must immediately notify such counsel and such counsel shall be afforded an opportunity to see the respondent and to make such preparation as is appropriate before or after the magistrate's order is issued. [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.30 Chemotherapy procedure.** When chemotherapy has been instituted prior to a hearing under Iowa Code section 229.12, the chief medical officer of the facility where the respondent is hospitalized shall, prior to the hearing, submit to the clerk of the district court where the hearing is to be held, a report in writing listing all types of chemotherapy given for purposes of affecting the respondent's behavior or mental state during any period of custody authorized by Iowa Code section 229.4(3), 229.11 or 229.22. For each type of chemotherapy the report shall indicate either the chemotherapy was given with the consent of the patient or the patient's next of kin or guardian or the way the chemotherapy was "necessary to preserve the patient's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue." The report shall also include the effect of the chemotherapy on the respondent's behavior or mental state. The clerk shall file the original report in the court file, advise the judge or referee and the respondent's attorney accordingly and provide a copy of the report to respondent's attorney if so requested. [Supreme Court Report 1979; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.31 Outpatient treatment plan.** If, pursuant to Iowa Code section 229.14(3), the chief medical officer determines that the patient is suited for outpatient care, the chief medical officer (or a designee) shall determine the specific care and treatment guidelines upon which the outpatient status will be based and shall discuss these guidelines with the patient. These written guidelines shall be known as the Outpatient Treatment Plan (O.T.P.). If the chief medical officer (or a designee) alleges that the O.T.P. has been breached, the judge or a judicial hospitalization referee shall hold a hearing as provided by Iowa Code sections 229.14(3) and 229.12 to determine whether the patient should be rehospitalized, whether the O.T.P. should be revised, or whether some other remedy should be ordered. The patient shall be given reasonable notice of such a hearing. [Supreme Court Report 1982; amendment 1983; November 9, 2001, effective February 15, 2002]

**Rules 12.32** to **12.35** Reserved.

**Rule 12.36 Forms for involuntary hospitalization of mentally ill persons.**

**Rule 12.36 Form 1.** ***Application Alleging Serious Mental Impairment Pursuant to Iowa Code Section 229.6.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

DATE: _____

TIME: _____

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**APPLICATION ALLEGING SERIOUS MENTAL IMPAIRMENT PURSUANT TO IOWA CODE SECTION 229.6** |
|---|---|

I _____, of _____ (address), allege Respondent is suffering from serious mental impairment. In support thereof I state as follows:

Based on the above facts, I believe Respondent is a danger to himself or herself or others or may be causing serious emotional injury to persons who are unable to remove themselves from Respondent's presence.

Do you request the respondent be taken into immediate custody? Yes _____ No _____

Attached hereto is a written statement of a licensed physician in support of this application.

Attached hereto is an affidavit corroborating these allegations.

(Strike the one not applicable.)

_____
Applicant

State of Iowa
_____County } ss

I, the undersigned, do solemnly swear or affirm that the matters alleged in the above application, to which my name is affixed, are true as stated, as I verily believe.

_____
Applicant

Subscribed and sworn to (or affirmed) before the undersigned this _____ day of _____, 20 _____.

_____
Notary Public in and for the State of Iowa

Form 1 [Supreme Court Report 1979; amendment 1981; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 2.** ***Affidavit in Support of Application Alleging Serious Mental Impairment Pursuant to Iowa Code Section 229.6.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**AFFIDAVIT IN SUPPORT OF APPLICATION ALLEGING SERIOUS MENTAL IMPAIRMENT PURSUANT TO IOWA CODE SECTION 229.6** |

I _____, of _____ (address), being first duly sworn on oath, depose and state that I am acquainted with Respondent who resides at _____ (Street) _____ (City), _____ County, Iowa and that I believe the above named person is seriously mentally impaired.

In support thereof, I state as follows:

_____

Subscribed and sworn to before undersigned this _____ day of _____, 20 _____.

_____
Notary Public in and for the State of Iowa

_____
Clerk of Iowa District Court

Form 2 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 3.** ***Notice to Respondent Pursuant to Iowa Code Section 229.7.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**NOTICE TO RESPONDENT PURSUANT TO IOWA CODE SECTION 229.7** |

TO: _____

You are hereby notified that there is now on file in the office of the Clerk of District Court of _____ County, Iowa, a verified application alleging that: _____ is seriously mentally impaired and a fit subject for custody and treatment, as shown by the application and (Report of the Physician) (Supporting Affidavits) on file in this proceeding, copies of which are attached; and that said matter will come on for hearing on said application before said Court at the _____ County, Iowa, on the _____ day of _____, 20 _____, at _____ o'clock _____ m.; and that such Order will be on said Hearing as may appear to the Court to be for the best interest of said person.

You are further notified you have the following rights in connection with this matter:

1. THE RIGHT TO THE ASSISTANCE OF AN ATTORNEY. If you cannot afford an attorney, one will be appointed for you at county expense.

2. THE RIGHT TO AN EXAMINATION BY A PHYSICIAN OF YOUR OWN CHOOSING. If you cannot afford an examination by your physician, you may have such an examination at county expense.

3. THE RIGHT TO A HEARING WITHIN 5 DAYS, and no sooner than 48 hours (except Saturdays, Sundays, and holidays) if you are presently in custody.

4. THE RIGHT TO A HEARING NO SOONER THAN 48 HOURS AFTER SERVICE OF THIS NOTICE (except Saturdays, Sundays, and holidays) if you are not presently in custody.

5. THE RIGHT TO BE PRESENT AT THE HEARING.

You are hereby advised that:

1. You must not leave the county while awaiting hearing. If you leave the county, you may be taken into custody.

2. You must submit to an examination by a physician appointed by the court. If you do not, the court may order you to do so.

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

Notice to Respondent Pursuant to Iowa Code Section 229.7 *(cont'd)*

RETURN OF SERVICE

State of Iowa
_____County } ss

The within notice received this _____ day of _____, 20 _____, and I certify that on the _____ day of _____, 20 ___, at _____m., I served the same on _____ by delivering a copy thereof to said _____ in the City, Township of _____ in _____ County, State of Iowa.

_____
Sheriff, _____ County

By _____
Deputy Sheriff

Form 3 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 4.** ***Order for Immediate Custody Pursuant to Iowa Code Section 229.11.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

DATE: _____

TIME: _____

| IN THE MATTER OF: | No. _____ |
|---|---|
| _____, ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED, | **ORDER FOR IMMEDIATE CUSTODY PURSUANT TO IOWA CODE SECTION 229.11** |
| Respondent. | |

A request has been presented that respondent should be immediately detained due to serious mental impairment. After review of the application and supporting documentation, I find there is probable cause to believe respondent is seriously mentally impaired and is likely to injure himself or herself or others if allowed to remain at liberty.

This finding is based on the following facts:

*1. I hereby order that respondent shall be detained in the custody of _____ until the hearing date pursuant to Iowa Code section 229.11(1).

*2. Because I find the less restrictive alternative of custody pursuant to Iowa Code section 229.11(1) will not be sufficient to protect respondent from himself or herself or others, I hereby order that respondent shall be detained at _____ until the hearing date pursuant to Iowa Code section 229.11(2).

*3. Because I find no less restrictive alternative is sufficient, I hereby order that respondent shall be detained at _____, a facility licensed to care for persons with mental illness or substance abuse.

*(Strike two of these three numbered provisions.)

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

Form 4 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 5.** ***Order Appointing Attorney Pursuant to Iowa Code Section 229.8.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**ORDER APPOINTING ATTORNEY PURSUANT TO IOWA CODE SECTION 229.8** |

AND NOW, TO-WIT, on this _____ day of _____, 20 _____, on Application previously filed with the (Court) (Judicial Hospitalization Referee) acting for and in behalf of _____ County, Iowa, alleging that the above named person is seriously mentally impaired, and upon which hearing was fixed by the (Court) (Judicial Hospitalization Referee), for the _____ day of _____, 20 _____, being presented to this (Court) (Judicial Hospitalization Referee), and upon showing made that the said person is unrepresented at this time and that no arrangements have been made either by the said person or any member of the family to procure such representation, it is now ORDERED by the (Court) (Judicial Hospitalization Referee) that _____, a regular practicing attorney for the _____ County, Iowa, Bar be and is hereby appointed to represent the said person at this hearing and at each adjourned meeting of or hearing before said (Court) (Judicial Hospitalization Referee) at which the subject matter of this Cause is under consideration by said (Court) (Judicial Hospitalization Referee).

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

Form 5 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 6.** ***Application for Appointment of Counsel and Financial Statement.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**APPLICATION FOR APPOINTMENT OF COUNSEL AND FINANCIAL STATEMENT** |
|---|---|

I, the undersigned, being first sworn, on oath depose and say that I am (respondent) (respondent's spouse) (next friend) or (guardian) herein, and I request the Court to appoint counsel to represent respondent at public expense. The following statement relating to respondent's financial affairs is submitted in support of this application.

Name _____

Address _____

Marital status _____

Number and ages of dependents _____

Business or employment _____

Average weekly earnings _____

Total income past 12 months _____

Is respondent now in custody: Yes _____ No _____ If NO, is respondent working and at what salary: _____

_____

Is spouse working: Yes _____ No _____ If so, name of employer and average weekly wage _____

_____

Motor vehicles: List make, year, amount owing thereon, if any, and how title is registered _____

_____

List balance of bank accounts of respondent and spouse _____

_____

List all sources of income other than salary from employment _____

_____

Describe real estate owned, if any, and value thereof _____

_____

Total amount of debts: _____

_____

List on the reverse side hereof all other assets owned by respondent, other than clothing and personal effects.

Application for Appointment of Counsel and Financial Statement *(cont'd)*

The foregoing statements are true to the best of my knowledge, are made under penalty of perjury, and are made in support of respondent's application for appointment of legal counsel because respondent is financially unable to employ counsel.

_____

Subscribed and sworn to before me this _____ day of _____, 20 _____.

_____

Notary Public in and for the State of Iowa

Form 6 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 7.** ***Appointment of Physician Pursuant to Iowa Code Section 229.8.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**APPOINTMENT OF PHYSICIAN PURSUANT TO IOWA CODE SECTION 229.8** |

STATE OF IOWA, _____ COUNTY:

TO _____, a regular practicing physician:

You are advised that an application has been filed in the Iowa District Court for _____ County alleging that _____ is seriously mentally impaired, needing medical care and treatment within the meaning of the applicable sections of Iowa Code chapter 229. You are hereby APPOINTED by this court to conduct a personal examination of the above-named person for the purpose of determining whether the person is seriously mentally impaired as defined in Iowa Code section 229.1(15). After conducting such an examination, you shall provide this court with a written report of your medical findings and conclusions.

NOTE TO EXAMINING PHYSICIAN:

If the respondent has been detained pursuant to Iowa Code section 229.11(2), your examination must be conducted within 24 hours of this date. If the respondent has been detained pursuant to Iowa Code section 229.11(1) or (3), your examination must be conducted within 48 hours of this date. Furthermore, your written evaluation report is to be filed with the Clerk of this Court prior to the hospitalization hearing scheduled pursuant to Iowa Code section 229.8(3)(a). *See* Iowa Code §229.10(2). An informational copy of the report may be directly transmitted by facsimile to the Clerk at the following number: (  )_____. Transmission by facsimile does not constitute filing.

Dated this _____ day of _____, 20 _____.

_____ _____

Judicial Hospitalization Referee Judge of the _____ Judicial District

Form 7 [Supreme Court Report 1979; amendment 1981; Court Order April 3, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 8.** ***Physician's Report of Examination Pursuant to Iowa Code Section 229.10(2).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF: | No. _____ |
|---|---|
| _____, ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED, Respondent. | **PHYSICIAN'S REPORT OF EXAMINATION PURSUANT TO IOWA CODE SECTION 229.10(2)** |

DATE AND TIME OF EXAMINATION _____

1. Respondent's Name _____
2. Address _____
   (Street) (City or Town) (County) (State)
3. Date of Birth _____
   (Day) (Month) (Year)
4. Place of Birth _____
5. Sex _____
6. Occupation _____
7. Marital Status _____
8. Number of Children, and Names _____
9. Nearest Relative's Name _____ Relationship _____
   Address _____
   (Street) (City or Town) (County) (State)
10. Is this an examination under Iowa Code section 229.11?
    _____
11. Did a qualified mental health professional assist with this exam? If so, who?
    _____
    (Please provide address.) If the professional's report is written, please attach.
12. In your judgement, is respondent mentally ill? _____
    If so, state diagnosis and supporting facts:
13. In your judgment is respondent capable of making responsible decisions with respect to hospitalization or treatment?
    _____
    If not, state supporting facts:
14. In your judgment, is the respondent treatable? _____
    If so, state diagnosis and supporting facts:
15. In your judgment, would the respondent benefit from treatment?
16. In your judgment, is the respondent likely to physically injure himself or herself or others?
    (a) What overt acts have led you to conclude the respondent is likely to physically injure himself or herself or others?

Physician's Report of Examination Pursuant to Iowa Code Section 229.10(2) *(cont'd)*

17. In your judgment, is the respondent likely to inflict severe emotional injury on those unable to avoid contact with the respondent?

18. Can the respondent be evaluated on an out-patient basis?
    Basis for answer:

19. Can the respondent, without danger to self or others, be released to the custody of a relative or friend during the course of evaluation?

20. Is full-time hospitalization necessary for evaluation?

21. Does the respondent have a prior history of other physical or mental illness? If yes, please specify.

22. Was the patient medicated at the time of examination? If so, please supply the following information:

MEDICINE _____
DOSAGE _____
TIME _____

Signed _____
Physician
Address _____

Form 8 [Supreme Court Report 1979; amendment 1981; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 9.** ***Order For Continuance Pursuant to Iowa Code Section 229.10(4).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**ORDER FOR CONTINUANCE PURSUANT TO IOWA CODE SECTION 229.10(4)** |
|---|---|

This matter came on for hearing upon the oral application of Attorney, _____, and for good cause shown, it is ordered that hearing in the above matter shall be continued, and shall be rescheduled upon application of _____, Attorney.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

Form 9 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36  Form 10.** ***Stipulation Pursuant to Iowa Code Section 229.12 and Involuntary Hospitalization Rule 12.19*.**

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**STIPULATION PURSUANT TO IOWA CODE SECTION 229.12 AND INVOLUNTARY HOSPITALIZATION RULE 12.19** |
|---|---|

It is hereby stipulated that Respondent need not be present at the hearing to determine the respondent's serious mental impairment.

(1) I have conversed with respondent about the hearing and the respondent's absence on _____ (date).

(2) In my judgment, respondent can make no meaningful contribution to the hearing. I base this judgment on the following grounds: _____
_____
_____

SIGNED

_____
Respondent's Attorney

Form 10 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 11.** ***Notice of Medication Pursuant to Iowa Code Section 229.12(1).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**NOTICE OF MEDICATION PURSUANT TO IOWA CODE SECTION 229.12(1)** |
|---|---|

I, _____, physician, inform (Judge _____ or _____ Referee) that the respondent was medicated at P.M. A.M. on _____, _____ 20 _____.

The medication will cause the following probable effects:

The medication (may) (probably will not) affect respondent's ability to understand the nature of these proceedings.

SIGNED

_____
Physician

Form 11 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36  Form 12.** ***Discharge and Termination of Proceeding Pursuant to Iowa Code Section 229.12.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**DISCHARGE AND TERMINATION OF PROCEEDING PURSUANT TO IOWA CODE SECTION 229.12** |

A hearing was held on the _____ day of _____, 20 _____, pertaining to the alleged mental impairment of Respondent and all relevant and material evidence was presented.

Therefore it is found that the contention of the Applicant alleging the respondent to be seriously mentally impaired has not been sustained by clear and convincing evidence.

It is therefore ordered that the Application for Involuntary Hospitalization of Respondent is hereby denied.

It is further ordered that the respondent be released from custody and that all proceedings in this matter are hereby terminated.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

Form 12 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 13.** ***Findings of Fact Pursuant to Iowa Code Section 229.13.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**FINDINGS OF FACT PURSUANT TO IOWA CODE SECTION 229.13** |
|---|---|

A hearing on the above entitled matter was held on the _____ day of _____, 20 _____. The court finds that the contention that the respondent is seriously mentally impaired has been sustained by clear and convincing evidence to wit:

1. Judgmental Capacity:

2. Treatability:

3. Dangerousness:

4. Mental Illness:

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

Form 13 [Supreme Court Report 1979; amendment 1981; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 14.** ***Notice of Termination of Proceedings Pursuant to Iowa Code Section 229.21.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**NOTICE OF TERMINATION OF PROCEEDINGS PURSUANT TO IOWA CODE SECTION 229.21** |

TO THE CHIEF JUDGE OF THE _____ JUDICIAL DISTRICT OR DESIGNEE:

Please be advised that I have terminated the proceedings in regard to the above Respondent for the reasons stated in the order entered, a copy of which is attached.

_____
Judicial Hospitalization Referee
_____ County, Iowa

Form 14 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 15.** ***Notice of Order Pursuant to Iowa Code Section 229.21.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**NOTICE OF ORDER PURSUANT TO IOWA CODE SECTION 229.21** |
|---|---|

TO THE CHIEF JUDGE OF THE _____ JUDICIAL DISTRICT OR DESIGNEE:

Please be advised that I have issued an order regarding the above Respondent for the reasons stated in the order and findings of fact, copies of which are attached.

DATE OF HOSPITALIZATION _____

_____
Judicial Hospitalization Referee
_____ County, Iowa

Form 15 [Supreme Court Report 1979; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 16.** ***Application for Order for Extension of Time for Psychiatric Evaluation Pursuant to Iowa Code Section 229.13.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

DATE _____

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**APPLICATION FOR ORDER FOR EXTENSION OF TIME FOR PSYCHIATRIC EVALUATION PURSUANT TO IOWA CODE SECTION 229.13** |
|---|---|

I, _____, Chief Medical Officer of the _____
(Facility)
request an extension of time not to exceed seven days in order to complete the psychiatric evaluation of Respondent.

I request this extension because:

I feel this extension is in Respondent's best interests.

_____
Chief Medical Officer
Facility

Form 16 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 17.** ***Order Re: Extension of Time Pursuant to Iowa Code Section 229.13.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>Respondent. | No. _____<br><br>**ORDER RE: EXTENSION OF TIME PURSUANT TO IOWA CODE SECTION 229.13** |
|---|---|

An Application for Extension of Time for Psychiatric Evaluation in the above entitled matter having been presented to the Court/Judicial Hospitalization Referee this _____ day of _____, 20 _____, and upon a showing of good cause;

It is hereby ordered that the Extension of Time be granted for a period not to exceed seven days.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

Form 17 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 18.** ***Chief Medical Officer's Report of Psychiatric Evaluation Pursuant to Iowa Code Section 229.14.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>Respondent. | No. _____<br><br>**CHIEF MEDICAL OFFICER'S REPORT OF PSYCHIATRIC EVALUATION PURSUANT TO IOWA CODE SECTION 229.14** |
|---|---|

DATE AND TIME OF EVALUATION _____

1. Treatment that respondent has received during the present hearing and evaluation period.

2. Chemotherapy respondent has received: Attachment 1 which is incorporated as part of this report lists all types of chemotherapy given at this hospital to the respondent for purposes of affecting the patient's behavior or mental state, along with the effect on the respondent's behavior or mental state.

3. Have there been previous psychiatric illnesses?
   If so, give approximate dates:

   Was hospitalization or treatment necessary?
   If so, give place, date, length of stay, condition on discharge:

4. Has the respondent any other disease or injury at present?
   If so, specify:

5. Respondent's past medical history.

6. Is respondent suffering from any transmissible disease or has respondent been exposed to such a disease within the past three weeks?
   If so, specify:

7. Is there a family history of mental illness, or mental deficiency, or convulsive disorder?
   If so, give names, relationship and type of disorder:

8. In your judgment is respondent mentally ill?
   If so, state diagnosis and supporting facts:

9. In your judgment is respondent capable of making responsible decisions with respect to hospitalization or treatment?
   If not, state supporting facts:

10. In your judgment, is the respondent treatable?_____
    If so, state diagnosis and supporting facts:

11. In your judgment, is the respondent likely to injure himself or herself or others?

(a) What overt acts have led you to conclude the respondent is likely to physically injure himself or herself or others?

Chief Medical Officer's Report of Psychiatric Evaluation Pursuant to Iowa Code Section 229.14 *(cont'd)*

12. In your judgment, is the respondent likely to inflict severe emotional injury on those unable to avoid contact with the respondent?

13. PROPOSED TREATMENT.
Please state one of the four alternative findings contained in Iowa Code section 229.14:*

A. If respondent does not require full-time hospitalization, please state your recommendation for treatment on an out-patient or other appropriate basis:

B. If respondent is in need of full-time custody and care but is unlikely to benefit from further treatment in a hospital, please recommend an alternative placement:

C. Other:

14. State facts and reasons supporting your judgment that the recommended course of treatment is the least restrictive, effective treatment for this patient:

Signed _____

Address _____

*1. That the respondent does not, as of the date of the report, require further treatment for serious mental impairment. (Iowa Code section 229.14(1))

2. That the respondent is seriously mentally impaired and in need of full-time custody, care and treatment in a hospital, and is considered likely to benefit from treatment. (Iowa Code section 229.14(2))

3. That the respondent is seriously mentally impaired and in need of treatment, but does not require full-time hospitalization. (Iowa Code section 229.14(3))

4. That the respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further treatment in a hospital. (Iowa Code section 229.14(4))

Form 18 [Supreme Court Report 1979; amendment 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 19.** ***Chief Medical Officer's Periodic Report Pursuant to Iowa Code Section 229.15(1).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF: | No. _____ |
|---|---|
| _____, Respondent. | **CHIEF MEDICAL OFFICER'S PERIODIC REPORT PURSUANT TO IOWA CODE SECTION 229.15(1)** |

1. An order for continued hospitalization of the respondent at this hospital was entered _____ _____, 20 _____.

2. Attachment 1 which is incorporated as part of this report lists all types of chemotherapy given at this hospital to the respondent for purposes of affecting the patient's behavior or mental state since the last report to the court, along with the effect on the respondent's behavior or mental state.

3. In my opinion, the patient's condition (has improved) (remains unchanged) (has deteriorated).

4. Check one box.

☐ (a) Respondent was tentatively discharged on _____, 20 ____, pursuant to Iowa Code section 229.16 because in my opinion the respondent no longer requires treatment or care for serious mental impairment. (See EXPLANATION below.)

☐ (b) Respondent was transferred to _____ on _____, 20 _____, pursuant to Iowa Code section 229.15(4) because in my opinion it is in the best interest of the respondent. (See EXPLANATION below.)

☐ (c) Respondent was placed on leave on _____, 20 ____, pursuant to Iowa Code section 229.15(4) because in my opinion it is in the best interest of the patient. Patient was instructed to return on _____, 20 _____. (See EXPLANATION below.)

☐ (d) Respondent continues to be hospitalized in this hospital.

EXPLANATION:

(If 4 (a) is applicable, skip items 5 through 8.)

5. In my opinion the following subsection of Iowa Code section 229.14 is applicable (check one box):

☐ (a) Respondent is seriously mentally impaired and in need of full-time custody, care and treatment in a hospital and is considered likely to benefit from treatment. (See EXPLANATION under item 7 below.)

☐ (b) Respondent is seriously mentally impaired and in need of treatment, but does not require full-time hospitalization. (For treatment recommendations, see RECOMMENDATIONS below.)

☐ (c) Respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further treatment in a hospital. (For recommendations of alternate placement, see RECOMMENDATIONS below.)

RECOMMENDATIONS:

Chief Medical Officer's Periodic Report Pursuant to Iowa Code Section 229.15(1) *(cont'd)*

(If 5 (b) or (c) is applicable, skip items 6 and 7.)

6. I estimate that the further length of time the respondent will be required to remain in the hospital to be (not possible to be determined) ( _____ days).

7. I recommend (check one box):

☐ (a) the respondent remain in this hospital. (See EXPLANATION below.)

☐ (b) the respondent be transferred to _____ or another hospital. (See EXPLANATION below.)

☐ (c) the respondent remain in the hospital to which the respondent has already been transferred. (See EXPLANATION under item 4 above.)

☐ (d) the patient remain on leave until the date specified for return in item 4 (c) above. (See EXPLANATION under item 4 above.)

☐ (e) the patient be placed on leave until _____, 20 _____. (See EXPLANATION below.)

EXPLANATION:

8. If continued hospitalization is recommended, state the reasons that in your judgment the recommended course of treatment is the least restrictive, effective treatment for this patient:

Signed _____

Hospital _____

Form 19 [Supreme Court Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 20.** ***Chief Medical Officer's Periodic Report Pursuant to Iowa Code Section 229.15(2).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>Respondent. | No. _____<br><br>**CHIEF MEDICAL OFFICER'S PERIODIC REPORT PURSUANT TO IOWA CODE SECTION 229.15(2)** |
|---|---|

1. An order for treatment of the respondent on an outpatient or other appropriate basis at this facility was entered _____, 20 _____.

2. Attachment 1 which is incorporated as part of this report lists all types of chemotherapy given to or prescribed for the respondent at this facility for purposes of affecting the patient's behavior or mental state since the last report to the court, along with the effect on the respondent's behavior or mental state.

3. In my opinion, the patient's condition (has improved) (remains unchanged) (has deteriorated).

4. Check one box.

   ☐ (a) Respondent was tentatively discharged on _____, 20 _____, pursuant to Iowa Code section 229.16 because in my opinion the respondent no longer requires treatment or care for serious mental impairment. (See EXPLANATION below.)

   ☐ (b) Respondent is failing or refusing to submit to treatment as ordered by the court and, in my opinion, has not shown good cause. (See EXPLANATION below.)

   ☐ (c) Respondent is in treatment as directed by the order of the court. (See EXPLANATION below.)

EXPLANATION:

(If 4 (a) is applicable, skip items 5 through 7.)

5. In my opinion the following subsection of Iowa Code section 229.14 is applicable (check one box):

   ☐ (a) Respondent is seriously mentally impaired and in need of full-time custody, care and treatment in a hospital and is considered likely to benefit from treatment. (See EXPLANATION below.)

   ☐ (b) Respondent is seriously mentally impaired and in need of treatment, but can continue in outpatient treatment. (See EXPLANATION below.)

   ☐ (c) Respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from treatment in a hospital. (For recommendation of alternate placement, see EXPLANATION below.)

EXPLANATION:

(If 5 (a) or (c) is applicable, skip item 6.)

6. I estimate that the further length of time the respondent will require outpatient or other appropriate treatment at this facility to be (not possible to be determined) (_____ days).

Chief Medical Officer's Periodic Report Pursuant to Iowa Code Section 229.15(2) *(cont'd)*

7. If inpatient hospitalization is recommended, state the reasons that in your judgment the recommended course of treatment is the least restrictive, effective treatment for this patient.

Signed _____

Hospital _____

Form 20 [Supreme Court Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 21.** ***Periodic Report Pursuant to Iowa Code Section 229.15(3). (Alternate Placement)***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>Respondent. | No. _____<br><br>**PERIODIC REPORT PURSUANT TO IOWA CODE SECTION 229.15(3)**<br>(ALTERNATE PLACEMENT) |
|---|---|

1. An order for continued placement of the respondent at this facility was entered _____, 20 _____.

2. Attachment 1 which is incorporated as part of this report lists all types of chemotherapy given at this facility to the respondent for purposes of affecting the patient's behavior or mental state since the last report to the court, along with the effect on the respondent's behavior or mental state.

3. In my opinion, the patient's condition (has improved) (remains unchanged) (has deteriorated). Additional information concerning the patient's condition and prognosis is provided below:

4. Check one box.

   ☐ (a) Respondent was tentatively discharged on _____, 20 _____, pursuant to Iowa Code section 229.16 because in my opinion the respondent no longer requires treatment or care for serious mental impairment. (See EXPLANATION below.)

   ☐ (b) Respondent continues to be in the custody of this facility.

EXPLANATION:

(If 4 (a) is applicable, skip items 5 and 6.)

5. In my opinion the following subsection of Iowa Code section 229.14 is applicable (check one box):

   ☐ (a) Respondent is seriously mentally impaired and in need of full-time custody, care and treatment in a hospital and is considered likely to benefit from treatment. (See RECOMMENDATIONS below.)

   ☐ (b) Respondent is seriously mentally impaired and in need of treatment, but does not require full-time hospitalization. (See RECOMMENDATIONS below.)

   ☐ (c) Respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further treatment in a hospital. (See RECOMMENDATIONS below, which recommend continued placement at this facility or alternate placement.)

RECOMMENDATIONS:

(If 5 (b) is applicable, skip item 6.)

6. If placement in a hospital is recommended, state the reasons that in your judgment the recommended course of treatment is the least restrictive, effective treatment for this patient. If placement in a facility other than a hospital is recommended, state the reasons that in your judgment the respondent is unlikely to benefit from treatment in a hospital.

Signed _____

Facility _____

Form 21 [Supreme Court Report 1980; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 22.** ***Notice of Chief Medical Officer's Report or Application Pursuant to Iowa Code Section 229.13.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF: | No. _____ |
|---|---|
| _____, Respondent. | **NOTICE OF CHIEF MEDICAL OFFICER'S REPORT OR APPLICATION PURSUANT TO IOWA CODE SECTION 229.13** |

TO: _____ Attorney for respondent.

You are hereby notified that pursuant to Iowa Code section 229.13, (a report) (a request for extension of time) (strike one), has been received from the chief medical officer of _____, a copy of which is attached hereto.

You are further notified that, if the chief medical officer has requested an extension of time for making a recommendation regarding disposition of this matter such request may be contested pursuant to Iowa Code section 229.13.

Done this _____ day of _____, 20 _____.

_____

Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

Form 22 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 23.** ***Order After Evaluation Pursuant to Iowa Code Section 229.14.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>Respondent. | No. _____<br><br>**ORDER AFTER EVALUATION PURSUANT TO IOWA CODE SECTION 229.14** |
|---|---|

The Court received the report of the Chief Medical Officer and it was the recommendation of _____ that the respondent _____
_____
_____
_____
_____

It is therefore ordered that the respondent _____
_____
_____
_____
_____

Copies of this order shall be sent to respondent's attorney or advocate if one has been appointed.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

Form 23 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 24.** ***Notice of Appeal From the Findings of the Judicial Hospitalization Referee.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**NOTICE OF APPEAL FROM THE FINDINGS OF THE JUDICIAL HOSPITALIZATION REFEREE** |

TO: _____, JUDGE OF THE _____ JUDICIAL DISTRICT OF IOWA AND _____, CLERK OF THE DISTRICT COURT:

The undersigned hereby appeals the findings of _____ Judicial Hospitalization Referee, that Respondent is serious mentally impaired and requests a review of the matter by a Judge of the Iowa District Court In and For _____ County, Iowa, all pursuant to Iowa Code section 229.21.

Dated the _____ day of _____, 20 _____.

SIGNED

_____

(Respondent, Next Friend, Guardian, Attorney)

Form 24 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 25.** ***Attorney's Report and Request for Withdrawal Pursuant to Iowa Code Section 229.19.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br>Respondent. | No. _____<br><br>**ATTORNEY'S REPORT AND REQUEST FOR WITHDRAWAL PURSUANT TO IOWA CODE SECTION 229.19** |
|---|---|

COMES NOW, _____, a regularly practicing attorney of _____ County, Iowa, and reports:

After having been employed or appointed to represent _____, the above named Respondent, I interviewed respondent, attended the hearing on the application, examined the attending physician or the reports thereof, examined any hospital reports available, and examined the witnesses who appeared at the hearing:

It is my opinion that there is no further need of legal services at this time.

I hereby request to be allowed to withdraw as attorney for the above-named Respondent.

_____
Name:
Address:
City:
Phone No.:
ATTORNEY FOR RESPONDENT

On this _____ day of _____, 20 _____, the Application for withdrawal of _____, as attorney for respondent, was considered by the undersigned and is hereby approved. Said counsel is hereby released from the above matter. The undersigned hereby appoints (or has previously appointed) _____, as advocate for respondent.

_____
Judge of the _____ Judicial District of Iowa or
Judicial Hospitalization Referee

Form 25 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 26.** ***Claim for Attorney or Physician's Fees Order and Certificate.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**CLAIM FOR ATTORNEY OR PHYSICIAN'S FEES ORDER AND CERTIFICATE** |
|---|---|

STATE OF IOWA, _____ COUNTY, ss:

The undersigned (attorney) (physician), being first duly sworn (or affirmed), states that he/she was appointed by the (Court) (Judicial Hospitalization Referee) to (defend) (examine) the above-named respondent, alleged to be seriously mentally impaired, pursuant to Iowa Code section 229.8; that services have been completed by this claimant as set forth on the attached itemized statement and that this claimant has not directly, or indirectly, received, or entered into a contract to receive, any compensation for such services from any sources.

WHEREFORE, this claimant prays for an order to be compensated in accordance with the provisions of Iowa Code section 229.8.

_____
Claimant

_____
P.O. Address

_____

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20 _____.

_____
Clerk of said District (or)
Notary Public In and For said County

ORDER

The foregoing verified claim has been duly considered, is fixed and approved in the sum of $_____ and ordered paid out of the county treasury. The Clerk is directed to certify a copy of above claim and this order to the County Auditor for payment to claimant, as provided by statute.

Dated this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District of Iowa or
Judicial Hospitalization Referee

Claim for Attorney or Physician's Fees Order and Certificate *(cont'd)*

CERTIFICATE

The above is a true copy of claim and order as appears of record in my office and is hereby certified to County Auditor for payment.

Dated this _____ day of _____, 20 _____.

_____
(Deputy) Clerk of Said Court

Form 26 [Supreme Court Report 1979; amendment 1981; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 27.** ***Order of Detention Pursuant to Iowa Code Section 229.22(2).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**ORDER OF DETENTION PURSUANT TO IOWA CODE SECTION 229.22(2)** |
|---|---|

DATE: _____

TIME OF DETENTION: _____

TIME OF NOTIFICATION OF MAGISTRATE: _____

I order immediate detention of Respondent because there is reason to believe Respondent is seriously mentally impaired and likely to injure himself or herself or others if not immediately detained.

The following facts have led me to the above conclusion:

This order is made pursuant to the verbal instructions of _____, magistrate.

_____
Chief Medical Officer

ARRIVAL OF MAGISTRATE

Time of arrival of magistrate _____

_____
Magistrate

Form 27 [Supreme Court Report 1979; amendment 1980; amendment 1981; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 28.** ***Magistrate's Report Pursuant to Iowa Code Section 229.22(2)(a).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**MAGISTRATE'S REPORT PURSUANT TO IOWA CODE SECTION 229.22(2)(a)** |

1. Reason for failure to respond immediately to chief medical officer's call:

2. Substance of the information on the basis of which the respondent's continued detention was ordered:

TIME OF CALL: _____

TIME OF RESPONSE: _____

TIME OF APPOINTMENT OR NOTIFICATION OF COUNSEL: _____

_____
Magistrate

Form 28 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 29.** ***Emergency Hospitalization Order Pursuant to Iowa Code Section 229.22, Subsections (3) and (4).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**EMERGENCY HOSPITALIZATION ORDER PURSUANT TO IOWA CODE SECTION 229.22, SUBSECTIONS (3) AND (4)** |

TIME OF NOTIFICATION OF MAGISTRATE: _____

TIME OF ACTION BY MAGISTRATE: _____

Information and evidence has been presented to this magistrate that respondent should be immediately detained due to serious mental impairment;

This Magistrate finds that there is probable cause to believe that Respondent is seriously mentally impaired, and because of that impairment is likely to injure himself or herself or others if not immediately detained;

This finding is based on the following circumstances and grounds: _____

_____

_____

_____

It is hereby ordered that _____ shall be detained in custody at _____ for examination and care for a period not to exceed forty-eight hours,
Facility

excluding Saturdays, Sundays and holidays.

It is further ordered that the facility may provide treatment which is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to himself or herself or others if allowed to continue, but may not otherwise provide treatment to the respondent without consent.

Done this _____ day of _____, 20 _____.

Time _____

_____

Magistrate

Form 29 [Supreme Court Report 1979; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 30.** ***Quarterly Report of Patient Advocate Pursuant to Iowa Code Section 229.19(6).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**QUARTERLY REPORT OF PATIENT ADVOCATE PURSUANT TO IOWA CODE SECTION 229.19(6)** |
|---|---|

Date _____.

Date of last previous report (if one) _____.

Date of respondent's commitment _____.

Is respondent still committed _____. If not, date of release _____.

Actions I have taken with respect to the above-named respondent and the amount of time I have spent regarding the above-named respondent since (I became the patient's advocate) (the last report was filed):

Action Taken _____ Time Spent _____

_____

Total Time Spent:

Other comments:

_____

Patient Advocate

Form 30 [Supreme Court Report 1981; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 31.** ***Notice to Patient of Name of Advocate Pursuant to Iowa Code Section 229.19.***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**NOTICE TO PATIENT OF NAME OF ADVOCATE PURSUANT TO IOWA CODE SECTION 229.19** |

To: _____

You are hereby notified that _____ is now your patient advocate. This advocate will be communicating with you and representing your interests in any matter relating to your hospitalization and treatment.

_____
Clerk of District Court

Form 31 [Supreme Court Report 1981; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 32.** ***Notice to Respondent Pursuant to Iowa Code Section 229.14(3).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**NOTICE TO RESPONDENT PURSUANT TO IOWA CODE SECTION 229.14(3)** |

TO: _____

You are hereby notified that there is now on file in the office of the Clerk of the District Court of _____ _____ County, Iowa, an application alleging that you have not satisfactorily responded to your "Outpatient Treatment Plan (O.T.P.)" and should therefore be rehospitalized for inpatient care and treatment. A copy of said application is attached. This matter will come on for hearing on the application before this Court at _____ County, Iowa, on the _____ day of _____, 20 _____, at _____ o'clock _____.m.

You are further notified that you have the right to have your personal or previously appointed attorney present in connection with this hearing.

You have a right to be present at the hearing.

At this hearing the Court will decide whether you should be rehospitalized for inpatient care and treatment; whether the O.T.P. should be revised and outpatient care continued; or whether some other result is appropriate.

_____

JUDGE OF THE _____ JUDICIAL DISTRICT OF IOWA OR JUDICIAL HOSPITALIZATION REFEREE

Form 32 [Supreme Court Report 1982; November 9, 2001, effective February 15, 2002]

**Rule 12.36 Form 33.** ***Hospitalization Order Pursuant to Iowa Code Section 229.14(3).***

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,<br><br>Respondent. | No. _____<br><br>**HOSPITALIZATION ORDER PURSUANT TO IOWA CODE SECTION 229.14(3)** |

On _____ a hearing was held regarding allegations that Respondent has failed to satisfactorily respond to the Outpatient Treatment Plan (O.T.P.) and should therefore be rehospitalized for inpatient care and treatment as provided by Iowa Code sections 229.14(3) and 229.15(2). It is hereby determined that sufficient evidence has been presented to support said allegations, and the Respondent is hereby order recommited to _____.

This finding is based on the following circumstances and grounds:

_____

_____

_____

Done this _____ day of _____, 20 _____.

_____

JUDGE OF THE _____ JUDICIAL DISTRICT OF IOWA OR JUDICIAL HOSPITALIZATION REFEREE

Form 33 [Supreme Court Report 1982; November 9, 2001, effective February 15, 2002]

# CHAPTER 13
# RULES FOR INVOLUNTARY COMMITMENT OR TREATMENT OF CHRONIC SUBSTANCE ABUSERS

**Rule 13.1 Application – forms obtained from clerk.** A form for application seeking the involuntary commitment or treatment of any person on grounds of chronic substance abuse may be obtained from the clerk of court in the county in which the person whose commitment is sought resides or is presently located. Such application may be filled out and presented to the clerk by any person who has an interest in the treatment of another for chronic substance abuse and who has sufficient association with or knowledge about that person to provide the information required on the face of the application and under Iowa Code section 125.75. The clerk or clerk's designee shall provide the forms required by Iowa Code section 125.75 to the person who desires to file the application for involuntary commitment. The clerk shall see that all the information required by Iowa Code section 125.75 accompanies the application. [Report 1984; 1995; November 9, 2001, effective February 15, 2002]
*See* rule 13.35, Forms 1, 2

**Rule 13.2 Termination of proceedings – insufficient grounds.** If the judge or referee determines that insufficient grounds to warrant a hearing on the respondent's substance abuse appear on the face of the application and supporting documentation, the judge or referee shall order the proceedings terminated and so notify the applicant. All papers and records pertaining to terminated proceedings shall be confidential and subject to the provisions of Iowa Code section 125.93. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.3 Notice to respondent – requirements.**

**13.3(1)** If the judge or referee determines that sufficient grounds to warrant a hearing on the respondent's substance abuse appear on the face of the application and supporting documentation, the sheriff or sheriff's deputy shall immediately serve notice, personally and not by substitution, on the respondent. Pursuant to Iowa Code section 125.79, notice also shall be served on respondent's attorney as soon as the attorney is identified or appointed by the judge or referee.

**13.3(2)** If the respondent is to be taken into immediate custody pursuant to Iowa Code section 125.81, the notice shall include a copy of the order required by Iowa Code section 125.81 and rule 13.14.

**13.3(3)** The notice of procedures required under Iowa Code section 125.77 shall inform the respondent of the following:

*a.* Respondent's immediate right to counsel, at public expense if necessary.

*b.* Respondent's right to request an examination by a physician of the respondent's choosing, at public expense if necessary.

*c.* Respondent's right to be present at the hearing.

*d.* Respondent's right to a hearing within five days if the respondent is taken into immediate custody pursuant to Iowa Code section 125.81.

*e.* Respondent's right not to be forced to hearing sooner than 48 hours after notice, unless respondent waives such minimum prior notice requirement.

*f.* Respondent's duty to remain in the jurisdiction and the consequences of an attempt to leave.

*g.* Respondent's duty to submit to examination by a physician appointed by the court. [Report 1984; November 9, 2001, effective February 15, 2002]
*See* rule 13.35, Form 3

**Rule 13.4 Notice requirement – waiver.** The respondent may waive the minimum prior notice requirement only in writing and only if the judge or referee determines that the respondent's best interests will not be harmed by such waiver. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.5 Hearings – continuance.** At the request of the respondent or respondent's attorney, the hearing provided in Iowa Code section 125.82 may be continued beyond the statutory limit so that the respondent's attorney has adequate time to prepare respondent's case. In such instances custody pursuant to Iowa Code section 125.81 may be extended by court order until the hearing is held. The continuance shall be no longer than five days beyond the statutory limit. The granting of a continuance shall not prevent the facility from making application to the court for an earlier release of the respondent from custody. [Report 1984; November 9, 2001, effective February 15, 2002]
*See* rule 13.35, Form 11

**Rule 13.6 Attorney conference with respondent – location – transportation.** If the respondent is involuntarily confined prior to the hearing pursuant to a determination under Iowa Code section 125.81, the respondent's attorney may apply to the judge or referee for an opportunity to confer with the respondent, in a place other than the place of confinement, in advance of the hearing provided for in Iowa Code section 125.82. The order shall provide for transportation and the type of custody and responsibility therefor during the period the respondent is away from the place of confinement under this rule. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.7 Service, other than personal.** If personal service as defined in rule 13.3 cannot be made, any respondent may be served as provided by court order, consistent with due process of law. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.8 Return of service.** Returns of service of notice shall be made as provided in Iowa R. Civ. P. 1.308. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.9 Amendment of proof of service.** Amendment of process or proof of service shall be allowed in the manner provided in Iowa R. Civ. P. 1.309. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.10 Attorney evidence and argument – predetermination.** If practicable the court should allow the respondent's attorney to present evidence and argument prior to the court's determination under Iowa Code section 125.81. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.11 Attorney evidence and argument – after confinement.** If the respondent's attorney is not afforded an opportunity to present evidence and argument prior to the court's determination under Iowa Code section 125.81, the attorney shall be entitled to do so after the determination during the course of respondent's confinement pursuant to an order issued under that section. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.12 Examination report to attorney.** The clerk shall furnish the respondent's attorney with a copy of the examination report filed pursuant to Iowa Code section 125.80(2), as soon as possible after receipt. In ruling on any request for an extension of time under Iowa Code section 125.80(4), the court shall consider the time available to the respondent's attorney after receipt of the examination report to prepare for the hearing and to prepare responses from physicians engaged by respondent, where relevant. Respondent's attorney shall promptly file a copy of a report of any physician who has examined respondent and whose evidence the attorney expects to use at the hearing. The clerk shall provide the court and the county attorney with a copy thereof when filed. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.13 Physician's report.** The court-designated physician shall submit a written report of the examination as required by Iowa Code section 125.80(2) on the form designated for use by the supreme court. The report shall contain the following information, or as much thereof as is available to the physician making the report:

(1) Respondent's name;
(2) Address;
(3) Date of birth;
(4) Place of birth;
(5) Sex;
(6) Occupation;
(7) Marital status;
(8) Number of children, and names;
(9) Nearest relative's name, relationship, and address; and
(10) The physician's diagnosis and recommendations, with a detailed statement of the observations or medical history which led to the diagnosis. [Report 1984; November 9, 2001, effective February 15, 2002]

*See* rule 13.35, Form 10

**Rule 13.14 Probable cause to injure.** The judge's or referee's order for respondent's immediate custody under Iowa Code section 125.81 shall include a finding of probable cause to believe that the respondent is a chronic substance abuser and is likely to inflict self-injury or injure others if allowed to remain at liberty. [Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.15 Hearing – county location.** The hearing provided in Iowa Code section 125.82 shall be held in the county where the application was filed, unless the judge or referee finds that the best interests of the respondent would be served by transferring the proceedings to a different location. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.16 Hearing – location at hospital or treatment facility.** The hearing required by Iowa Code section 125.82 may be held at a hospital or other treatment facility, provided that a proper room is available and that such a location would not be detrimental to the best interests of respondent. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.17 Respondent's rights explained before hearing.** Respondent's attorney shall explain to respondent the respondent's rights and the possible consequences of the proceedings. Prior to the commencement of the hearing under Iowa Code section 125.82, the judge or referee shall ascertain whether the respondent has been so informed. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.18 Subpoenas.** Subpoena power shall be available to all parties participating in the proceedings, and subpoenas or other investigative demands may be enforced by the judge or referee. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.19 Presence at hearing – exceptions.**

**13.19(1)** The applicant and any physician or mental health professional who has examined respondent in connection with the commitment proceedings must be present at the hearing conducted under Iowa Code section 125.82, unless their presence is waived by the respondent's attorney, the judge or referee finds that their presence is not necessary, or their testimony can be taken through telephonic means and the respondent's attorney does not object.

**13.19(2)** The respondent must be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing to respondent's absence. Such stipulation shall state that the attorney has conversed with the respondent, that in the attorney's judgment the respondent can make no meaningful contribution to the hearing or has waived the right to be present, and the basis for such conclusions. A stipulation to the respondent's absence shall be reviewed by the judge or referee before the hearing, and shall be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by respondent's absence. [Report 1984; October 11, 1991, effective January 2, 1992; November 9, 2001, effective February 15, 2002]
*See* rule 13.35, Form 12

**Rule 13.20 Hearing — electronic recording.** An electronic recording or other verbatim record of the hearing provided in Iowa Code section 125.82 shall be made and retained for three years or until the respondent has been discharged from involuntary custody for 90 days, whichever is longer. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.21 Transfer from county of confinement.** If the respondent is in custody in another county prior to the hearing provided in Iowa Code section 125.82, respondent's attorney may request that the respondent be delivered to the county in which the hearing will be held sufficiently prior thereto to facilitate preparation by respondent's attorney. Such requests shall not be denied unless they are unreasonable and the denial would not harm respondent's interests in representation by counsel. This rule does not authorize permanent transfer of the respondent to another facility without conformance to appropriate statutory procedures. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.22 Evaluation and treatment.** If, upon hearing, the court finds respondent to be a chronic substance abuser, evaluation and treatment shall proceed as set out in Iowa Code section 125.83. [Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.23 Evaluation — time extension.** Pursuant to Iowa Code section 125.83, the facility administrator may request a seven-day extension of time for further evaluation by filing a written application with the clerk of court in the county in which the hearing was held. The application shall contain a statement by the facility administrator or the administrator's designee identifying with reasonable particularity the basis of the request for extension. The clerk shall immediately notify the respondent's attorney of the request by furnishing a copy of the application. [Report 1984; November 9, 2001, effective February 15, 2002]
*See* rule 13.35, Forms 16 and 17

**Rule 13.24 Evaluation report.** The facility administrator's report under Iowa Code section 125.84 shall include a written evaluation of the respondent by the chief medical officer or the officer's designee. The evaluation must state with reasonable particularity the basis for the diagnostic conclusions concerning the respondent's substance abuse and recommended treatment. The evaluation shall specify the basis for the medical officer's conclusions regarding respondent's substance abuse, capacity to understand the need for treatment, and dangerousness. The evaluation also shall specify the basis for the medical officer's conclusions concerning recommended treatment and the basis for the judgment that the recommended treatment is the least restrictive alternative possible for the respondent pursuant to options (1), (2), (3), or (4) of Iowa Code section 125.84. [Report 1984; November 9, 2001, effective February 15, 2002]
*See* rule 13.35, Form 18

**Rule 13.25 Reports issued by clerk.** The clerk shall promptly furnish to the respondent's attorney copies of all reports issued under Iowa Code section 125.86. Such reports shall comply substantially with the requirements of rule 13.24. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.26 Clerk's filing system.** The clerk shall institute an orderly system for filing periodic reports required under Iowa Code section 125.86 and shall monitor the reports to ascertain when a report is overdue. If a report is not filed when due, the clerk shall notify the administrator of the treatment facility. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.27 Emergency detention — magistrate's approval.** If the magistrate cannot immediately proceed to the facility where a person is detained pursuant to Iowa Code section 125.91, the magistrate shall verbally communicate approval or disapproval of the detention. Such communication shall be duly noted by the administrator of the facility on the form prescribed by this chapter. [Report 1984; November 9, 2001, effective February 15, 2002]
*See* rule 13.35, Form 28

**Rule 13.28 Emergency detention — medical officer absent from facility.** If the facility to which the respondent is delivered pursuant to Iowa Code section 125.91 lacks a chief medical officer, the person then in charge of the facility shall immediately notify a physician whenever treatment appears necessary to protect the respondent. The person in charge of the facility shall then immediately notify the magistrate. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.29 Attorney appointed.** As soon as practicable after the respondent's delivery to a facility under Iowa Code section 125.91, the magistrate shall identify or appoint an attorney for the respondent and shall immediately notify such attorney of respondent's emergency detention. If counsel can be identified at the time of respondent's arrival at a facility, or if legal services are available through a legal aid or public defender office, the magistrate must immediately notify such counsel. Such counsel shall be afforded an opportunity to interview the respondent before or after the magistrate's order is issued. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rule 13.30 Chemotherapy procedure.** When chemotherapy has been instituted prior to a hearing under Iowa Code section 125.82, the chief medical officer of the facility where the respondent is hospitalized shall, prior to the hearing, submit to the clerk of the district court where the hearing is to be held, a report in writing. The report shall identify all types of chemotherapy given and shall specify which were administered to affect the respondent's behavior or mental state during any period of custody authorized by Iowa Code section 125.81 or 125.91. For each type of chemotherapy the report shall indicate that the chemotherapy was given with the consent of the respondent or the respondent's next of kin or guardian or, if not, that the chemotherapy was necessary to preserve the respondent's life or to appropriately control respondent's behavior in order to avoid physical injury to the respondent or others. The report shall also include the effect of the chemotherapy on the respondent's behavior or mental state. The clerk shall file the original report in the court file, advise the judge or referee and the respondent's attorney accordingly, and provide a copy of the report to respondent's attorney. [Report 1984; November 9, 2001, effective February 15, 2002]

**Rules 13.31** to **13.34** Reserved.

**Rule 13.35 Forms for Involuntary Commitment or Treatment of Chronic Substance Abusers.**
**Rule 13.35 Form 1:** ***Application Alleging Chronic Substance Abuse Pursuant to Iowa Code Section 125.75.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**APPLICATION ALLEGING CHRONIC SUBSTANCE ABUSE PURSUANT TO IOWA CODE SECTION 125.75** |
|---|---|

I, _____, of _____ (address), allege that respondent is a chronic substance abuser. In support thereof I state as follows:

Based on the above facts, I believe respondent is a danger to himself or herself or others.

Do you request the respondent be taken into immediate custody? Yes ☐ No ☐

☐ Attached hereto is a written statement of a licensed physician in support of this application.

☐ Attached hereto is an affidavit corroborating these allegations.

_____
Applicant

State of Iowa
_____County } ss:

I, the undersigned, do solemnly swear or affirm that the matters alleged in the above application to which my name is affixed, are true as stated, as I verily believe.

_____
Applicant

Subscribed and sworn to (or affirmed) before the undersigned this _____ day of _____, 20 _____.

_____
Notary Public in and for the State of Iowa

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 2:** ***Affidavit in Support of Application Alleging Chronic Substance Abuse Pursuant to Iowa Code Section 125.75.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**AFFIDAVIT IN SUPPORT OF APPLICATION ALLEGING CHRONIC SUBSTANCE ABUSE PURSUANT TO IOWA CODE SECTION 125.75** |

I, _____, of _____,
(address)

being first duly sworn on oath, depose and state that I am acquainted with respondent who resides at _____,
(street) (city) (county)

Iowa, and that I believe the respondent is a chronic substance abuser.

In support thereof, I state as follows:

By _____

Subscribed and sworn to before the undersigned this _____ day of _____, 20 _____.

_____
Notary Public in and for the State of Iowa

_____
Clerk of Iowa District Court

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 3:** ***Notice to Respondent Pursuant to Iowa Code Section 125.77.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**NOTICE TO RESPONDENT PURSUANT TO IOWA CODE SECTION 125.77** |
|---|---|

TO: _____

You are hereby notified: There is now on file in the office of the clerk of the district court of _____ County, Iowa, a verified application alleging that the respondent is a chronic substance abuser and a fit subject for custody and treatment, as shown by the application and (report of the physician) (supporting affidavits) on file in this proceeding. Copies of these documents are attached. This matter will come on for hearing on said application before the court at _____ County, Iowa, on the _____ day of _____, 20 _____, at _____ o'clock _____.m.

The court thereafter will enter an appropriate order.

You are further notified you have the following rights in connection with this matter:

1. THE RIGHT TO THE ASSISTANCE OF AN ATTORNEY. If you cannot afford an attorney, one will be appointed for you at public expense.
2. THE RIGHT TO AN EXAMINATION BY A PHYSICIAN OF YOUR OWN CHOOSING. If you cannot afford an examination by your physician, you may have such an examination at public expense.
3. THE RIGHT TO A HEARING WITHIN 5 DAYS (unless the fifth day is a Saturday, Sunday, or a holiday), and no sooner than 48 hours (excluding Saturdays, Sundays, and holidays), if you are presently in custody.
4. THE RIGHT TO A HEARING NO SOONER THAN 48 HOURS AFTER SERVICE OF THIS NOTICE (excluding Saturdays, Sundays, and holidays), and no later than 48 hours after the report of a court-appointed physician is filed (excluding Saturdays, Sundays, and holidays), if you are not presently in custody.
5. THE RIGHT TO BE PRESENT AT THE HEARING.

You are hereby advised that:

1. You must not leave the county while awaiting hearing. If you leave the county, you may be taken into custody.
2. You must submit to an examination by a physician appointed by the court.

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

RETURN OF SERVICE

State of Iowa
_____County } ss:

The within notice received this _____ day of _____, 20 _____, at _____ a.m./p.m., I served the same on _____ by delivering a copy thereof to said _____ in the City, Township of _____ in _____ County, State of Iowa.

_____
Sheriff, _____ County

By _____
Deputy Sheriff

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 4:** ***Order for Immediate Custody Pursuant to Iowa Code Section 125.81.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF: | No. _____ |
|---|---|
| _____, ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER, | **ORDER FOR IMMEDIATE CUSTODY PURSUANT TO IOWA CODE SECTION 125.81** |
| Respondent. | |

A request has been presented that respondent should be immediately detained due to chronic substance abuse. After review of the application and supporting documentation, I find there is probable cause to believe respondent is a chronic substance abuser and is likely to injure himself or herself or others if allowed to remain at liberty.

This finding is based on the following facts:

☐ 1. I hereby order that respondent shall be detained in the custody of _____ until the hearing date pursuant to Iowa Code section 125.81(1).

☐ 2. Because I find the less restrictive alternative of custody pursuant to Iowa Code section 125.81(1) will not be sufficient to protect respondent from himself or herself or others, I hereby order that respondent shall be detained at _____ until the hearing date pursuant to Iowa Code section 125.81(2).

(Check ☐ the appropriate one of these provisions.)

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 5:** ***Application for Appointment of Respondent's Counsel and Financial Statement.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**APPLICATION FOR APPOINTMENT OF RESPONDENT'S COUNSEL AND FINANCIAL STATEMENT** |
|---|---|

I, the undersigned, being first sworn, depose and say that I am (respondent) (respondent's spouse) (next friend) or (guardian) herein, and I request the court to appoint counsel to represent respondent at public expense. The following statement relating to respondent's financial affairs is submitted in support of this application.

Name _____

Address _____

Marital status _____

Number and ages of dependents _____

Business or employment _____

Average weekly earnings _____

Total income past 12 months _____

Is respondent now in custody: Yes ☐ No ☐ If no, is respondent working and at what salary: _____

Is spouse working: Yes ☐ No ☐ If yes, name of employer and average weekly earnings _____

Motor vehicles: List make, year, amount owing thereon, if any, and how title is registered _____

List balance of bank accounts of respondent and spouse _____

List all sources of income other than salary from employment _____

Describe real estate owned, if any, and value thereof _____

Total amount of debts _____

_____

List on the reverse side hereof all other assets owned by respondent, other than clothing and personal effects.

The foregoing statements are true to the best of my knowledge, are made under penalty of perjury, and are made in support of respondent's application for appointment of legal counsel because respondent is financially unable to employ counsel.

By _____

Application for Appointment of Respondent's Counsel and Financial Statement *(cont'd)*

Subscribed and sworn to before me this _____ day of _____, 20 _____.

_____
Notary Public in and for the State of Iowa

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 6:** ***Order Appointing Respondent's Attorney Pursuant to Iowa Code Section 125.78.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**ORDER APPOINTING RESPONDENT'S ATTORNEY PURSUANT TO IOWA CODE SECTION 125.78** |

NOW, on this _____ day of _____, 20 _____, on application previously filed with the (court) (judicial hospitalization referee) alleging that the above-named respondent is a chronic substance abuser, and upon which hearing was set for the _____ day of _____, 20 _____, and upon showing made that respondent is unrepresented at this time and that no arrangements have been made either by the respondent or any member of respondent's family to procure such representation, it is now ORDERED that _____, a regular practicing attorney in _____ _____ County, Iowa, be and is hereby appointed to represent the respondent at this hearing and at each subsequent hearing at which the subject matter of this cause is under consideration.

_____
Judge of the _____ Judicial District
of Iowa or Judicial Hospitalization Referee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 7:** ***Application for Appointment of Applicant's Counsel and Financial Statement Pursuant to Iowa Code Section 125.76.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**APPLICATION FOR APPOINTMENT OF APPLICANT'S COUNSEL AND FINANCIAL STATEMENT PURSUANT TO IOWA CODE SECTION 125.76** |

I, the undersigned, being first sworn, depose and say that I am the applicant herein, and I request the court to appoint counsel to represent the applicant at public expense, pursuant to Iowa Code sections 125.76 and 125.78(2). The following statement relating to applicant's financial affairs is submitted in support of this application.

Name _____

Address _____

Marital status _____

Number and ages of dependents _____

Business or employment _____

Average weekly earnings _____

Total income past 12 months _____

Is applicant working and at what salary: _____

Is spouse working: Yes ☐ No ☐ If yes, name of employer and average weekly earnings

_____

Motor vehicles: List make, year, amount owing thereon, if any, and how title is registered

_____

List balance of bank accounts of applicant and spouse _____

List all sources of income other than salary from employment _____

Describe real estate owned, if any, and value thereof _____

Total amount of debts _____

_____

List on the reverse side hereof all other assets owned by applicant, other than clothing and personal effects.

The foregoing statements are true to the best of my knowledge, are made under penalty of perjury, and are made in support of application for appointment of legal counsel because I am financially unable to employ counsel.

_____
Applicant

Application for Appointment of Applicant's Counsel and Financial Statement Pursuant to Iowa Code Section 125.76 *(cont'd)*

Subscribed and sworn to before me this _____ day of _____, 20 _____.

_____
Notary Public in and for the State of Iowa

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35  Form 8:** ***Order Appointing Applicant's Attorney Pursuant to Iowa Code Section 125.78(2).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**ORDER APPOINTING APPLICANT'S ATTORNEY PURSUANT TO IOWA CODE SECTION 125.78(2)** |
|---|---|

NOW, on this _____ day of _____, 20 _____, on application previously filed with the (court) (judicial hospitalization referee), alleging that the above-named respondent is a chronic substance abuser, and upon which hearing was set for the _____ day of _____, 20 _____, and upon showing made that the applicant is unrepresented at this time, that a court-appointed attorney is necessary to assist the applicant in presenting the evidence, and that the applicant is financially unable to employ an attorney, it is now ORDERED that _____, a regular practicing attorney in _____ County, Iowa, be and is hereby appointed to represent the applicant at this hearing and at each subsequent hearing at which the subject matter of this cause is under consideration.

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 9:** ***Appointment of Physician Pursuant to Iowa Code Section 125.78.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**APPOINTMENT OF PHYSICIAN PURSUANT TO IOWA CODE SECTION 125.78** |

To _____, a regular practicing physician of _____ County, Iowa:

This (court) (judicial hospitalization referee) has before it an application alleging that respondent is a chronic substance abuser, and is a fit subject for custody and treatment. Therefore, you are hereby appointed to make a personal examination of the respondent regarding the allegations of said application and the respondent's actual condition.

You shall therefore proceed to make such examination and forthwith report thereon to said (court) (judicial hospitalization referee) as the law requires in such cases.

_____
Judge of the _____ Judicial District
of Iowa or Judicial Hospitalization Referee

NOTE TO EXAMINING PHYSICIAN:

If respondent has been taken into custody pursuant to Iowa Code section 125.81, your examination must be conducted within 24 hours.

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 10:** ***Physician's Report of Examination Pursuant to Iowa Code Section 125.80.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**PHYSICIAN'S REPORT OF EXAMINATION PURSUANT TO IOWA CODE SECTION 125.80** |
|---|---|

DATE AND TIME OF EXAMINATION _____

1. Respondent's name _____

2. Address _____
(street) (city or town) (county) (state)

3. Date of birth _____
(day) (month) (year)

4. Place of birth _____

5. Sex _____

6. Occupation _____

7. Marital status: Single ☐ Married ☐ Divorced ☐

8. Number of children _____

9. Nearest relative's name _____ relationship _____

address _____
(street) (city or town) (county) (state)

10. Is this examination conducted under Iowa Code section 125.80? _____

11. Did a qualified mental health professional assist with this exam? _____ If so, name that individual. _____
(Please provide address) If the professional's report is written, please attach.

12. In your judgment is respondent a chronic substance abuser? _____ If so, state diagnosis and supporting observations or medical history:

13. In your judgment is respondent capable of making responsible decisions with respect to hospitalization or treatment? _____ If not, state supporting observations or medical history:

14. In your judgment, is the respondent treatable? _____ If so, state diagnosis and supporting observations or medical history:

15. In your judgment, is the respondent likely to physically injure himself or herself or others? _____
If so, what has led you to this conclusion?

Physician's Report of Examination Pursuant to Iowa Code Section 125.80 *(cont'd)*

16. In your judgment, is the respondent likely to inflict severe emotional injury on those who cannot avoid contact with the respondent?

17. Can the respondent be evaluated on an out-patient basis? _____
    Basis for answer:

18. Can the respondent, without danger to self or others, be released to the custody of a relative or friend during the course of evaluation?

19. Is full-time hospitalization necessary for evaluation?

20. Does the respondent have a prior history of treatment for substance abuse? _____
    If so, please specify:

21. Has the patient been medicated within 12 hours of the time of the hearing? _____
    If so, supply the probable effects of the medication:

MEDICINE _____

DOSAGE _____

TIME _____

Signed _____
Physician

Address _____

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 11:** ***Order for Continuance Pursuant to Iowa Code Section 125.80(4).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**ORDER FOR CONTINUANCE PURSUANT TO IOWA CODE SECTION 125.80(4)** |
|---|---|

Upon the application of respondent's attorney, and for good cause shown, it is ordered that hearing in this matter be continued. The hearing shall be rescheduled promptly, as soon as respondent's attorney has informed the court of the expected date of respondent's readiness for the hearing. The rescheduling shall take into consideration any application by the facility for an earlier release of the respondent from custody.

Done this _____day of _____, 20 _____.

_____
Judge of the _____ Judicial District
of Iowa or Judicial Hospitalization Referee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 12:** ***Stipulation Pursuant to Iowa Code Section 125.82 and Rule 13.19.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**STIPULATION PURSUANT TO IOWA CODE SECTION 125.82 AND RULE 13.19** |
|---|---|

It is hereby stipulated that respondent need not be present at the hearing to determine if the respondent is a chronic substance abuser.

(1) I have conversed with respondent about the hearing and the respondent's absence on _____.
(date)

(2) In my judgment, *(a)* respondent can make no meaningful contribution to the hearing; or *(b)* respondent has waived the right to be present. I base this judgment on the following grounds: _____

_____

_____

SIGNED

_____
Respondent's attorney

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 13:** ***Notice of Medication Pursuant to Iowa Code Section 125.82(1).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**NOTICE OF MEDICATION PURSUANT TO IOWA CODE SECTION 125.82(1)** |
|---|---|

I hereby certify that the respondent was medicated at _____a.m./p.m. on _____, 20 _____.

The probable effects of the medication are as follows:

The medication (may) (probably will not) affect respondent's ability to understand the nature of these proceedings.

SIGNED

_____
Physician

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 14:** ***Discharge and Termination of Proceedings Pursuant to Iowa Code Section 125.82(4).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**DISCHARGE AND TERMINATION OF PROCEEDINGS PURSUANT TO IOWA CODE SECTION 125.82(4)** |

A hearing was held on the _____ day of _____, 20 _____, pertaining to the alleged chronic substance abuse by respondent. All relevant and material evidence was presented.

This court finds the contention that the respondent is a chronic substance abuser has not been sustained by clear and convincing evidence.

It is therefore ordered that the application for involuntary commitment or treatment of respondent is hereby denied and that all proceedings in this matter are hereby terminated.

It is further ordered that the respondent be released from custody.

All papers and records pertaining to these proceedings shall be confidential and subject to the provisions of Iowa Code section 125.93.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 15:** ***Findings of Fact and Order Pursuant to Iowa Code Section 125.83.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**FINDINGS OF FACT AND ORDER PURSUANT TO IOWA CODE SECTION 125.83** |
|---|---|

A hearing on this matter was held on _____, 20 . The court finds the contention that the respondent is a chronic substance abuser has been sustained by clear and convincing evidence.

The following is a statement of facts setting forth the evidence upon which this finding is based:

It is therefore ordered that the respondent be placed at _____ (facility) for a complete evaluation and appropriate treatment.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District of Iowa or Judicial Hospitalization Referee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 16:** ***Application for Order for Extension of Time for Evaluation Pursuant to Iowa Code Section 125.83.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**APPLICATION FOR ORDER FOR EXTENSION OF TIME FOR EVALUATION PURSUANT TO IOWA CODE SECTION 125.83** |
|---|---|

I, the facility administrator of _____ request an extension of
(facility)
time not to exceed seven days in order to complete the evaluation of respondent.

I request this extension because:

_____
Facility Administrator

_____
Date

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 17:** ***Order for Extension of Time Pursuant to Iowa Code Section 125.83.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF: | No. _____ |
|---|---|
| _____, | **ORDER FOR EXTENSION OF TIME PURSUANT TO IOWA CODE SECTION 125.83** |
| Respondent. | |

An application for extension of time for evaluation in this matter having been presented to the (court) (judicial hospitalization referee) this _____ day of _____, 20 _____, and upon a showing of good cause; it is hereby ordered that the extension of time be granted for a period not to exceed seven days beyond the initial 15-day evaluation period set out in Iowa Code section 125.83.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District
of Iowa or Judicial Hospitalization Referee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 18:** ***Report of the Chief Medical Officer's Substance Abuse Evaluation Pursuant to Iowa Code Section 125.84.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br><br>Respondent. | No. _____<br><br>**REPORT OF THE CHIEF MEDICAL OFFICER'S SUBSTANCE ABUSE EVALUATION PURSUANT TO IOWA CODE SECTION 125.84** |
|---|---|

DATE AND TIME OF EVALUATION: _____

1. Treatment that respondent has received during the present hearing and evaluation period:

2. Medication given for withdrawal symptoms and the effect on the respondent's behavior or mental state:

3. Have there been previous incidents of substance abuse? _____
   (a) If so, give approximate dates:

   (b) Was hospitalization or treatment necessary? _____
   If so, give place, date, length of stay, condition on discharge:

4. Respondent's past medical history:

5. Is there a family history of substance abuse? _____
   If so, give names and relationship:

6. In your judgment is respondent a chronic substance abuser? _____
   If so, state diagnosis and supporting observations or medical history:

7. In your judgment is respondent capable of making responsible decisions with respect to hospitalization or treatment? _____
   If not, state supporting observations or medical history:

8. In your judgment, is the respondent treatable? _____
   If so, state diagnosis and supporting observations or medical history:

9. In your judgment, is the respondent likely to physically injure himself or herself or others? _____
   What has led you to this conclusion?

10. In your judgment, is the respondent likely to inflict severe emotional injury on those unable to avoid contact with the respondent?

Report of the Chief Medical Officer's Substance Abuse Evaluation Pursuant to Iowa Code Section 125.84 *(cont'd)*

11. PROPOSED TREATMENT
Please check one of the four alternatives contained in Iowa Code section 125.84.

_____1. The respondent does not, as of the date of this report, require further treatment for substance abuse.

_____2. The respondent is a chronic substance abuser who is in need of full-time custody, care, and treatment in a facility, and is considered likely to benefit from treatment.

_____3. The respondent is a chronic substance abuser who is in need of treatment, but does not require full-time placement in a facility.

_____4. The respondent is a chronic substance abuser who is in need of treatment, but in the opinion of the chief medical officer is not responding to the treatment provided. Recommendation for alternative placement.

Signed _____, M.D.
Chief Medical Officer/Designee

Address _____

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 19:** ***Periodic Report Pursuant to Iowa Code Section 125.86(1).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br><br>Respondent. | No. _____<br><br>**PERIODIC REPORT PURSUANT TO IOWA CODE SECTION 125.86(1)**<br><br>Date _____ |
|---|---|

1. An order for continued placement of the respondent at this facility was entered

_____.

Facility _____ Address _____

Patient's Name _____ Hospital Number _____ DOB _____ County of Settlement _____

County of Commitment _____ Transfer From _____

Transfer Date _____ Last Evaluation _____ Date of this Visit _____

Diagnosis _____

2. Current therapy: List all types of therapy, including medication.

PHYSICAL CONDITION COMMENTS:

Ambulatory _____ Wheelchair _____ _____

Bed Patient _____

General Appearance: Good _____ _____

Fair _____ Poor _____

Eating Habits: Good _____ _____

Fair _____ Poor _____

Sleeping Habits: Good _____ _____

Fair _____ Poor _____

Incontinent — Yes _____ No _____

Sometimes _____

Diet: Regular _____ Reduction _____

Other (specify) _____ Wt. _____ Ht. _____ B.P. _____

List any physical problems such as seizures, dental, heart, sight, hearing, etc.

BEHAVIOR: Improved _____ Unchanged _____

Disturbed __

Depressed _____ Suicidal _____

Is this patient easily managed in your facility?

Yes _____ No _____ If no, describe:

WORK: Is patient currently employed? _____ If so, where? _____

_____

Describe job performance _____

Periodic Report Pursuant to Iowa Code Section 125.86(1) *(cont'd)*

FAMILY SITUATION: Single ☐ Married ☐ Divorced ☐
Dissolution in progress ☐

Does this patient receive Social Security?
Disability _____ Pension _____

RECREATIONAL ACTIVITIES:
Participation: Active _____ Limited _____
Observe Only _____ Type _____

VISITORS: No _____ Yes _____ Frequency _____ Who _____

MAIL: Receives _____ Writes _____

INTERVIEW SUMMARY

COVER THE FOLLOWING: (1) Present physical and mental condition; (2) Adjustment to facility; (3) Behavior during interview; and (4) Administrator's viewpoint of patient.

3. In my opinion, the patient's condition (has improved) (remains unchanged) (has deteriorated). Additional information concerning the patient's condition and prognosis is provided below:

4. In my opinion, the following subsection of Iowa Code section 125.84 is applicable (check one):

_____ (a) Respondent does not, as of this date, require further treatment for substance abuse.

_____ (b) Respondent is a chronic substance abuser who is in need of full-time custody, care, and treatment in a facility, and is considered likely to benefit from treatment.

_____ (c) Respondent is a chronic substance abuser who is in need of treatment but does not require full-time placement in a facility. (See recommendation below.)

_____ (d) Respondent is a chronic substance abuser who is in need of treatment but is not responding to the treatment provided. (See recommendation below.)

RECOMMENDATIONS:

5. Respondent was tentatively discharged on _____, pursuant to Iowa Code section 125.85 because in my opinion the respondent no longer requires treatment or care as a substance abuser: (See explanation below.)

EXPLANATION:

Respondent seen at _____ on _____
(name of facility) (date)

by _____
(interviewer) (title)

_____, M.D.
Chief Medical Officer/Designee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 20:** ***Periodic Report Pursuant to Iowa Code Section 125.86(2).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF: | No. _____ |
|---|---|
| _____, | **PERIODIC REPORT PURSUANT TO IOWA CODE SECTION 125.86(2)** |
| Respondent. | Date _____ |

1. An order for continued treatment of the respondent under the supervision of this facility was entered _____.

Facility _____ Address _____

Patient's Name _____ Hospital Number _____ DOB _____ County of Settlement _____

County of Commitment _____ Transfer From _____

Transfer Date _____ Last Evaluation _____ Date of this Visit _____

Diagnosis _____

2. Current therapy: List all types of therapy, including medication.

PHYSICAL CONDITION

Ambulatory _____ Wheelchair _____
Bed Patient _____
General Appearance: Good _____
Fair _____ Poor _____
Eating Habits: Good _____
Fair _____ Poor _____
Sleeping Habits: Good _____
Fair _____ Poor _____
Incontinent — Yes _____ No _____
Sometimes _____
Diet: Regular _____ Reduction _____
Other (specify) _____

COMMENTS:

_____
_____
_____
_____

Wt. _____ Ht. _____ B.P. _____

List any physical problems such as seizures, dental, heart, sight, hearing, etc.

BEHAVIOR: Improved _____ Unchanged _____ Disturbed _____
Depressed _____ Suicidal _____
Is this patient easily managed in your facility?
Yes _____ No _____ If no, describe:

WORK: Is patient currently employed? _____ If so, where? _____

_____

Describe job performance _____

_____

Periodic Report Pursuant to Iowa Code Section 125.86(2) *(cont'd)*

FAMILY SITUATION: Single ☐ Married ☐ Divorced ☐
Dissolution in progress ☐

Does this patient receive Social Security?
Disability _____ Pension _____

RECREATIONAL ACTIVITIES:
Participation: Active _____ Limited _____
Observe Only _____ Type _____

VISITORS: No _____ Yes _____ Frequency _____ Who _____

MAIL: Receives _____ Writes _____

INTERVIEW SUMMARY

COVER THE FOLLOWING: (1) Present physical and mental condition; (2) Adjustment to facility; (3) Behavior during interview; and (4) Administrator's viewpoint of patient.

3. In my opinion, the patient's condition (has improved) (remains unchanged) (has deteriorated). Additional information concerning the patient's condition and prognosis is provided below:

4. In my opinion, the following subsection of Iowa Code section 125.84 is applicable (check one):

_____ (a) Respondent does not, as of this date, require further treatment for substance abuse.

_____ (b) Respondent is a chronic substance abuser who is in need of full-time custody, care, and treatment in a facility, and is considered likely to benefit from treatment.

_____ (c) Respondent is a chronic substance abuser who is in need of treatment but does not require full-time placement in a facility. (See recommendation below.)

_____ (d) Respondent is a chronic substance abuser who is in need of treatment but is not responding to the treatment provided. (See recommendation below.)

RECOMMENDATIONS:

5. Respondent was tentatively discharged on _____, pursuant to Iowa Code section 125.85 because in my opinion the respondent no longer requires treatment or care as a substance abuser: (See explanation below.)

EXPLANATION:

Respondent seen at _____ on _____
(name of facility) (date)

by _____
(interviewer) (title)

_____, M.D.
Chief Medical Officer/Designee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 21:** ***Notice of Facility Administrator's Request for Extension of Time Pursuant to Iowa Code Section 125.83.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br><br>Respondent. | No. _____<br><br>**NOTICE OF FACILITY ADMINISTRATOR'S REQUEST FOR EXTENSION OF TIME PURSUANT TO IOWA CODE SECTION 125.83** |
|---|---|

TO: _____, attorney for respondent.

You are hereby notified, pursuant to Iowa Code section 125.83, that a request for extension of time for filing an evaluation report has been received from the facility administrator of _____ _____, a copy of which is attached.

The request for an extension of time may be contested pursuant to Iowa Code section 125.83.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District
of Iowa or Judicial Hospitalization Referee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 22:** ***Order After Evaluation Pursuant to Iowa Code Section 125.84.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br><br>Respondent. | No. _____<br><br>**ORDER AFTER EVALUATION PURSUANT TO IOWA CODE SECTION 125.84** |
|---|---|

The court has received the facility administrator's report of the chief medical officer's substance abuse evaluation of the respondent, and it was the recommendation of _____ that the respondent _____

_____

_____

_____

_____

_____

It is therefore ordered that the respondent _____

_____

_____

_____

_____

_____

Copies of this order shall be sent to respondent's attorney.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District
of Iowa or Judicial Hospitalization Referee

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 23:** ***Report of Respondent's Discharge Pursuant to Iowa Code Section 125.85(4).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF: | No. _____ |
|---|---|
| _____, | **REPORT OF RESPONDENT'S DISCHARGE PURSUANT TO IOWA CODE SECTION 125.85(4)** |
| Respondent. | |

TO: _____(judge) (judicial hospitalization referee)

I,_____, administrator of _____ do hereby report that the
(facility)
above-named respondent, for whom (commitment) (treatment) was ordered on _____, was discharged from this facility or from treatment on _____.

_____
Facility Administrator

_____
Date

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 24:** ***Order Confirming Respondent's Discharge and Terminating Proceedings Pursuant to Iowa Code Section 125.85(4).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br><br>Respondent. | No. _____<br><br>**ORDER CONFIRMING RESPONDENT'S DISCHARGE AND TERMINATING PROCEEDINGS PURSUANT TO IOWA CODE SECTION 125.85(4)** |
|---|---|

This (court) (referee) has received a report from _____, administrator of _____, indicating that respondent,
(facility)
for whom (commitment) (treatment) was ordered by this (court) (referee) on _____, has been discharged from the facility or from treatment.

I hereby confirm respondent's discharge and, further, order termination of all proceedings pursuant to which the (commitment) (treatment) order was issued.

All papers and records pertaining to those proceedings shall be confidential and subject to the provisions of Iowa Code section 125.93.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District
of Iowa or Judicial Hospitalization Referee

cc: Facility
Respondent

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 25:** ***Notice of Appeal From the Findings of the Judicial Hospitalization Referee.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF: | No. _____ |
|---|---|
| _____, | **NOTICE OF APPEAL FROM THE FINDINGS OF THE JUDICIAL HOSPITALIZATION REFEREE** |
| Respondent. | |

TO: _____, judge of the _____ judicial district of Iowa and the clerk of the district court:

The undersigned hereby appeals the findings of _____, judicial hospitalization referee, that respondent is a chronic substance abuser, and requests a review of the matter by a judge of the Iowa district court for _____ County, Iowa, all pursuant to Iowa Code section 229.21(3).

Done this _____ day of _____, 20 _____.

SIGNED

_____
(Respondent, Next Friend, Guardian, Attorney)

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 26:** ***Claim, Order and Certificate for Attorney or Physician's Fees.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br><br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**CLAIM, ORDER AND CERTIFICATE FOR ATTORNEY OR PHYSICIAN'S FEES** |

STATE OF IOWA, _____ COUNTY, ss:

The undersigned (attorney) (physician), being first duly sworn (or affirmed), states that he/she was appointed by the (court) (judicial hospitalization referee) to (represent) (examine) the (respondent) (applicant _____ _____) in substance abuse proceedings, pursuant to Iowa Code section 125.78; that services have been completed by this claimant as set forth on the attached itemized statement; and that this claimant has not directly, or indirectly, received, or entered into a contract to receive, any compensation for such services from any sources.

WHEREFORE, this claimant prays for an order to be compensated in accordance with the provisions of Iowa Code section 125.78.

_____
Claimant

_____
Address

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20 _____.

_____
Clerk of Said District Court
(or) Notary Public in and for the State of Iowa

Claim, Order and Certificate for Attorney or Physician's Fees *(cont'd)*

ORDER

The foregoing verified claim has been duly considered, is fixed and approved in the sum of $ _____ and ordered paid out of the county treasury. The clerk is directed to certify a copy of above claim and this order to the county auditor for payment to claimant, as provided by statute.

Done this _____ day of _____, 20 _____.

_____
Judge of the _____ Judicial District
of Iowa or Judicial Hospitalization Referee

CERTIFICATE

The above is a true copy of claim and order as appears of record in my office and is hereby certified to county auditor for payment.

Done this _____ day of _____, 20 _____.

_____
(Deputy) Clerk of Said Court

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 27:** ***Authorization of Detention Pursuant to Iowa Code Section 125.91(2).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| IN THE MATTER OF:<br><br>_____,<br><br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**AUTHORIZATION OF DETENTION PURSUANT TO IOWA CODE SECTION 125.91(2)** |
|---|---|

DATE _____

TIME OF DETENTION _____

TIME OF NOTIFICATION OF MAGISTRATE _____

Respondent has been detained because there is reason to believe respondent is a chronic substance abuser who is incapacitated or is likely to injure himself or herself or others if not immediately detained. My conclusion regarding the need for detention is based upon the following information:

This detention has been authorized by the verbal instruction of _____ _____, magistrate.

_____
Facility Administrator

ARRIVAL OF MAGISTRATE

Time of arrival of magistrate _____

_____
Magistrate

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 28:** ***Magistrate's Report Pursuant to Iowa Code Section 125.91(2)(b).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br><br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**MAGISTRATE'S REPORT PURSUANT TO IOWA CODE SECTION 125.91(2)(b)** |

1. Reason for failure to respond immediately to the facility administrator's call:

2. Substance of the information on the basis of which the respondent's continued detention was ordered:

TIME OF CALL _____

TIME OF RESPONSE _____

TIME OF APPOINTMENT OR NOTIFICATION OF COUNSEL _____

_____
Magistrate

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

**Rule 13.35 Form 29:** ***Magistrate's Order of Detention Pursuant to Iowa Code Section 125.91(3).***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY, IOWA

| | |
|---|---|
| IN THE MATTER OF:<br><br>_____,<br><br>ALLEGED TO BE A CHRONIC SUBSTANCE ABUSER,<br><br>Respondent. | No. _____<br><br>**MAGISTRATE'S ORDER OF DETENTION PURSUANT TO IOWA CODE SECTION 125.91(3)** |

TIME OF NOTIFICATION OF MAGISTRATE _____

TIME OF ACTION BY MAGISTRATE _____

Information and evidence has been presented to this magistrate that respondent should be immediately detained due to chronic substance abuse;

This magistrate finds that there is probable cause to believe that respondent is a chronic substance abuser, and because of that chronic abuse is likely to injure himself or herself or others if not immediately detained;

The finding is based on the following circumstances and grounds: _____

_____

_____

_____

It is hereby ordered that _____ shall be detained in custody at _____ (facility) for examination and care for a period not to exceed 48 hours (excluding Saturdays, Sundays and holidays).

It is further ordered that the facility may provide treatment which is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to himself or herself or others if allowed to continue, or is otherwise deemed medically necessary by the chief medical officer, but the facility may not otherwise provide treatment to the respondent without respondent's consent.

Done this _____ day of _____, 20 _____.

Time _____

_____
Magistrate

[Report 1984; 1995; November 9, 2001, effective February 15, 2002]

# CHAPTER 14
# RULES ON THE QUALIFICATIONS AND COMPENSATION OF INTERPRETERS FOR HEARING-IMPAIRED PERSONS

**Rule 14.1 Appointment and qualifications of interpreters.** When required to appoint an interpreter for a deaf or hard-of-hearing person pursuant to Iowa Code section 622B.2, the court or administrative agency shall select an interpreter from the current directory of qualified interpreters for deaf or hard-of-hearing persons furnished by the service program for the deaf of the Iowa state department of human rights and available from the department of human rights or the supreme court administrator's office. Interpreters listed in the directory shall be certified under the National Testing System of the Registry of Interpreters for the Deaf and shall demonstrate one or more of the following certifications, commensurate with their training and experience: (1) a valid comprehensive skills certificate (CSC), (2) both a certificate of interpretation (CI) and a certificate of transliteration (CT), (3) a master comprehensive skills certificate (MCSC), or (4) a specialist certificate: legal (SC:L). Selection of a particular interpreter shall be based on availability, proximity to the venue of the proceeding, and the level of interpreter expertise needed regarding the complexity of the proceeding and the deaf or hard-of-hearing person's role in the proceeding. [Court Order June 23, 1980; August 20, 1993, effective January 3, 1994; January 3, 1994, effective February 4, 1994; November 9, 2001, effective February 15, 2002]

**Rule 14.2 Compensation-appointment of more than one interpreter.** After selecting an appropriate interpreter, the court or administrative agency shall enter an order appointing the interpreter and setting the level of compensation for the interpreter. Where a deaf or hard-of-hearing person is a party to a complex proceeding or is a witness giving lengthy testimony, the court or administrative agency may, in its discretion, appoint more than one interpreter. An interpreter appointed under Iowa Code section 622B.2 shall be entitled to reasonable compensation. Appointed interpreters are also entitled to compensation for mileage at the same rate paid witnesses in district court. [Court Order June 23, 1980; March 27, 1990, effective May 1, 1990; August 20, 1993, effective January 3, 1994; November 9, 2001, effective February 15, 2002]

**Rule 14.3 Claim for compensation.** After the close of proceedings the interpreter shall submit to the court or administrative agency a voucher specifically listing the hours spent on the appointment and any mileage claims. Upon review and approval of the voucher, the court or administrative agency shall enter an order setting the total amount of compensation due the interpreter and directing such compensation paid out of county funds or administrative agency funds as provided in Iowa Code section 622B.7. [Court Order June 23, 1980; August 20, 1993, effective January 3, 1994; November 9, 2001, effective February 15, 2002]

CHAPTERS 15 to 20
Reserved

**CHAPTER 15**

**CHAPTER 16**

**CHAPTER 17**

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**CHAPTER 20**

# CHAPTER 21
# ORGANIZATION AND PROCEDURES OF APPELLATE COURTS

## ORGANIZATION OF SUPREME COURT


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| Rule 21.2 | Absence of chief justice |
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# CHAPTER 21
# ORGANIZATION AND PROCEDURES OF APPELLATE COURTS

## ORGANIZATION OF SUPREME COURT

**Rule 21.1 Submission to the court.** Cases shall ordinarily be submitted en banc; however, the chief justice may provide for submission and consideration by less than the entire court. [Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

**Rule 21.2 Absence of chief justice.** If the chief justice is absent or ill or from any other disability is unable to act and does not select some other member of the supreme court to act as chief justice during an absence or disability, the court shall select one of its other members to act during such time. [Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

**Rules 21.3** to **21.10** Reserved.

## ORGANIZATION AND ADMINISTRATION OF COURT OF APPEALS

**Rule 21.11 Sitting en banc or in divisions.** The court of appeals may sit in divisions. The chief judge of the court of appeals shall determine whether a case will be submitted with or without oral argument and whether it will be submitted to a division of the court of appeals. [Court Order September 19, 1979; October 7, 1981; February 1, 1982; May 16, 1984; November 9, 2001, effective February 15, 2002]

**Rule 21.12 Party's challenge to nonoral or division assignment.** A party may state reasons in writing why a case should be submitted with oral argument or not be assigned to a division of the court of appeals. The statement, if any, shall be filed and served within seven days after the date of the notice that the case will be submitted without oral argument or to a division. [Court Order February 1, 1982; November 9, 2001, effective February 15, 2002]

**Rule 21.13 Division personnel.** The personnel of a division of the court of appeals shall not be permanent but may be changed from time to time by the chief judge or by vote of a majority of the judges of the court of appeals. The membership of a division shall be selected at random. A chief judge sitting on any division shall be the presiding judge. On a division of which the chief judge is not a member, the judge senior in precedence shall preside. [Court Order February 1, 1982; May 16, 1984; July 19, 1999; November 9, 2001, effective February 15, 2002]

**Rule 21.14 Court conferences.** A preliminary conference may be held for cases submitted to the court of appeals without oral argument. Prior to oral argument, cases shall ordinarily be randomly assigned to a judge for drafting of an opinion. Preliminary conferences on cases heard orally by the court of appeals ordinarily shall follow argument. A tentative vote shall be taken at the preliminary conference. Final conference on all cases ordinarily shall be by panel but may, at the option of the court, be en banc. [Court Order February 1, 1982; May 16, 1984; June 28, 1995, effective August 1, 1995; July 19, 1999; November 9, 2001, effective February 15, 2002]

**Rules 21.15** to **21.20** Reserved.

## APPELLATE OPERATING PROCEDURES

**Rule 21.21 Allocation of proceedings (cases).**

**21.21(1)** *Initial review and preparation of case statements.*

*a.* All appellate proceedings shall be filed in the office of the supreme court clerk. Screening and evaluation of cases shall be undertaken by the supreme court and central staff research attorneys for purposes of recommending routing to the appropriate appellate court. Staff attorneys shall not make any recommendation as to the determination of a case. A case statement may be prepared by staff attorneys if warranted. Rule 21.41, Form 1, contains the form of such case statement.

*b.* All routing decisions shall be made by justices of the supreme court. Decisions concerning the necessity and time allocated for oral argument shall be decided in the appropriate appellate court in accordance with the rules of appellate procedure.

*c.* The cover page of a case statement through the general case description may be made available to the public. The remainder of the case statement shall be confidential.

**21.21(2)** *Review by supreme court panel.* Except as otherwise directed by a supervisory order of the chief justice, all proceedings shall be reviewed by a rotating panel of three justices of the supreme court to determine initially whether a case shall be retained by the supreme court for full appellate review, transferred to the court of appeals, or decided by summary disposition by the supreme court.

**21.21(3)** *Summary disposition.* Cases appropriate for summary disposition shall be retained by the supreme court for disposition by a brief per curiam opinion. [Court Order September 19, 1979; May 27, 1988, effective July 1, 1988; November 9, 2001, effective February 15, 2002]

**Rule 21.22 Submissions to supreme court.** Causes not fully argued at the period for which assigned may be passed to a later period or be continued on the supreme court's own motion or on motion by a party. [Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

**Rule 21.23 Submissions to court of appeals.** The court of appeals may schedule submissions of cases at any time except when the supreme court courtroom is being used by the supreme court. [Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

**Rule 21.24 Oral argument.**

**21.24(1)** *Governing principle.* Oral argument in both the supreme court and court of appeals shall be governed by these rules and the rules of appellate procedure.

**21.24(2)** *Limitations on oral argument.* Oral argument shall not be granted as a matter of right. When oral argument is granted, time limitations shall be determined at the discretion of the court hearing the appeal.

**21.24(3)** *Notification.* If the supreme court or the court of appeals tentatively decides to submit a case without oral argument, the chief justice or chief judge shall notify the parties of the possibility of nonoral submission and offer them the opportunity to file statements of reasons oral argument is needed and should be granted. [Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

**Rule 21.25 Participation in and publication of opinions.** Each opinion of the supreme court and court of appeals shall show the justices or judges who participated in it. Opinions of the supreme court and opinions of the court of appeals to be published in accordance with rule 21.30 and Iowa R. App. P. 6.25 shall be published by West Publishing Company commencing with and subsequent to 158 N.W.2d. [Court Order September 19, 1979; December 20, 1989, effective February 15, 1990; February 19, 2001, effective July 1, 2001; November 9, 2001, effective February 15, 2002]

**Rule 21.26 Correction of opinions.**

**21.26(1)** The author of an opinion or the appropriate appellate court may correct typographical, grammatical or other formal errors in the opinion by filing a correction notice with the clerk of the supreme court. The correction notice shall be filed and kept with the opinion, and the author or appropriate appellate court shall cause the corrections to be inserted in the original opinion. If the opinion is to be published in the North Western Reporter and has not yet been published in a bound volume, and if the correction did not originate with West Publishing Company, the author or appropriate appellate court shall cause a copy of the correction notice to be transmitted immediately to West Publishing Company for insertion of the correction in the published opinion.

**21.26(2)** Changes in the substance of a supreme court opinion may be made only by action of that court before procedendo has been issued. Changes in the substance of an opinion by the court of appeals may be made only before supreme court ruling on any application for further review or, when no such application is filed, before issuance of procedendo. Such changes shall be made only by filing an order, amended opinion, or substituted opinion. The original opinion shall remain on file with the clerk and shall not be altered by interlining, expunging prior language, or any other means. [Court Order December 5, 1979, effective January 1, 1980; May 16, 1984; November 9, 2001, effective February 15, 2002]

**Rule 21.27 Consideration of petitions for rehearing.** Immediately upon the filing of a petition for rehearing pursuant to Iowa R. App. P. 6.27, the clerk shall deliver copies of the petition to all justices of the supreme court. All petitions for rehearing shall be considered by the supreme court en banc. [Court Order June 27, 1980; November 9, 2001, effective February 15, 2002]

**Rule 21.28 Opinions dealing with confidential material.** In an appeal in a juvenile case in which the juvenile court record is confidential under Iowa Code section 232.147, the supreme court or court of appeals shall refer to the parties in the caption and body of the opinion and other public court documents by first name or initial only. The same method of designation shall be used in any situation in which revealing a person's identity would have the effect of disclosing material which is required by statute or rule of the supreme court to be confidential. [Court Order November 19, 1981; November 9, 2001, effective February 15, 2002]

**Rule 21.29 Memorandum opinions.**

**21.29(1)** *When appropriate.* Memorandum opinions may be used by the court of appeals and supreme court to dispose of cases when appropriate. A short memorandum opinion may be used when any of the following occur:

*a.* The issues involve only the application of well-settled rules of law to a recurring fact situation.

*b.* The issue is whether the evidence is sufficient to support a jury verdict, a trial judge's finding of fact or an administrative agency's finding, and the evidence is sufficient.

*c.* Disposition of the proceeding is clearly controlled by a prior published holding of the court deciding the case or of a higher court.

*d.* The record of the proceeding includes an opinion of the court or agency whose decision is being reviewed, the opinion identifies and considers all the issues presented and the appellate court approves of the reasons and conclusions in the opinion.

*e.* A full opinion would not augment or clarify existing case law.

**21.29(2)** *Contents.* Memorandum opinions should contain all of the following information:

*a.* The name and number of the case.

*b.* Appellant's contentions when appropriate.

*c.* The reasons for the result, briefly stated.

*d.* The disposition.

[Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

**Rule 21.30 Publication of court of appeals opinions.**

**21.30(1)** *Policy.* The principal role of the court of appeals is to dispose justly of a high volume of cases. In order to achieve maximum productivity without sacrificing quality, the court of appeals must devote time, which otherwise might be used in writing and revising full opinions, to deciding cases.

**21.30(2)** *Criteria for publication.* An opinion of the court of appeals may be published only when at least one of the following criteria is satisfied:

*a.* The case resolves an important legal issue.

*b.* The case concerns a factual situation of broad public interest.

*c.* The case involves legal issues which have not been previously decided by the Iowa Supreme Court.

**21.30(3)** *Authority for publication.* Subject to this rule, the court of appeals, by majority vote of its members en banc, shall decide which of its opinions shall be published. Its decision to publish an opinion shall be reflected in an order filed with the clerk within 30 days after the opinion becomes final. A copy of the order shall be provided to the court administrator. An opinion may be published only after it is final. Denial of further review shall not constitute approval by the supreme court of the opinion sought to be reviewed. When further review is granted, the supreme court shall decide whether the court of appeals opinion will be published.

**21.30(4)** *Manner of publication.* Opinions of the court of appeals which are approved for publication shall be transmitted by the chief judge of the court of appeals to West Publishing Company for publication in the North Western Reporter.

**21.30(5)** *Abstracts of opinions not otherwise published.* The court administrator shall cause to be published an abstract of each opinion of the court of appeals not approved for publication. The abstracts shall consist of the title, docket number, date of decision and disposition of each case. The abstracts shall be published quarterly in the North Western Reporter. [Court Order September 19, 1979; March 3, 1981; February 1, 1982; June 10, 1983; August 31, 2001; November 9, 2001, effective February 15, 2002]

**Rule 21.31 Costs in court of appeals.** Costs in the court of appeals shall be the same as in the supreme court. [Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

**Rule 21.32 Application to supreme court for further review.**

**21.32(1)** *Review by rotating panel.* Each application for further review, resistance, and previously filed briefs and appendix shall be examined by a rotating panel of three justices, which shall make a recommendation to the supreme court. If granting is recommended, the scope and manner of submission also shall be recommended.

**21.32(2)** *Court conference.* The supreme court en banc shall consider each application for further review and resistance in a conference. The affirmative vote of at least four justices shall be required to grant an application for further review. If an application is granted, the supreme court shall determine the scope and manner of submission. [Court Order September 19, 1979; June 1, 2000, effective November 11, 2000; November 9, 2001, effective February 15, 2002]

**Rule 21.33 Distribution of printed papers.** For cases retained by the supreme court or in which an application for further review was granted, the clerk of the supreme court shall make the following distribution of the papers which are printed or duplicated in the manner prescribed in Iowa R. App. P. 6.16(1): a copy to each justice of the supreme court, the state law library, the library of the University of Iowa College of Law and the law library of Drake University. The remainder of such papers shall be placed in the clerk's office, with one copy to be kept permanently there or in the state historical department archives. For cases transferred to the court of appeals in which an application for further review was not granted, the clerk shall distribute a copy of the printed or duplicated papers to each judge of that court and to the state law library; the remainder shall be placed in the clerk's office, with one copy to be kept permanently there or in the state historical department archives. When a court of appeals opinion is approved for publication, the clerk shall make the following additional distribution of the printed or duplicated papers in the case: a copy to the library of the University of Iowa College of Law and to the law library of Drake University. [Court Order September 19, 1979; May *22,* 1990, effective July *2,* 1990; November 9, 2001, effective February 15, 2002]

**Rule 21.34 Petitions, applications, requests, and motions in supreme court.**

**21.34(1)** *Clerk's examination of papers.* The clerk of the supreme court or the deputy clerk shall examine each petition, application, request, motion or similar paper (called "motions" in this rule) filed in the clerk's office regarding matters in the supreme court to determine whether:

*a.* The clerk or deputy has authority to rule on the motion pursuant to Iowa R. App. P. 6.22(8), or

*b.* The motion may be resisted and be ruled upon pursuant to Iowa R. App. P. 6.22(3) and 6.22(4), or

*c.* The motion demands the immediate attention of the supreme court.

**21.34(2)** *Motions for procedural orders.* If the clerk or the deputy clerk determines that a motion is for a procedural order and that it may be ruled on under Iowa R. App. P. 6.22(8), the clerk or the deputy clerk shall do any of the following:

*a.* Promptly rule on the motion and send copies of the order to the interested parties or their attorneys of record.

*b.* If the clerk or deputy clerk determines a resistance would be helpful, set the matter for nonoral consideration pursuant to Iowa R. App. P. 6.22(9), before ruling on the motion or forwarding it to a justice.

*c.* Request the assistance of central staff research attorneys, before ruling on the motion or forwarding it to a justice.

*d.* Forward the motion to a justice with a request that a justice rule on the motion and a statement of the reason for the request.

**21.34(3)** *Action on substantive motions.*

*a.* When all the nonmoving parties have resisted or the time for resistance has expired, the clerk shall promptly deliver the motion and all relevant papers directly to a justice or to central staff research attorneys, who shall prepare a memorandum, if necessary, and proposed order on the motion. The memorandum shall be confidential. The staff attorneys shall promptly send to the justice to whom the motion is assigned a copy of the motion, resistance and attachments filed by the parties; any transcript or other relevant papers, and an original and one copy of any memorandum and proposed order unless otherwise directed by the assigned justice.

*b.* If the memorandum recommends relief that cannot be granted by a single justice under Iowa R. App. P. 6.22(6), the staff attorneys shall send copies of the motion, resistance, attachments, memorandum and proposed order to two other justices to participate in the consideration of the motion. The justices will then consider the motion and the justice to whom the motion is assigned will sign the proposed order, or draft and sign an order. The order shall recite the names of the three justices considering the motion.

*c.* After a justice has signed an order, the justice shall arrange for its delivery to the supreme court clerk's office and for the mailing of copies of the order to the parties. The clerk's office shall contact the parties regarding any order requiring immediate notification.

*d.* If a motion which should proceed pursuant to Iowa R. App. P. 6.22(3) and 6.22(4) is filed directly with a justice, the justice will note on the original the date of filing and transmit the original to the clerk in accordance with Iowa R. App. P. 6.31(1). The clerk and staff attorneys shall then proceed with the motion pursuant to this subrule unless otherwise directed by the justice.

**21.34(4)** *Motions demanding immediate attention.* Motions demanding the immediate attention of the supreme court include, but are not limited to, the following: motions for an immediate temporary stay of proceedings pending consideration of request for a stay during appeal; motions for immediate temporary injunctive relief; motions for an order affecting the immediate custody of a child; motions for any temporary relief when substantial rights would otherwise apparently be lost or be greatly impaired by delay, and motions requesting relief of an emergency nature. If the clerk or the deputy clerk determines that a motion demands the immediate attention of the court, the motion and relevant papers shall be immediately delivered with an explanation of the urgency involved for appropriate disposition to a justice who maintains a Des Moines office. The clerk and staff attorneys shall provide assistance on request.

**21.34(5)** *Motion calendar.* The clerk and central staff shall maintain a confidential calendar of motions requiring action by one or more justices, and the calendar shall ordinarily include:

Docket number.
Case name.
Name of motion indicating relief sought.
Date of filing motion.
Justice, if any, with whom filed.
Justice to whom assigned.
Any other participating justices.
Date of ruling on motion.

**21.34(6)** *Justices to whom motions are assigned.* The justice to whom a motion is assigned shall be determined at random but in a manner to ensure substantially equal division of work. When necessary or desirable, additional justices will participate in considering a motion. [Court Order September 19, 1979; October 1, 1979; July 19, 1984; May 7, 1986, effective June 2, 1986; November 9, 2001, effective February 15, 2002]

**Rules 21.35** to **21.40** Reserved.

**Rule 21.41 Forms.**
**Rule 21.41 Form 1:** ***Case Statement.***

*CASE STATEMENT*

No. _____
Law _____
Equity _____
Criminal _____
Special _____

vs.

Trial Court: Trial Judge:

Trial Counsel:

Appellate Counsel:

Final judgment: Interlocutory: Appeal authorized:

Date of entry of order or judgment in question:

Notice of appeal:
Date of filing: Date of serving:

Scope of review:

Request for oral argument by appellant:

by appellee:

Ready date:

General case description:

Error
Preserved I. STATEMENT OF THE ISSUES:

II. STATEMENT OF THE CASE:

III. DISCUSSION OF CASE (to be completed only when necessary to comprehension of the issues):

IV. RECOMMENDATIONS REGARDING CLASSIFICATION OF CASE, ROUTING AND ORAL ARGUMENT:

Classification:

Routing:

Oral Argument:

DIRECTIONS BY PANEL CONSISTING OF:

Routing:

Other:

Case statement prepared by _____on _____.

[Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

# CHAPTER 22
# JUDICIAL ADMINISTRATION

**Rule 22.1 Supervision of courts.** The supreme court, by and through the chief justice, shall exercise supervisory and administrative control over all trial courts in the state, and over the judges and other personnel thereof, including but not limited to authority to make and issue any order a chief judge may make under rule 22.5, or to modify, amend or revoke any such order or court schedule. [Report 1969; Court Order November 9, 2001, effective February 15, 2002]

**Rule 22.2 Recall and transfer of judges.** The supreme court by and through the chief justice may at any time order the recall of eligible retired judges for active service, and the transfer of active judges and other court personnel from one judicial district to another to provide a sufficient number of judges to handle the judicial business in all districts promptly and efficiently. [Report 1969; Court Order November 9, 2001, effective February 15, 2002]

**Rule 22.3 Selection of chief judges.** Not later than December 15 in each odd-numbered year the chief justice, with the approval of the supreme court, shall appoint from the district judges of each district one of their number to serve as chief judge. The judge so appointed shall serve for a two-year term and shall be eligible for reappointment. Vacancies in the office of chief judge shall be filled in the same manner within 30 days after the vacancy occurs. During any period of vacancy the judge of longest service in the district shall be the acting chief judge. [Report 1969; Court Order October 31, 1997, effective January 24, 1998; October 27, 1999, effective January 3, 2000; November 9, 2001, effective February 15, 2002]

**Rule 22.4 Order appointing chief judges.** The order appointing chief judges shall be filed with the clerk of the supreme court who shall mail certified copies to the clerk of each district court. [Report 1969; Court Order November 9, 2001, effective February 15, 2002]

**Rule 22.5 Duties and powers of chief judges.** In addition to their ordinary judicial duties, chief judges shall exercise continuing administrative supervision within their respective districts over all district courts, judges, magistrates, officials and employees thereof for the purposes stated in Iowa R. Civ. P. 1.1807. They shall by order fix times and places of holding court and designate the respective presiding judges and magistrates; they shall supervise and direct the performance of all administrative business of their district courts; they may conduct judicial conferences of their district judges, district associate judges, and magistrates to consider, study and plan for improvement of the administration of justice; and may make such administrative orders as necessary. No chief judge shall at any time direct or influence any judge or magistrate in any ruling or decision in any proceeding or matter whatsoever.

The chief judge of a judicial district may appoint from the other district judges an assistant or assistants to serve on a judicial district-wide basis and at the chief judge's pleasure. When so acting, such an assistant shall have those powers and duties given to the chief judge by statute or rule of court which are specified in the order of appointment. Such appointment shall by general order be made a matter of record in each county in the judicial district. [Report 1969; amendment 1972; amendment 1979; Court Order October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 22.6 Court and trial sessions.** Chief judges shall by order provide for the following:

**22.6(1)** A court session by a district judge at least once each week in each county of the district, announced in advance in the form of a written schedule, unless a different schedule is approved by the supreme court.

**22.6(2)** Additional sessions in each county for the trial of cases, and other judicial matters, of such duration and frequency as will best serve to expeditiously dispose of pending cases ready for trial, and other pending judicial matters. [Report 1969; Court Order November 9, 2001, effective February 15, 2002]

**Rule 22.7 Case assignment.** The chief judge may assign and monitor cases within the district and may delegate this authority to the district court administrator by general supervisory order or on a case-by-case basis. District judges, district associate judges, associate juvenile judges, associate probate judges, and magistrates shall attend to any matter within their statutory jurisdiction assigned to them by the chief judge. [Court Order May 30, 1986; February 14, 1996; July 26, 1996; November 9, 2001, effective February 15, 2002]

**Rule 22.8 Judicial district scheduling.**

**22.8(1)** The chief judge of each judicial district shall by annual written order set the times and places of holding court within the judicial district and designate the respective presiding judges. The order shall provide for a court session at least once a week in each county of the judicial district, unless otherwise approved by the supreme court. The order shall provide for a scheduled trial session in each county of the judicial district at least four times each year, to be presided over by a different judge. In determining the schedule ordered, the chief judge shall rotate trial judges without regard to judicial election district lines to facilitate the administration of justice, integrate the district bench and promote the ideal of district administration.

**22.8(2)** An order of the chief judge demonstrating compliance with this rule for the next calendar year shall be filed by October 15 of the preceding calendar year with the clerk of the supreme court. Following supreme court approval, the chief judge shall file a copy of the order with the clerk of the district court in each county of the respective judicial district. [Court Order October 15, 1985; November 9, 2001, effective February 15, 2002]

**Rule 22.9 Change of venue to another judicial district.**

**22.9(1)** *Definitions.* As used in this rule:

*a.* *"Receiving county"* means the county to which a change of venue is ordered.

*b.* *"Sending county"* means the county from which a change of venue is ordered.

**22.9(2)** *Communication prior to ordering a change of venue.* Before ordering a change of venue to another judicial district for trial, a judge shall communicate with the office of the chief judge of the judicial district in which the intended receiving county is located. The judge shall determine from inquiry of the chief judge or the chief judge's designee the availability of a courtroom, a jury panel if required, and any necessary court personnel in the receiving county. Subject to the approval of the chief justice, the judicial district in which the sending county is located shall provide the trial judge and court reporter for the transferred proceeding.

**22.9(3)** *Transmission of copies of order changing venue.* Copies of an order changing venue shall be promptly transmitted to all of the following:

*a.* The chief judge of the judicial district in which the receiving county is located.

*b.* The court administrator for the judicial district in which the receiving county is located.

*c.* The clerk of the district court for the receiving county.

*d.* The state court administrator, Statehouse, Des Moines, Iowa 50319.

*e.* Any other persons required by law to receive copies of such an order.

**22.9(4)** *Action brought in wrong county.* This rule does not apply where the action was brought in the wrong county. [Court Order October 20, 1981; November 9, 2001, effective February 15, 2002]

*See* also rule. 2.11 and rule 2.65.

**Rule 22.10 Judges monthly report.**

**22.10(1)** Each senior judge, district judge, district associate judge, full-time associate juvenile judge, full-time associate probate judge, and judicial magistrate shall report monthly to the supreme court, through the office of the state court administrator, all matters taken under advisement in any case for longer than 60 days, together with an explanation of the reasons for the delay and an expected date of decision. If no matters have been taken under advisement over 60 days, the report shall state "none." Senior judges need only file reports for those months during which they perform judicial duties or have matters under advisement.

**22.10(2)** Any submission shall be reported when all hearings have been completed and the matter awaits decision without further appearance of the parties or their attorney. A matter shall be deemed submitted even though briefs or transcripts have been ordered but have not yet been filed.

**22.10(3)** The report shall be due on the tenth day of each calendar month for the period ending with the last day of the preceding calendar month. The report shall be signed by the judge or magistrate and submitted on a form prescribed by the state court administrator.

**22.10(4)** A judge who is reporting a matter or matters taken under advisement for longer than 60 days shall send to the district court administrator a copy of the report forwarded to the state court administrator. The chief judge of the district shall review the copies filed in the district court administrator's office and take such action as shall be appropriate. A chief judge may elect whether to report any action taken to the supreme court. A district chief judge reporting such matters to the supreme court shall forward a copy to the liaison justice for the chief judge's judicial district.

**22.10(5)** The state court administrator shall promptly cause all reports received to be filed in the office of the clerk of the supreme court as records available for public inspection. [Court Order December 15, 1977; February 20, 1981; July 16, 1984 — received for publication October 25, 1984; June 28, 1985, effective July 1, 1985; July 26, 1996; November 9, 2001, effective February 15, 2002]

**Rule 22.11 Practice of law by judges.**

**22.11(1)** A newly appointed full-time associate juvenile judge, full-time associate probate judge, district associate judge, district judge, court of appeals judge, or supreme court justice (hereinafter, judge) may have 30 days from the date of qualifying for office pursuant to Iowa Code section 63.6, or until the vacancy in the office actually occurs, whichever is later, in which to terminate any private law practice before assuming judicial duties. No newly appointed judge shall be placed on the state payroll or assume judicial duties until such private practice is concluded.

**22.11(2)** In terminating a law practice, the newly appointed judge shall undertake no new matters, shall conclude those matters which can be completed within the time provided in rule 22.11(1) and shall transfer those matters which cannot be so concluded or which require trial. While in the process of terminating a private practice, the newly appointed judge shall keep court appearances to a minimum.

**22.11(3)** Upon good cause shown, the supreme court may extend the time in which a newly appointed judge shall comply with this rule.

**22.11(4)** After assuming judicial duties and being placed on the payroll, a judge shall not engage in the practice of law. The practice of law includes but is not limited to the examination of abstracts, consummation of real estate transactions, preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns. [Court Order April 29, 1980; June 28, 1985, effective July 1, 1985; July 26, 1996; December 17, 1996, effective January 2, 1997; November 9, 2001, effective February 15, 2002; April 4, 2002]

**Rule 22.12 Senior judges.**

**22.12(1)** The supreme court, in ruling on an application for senior status, may consider the following factors:

*a.* The applicant's demonstrated willingness and ability to undertake and complete all assigned work within the last two years.

*b.* The result of a confidential vote of the resident district and associate district judges: i.e., (suggested) "Shall X be appointed a senior judge?"

*c.* The result of the most recent judicial plebiscite results.

*d.* The applicant's monthly reports issued pursuant to rule 22.10.

*e.* The applicant's demonstrated understanding that a senior judge's assignment will be determined by the chief judge, with reasonable accommodation for the senior judge's preference.

**22.12(2)** A person who files an election to become a senior judge any time after the date of retirement, pursuant to Iowa Code section 602.9203, shall file written evidence with the clerk of the supreme court that the person has not engaged in the practice of law between the person's date of retirement and date of senior judge election. [Court Order December 17, 1996, effective January 2, 1997; November 9, 2001, effective February 15, 2002]

**Rule 22.13 Service by retired judges.** No retired judge or retired senior judge shall be eligible for temporary service under the provisions of Iowa Code section 602.1612 after reaching the age of 78. [Court Order September 30, 1987; November 9, 2001, effective February 15, 2002]

**Rule 22.14 Judicial vacation.**

**22.14(1)** Supreme court justices, court of appeals judges, district judges, district associate judges, full-time associate juvenile judges, and full-time associate probate judges are entitled to 20 working days of vacation per calendar year. After 15 years of service with the judicial department, supreme court justices, court of appeals judges, district judges, district associate judges, full-time associate juvenile judges, and full-time associate probate judges are entitled to 25 working days of vacation per calendar year.

Vacation schedules of district judges, district associate judges, full-time associate juvenile judges, and full-time associate probate judges shall be coordinated through the office of the chief judge of the district. The chief judge shall cause a record to be kept of the amount of vacation taken by each judicial officer in the district. The number of vacation days shall be prorated during the calendar years a judicial officer begins and separates from judicial service.

No more than 25 working days of accrued, unused vacation from a prior year may be carried into a calendar year. Separation from judicial office shall cancel all unused vacation time. No compensation shall be granted for unused vacation time remaining at the time of separation.

**22.14(2)** Schedules for judicial magistrates should be arranged by the chief judge of each district to accommodate a reasonable vacation period; however, a judicial magistrate shall not be entitled to any specific vacation days for which compensation may be granted, nor may compensation be granted for days not taken prior to separation from judicial service. [Court Order May 20, 1980; May 23, 1985, effective August 1, 1985; September 18, 1992, effective January 2, 1993; July 26, 1996; November 9, 2001, effective February 15, 2002]

**Rule 22.15 Quasi-judicial business.**

**22.15(1)** Each supreme court justice, court of appeals judge, district judge, district associate judge, full-time associate juvenile judge, and full-time associate probate judge may take up to ten working days per calendar year for the purpose of quasi-judicial business. This right is subject to the ability of the chief judge of each district to make necessary scheduling adjustments to accommodate requests. The ten days shall be prorated during the calendar years a judicial officer begins and separates from judicial service. The chief justice of the supreme court may authorize exceptions to this rule.

**22.15(2)** "Quasi-judicial business" includes teaching, speaking, attending related educational programs, courses or seminars, and those duties specified in rule 22.16(5)(*b*)(8) and rule 22.16(5)(*b*)(13) but does not include time spent on other "official duties" enumerated in rule 22.16(5)(*b*), or teaching judicial department educational programs when prior approval is obtained from the chief judge of the appropriate judicial district and chief justice of the supreme court. [Court Order May 20, 1980; May 23, 1985, effective August 1, 1985; June 28, 1985, effective July 1, 1985; October 24, 1985, effective November 1, 1985; July 26, 1996; November 9, 2001, effective February 15, 2002]

**Rule 22.16 Preaudit travel claims of judiciary — definitions.** As used in this rule and rules 22.17 through 22.21:

**22.16(1)** *"Court employee"* or *"employee of the judicial department"* means an officer or employee of the judicial department except for a judicial officer or a court reporter.

**22.16(2)** *"Court reporter"* means every full-time or temporary court reporter compensated by the judicial department pursuant to Iowa Code section 602.1502.

**22.16(3)** *"Judicial officer"* means every justice, judge, district associate judge, senior judge, associate juvenile judge, associate probate judge, judicial hospitalization referee, and magistrate, appointed to serve in the state of Iowa.

**22.16(4)** *"Official domicile"* means the following:

*a.* *"Court employee's official domicile"* means the city, town, or metropolitan area within which the office is located to which that court employee is assigned. Transportation costs between any such employee's permanent home and that person's office, and subsistence within the limits of an employee's official domicile are not reimbursable.

*b.* *"Court reporter's official domicile."* By December 15 of each year, the chief judge of the judicial district shall designate a courthouse as an official domicile for each court reporter. The official domicile of a court reporter shall be the courthouse in the county in which the court reporter works more than 50 percent of the time. When the reporter does not work more than 50 percent of the time in the same courthouse, the reporter's official domicile shall be a courthouse designated by the chief judge at the time of hiring or later upon agreement between the reporter and chief judge. Notification of the official domicile must be filed with the state court administrator's office.

*c.* *"Judicial officer's official domicile"* means the courthouse of the county of residence.

*d.* For purposes of this definition, the following are official domicile-defining metropolitan areas.

| Metropolitan Areas | Inclusions |
|---|---|
| 1. Cedar Rapids | 1. Hiawatha<br>Marion |
| 2. Clinton | 2. Camanche<br>Elvira<br>Low Moor |
| 3. Council Bluffs | 3. Bellevue<br>Bennington<br>Boys Town<br>Carter Lake<br>Elkhorn<br>Irvington<br>LaPlatte<br>LaVista<br>Millard<br>Omaha<br>Papillion<br>Ralston<br>Springfield |
| 4. Davenport | 4. Bettendorf<br>East Moline<br>Hampton<br>Milan<br>Moline<br>Pleasant Valley<br>Riverdale<br>Rock Island<br>Silvis |
| 5. Des Moines | 5. Polk County |
| 6. Dubuque | 6. Asbury<br>Centralia<br>East Dubuque<br>Sageville |
| 7. Iowa City | 7. Coralville |
| 8. Mason City | 8. Clear Lake |
| 9. Sioux City | 9. North Sioux City<br>Sergeant Bluff<br>South Sioux City |
| 10. Waterloo | 10. Cedar Falls<br>Evansdale |

**22.16(5)** *"Official duties"* means the following:

*a.* *"Official duties"* of a court reporter or court employee are the responsibilities and functions contained in the judicial department job description for the position the individual holds.

*b.* *"Official duties"* of a judicial officer are the responsibilities and functions customarily and usually pertaining to the office of judge or referee. Subject to Iowa Code section 602.1509, and this rule and rules 22.17 through 22.21, official duties include the following:

(1) Attendance at court sittings and performance of the other work of the court.

(2) Attendance at judicial conferences called under Iowa Code section 602.1203.

(3) Attendance by district judges, district associate judges, associate juvenile judges, associate probate judges, and judicial magistrates at district judicial conferences called by chief judges of the district court.

(4) Attendance to give testimony before committees of the general assembly, at the committees' request.

(5) Attendance at meetings of judicial nominating commissions as the judicial member of the commission.

(6) Performance of functions as a member of committees or commissions appointed by the supreme court, the chief justice, or a chief judge of the district court on court procedure, administration, or structure.

(7) Attendance at meetings when designated by the chief justice to represent the judicial department.

(8) If approved in advance by the chief justice: attendance to serve as judge at moot court proceedings for Iowa Law School and Drake Law School not to exceed one attendance per calendar year by any one attending judge; attendance at legal or judicial educational and training sessions and courses outside the state; and attendance at meetings of national associations of chief justices, appellate court justices and judges, trial court judges, and judicial officers of limited jurisdiction.

(9) Performance by chief judges of the district court of their administrative functions.

(10) Attendance by members of the judicial council at meetings of the council and of its committees.

(11) Performance by liaison justices of their functions as such within their assigned judicial districts.

(12) Attendance by district associate judges and judicial magistrates at the Iowa judicial magistrates schools of instruction and traffic court conferences.

(13) Performance of functions for which reimbursement of travel expense is authorized by any other Iowa statute or rule of the supreme court. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 22.17 Reimbursable travel.**

**22.17(1)** *In state.*

*a.* Expenses incurred for in-state travel outside the judicial district, except expenses incurred by juvenile court officers in the discharge of their official duties, are not reimbursable unless prior approval for the travel has been given by the chief justice or the chief justice's designee on a prescribed form. In-state travel for juvenile court officers shall include travel within a 100-mile radius outside the borders of the state of Iowa. Expenses incurred for in-state travel outside the judicial district by juvenile court officers in the discharge of their official duties are not reimbursable unless approval for the travel has been given by the chief juvenile court officer of the judicial district.

*b.* Reimbursement under this chapter for in-state travel expenses incurred by juvenile court officers in the discharge of their official duties shall be provided from funds administered by the judicial department or pursuant to Iowa Code section 232.141, as applicable.

**22.17(2)** *Out of state.*

*a.* Requests to attend conferences, meetings, training courses, programs, and similar gatherings which require out-of-state travel shall be submitted to the chief justice or the chief justice's designee on a prescribed form at least two weeks prior to the proposed departure date. No reimbursement of out-of-state expenses shall be made unless the trip has received prior approval of the chief justice or the chief justice's designee except as otherwise provided in this rule.

*b.* Reimbursement for expenses incurred for out-of-state travel by juvenile court officers in the discharge of their official duties relating to court-ordered transportation and placement shall be allowed if oral or written approval is given by the chief juvenile court officer of the judicial district and the chief justice or the chief justice's designee at any time prior to the proposed departure.

*c.* Reimbursement under this chapter for out-of-state travel expenses incurred by juvenile court officers in the discharge of their official duties shall be provided from funds administered by the judicial department or pursuant to Iowa Code section 232.141, as applicable. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 22.18 Transportation.**

**22.18(1)** *Route and conveyance.* Transportation shall be by the usually traveled route. Mileage shall be based on mileage published by the department of transportation. Reimbursement shall be limited to the most economical means of conveyance available.

**22.18(2)** *Mileage personal car.* Judicial officers, court reporters, and court employees shall be reimbursed their mileage expense when required in the discharge of official duties to travel outside their official domicile. Reimbursement shall be for the miles driven from the official domicile or employee's residence, whichever is less, to the assigned work location. In no instance shall employees be reimbursed for more than actual miles driven. Carpooling is strongly encouraged whenever possible. A judge and the judge's court reporter shall not be separately reimbursed for duplicate mileage expense in traveling to court assignments unless authorization is obtained from the chief judge due to special circumstances. The allowance for use of a private automobile on official judicial department business shall be established by order* of the supreme court and shall be presumed to

include all automobile expenses. Additionally, judicial officers, juvenile court officers, court reporters, and court employees shall be reimbursed their mileage expense for travel required in the discharge of official duties within the continuous metropolitan area of their official domicile, but not for commuting.

*29 cents per mile, Supervisory Order 5/26/00, effective 7/1/00.

**22.18(3)** *Transportation other than private automobile.* Expenses for transportation other than private automobile are reimbursed on an actual incurred cost basis and must be claimed accompanied by an original receipt.

**22.18(4)** *Reimbursement of parking.* Reimbursement for parking expense is allowable when mileage is claimed. Receipts for parking, taxi and/or other transportation expenses, are not required when the total amount, per day, does not exceed $15. Receipts must be attached to the travel voucher for employees to receive reimbursement for the above expenses in excess of $15 per day. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 22.19 Lodging.**

**22.19(1)** *In state.* Lodging expense is reimbursed as incurred when a judicial officer, court reporter, or court employee is required, in the discharge of official duties, to leave the county of that person's official domicile. The name of the establishment where the expense is incurred shall be indicated on the claim form and the original receipt shall be attached. The single room rate is to be noted on the receipt when other than a single room was charged. Special rates for judicial officers, court reporters, and court employees are available at many motels and hotels in the state. An identification card identifying the holder as a judicial officer, court reporter, or court employee is usually necessary. Identification cards are available upon request from the office of the state court administrator. The allowance for lodging shall be the actual cost, but not exceeding $45 (plus applicable taxes) per day.

Judicial officers and court employees are to seek lodging facilities whose rates are within those prescribed in this rule or a reasonable explanation must be noted in the expense claim in order to be considered for reimbursement over the defined maximum rates. (*See* rule 22.21(6)). When seeking overnight lodging judicial officers and court employees should request the lowest of "state," "government," or "commercial" rates, as many facilities offer these "special" rates which a state employee can and should obtain.

**22.19(2)** *Out of state.* Lodging expense is not limited outside the state, but the incurred expenditures are to be reasonable. Lodging for approved out-of-state travel shall be reimbursed for the night preceding and the night of the ending date of the authorized meeting. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 22.20 Meals.**

**22.20(1)** *In state.* Incurred meal expense shall be reimbursed at "reasonable and necessary" cost when a judicial officer, court reporter, or court employee is required, in the discharge of official duties, to leave the county of that person's official domicile. Judicial officers, court reporters, and court employees residing in Lee County shall be reimbursed meal expenses when required, in the discharge of official duties, to travel from that person's official domicile to the courthouse located farther from the person's official domicile. A maximum of $23 per day may be reimbursed for meals, as outlined below; however, if departure from the official domicile is before 6 a.m., a notation must be included on the Travel Voucher. At the return of the trip, if arrival back at the official domicile is after 7 p.m., a notation to this effect must be included on the Travel Voucher. Meal allowance for travel will be as follows:

*a.* Departure before 6 a.m. and return to official domicile after 7 p.m. may be reimbursed the actual cost for breakfast, lunch, and dinner up to a maximum of $23.

*b.* Departure before 6 a.m. and return to official domicile before 7 p.m. may be reimbursed the actual cost for breakfast and lunch up to a maximum of $11.

*c.* Departure after 6 a.m. and return to official domicile after 7 p.m. may be reimbursed the actual cost for lunch and dinner up to a maximum of $18.

*d.* Departure after 6 a.m. and return to official domicile before 7 p.m. may be reimbursed the actual cost for lunch up to a maximum of $6.

**22.20(2)** *Out of state.* Meal expenses are not limited out-of-state, but the incurred expenses are to be reasonable. When in travel status, lunch and dinner the day preceding the meeting, and breakfast and lunch the day after a meeting, are reimbursable expenditures. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 22.21 Miscellaneous travel provisions.**

**22.21(1)** *Continuing education expenses.* Provisions relating to "Official duties," "Travel," "Transportation," "Lodging" and "Meals" as used in rules 22.16 through 22.21 shall not be applicable to expenses for continuing education requirements for court reporters or court employees, unless otherwise ordered by the chief justice or the chief justice's designee.

**22.21(2)** *Examining Board expenses.* Board of Law Examiners and Shorthand Reporters Examiners will be reimbursed actual and necessary expenses not to exceed one and one-half times the reimbursement allowances provided in rules 22.19 and 22.20.

**22.21(3)** *Living outside official domicile.* When additional expense is incurred by reason of a court employee maintaining a permanent home in a city, town, or metropolitan area other than that person's official domicile, unless otherwise determined by the state court administrator, the additional expense is not reimbursable.

**22.21(4)** *Registration fees.* Registration fees for authorized meetings and conferences are an allowable expense when accompanied by receipt.

**22.21(5)** *Claim preparation.* All claims shall be typewritten, or printed in ink, and signed by the claimant. Receipts for lodging, public transportation, and any authorized miscellaneous expenses shall be attached to the upper left-hand corner of the form. Claim for reimbursement for out-of-state travel shall be submitted for payment upon completion of the trip.

If reimbursement is sought pursuant to Iowa Code section 232.141, the district court administrator shall process the claim per rules and procedures of the applicable county and the department of human services.

**22.21(6)** *Exceptions.* The chief justice or the chief justice's designee may grant exceptions to rules 22.16 through 22.21 as necessitated by unusual circumstances.

**22.21(7)** *Refreshments.* The cost of refreshments served at meetings will not be reimbursed, except for educational programs sponsored and authorized by the chief justice or the chief justice's designee.

**22.21(8)** *Form.* A written request for travel authority from the chief justice or the chief justice's designee pursuant to rules 22.16 through 22.21 shall be in substantially the following form:

JUDICIAL BRANCH
REQUEST FOR TRAVEL AUTHORITY

_____ Outside of Iowa
_____ In-state, out of Judicial District

Date _____

Name _____
Title _____
Judicial District _____

Form to be submitted to Chief Justice of the Supreme Court or the Chief Justice's designee prior to proposed departure date. See rules 22.16 to 22.21 for applicable travel and time for submission.

DEPARTURE FROM:

DESTINATION:

TRAVEL DATES (ROUND TRIP):

MODE OF TRAVEL:

PURPOSE OF TRAVEL: (INCLUDE NATURE AND DATES OF MEETING OR OTHER PURPOSE OF TRAVEL AND JUSTIFICATION FOR PROFESSIONAL PURPOSES)

ESTIMATED COST:
Transportation:
Lodging:
Meals:
Other (Please Specify):
Total:

Anticipated Funding Source(s):

Approved as to form:

_____
Person requesting approval

_____
District Court Administrator
(initials)

_____
Supervising authority (when applicable)

Request Approved/Denied:

_____
Chief Judge Date

Request Approved/Denied:

_____
Chief Justice Date
Supreme Court of Iowa
(or Chief Justice's designee)

[Court Order June 11, 1981; November 30, 1981 (Received for publication January 5, 1983); June 28, 1984; June 28, 1985, effective July 1, 1985; October 3, 1985, effective October 15, 1985; May 15, 1986, effective July 1, 1986; November 20, 1986, effective December 1, 1986; July 21, 1988, effective August 1, 1988; October 12, 1989, effective November 1, 1989; November 13, 1990, effective January 2, 1991; January 17, 1991; July 12, 1991, effective July 12, 1991, for expenses on or after January 2, 1991; December 16, 1994, effective December 16, 1994; December 16, 1994, effective January 2, 1995; January 3, 1996; March 21, 1996; July 26, 1996; November 5, 1996; December 21, 1999, effective January 1, 2000; May 26, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002]

**Rule 22.22 Gifts.**

**22.22(1)** Except as otherwise provided in this rule, an official or employee of the judicial branch or a member of that person's immediate family shall not, directly or indirectly, accept, receive or solicit any gift or series of gifts.

**22.22(2)** As used in this rule:

*a. "Gift"* means a rendering of anything of value in return for which legal consideration of equal or greater value is not given or received, if the donor is:

(1) A party or other person involved in a case pending before the donee.

(2) A party or a person seeking to be a party to any sale, purchase, lease or contract involving the judicial branch or any of its offices, if the donee has authority to approve the sale, purchase, lease or contract, or if the donee assists or advises the person with authority to approve the sale, purchase, lease or contract.

(3) A person who will be directly or substantially affected by the performance or nonperformance of the donee's official duties in a way that is greater than the effect on the public generally or on a substantial class of persons to which the donor belongs as a member of a profession, occupation, industry or region.

*b. "Gift"* does not include:

(1) Informational material relevant to the official's or employee's duties, such as books, pamphlets, reports, documents or periodicals, or the cost of registration for an education conference or seminar which is relevant to the official's or employee's duties.

(2) Anything received from a person related within the fourth degree of kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.

(3) An inheritance or bequest.

(4) Anything available or distributed to the public generally without regard to the official status of the recipient.

(5) Actual expenses of a donee for food, beverages, travel, and lodging, which is given in return for participation at a meeting as a speaker, panel member or facilitator, when the expenses relate directly to the day or days on which the donee participates at the meeting, including necessary travel time.

(6) Plaques or items of negligible resale value given as recognition for public service.

(7) Nonmonetary items with a value of $3 or less that are received from any one donor during one calendar day.

(8) Items or services solicited or given to a state, national or regional organization in which the state of Iowa or a political subdivision of the state is a member.

(9) Items or services received as part of a regularly scheduled event that is part of a conference, seminar or other meeting that is sponsored and directed by any state, national or regional organization in which the judicial branch is a member.

(10) Funeral flowers or memorials to a church or nonprofit organization.

(11) Gifts which are given to an official or employee for the official's or the employee's wedding or twenty-fifth or fiftieth wedding anniversary.

*c. "Immediate family"* means the spouse and minor children of an official or employee of the judicial branch.

**22.22(3)** For purposes of determining the value of an item, an individual who gives an item on behalf of more than one person shall not divide the value of the item by the number of persons on whose behalf the item is given and the value shall be the value actually received by the donee.

**22.22(4)** An official or employee of the judicial branch or the person's immediate family member, may accept a nonmonetary gift or a series of nonmonetary gifts and not be in violation of this rule if the nonmonetary gift or series of nonmonetary gifts is donated within 30 days to a public body, the state court administrator, the department of general services, or a bona fide educational or charitable organization, if no part of the net earnings of the educational or charitable organization inures to the benefit of any private stockholder or other individual. [Court Order June 30, 1980; July 31, 1987, effective August 3, 1987; December 29, 1992, effective January 1, 1993; August 19, 1993; November 9, 2001, effective February 15, 2002]

**Rule 22.23 Honoraria.**

**22.23(1)** An official or employee of the judicial branch shall not seek or accept an honorarium.

**22.23(2)** As used in this rule:

*a. "Honorarium"* means anything of value that is accepted by, or on behalf of, an official or employee of the judicial branch as consideration for an appearance, speech or article if the donor is:

(1) A party or other person involved in a case pending before the donee.

(2) A party or person seeking to be a party to any sale, lease, or contract involving the judicial branch or any of its offices, if the donee has authority to approve the sale, lease, or contract or if the donee assists or advises the person with authority to approve the sale, lease, or contract.

(3) A person who will be directly and substantially affected by the performance or nonperformance of the donee's official duties in a way that is greater than the effect on the public generally or on a substantial class of persons to which the donor belongs as a member of a profession, occupation, industry or region.

*b. "Honorarium"* does not include:

(1) Actual expenses of a donee for food, beverages, travel, lodging and registration which is given in return for participation at a meeting as a speaker, panel member or facilitator when the expenses relate directly to the day or days on which the donee participates at the meeting, including necessary travel time.

(2) Payment to an employee for services rendered as part of outside employment which has been approved pursuant to the department's personnel policies, if the payment is commensurate with the actual activity or services rendered and not based upon the employee's position within the department, but, rather, because of some special expertise or other qualification.

(3) Payment to a judge or magistrate for officiating and making return for a marriage pursuant to rule 22.29.

(4) Payment to a judge or senior judge for instruction at an accredited education institution, if the payment is commensurate with the actual activity or services rendered and not based upon the judge's official position.

(5) Payment to a part-time judge for services rendered as part of a bona fide business or profession in which the judge is engaged, if the payment is commensurate with the actual activity or services rendered and not based upon the judge's official position.

(6) Payment to a senior judge for services rendered as an arbitrator or mediator, if the payment is commensurate with the actual activity or services rendered and not based upon the senior judge's official position. [Court Order December 29, 1992, effective January 1, 1993; November 9, 2001, effective February 15, 2002]

**Rule 22.24 Interests in public contracts.**

**22.24(1)** A full-time official or employee of the judicial branch shall not sell any goods or services to any state agency.

**22.24(2)** As used in this rule, "services" does not include any of the following:

*a.* Instruction at an accredited education institution by a judge, senior judge or magistrate if permitted as a quasi-judicial or extrajudicial activity pursuant to the Code of Judicial Conduct or by an employee as part of outside employment which has been approved pursuant to the judicial department's personnel policies.

*b.* The preparation of a transcript by an official court reporter. [Court Order December 29, 1992, effective January 1, 1993; November 9, 2001, effective February 15, 2002]

**Rule 22.25 Services against the state.**

**22.25(1)** No official or employee of the judicial branch shall receive, directly or indirectly, or enter into an agreement, express or implied, for any compensation, in whatever form, for the appearance or rendition of services against the interest of the state in relation to any case, proceeding, application, or other matter before any state agency, any court of the state of Iowa, any federal court, or any federal bureau, agency, commission or department.

**22.25(2)** As used in this rule, "appearance or service against the interest of the state" means an appearance or service which conflicts with a person's duties or employment obligations owed to the state. [Court Order December 29, 1992, effective January 1, 1993; November 9, 2001, effective February 15, 2002]

**Rule 22.26 Personal disclosure.**

**22.26(1)** Each official shall file a statement of personal financial disclosure in the manner provided in this rule. The disclosure must contain:

*a.* The sources of the person's income, including the nature of any income-producing business in which the person is actively engaged.

*b.* Any significant financial interests, including:

(1) Investments in stocks, bonds, bills, notes, mortgages, or other securities offered for sale through recognized financial brokers of greater than 5 percent of the total outstanding issue of any stocks, bonds, bills, notes, mortgages, or other securities of the offering entity.

(2) Any business, trade, labor, farm, professional, religious, educational, or charitable association, foundation, or organization in which the person is employed or has rendered services for compensation within the previous 12 months.

(3) Any office or directorship held during the previous 12 months by the person in any corporation, firm, enterprise, labor union, farm organization, cooperative, religious, education, or charitable association or organization or trade or professional association.

**22.26(2)** Disclosure of investments in stocks, bonds, bills, notes, mortgages, or other securities offered for sale through recognized financial brokers is not required if the investment is 5 percent or less of the total outstanding issue of the offering entity.

**22.26(3)** The statement of personal financial disclosure shall be reported on forms adopted by the supreme court and shall be filed with the clerk of the supreme court on or by the first day of April each year or no later than 30 days after assuming office. [Court Order December 29, 1992, effective January 1, 1993; Statement required April 1, 1994; November 9, 2001, effective February 15, 2002]

**Rule 22.27 Definitions.** As used in rules 22.22 to 22.26:

**22.27(1)** *"Employee"* means a paid employee of the state of Iowa, including independent contractors, and does not include a member of a board, commission, or committee.

**22.27(2)** *"Official"* means an officer of the judicial branch performing judicial functions, including an associate juvenile judge, a magistrate or referee, an associate probate judge, and the state court administrator, and does not include a member of a board, commission, or committee. [Court Order December 29, 1992, effective January 1, 1993; July 26, 1996; November 9, 2001, effective February 15, 2002]

**Rule 22.28** Reserved.

**Rule 22.29 Marriage fees received by a judicial officer.**

**22.29(1)** A judge or magistrate may charge a fee for officiating and making return for each marriage solemnized at a time other than regular judicial working hours and at a place other than a court facility. This fee shall not exceed the sum of $100.

**22.29(2)** A judge or magistrate may charge the parties to the marriage for expenses incurred in solemnizing the marriage. In no event shall the expenses charged exceed the maximum amounts set by rules 22.16 through 22.21.

**22.29(3)** The phrase "regular judicial working hours," for purposes of this rule, shall mean 8 a.m. to 5 p.m. Monday through Friday (except for legal holidays) for all judicial officers except magistrates, and for them the schedule fixed by the chief judge of the judicial district. [Court Order July 1, 1983; received for publication April 2, 1984; September 17, 1984; Court Order July 7, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 22.30 Use of signature facsimile.**

**22.30(1)** In all instances where a law of this state requires a written signature by a justice of the supreme court, judge of the court of appeals, district judge, district associate judge, judicial magistrate, clerk of the district court, county attorney, court reporter, associate juvenile judge, associate probate judge, judicial hospitalization referee, probate referee, or law enforcement officer, any such officer may use, or direct and authorize a designee to possess and use, a facsimile signature stamp bearing that officer's signature pursuant to the provisions of this rule. The stamp shall be issued only by the officer whose signature it bears.

**22.30(2)** Whether used personally by the officer whose signature it bears or by a designee of that officer, a facsimile signature stamp must contain a true facsimile of the actual signature of that officer. The stamp shall be kept in the personal possession of the officer or that officer's designee, or in a secure, locked place at all times, accessible only to the officer or the officer's designee. Each use of the facsimile stamp shall be initialed by the designee.

**22.30(3)** An officer directing and authorizing a designee to possess and use a facsimile signature stamp bearing that officer's signature shall execute a written designation of the authorization. The designation shall be addressed to the designee, by name or title, and shall specifically identify each category of documents to which the designee is authorized to affix the stamp. The original of the written designation shall be filed with the district court administrator in the judicial district within which the officer is located. A copy of the written designation shall be retained by the officer and by the designee.

**22.30(4)** A written designation made by an officer pursuant to rule 22.30(3) may be revoked, in writing, at any time by the officer who executed it, and shall stand automatically revoked upon that officer's ceasing to hold the office for any reason. A written revocation of designation shall be addressed to the former designee, in the same manner as the original designation. A copy of the written revocation shall be retained by the officer and by the former designee. A facsimile signature stamp in the possession of a former designee shall be forthwith returned to the officer who issued it, if available, or shall be destroyed by the former designee.

**22.30(5)** Nothing contained in this rule shall abrogate any provision of Iowa Code section 4.1(39). [Court Order May 17, 1984; July 25, 1986, effective September 2, 1986; June 22, 1987, effective August 3, 1987; July 26, 1996; November 9, 2001, effective February 15, 2002]

**Rule 22.31 Interpreters.** Qualifications for interpreters, in addition to those required under Iowa R. Evid. 5.604, shall be fixed and determined in each case by the presiding judge pursuant to Iowa Code chapter 622A. Compensation for such interpreters shall be in accordance with Iowa Code sections 622A.3 and 622A.4. [Court Order July 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 22.32 Magistrates – annual school of instruction.** Each magistrate shall be required to attend a judicial department school of instruction prior to taking office and annually thereafter unless excused by the chief justice for good cause. A magistrate appointed to fill a vacancy shall attend the first school of instruction that is held following the appointment, unless excused by the chief justice for good cause. [Court Order September 23, 1985, effective October 15, 1985; November 9, 2001, effective February 15, 2002]

**Rule 22.33 Nepotism.** No judicial officer or employee of the judicial department shall appoint, or continue to employ any person related by consanguinity or affinity within the third degree. This prohibition shall apply to any employment where a direct supervisory relationship exists between the judicial officer or employee and the person supervised.

In the event an employment situation exists within the judicial department which is consistent with Iowa Code chapter 71 but inconsistent with this rule, the supervisor shall terminate the employment relationship prior to March 15, 1986. Every effort shall be made by the judi-

cial department to relocate within the department any individual who is dismissed as a result of this rule. [Court Order January 22, 1986, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 22.34 Judicial branch appointments.** It is a policy of the judicial branch that all boards, commissions, and committees to which appointments are made or confirmed by any part of the judicial branch shall reflect, as much as possible, a gender balance. If there are multiple appointing authorities for a board, commission, or committee, they shall consult with each other to avoid contravention of this policy. [Court Order June 30, 1986, effective July 1, 1986; November 9, 2001, effective February 15, 2002]

**Rule 22.35 Service copies.**

**22.35(1)** After April 1, 1988, the clerk of court shall not make a part of the court file, or otherwise retain in the clerk's office, service copies of pleadings, orders, or writs.

**22.35(2)** "Service copy" means the copy of the pleading, order, or writ attached to either the return of service or the document proving service.

**22.35(3)** All returns of service shall specify what pleading, order, or writ was served. Returns of service of an original notice shall certify that a copy of the petition was served with the notice pursuant to Iowa R. Civ. P. 1.302. [Court Order January 29, 1988, effective March 1, 1988; November 9, 2001, effective February 15, 2002]

**Rule 22.36 Paper size and requested copies.**

**22.36(1)** *Paper size.* All pleadings and other papers filed in the Iowa district courts and their small claims divisions shall be on 8½ inch by 11 inch size white paper of standard weight, with a margin of at least one inch at the top of each page. Exhibits attached to pleadings shall be of the same size as pleadings, reduced from their original size if necessary. Original documents, including wills, bonds, notes, foreclosed mortgages, and real estate contracts, may be filed on longer paper. Uniform Citation forms and other court forms smaller than 8½ by 11 inches shall be accepted for filing. The clerks of court shall not accept filings which do not substantially comply with this rule.

**22.36(2)** *Requested copies.* If counsel or any party requests file-stamped copies of pleadings or other papers to be returned by mail, an extra copy and a self-addressed, postage prepaid envelope, large enough to accommodate the copy being returned, must be included with the filing. No copy shall be returned by mail unless this rule is followed. [Court Order May 12, 1989, effective July 3, 1989; March 20, 1991, effective July 1, 1991; November 9, 2001, effective February 15, 2002]

**Rule 22.37 Purging of case files.**

**22.37(1)** Each clerk of the district court may purge civil case files ten years after final disposition. For purposes of this rule and rule 22.38, civil case files do not include juvenile, mental health, probate, or adoption proceedings. Each district court clerk may purge criminal case files ten years after dismissal of all charges, or ten years after the expiration of all sentences imposed or the date probation is granted, whichever later occurs. For purposes of this rule and rule 22.38, "purging" means the removal and destruction of documents in the case file which have no legal, administrative or historical value. The documents are to be retained or discarded in accordance with the purging lists in rule 22.38.

**22.37(2)** Purging shall be done prior to reproduction of an entire court file in preparation for destruction under Iowa Code section 602.8103. A file shall be purged only once, pursuant to the provisions of this rule in effect at the time of purging.

**22.37(3)** Each clerk of the district court shall designate either the clerk or a deputy as the "Records Management Specialist." The records management specialist shall be responsible for implementing office procedures for records management and retention, including the implementation of this rule. The records management specialist shall be the local supervisor who will answer questions about purging any documents not on the lists provided in rule 22.38. Any question not answerable by the records management specialist shall be referred to the district court administrator, who may refer questions to the state court administrator.

**22.37(4)** The district court clerk need not give notice to any agency, attorney, party, or other group before purging any files under this rule and rule 22.38. Any government agency, historical society, group, or person may request and obtain any or all purged documents upon making written request to the local district court clerk, and tendering payment therefor. District court clerks shall cooperate with reasonable requests of local and state historical societies when implementing purging operations.

**22.37(5)** Case files will be excepted from this rule only upon court order signed by a majority of the district judges of that district. The order may prohibit purging specific court files in whole or part, and must state the reason for the prohibition.

**22.37(6)** Purging of case files in proceedings involving parental notification of a minor's abortion under Iowa Code chapter 135L shall be in accordance with Iowa Ct. R. 8.32(3).

**22.37(7)** Orders appointing condemnation commissioners shall be retained for five years and then destroyed without reproduction.

**22.37(8)** One year after filing, district court clerks may destroy, without reproduction, "Confidential Information Forms" filed pursuant to Iowa Code section 602.6111. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 22.38 Purging of case files lists.**

**22.38(1)** Civil case files.

(A) Retain in files:
- (1) Original notice.
- (2) Petition.
- (3) Return of service—affidavit of publication, certificate of state official (long arm/nonresident motorist, foreign corporations).
- (4) Answer.
- (5) Cross-petition.
- (6) Answer to cross-petition.
- (7) Counterclaim.
- (8) Signed orders (original signed by judge).
- (9) Decisions or decrees of court opinions.
- (10) Amended pleadings (see nos. 2, 4, 5, 6, or 7).
- (11) Writs issued (return of service).
- (12) Entry of judgment.
- (13) Dismissal.
- (14) Jury verdict form (signed).
- (15) Notice of appeal.
- (16) Procedendo from clerk of supreme court.
- (17) Agreement for judgment.
- (18) Offer to confess judgment.
- (19) Acceptance of offer to confess judgment.
- (20) Execution/special execution.
- (21) Return on execution/sheriff's sale.
- (22) Stipulations.
- (23) Partial satisfactions.
- (24) Special appearance.
- (25) Claim for return of seized property.
- (26) Application for forfeiture of seized property.
- (27) Release and/or satisfaction.

(B) Discard from files (EXCEPT in those cases excluded in rule 22.37(1)):
- (1) All duplicates of original documents.
- (2) Bonds.
- (3) Motions/Applications:
  - (a) Amend
  - (b) Change venue
  - (c) Dismiss/demurrer
  - (d) Strike
  - (e) Quash
  - (f) More specific statement
  - (g) Summary judgment
  - (h) Consolidation
  - (i) Stay
  - (j) Compel
  - (k) Sanctions
  - (l) New trial
  - (m) Reconsideration
  - (n) Enlarge and amend
  - (o) Continuance
  - (p) Consolidate or sever
  - (q) Judgment notwithstanding verdict
  - (r) Examinations of judgment debtor
  - (s) Substitute party
  - (t) Withdrawal of attorney
  - (u) Condemn funds
  - (v) Citation for contempt
- (4) Response to any motion.
- (5) Briefs.
- (6) Notice of deposition.
- (7) Deposition transcripts.
- (8) Interrogatories and answers.
- (9) Notice of interrogatories.
- (10) Request for production.
- (11) Response to request for production.
- (12) Request for admissions and responses.
- (13) Pretrial compliance reports.
- (14) Trial certificates.
- (15) Objections to trial certificate.
- (16) Subpoenas.
- (17) Proposed jury instructions.
- (18) Witness lists; exhibits lists.
- (19) Correspondence.
- (20) Directions to sheriff for service.
- (21) Demand for jury trial.
- (22) Certificate of reporters re: costs of or taking deposition.
- (23) Order condemning funds.
- (24) Scheduling order or notices.
- (25) Orders that only set hearings.
- (26) Strike list notices.
- (27) Warrant for arrest of contemnor.
- (28) Entry of default.
- (29) Jury instructions.
- (30) Receipts for exhibits.
- (31) Praecipe.
- (32) Affidavit of amount due.
- (33) Affidavit of payments made.

**22.38(2)** Criminal case files.

(A) Retain in files:
- (1) Trial information and minutes of testimony.
- (2) Indictment.
- (3) Amended trial information.
- (4) Written plea of guilty.
- (5) Opinion or decision of court.
- (6) All orders of court, except those only setting a hearing.
- (7) Jury instructions.

(8) Jury verdict (signed).
(9) Notice of appeal.
(10) Procedendo from clerk of supreme court.
(11) Notice of dismissal of appeal.
(12) Judgment entry.
(13) Sentencing entry.
(14) Presentence investigation report and associated reports.

(B) Discard from files (EXCEPT in those cases excluded in rule 22.37(1)):
(1) All duplicates of original documents.
(2) All copies and originals of jail booking forms and receipts.
(3) All subpoenas issued and returned.
(4) Written stipulations.
(5) Warrant for arrest.
(6) Return on warrant.
(7) Bail bonds.
(8) Recognizance agreements to appear.
(9) Written arraignment.
(10) Motions:
(a) To suppress and response
(b) Change of venue and response
(c) Limine and response
(d) To dismiss and response
(e) To sever trial and response
(f) Bill of particulars and response
(g) To amend trial information
(h) For appointment of counsel
(i) For withdrawal of counsel
(j) To determine competency
(k) To consolidate trial
(l) For continuance
(m) To correct sentence
(n) Reduction of bail or review conditions of release
(o) To revoke bail or pretrial release
(p) To forfeit bail
(q) To compel
(11) Orders that only set hearings.
(12) Briefs.
(13) Proposed or requested jury instructions.
(14) Pretrial conference reports, minutes, or orders.
(15) Notices of depositions.
(16) Scheduling notices.
(17) Requests for transcripts.
(18) Registered mail receipt cards or letters returned.
(19) Receipts for evidence.
(20) Correspondence from attorneys.
(21) Nonsubstantive correspondence from defendants.
(22) Application to revoke probation, or to adjudicate guilt, or to revoke deferred judgment.
(23) Magistrate's transcript.
(24) Complaint forms.
(25) Media coordinator requests.
(26) Appearance of attorney.
(27) Witness lists.
(28) Notice of special defense, (i.e., insanity, intoxication, alibi, duress, etc.)
(29) Iowa R. Crim. P. 2.14(2)(*a*), disclosure required upon receipt (Notice).
(30) Application for search warrant.
(31) Return on search warrant.

**22.38(3)** Divorce/Dissolution of Marriage/Separate Maintenance/Child Support and Paternity case files.

(A) Retain in files:
(1) Original notice.
(2) Petition for divorce, separate maintenance, dissolution of marriage, child support, or to determine paternity.
(3) Return of service—affidavit of publication.
(4) Acceptance of service.
(5) Answer.
(6) Cross-petition.
(7) Answer to cross-petition.
(8) Signed orders (original signed by judge).
(9) Decrees or decisions of court.
(10) Amended pleadings (see nos. 2, 5, 6, or 7).
(11) Writs issued (return of service).
(12) Entry of default.
(13) Dismissal.
(14) Notice of appeal.
(15) Procedendo from clerk of supreme court.
(16) Paternity test results.
(17) Petition or application for modification.
(18) Answer to petition or application for modification.
(19) Order for temporary support or temporary custody.
(20) Stipulations.
(21) Execution/special execution.
(22) Satisfaction/partial satisfaction.
(23) Appearance by attorney or party.
(24) Assignments of judgments and terminations of assignments.
(25) Financial affidavits.
(26) Child support worksheets.
(27) Confidential information required under Iowa Code section 598.22B.

(B) Discard from files:

(1) All duplicates of original documents.
(2) Bonds.
(3) Motions/applications:
  (a) Amend
  (b) Change venue
  (c) Dismiss/demurrer
  (d) Strike
  (e) Quash
  (f) More specific statement
  (g) Stay
  (h) Compel
  (i) Sanctions
  (j) New trial
  (k) Reconsideration
  (l) Enlarge and amend (Iowa R. Civ. P. 1.904(2))
  (m) Continuance
  (n) Examinations of judgment debtor
  (o) Withdrawal of attorney
  (p) Condemn funds
  (q) Citation for contempt
(4) Response to any motion.
(5) Briefs.
(6) Notice of deposition.
(7) Depositions transcripts.
(8) Interrogatories and answers to interrogatories.
(9) Notice of interrogatories.
(10) Requests for production.
(11) Response to requests for production.
(12) Requests for admissions and responses.
(13) Trial certificates.
(14) Objections to trial certificates.
(15) Subpoenas.
(16) Correspondence.
(17) Directions to sheriff for service.
(18) Certificate of reporters re: costs of or taking depositions.
(19) Order condemning funds.
(20) Scheduling order or notices.
(21) Orders that only set hearings.
(22) Warrant for arrest of contemnor.
(23) Strike list notices.
(24) Receipts for exhibits.
(25) Proof of service by Child Support Recovery Unit.
(26) Certificate of completion of parent education program.

[Court Order February 17, 1989, effective April 15, 1989; July 26, 1996; October 3, 1997; November 25, 1998; October 27, 1999; November 9, 2001, effective February 15, 2002]

# CHAPTER 23
# TIME STANDARDS FOR CASE PROCESSING

**Rule 23.1 Time standards – considerations.** The time standards contained in this chapter are subject to statutes and rules affecting the same proceedings. The standards are to be utilized as guidelines and, while not mandatory, are urged upon both counsel and the court as an aid to their actions and deliberations.

The state court administrator shall continue the efforts toward establishment of a statewide information system insuring that such system has the capability of monitoring compliance with these standards. [Court Order August 22, 1985, effective October 1, 1985; February 26, 1988, effective April 1, 1988; July 29, 1988, effective September 1, 1988; November 9, 2001, effective February 15, 2002]

**Rule 23.2 Criminal standards.**

**23.2(1)** Felony:
From arrest to trial: 6 months

**23.2(2)** Misdemeanor:
From arrest to trial: 4 months

[Court Order November 9, 2001, effective February 15, 2002]

**Rule 23.3 Civil standards.**

**23.3(1)** Civil jury cases:
From filing to disposition: 18 months

**23.3(2)** Nonjury civil cases:
From filing to disposition: 12 months

**23.3(3)** Contested domestic relations cases:
From filing to disposition: 8 months

**23.3(4)** Uncontested domestic relations cases:
From filing to disposition: 4 months

[Court Order November 9, 2001, effective February 15, 2002]

**Rule 23.4 Juvenile standards.**

**23.4(1)** Detention and shelter hearings:

*a.* From detention facility admission to hearing: 24 hours*

*b.* From admission to shelter care facility pursuant to Iowa Code section 232.21 court order to hearing: 48 hours*

**23.4(2)** Pre-adjudicatory hearings for physical and mental health examinations:

*a.* From court ordered admission to detention or shelter care facility to hearing: 15 days

*b.* From filing, if juvenile is not in detention or shelter care facility, to hearing: 30 days

**23.4(3)** Adjudicatory hearings:

*a.* From court ordered admission to detention or shelter care facility to hearing: 15 days

*b.* From filing, if juvenile is not in detention or shelter care facility, to hearing: 30 days

*c.* From entry of order for physical or mental examination to hearing: 45 days

**23.4(4)** Dispositional hearings:

*a.* From entry of adjudicatory order to hearing, if juvenile is:

In a detention or shelter care facility: 30 days

Not in a detention or shelter care facility: 40 days

*b.* From court ordered placement for physical or mental examination, following a delinquency or C.I.N.A. adjudication, to hearing: 60 days

**23.4(5)** Termination of parental rights (Iowa Code chapter 232):

*a.* From filing to hearing: 60 days

*b.* From filing to disposition: 5 months

*Excluding Saturday, Sunday, and legal holidays

[Court Order November 9, 2001, effective February 15, 2002]

**Rule 23.5 Forms for implementing time standards.**
**Rule 23.5 Form 1:** ***120-Day Notice of Civil Trial Setting Conference.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| _____<br><br>_____,<br>Plaintiff(s),<br><br>vs.<br><br>_____<br><br>_____,<br>Defendant(s). | No. _____<br><br>**120-DAY NOTICE OF CIVIL TRIAL SETTING CONFERENCE** |

To the parties or their attorneys of record:

This case has now been on file 120 days or more. In accordance with Chapter 23 of the Iowa Court Rules, notice is hereby given that this case has been set for trial setting conference on _____ at _____ _____.m.*
(date)
before _____.
(person and location)

This conference shall be held:
_____ By telephone.
_____ In person.

Attorneys for all parties appearing in the case shall participate at this conference. A party shall participate in person if the party does not have an attorney.

At this trial setting conference, every case will be set for trial no sooner than thirty days, but no later than four months for nonjury cases and six months for jury cases, after the conference.

At the trial setting conference, each party shall be prepared to certify to the court that:
(1) No additional parties are necessary;
(2) Experts, if any, have been disclosed;
(3) Discovery has been completed;
(4) The pleadings are closed;
(5) Dispositive motions have been filed and ruled upon by the court.

As an alternative to this certification, the parties may report the terms of a mutual, written scheduling agreement, which accomplishes all of the foregoing matters in compliance with the intent of Chapter 23 of the Iowa Court Rules. If the case is not ready to be assigned for trial, an appropriate scheduling order will be prepared establishing deadlines necessary to effect the purpose of the time standards order.

The trial date that is agreed upon at this conference shall be a firm date. Continuances will not be granted even if all parties agree unless for a crucial cause that could not have been foreseen.

The Clerk of Court shall notify all counsel of record and parties not represented by counsel.

Dated this _____ day of _____, 20 _____.

_____
District Court Administrator

*This date shall not be sooner than 240 days after the filing of the petition unless set sooner by special order on application of one or more parties.

[Administrative Directive June 16, 1987, effective September 1, 1987; Court Order November 9, 2001, effective February 15, 2002]

**Rule 23.5 Form 2:** ***Civil Trial Setting Conference Memorandum.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| _____<br><br>_____,<br>Plaintiff(s),<br><br>vs.<br><br>_____<br><br>_____,<br>Defendant(s). | No. _____<br><br>**CIVIL TRIAL SETTING CONFERENCE MEMORANDUM** |

Appearances:
For Plaintiff(s) _____
_____
For Defendant(s) _____
_____

A trial setting conference was held this date and, good cause appearing, the following determinations were made with reference to disposition of the above-entitled matter:

1. Nonjury/jury: Estimated length of trial _____ day(s).
2. Trial date should/should not be assigned.
3. Scheduling order:
   *a.* _____.
   *b.* _____.
   *c.* _____.
   *d.* _____.
   _____.
   *e.* _____.
   _____.
   *f.* _____.

Trial Attorney(s)_____
_____ Plaintiff(s)
_____
_____ Defendant(s)

TRIAL NOTICE

Trial is set for _____ at _____ _____.m.

Settlement conference, if required, is set for _____, at _____ _____.m. All provisions of any settlement conference order are to be complied with prior to this time.

Pretrial conference, if required, is set for _____, at _____ _____.m. All provisions of any pretrial order or orders are to be complied with prior to this time.

The Clerk of Court shall notify all counsel of record and parties not represented by counsel.

Dated this _____ day of _____, 20 _____.

_____
District Court Administrator

[Administrative Directive June 16, 1987, effective September 1, 1987; Court Order November 9, 2001, effective February 15, 2002]

# CHAPTER 24
# RULES OF THE BOARD OF EXAMINERS OF SHORTHAND REPORTERS

**Rule 24.1 Authorization and scope.** The rules in this chapter are adopted in conjunction with Iowa Code sections 602.3101 through 602.3302. They apply to all proceedings, functions, and responsibilities of shorthand reporters and the board of examiners. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; November 9, 2001, effective February 15, 2002]

**Rule 24.2 Definitions.**

*"Certified shorthand reporter"* is an individual who has demonstrated by examination administered by the board of examiners that such individual has achieved proficiency in shorthand equivalent in the discretion of the board to the standard of the National Court Reporters Association for the earned designation of Registered Professional Reporter, namely, the demonstrated ability to write dictated tests at 180 words per minute (question and answer — technical dictation), 200 words per minute (multivoice dictation for transcription or readback), and 225 words per minute (question and answer dictation), or such equivalents thereof as the board may select, each at 95 percent accuracy or better, and demonstrated written knowledge of the reporter's duties, legal procedure, and correct English usage at 70 percent accuracy or better. The Iowa designation of certified shorthand reporter is not granted by reciprocity. However, individuals who hold the designation of Registered Professional Reporter from the National Court Reporters Association by passing said association's examination on or after May 1, 1973, and are in good standing with such association, may, upon application to the board of examiners, become certified shorthand reporters upon successfully passing a written examination concerning a reporter's duties, legal procedure, and correct English usage at 70 percent accuracy or better.

*"Shorthand"* is a method of writing rapidly with stenographic machine by substituting characters, abbreviations, or symbols for letters, words, or phrases.

*"Shorthand reporting"* as used in this chapter is the professional skill whose practice by official shorthand reporters and freelance shorthand reporters serves the judicial branch of state government in courts of record, references by such courts or the law, depositions taken by shorthand reporters, or proceedings of like character, with the end in view of ensuring the accuracy and integrity of the record upon which courts rely for evidence, trial, and appellate review. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; May 12, 1992, effective June 30, 1992; June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 24.3 Organization, meetings, and information.**

**24.3(1)** The officers of the board shall be a chairperson, selected by the supreme court of Iowa, and a secretary elected at the September meeting, each to serve for a term of one year, or until a successor is elected. Each shall perform the duties incumbent upon the office.

**24.3(2)** The board shall hold regular meetings for examination of applicants and the transaction of other business on the second Saturday of March and September of each year in Des Moines, Iowa, commencing at 9 a.m., or at such other times or places as the board may hereafter designate. Special meetings may be held upon the call of any two members of the board. A majority of three or more members of the board shall constitute a quorum. Business shall not be conducted unless a quorum is present. All actions of the board shall require a simple majority vote of those present.

**24.3(3)** Information may be obtained from the administrator of the board's office, 431 East Locust Street, Suite 201, Des Moines, Iowa 50309, by mail or in person during office hours. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 24.4 Applications.** Candidates for examination shall make written application on the form approved by the board and provided by the board's office. An application must be on file with the clerk of the supreme court at least 30 days before the date of examination. A new application is required for each examination. An applicant to become a certified shorthand reporter shall not be examined until said applicant has satisfied the board that the applicant's educational and special training includes at least one of the following:

**24.4(1)** The applicant has attained proficiency of 200 words per minute or more in a shorthand reporting course.

**24.4(2)** The applicant has had at least two years of experience as a shorthand reporter in making verbatim records of judicial or related proceedings.

**24.4(3)** The applicant has graduated from a shorthand reporting school approved by the National Court Reporters Association. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; May 12, 1992, effective June 30, 1992; June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 24.5 Examination.**

**24.5(1)** Applicants shall be required to write shorthand from dictation of regular court proceedings, or such other matter as may be selected by the board of examiners, for such periods as shall be required at varying speeds within the standard.

**24.5(2)** Applicants shall be examined with respect to their knowledge of the statutory duties of a court reporter, general court procedure, and correct English usage.

**24.5(3)** Applicants shall be required to transcribe such part of the dictation as the board of examiners may indicate.

**24.5(4)** Applicants shall be required to read aloud such part of the dictated matter as the board of examiners may indicate.

**24.5(5)** Applicants shall be required to furnish their own equipment and supplies for taking shorthand. Applicants shall make their own transcript on a provided computer or typewriter unless the applicant is otherwise notified.

**24.5(6)** Upon completion of the examination, all shorthand notes, transcripts, and other papers used in connection with an examination shall be returned to the board.

**24.5(7)** Testing rules and guidelines of the National Court Reporters Association and the Board of the Academy of Professional Reporters for Registered Professional Reporters shall be used as a guide to procedure. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; May 12, 1992, effective June 30, 1992; June 28, 1996, effective July 1, 1996; May 23, 2001; November 9, 2001, effective February 15, 2002]

**Rule 24.6 Certification.** Each person who has achieved the designation of certified shorthand reporter shall be issued a certificate by the board of examiners. The certificate may be signed by the chairperson and secretary or by all of the board members. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; November 9, 2001, effective February 15, 2002]

**Rule 24.7 Fees.**

**24.7(1)** The fee for each examination is $50.

**24.7(2)** The fee for annual renewal is $10.

**24.7(3)** The fee for late filing of an annual report is $25.

**24.7(4)** The fee for reinstatement from a suspension is $50.

**24.7(5)** The fee for reinstatement for one granted a certificate of exemption is $10.

**24.7(6)** The fee for approval of a continuing education activity is $10.

**24.7(7)** The fee for an extension for obtaining continuing education credit is $50. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; May 12, 1992, effective June 30, 1992; June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 24.8 Continuing education requirement.**

**24.8(1)** Units of continuing education credits as approved by the board of examiners of shorthand reporters shall be completed by each reporter in active practice in Iowa. Failure to comply with the continuing education requirements shall be grounds for disciplinary action under rule 24.11. In order to comply, a reporter shall meet the requirements of rule 24.8(1)(*a*) or 24.8(1)(*b*):

*a.* Obtain at least three continuing education units (CEUs) within a three-year period by attending or participating in seminars, workshops, or courses, integrally relating to the field of shorthand reporting, and which contribute directly to the professional competency of the shorthand reporter. One hour of continuing education credit shall equal .1 continuing education unit.

Continuing education activities shall be conducted by individuals who have special education, training, and experience, and the individuals should be considered experts concerning the subject matter of the program. Attendance at any approved national, regional or state seminar will be acceptable.

Continuing education units earned in any one reporting period may be carried over for credit in one or more succeeding reporting periods, constituting the three-year period previously provided, but can not be carried over to any successive three-year period.

Commencing July 1, 1997, the annual reporting cycle shall run from July 1 through June 30. Continuing education requirements and the three-year reporting cycle for newly certified shorthand reporters will commence July 1 of the year following the year of their certification.

*b.* In lieu of the requirements set forth in rule 24.8(1)(*a*), the board will accept satisfactory evidence of compliance with the current continuing education requirements of the National Court Reporters Association for retention on its Registry of Professional Reporters.

**24.8(2)** The board may, in individual cases involving disability, hardship, or extenuating circumstances, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application is made and signed by the reporter. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

**24.8(3)** Reporters who are not actively engaged in practice may obtain from the board a certificate of exemption from continuing education requirements. Application for such exemption shall contain a statement that the applicant will not engage in the practice of shorthand reporting in Iowa without first complying with the regulations governing reinstatement after exemption.

**24.8(4)** Inactive practitioners who have been granted a certificate of exemption from these regulations shall, prior to engaging in the practice of shorthand reporting in Iowa, satisfy the following requirements for reinstatement:

*a.* Submit written application for reinstatement to the board upon forms prescribed by the board together with a reinstatement fee of $10, and

*b.* Furnish in the application evidence of one of the following:

(1) Active shorthand reporting in another state of the United States or the District of Columbia and completion of continuing education requirements that are the substantial equivalent to the requirements set forth in these rules for court reporters in Iowa as determined by the board.

(2) Completion of continuing education units (CEUs) sufficient to satisfy education requirements for the period of inactivity if seeking reinstatement within three years of being granted a certificate of exemption.

(3) Successful passing of either the state of Iowa's certificate examination or the National Court Reporters Association's examination within one year immediately prior to the submission of such application for reinstatement. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; May 12, 1992, effective June 30, 1992; June 28, 1996, effective July 1, 1996; November 25, 1998; December 21, 1999; May 23, 2001; November 9, 2001, effective February 15, 2002]

**Rule 24.9 Approval of activity.** A reporter seeking credit for attendance and participation in an educational activity other than those sponsored or approved by the National or Iowa Shorthand Reporters Associations shall submit to the board, within 30 days after completion of such activity, a request for credit, including a brief résumé of the activity, its dates, subjects, instructors and their qualifications, and the number of credit hours requested therefor. Within 60 days after receipt of such application, the board shall advise the reporter in writing by ordinary mail whether the activity is approved and the number of hours allowed therefor. A reporter not complying with the requirements of this rule may be denied credit for such activity. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 24.10 Continuing education reports.**

**24.10(1)** On or before September 1 of each year, each reporter shall file with the board, on forms provided by the board, a signed report concerning completion of continuing education for the prior reporting period. Said report, along with the annual renewal fee, shall be sent to the board's office, 431 East Locust Street, Suite 201, Des Moines, Iowa 50309.

**24.10(2)** All active reporters who fail by September 1 of each year to file the annual report shall pay a penalty of $25 unless the envelope containing the annual report is postmarked on or before September 1. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; May 12, 1992, effective June 30, 1992; June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 24.11 Penalty for failure to satisfy continuing education requirements.** The board may revoke or suspend the license of any reporter who fails to comply with rule 24.10 or who files a report showing a failure to complete the required number of education credits; provided that at least 30 days prior to the suspension or revocation, notice of the delinquency has been served upon the reporter in the manner provided for the service of original notices in Iowa R. Civ. P. 1.305 or has been forwarded to the reporter by restricted certified mail, return receipt requested, addressed to the reporter's last-known address. The reporter shall be given the opportunity during the 30 days to file in the board's office an affidavit establishing that the noncompliance was not willful and tender the documents and sums and penalties which, if accepted, would cure the delinquency. Alternatively, the reporter may file in the board's office a request, in duplicate, for hearing to show cause why the reporter's certificate should not be suspended or revoked. The board shall grant a hearing if requested. If the board orders a suspension or revocation it shall notify the reporter by either of the methods provided above. The suspension or revocation shall continue until the board has approved the reporter's written application for reinstatement. [Court Order June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 24.12 Disciplinary action.** The board may, upon its own initiative, or at the request of the supreme court of Iowa, or complaint by a third party, begin disciplinary procedures for violations of the board rules or the Code of Iowa against any reporter.

**24.12(1)** Charges against a reporter brought by a third party must be in writing, signed by the complainant, filed with the board, and contain substantiating evidence to support the complainant's allegations. The complaint shall include complainant's address and telephone number, be dated, identify the reporter, and give the address and any other information about the reporter which the complainant may have concerning the matter.

**24.12(2)** Such complaint, which will be held in confidence as required by law, shall be reviewed by the board. If the board concurs in the seriousness of the allegations made by the complainant, the board shall, in writing, advise the reporter of the charges involved. The reporter shall have 30 days from the receipt of the board's notice to answer the charges in writing. The reporter may request a personal appearance before the board. The board shall then review again the charges made and determine whether the complaint can be disposed of informally or if contested case proceedings should be commenced. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 24.13 Causes for disciplinary action.** The board may revoke or suspend a certificate, or impose any of the disciplinary sanctions included in this chapter for any of the following reasons:

**24.13(1)** All grounds listed in Iowa Code section 602.3203.

**24.13(2)** Failure to file an annual report showing satisfaction of the current requirement of continuing education or submission of a false report of continuing education.

**24.13(3)** Conviction of a misdemeanor related to the profession or occupation of the reporter.

**24.13(4)** The board's receipt of a certificate of noncompliance from the Child Support Recovery Unit, pursuant to the procedures set forth in Iowa Code chapter 252J. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 24.14 Contested case proceedings.**

**24.14(1)** Contested case proceedings which involve possible disciplinary sanctions shall be set for hearing on not less than ten days' notice to all parties. Notice of hearing shall be in writing and shall be served either by personal service or certified mail, return receipt requested.

**24.14(2)** The notice shall include all of the following information:

*a.* A statement of the time, place, and nature of the hearing.

*b.* A statement of the legal authority and jurisdiction under which the hearing is to be held.

*c.* A reference to the particular sections of the statutes and rules involved.

*d.* A concise statement of the matters asserted, or if the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved.

**24.14(3)** If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjustment is granted, proceed with the hearing and make a decision in the absence of the party.

**24.14(4)** Opportunity should be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

**24.14(5)** Unless precluded by statute, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, default, or by another method agreed upon by the parties in writing.

**24.14(6)** After the conclusion of a hearing, the board shall take any of the actions set forth in rule 24.15. The board's actions shall be set forth in writing, and a copy of the conclusions and decisions shall be served upon all parties and the supreme court of Iowa. The board may permit a reasonable time for the parties to file posthearing briefs and arguments. The report of the board shall be made within 60 days after the date set for the filing of the last responsive brief and argument. If the board cannot reasonably make its determination or file its report within such time limit, it shall report that fact and the reasons therefor to the parties and to the clerk of the supreme court. Any determination or report of the board need only be concurred in by a majority of the board members sitting, and any member has the right to file a dissent from the majority determination or report.

**24.14(7)** Procedures for the handling of all contested case proceedings shall, to the extent not specifically set forth in this chapter, be governed by the Iowa Administrative Procedure Act. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**Rule 24.15 Disciplinary sanctions.** The board may, based upon the evidence presented, take one or more of the following actions:

**24.15(1)** Dismiss the charges.

**24.15(2)** Suspend the certificate.

**24.15(3)** Revoke the certificate.

**24.15(4)** Impose a period of probation.

**24.15(5)** Require additional professional education.

**24.15(6)** Issue a citation and a warning regarding the reporter's behavior.

**24.15(7)** Informally stipulate and settle any matter relating to the reporter's discipline.

**24.15(8)** Reprimand. [Court Order June 22, 1987, amended July 17, 1987, effective August 3, 1987; June 28, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

# CHAPTER 25
# RULES FOR EXPANDED MEDIA COVERAGE

**Rule 25.1 Definitions.** As used in this chapter:

*"Expanded media coverage"* includes broadcasting, televising, electronic recording, or photographing of judicial proceedings for the purpose of gathering and disseminating news to the public.

*"Good cause"* for purposes of exclusion under this chapter means that coverage will have a substantial effect upon the objector which would be qualitatively different from the effect on members of the public in general and that such effect will be qualitatively different from coverage by other types of media.

*"Judge"* means the magistrate, district associate judge, or district judge presiding in a trial court proceeding, or the presiding judge or justice in an appellate proceeding.

*"Judicial proceedings"* or *"proceedings"* shall include all public trials, hearings, or other proceedings in a trial or appellate court, for which expanded media is requested, except those specifically excluded by this chapter.

*"Media coordinator"* shall include media coordinating councils as well as the designees of such coordinators or councils. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 25.2 General.** Broadcasting, televising, recording, and photographing will be permitted in the courtroom and adjacent areas during sessions of the court, including recesses between sessions, under the following conditions:

**25.2(1)** Permission first shall have been granted expressly by the judge, who may prescribe such conditions of coverage as provided for in this chapter.

**25.2(2)** Expanded media coverage of a proceeding shall be permitted, unless the judge concludes, for reasons stated on the record, that under the circumstances of the particular proceeding such coverage would materially interfere with the rights of the parties to a fair trial.

**25.2(3)** Expanded media coverage of a witness also may be refused by the judge upon objection and showing of good cause by the witness. In prosecutions for sexual abuse, or for charges in which sexual abuse is an included offense or an essential element of the charge, there shall be no expanded media coverage of the testimony of a victim/witness unless such witness consents. Further, an objection to coverage by a victim/witness in any other forcible felony prosecution, and by police informants, undercover agents, and relocated witnesses, shall enjoy a rebuttable presumption of validity. The presumption is rebutted by a showing that expanded media coverage will not have a substantial effect upon the particular individual objecting to such coverage which would be qualitatively different from the effect on members of the public in general and that such effect will not be qualitatively different from coverage by other types of media.

**25.2(4)** Expanded media coverage is prohibited of any court proceeding which, under Iowa law, is required to be held in private. In any event, no coverage shall be permitted in any juvenile, dissolution, adoption, child custody, or trade secret cases unless consent on the record is obtained from all parties (including a parent or guardian of a minor child).

**25.2(5)** Expanded media coverage of jury selection is prohibited. Expanded media coverage of the return of the jury's verdict shall be permitted. In all other circumstances, however, expanded media coverage of jurors is prohibited except to the extent it is unavoidable in the coverage of other trial participants or courtroom proceedings. The policy of the rules in this chapter is to prevent unnecessary or prolonged photographic or video coverage of individual jurors.

**25.2(6)** There shall be no audio pickup or broadcast of conferences in a court proceeding between attorneys and their clients, between co-counsel, between counsel and the presiding judge held at the bench or in chambers, or between judges in an appellate proceeding.

**25.2(7)** The quantity and types of equipment permitted in the courtroom shall be subject to the discretion of the judge within the guidelines set out in this chapter.

**25.2(8)** Notwithstanding the provisions of any of the procedural or technical rules in this chapter, the presiding judge, upon application of the media coordinator, may permit the use of equipment or techniques at variance therewith, provided the application for variance is included in the advance notice of coverage provided for in rule 25.3(2). Objections, if any, shall be made as provided by rule 25.3(3). Ruling upon such a variance application shall be in the sole discretion of the presiding judge. Such variances may be allowed by the presiding judge without advance application or notice if all counsel and parties consent to it.

**25.2(9)** The judge may, as to any or all media participants, limit or terminate photographic or electronic media coverage at any time during the proceedings in the event the judge finds that rules established under this chapter, or additional rules imposed by the presiding judge, have been violated or that substantial rights of individual participants or rights to a fair trial will be prejudiced by such manner of coverage if it is allowed to continue.

**25.2(10)** The rights of photographic and electronic coverage provided for herein may be exercised only by persons or organizations which are part of the news media.

**25.2(11)** A judge may authorize expanded media coverage of investitive or ceremonial proceedings at variance with the procedural and technical rules of this chapter as the judge sees fit. [Amended by Court Order September 26, 1984, effective October 10, 1984; November 9, 2001, effective February 15, 2002]

**Rule 25.3 Procedural.**

**25.3(1)** *Media coordinator and coordinating councils.* Media coordinators shall be appointed by the supreme court from a list of nominees provided by a representative of the media designated by the supreme court. The judge and all interested members of the media shall work, whenever possible, with and through the appropriate media coordinator regarding all arrangements for expanded media coverage. The supreme court shall designate the jurisdiction of each media coordinator. In the event a media coordinator has not been nominated or is not available for a particular proceeding, the judge may deny expanded media coverage or may appoint an individual from among local working representatives of the media to serve as the coordinator for the proceeding.

**25.3(2)** *Advance notice of coverage.*

*a.* All requests by representatives of the news media to use photographic equipment, television cameras, or electronic sound recording equipment in the courtroom shall be made to the media coordinator. The media coordinator, in turn, shall inform counsel for all parties and the presiding judge at least 14 days in advance of the time the proceeding is scheduled to begin, but these times may be extended or reduced by court order. When the proceeding is not scheduled at least 14 days in advance, however, the media coordinator or media coordinating council shall give notice of the request as soon as practicable after the proceeding is scheduled.

*b.* Notice shall be in writing, filed in the appropriate clerk's office. A copy of the notice shall be sent by ordinary mail to the last known address of all counsel of record, parties appearing without counsel, the appropriate court administrator, and the judge expected to preside at the proceeding for which expanded media coverage is being requested.

*c.* The notice form in rule 25.5 is illustrative and not mandatory.

**25.3(3)** *Objections.* A party to a proceeding objecting to expanded media coverage under rule 25.2(2) shall file a written objection, stating the grounds therefor, at least three days before commencement of the proceeding. All witnesses shall be advised by counsel proposing to introduce their testimony of their right to object to expanded media coverage, and all objections by witnesses under rule 25.2(3) shall be filed prior to commencement of the proceeding. The objection forms in rule 25.5 are illustrative and not mandatory. All objections shall be heard and determined by the judge prior to the commencement of the proceedings. The judge may rule on the basis of the written objection alone. In addition, the objecting party or witness, and all other parties, may be afforded an opportunity to present additional evidence by affidavit or by such other means as the judge directs. The judge in absolute discretion may permit presentation of such evidence by the media coordinator in the same manner. Time for filing of objections may be extended or reduced in the discretion of the judge, who also, in appropriate circumstances, may extend the right of objection to persons not specifically provided for in this chapter. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 25.4 Technical.**

**25.4(1)** *Equipment specifications.* Equipment to be used by the media in courtrooms during judicial proceedings must be unobtrusive and must not produce distracting sound. In addition, such equipment must satisfy the following criteria, where applicable:

*a.* *Still cameras.* Still cameras and lenses must be unobtrusive, without distracting light or sound.

*b.* *Television cameras and related equipment.* Television cameras are to be electronic and, together with any related equipment to be located in the courtroom, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras are to be designed or modified so that participants in the judicial proceedings being covered are unable to determine when recording is occurring.

*c.* *Audio equipment.* Microphones, wiring, and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the judicial proceeding being covered. Any changes in existing audio systems must be approved by the presiding judge. No modifications of existing systems shall be made at public expense. Microphones for use of counsel and judges shall be equipped with off/on switches to facilitate compliance with rule 25.2(6).

*d.* *Advance approval.* It shall be the duty of media personnel to demonstrate to the presiding judge reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this rule. Failure to obtain advance judicial approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least fifteen minutes prior to the scheduled time of commencement of the proceeding.

**25.4(2)** *Lighting.* Other than light sources already existing in the courtroom, no flashbulbs or other artificial light device of any kind shall be employed in the courtroom. With the concurrence of the presiding judge, however, modifications may be made in light sources existing in the courtroom (e.g., higher wattage lightbulbs), provided such modifications are installed and maintained without public expense.

**25.4(3)** *Equipment and pooling.* The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the courtroom shall apply:

*a.* *Still photography.* Not more than two still photographers, each using not more than two camera bodies and two lenses, shall be permitted in the courtroom during a judicial proceeding at any one time.

*b.* *Television.* Not more than two television cameras, each operated by not more than one camera person, shall be permitted in the courtroom during a judicial proceeding. Where possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside of the courtroom.

*c. Audio.* Not more than one audio system shall be set up in the courtroom for broadcast coverage of a judicial proceeding. Audio pickup for broadcast coverage shall be accomplished from any existing audio system present in the courtroom, if such pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside of the courtroom.

*d. Pooling.* Where the above limitations on equipment and personnel make it necessary, the media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility of the media coordinator, and the presiding judge shall not be called upon to mediate any dispute as to the appropriate media representatives authorized to cover a particular judicial proceeding.

**25.4(4)** *Location of equipment and personnel.* Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the courtroom designated by the presiding judge. The area or areas designated shall provide reasonable access to the proceeding to be covered.

**25.4(5)** *Movement during proceedings.* Television cameras and audio equipment may be installed in or removed from the courtroom only when the court is not in session. In addition, such equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the courtroom while proceedings are in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

**25.4(6)** *Decorum.* All still photographers and broadcast media personnel shall be properly attired and shall maintain proper courtroom decorum at all times while covering a judicial proceeding. [Court Order October 9, 1975; December 22, 1981 — received and published May 1982; July 19, 1989; March 9, 1994, effective April 1, 1994; November 9, 2001, effective February 15, 2002]

**Rule 25.5 Forms.**

**Rule 25.5 Form 1:** ***Media Coordinator's Notice of Request(s) For Expanded Media Coverage of Trial or Proceeding.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| _____, Plaintiff, v. _____, Defendant. | No. _____ **MEDIA COORDINATOR'S NOTICE OF REQUEST(S) FOR EXPANDED MEDIA COVERAGE OF TRIAL OR PROCEEDING** |

COMES NOW the undersigned person, who states as follows:

1. Certain representatives of the news media want to use photographic equipment (_____), television cameras (_____) or electronic sound recording equipment (_____), in courtroom coverage of the above proceeding. (Check the appropriate type or types of equipment.)

2. The trial or proceeding to be covered by expanded media techniques is scheduled for the _____ day of _____, 20 _____, at ____. m., at the _____ County Courthouse, _____, Iowa. The request(s) for expanded media coverage includes every part of such proceeding and any later proceedings caused by a delay or continuance.

3. The request(s) for expanded media coverage is described as follows, e.g., the number of photographers with still cameras: _____

_____

_____

_____

4. This notice of request(s) for expanded media coverage is filed (check appropriate box):

[ ] at least 14 days in advance of the proceeding for which expanded media coverage is being requested;

or

[ ] this notice cannot be filed within 14 days of the proceeding because of the reasons set out in the attached statement.

5. A copy of this notice is being provided by ordinary mail directed to the last known address of all counsel of record, parties appearing without counsel, the district court, the district court administrator for this judicial district, and the judicial officer expected to preside at the trial or proceeding for which expanded media coverage has been requested, as follows:

ATTORNEYS: _____

_____

_____

_____

PARTIES APPEARING WITHOUT COUNSEL: _____

_____

_____

_____

DISTRICT COURT ADMINISTRATOR: _____

PRESIDING JUDGE: _____

Media Coordinator's Notice of Request(s) For Expanded Media Coverage of Trial or Proceeding *(cont'd)*

WHEREFORE, the undersigned media coordinator gives notice of request(s) for expanded media coverage as aforesaid.

_____
SIGNATURE

_____
MEDIA COORDINATOR (Print Name)

_____ JUDICIAL
DISTRICT OF IOWA

_____
ADDRESS

_____

_____
TELEPHONE

_____
SENT:

[Court Order December 22, 1981 — received and published May 1982; April 16, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 25.5 Form 2:** ***Objection of Party to Expanded Media Coverage of Trial or Proceeding.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| _____,<br>Plaintiff,<br><br>v.<br><br>_____,<br>Defendant. | No. _____<br><br>**OBJECTION OF PARTY TO EXPANDED MEDIA COVERAGE OF TRIAL OR PROCEEDING** |

COMES NOW the undersigned party, who states as follows:

1. Expanded media coverage has been requested for the above matter.

2. There is good cause to believe that the presence of expanded media coverage, under the particular circumstances of this proceeding, would materially interfere with the right of the parties to a fair trial. The specific facts and circumstances in support of this allegation are described as follows: _____

_____

_____

_____

3. This objection is filed at least three days before commencement of the proceeding for which expanded media coverage has been requested.

4. I have attached a proof of service showing service by ordinary mail of a copy of this objection upon all counsel of record, parties appearing without counsel, the media coordinator for this judicial district, the district court administrator for this judicial district and the judicial officer expected to preside at the proceeding for which expanded media coverage has been requested, such mailings having been directed to the last known address of each person.

WHEREFORE, I object to expanded media coverage of this proceeding for the reasons urged.

_____

_____

_____

(Add Proof of Service)

[Court Order December 22, 1981 — received and published May 1982; November 9, 2001, effective February 15, 2002]

**Rule 25.5  Form 3:** ***Objection of Witness to Expanded Media Coverage of Testimony*.**

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

| | |
|---|---|
| _____,<br>Plaintiff,<br><br>v.<br><br>_____,<br>Defendant. | No. _____<br><br>**OBJECTION OF WITNESS TO EXPANDED MEDIA COVERAGE OF TESTIMONY** |

COMES NOW the undersigned person, who states as follows:

1. I understand that expanded media coverage has been requested for the above proceeding, which is scheduled to begin in the near future.

2. I expect to be called as a witness in this case.

3. I object to expanded media coverage of my testimony for the following reasons (please be specific): _____

_____

_____

4. I understand this objection must be filed with the clerk of the district court prior to the beginning of the case.

5. I hereby ask the clerk of the district court for assistance in providing copies of this objection to all counsel of record, parties appearing without counsel, the media coordinator for this judicial district, the district court administrator for this judicial district and the judicial officer expected to preside in this proceeding.

WHEREFORE, I object to expanded media coverage of my testimony.

_____
SIGNATURE

_____
NAME (Please Print)

_____
TELEPHONE

(The Clerk of Court should accomplish the mailings described in paragraph five.)

(over)

[Court Order December 22, 1981 — received and published May 1982; July 19, 1989; November 9, 2001, effective February 15, 2002]

RULES FOR EXPANDED MEDIA COVERAGE

**Rule 25.2(3)**

Expanded media coverage of a witness also may be refused by the judge upon objection and showing of good cause by the witness. In prosecutions for sexual abuse, or for charges in which sexual abuse is an included offense or an essential element of the charge, there shall be no expanded media coverage of the testimony of a victim/witness unless such witness consents. Further, an objection to coverage by a victim/witness in any other forcible felony prosecution, and by police informants, undercover agents, and relocated witnesses, shall enjoy a rebuttable presumption of validity. The presumption is rebutted by a showing that expanded media coverage will not have a substantial effect upon the particular individual objecting to such coverage which would be qualitatively different from the effect on members of the public in general and that such effect will not be qualitatively different from coverage by other types of media.

**Rule 25.3(3)**

*Objections.* A party to a proceeding objecting to expanded media coverage under rule 25.2(2) shall file a written objection, stating the grounds therefor, at least three days before commencement of the proceeding. All witnesses shall be advised by counsel proposing to introduce their testimony of their right to object to expanded media coverage, and all objections by witnesses under rule 25.2(3) shall be filed prior to commencement of the proceeding. The objection forms in rule 25.5 are illustrative and not mandatory. All objections shall be heard and determined by the judge prior to the commencement of the proceedings. The judge may rule on the basis of the written objection alone. In addition, the objecting party or witness, and all other parties, may be afforded an opportunity to present additional evidence by affidavit or by such other means as the judge directs. The judge in absolute discretion may permit presentation of such evidence by the media coordinator in the same manner. Time for filing of objections may be extended or reduced in the discretion of the judge, who also, in appropriate circumstances, may extend the right of objection to persons not specifically provided for in this chapter.

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# CHAPTER 31
# ADMISSION TO THE BAR

**Rule 31.1 Board of law examiners.**

**31.1(1)** *Composition.*

*a.* The board of law examiners shall consist of five persons admitted to practice law in this state and two persons not admitted to practice law in this state. Members shall be appointed by the supreme court. A member admitted to practice law shall be actively engaged in the practice of law in this state.

*b.* Appointment shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the supreme court. Members shall serve no more than three terms or nine years, whichever is less.

*c.* The members thus appointed shall sign a written oath to faithfully and impartially discharge the duties of the office, and shall file the oath in the office of the clerk of the supreme court. They shall be compensated for their services in accordance with the provisions of Iowa Code section 602.10106.

*d.* The supreme court may appoint from time to time, when necessary, temporary examiners to assist the board, who shall receive their actual and necessary expenses to be paid from funds appropriated to the board.

*e.* The members of the board of law examiners and the temporary examiners shall be paid a per diem in an amount to be set by the supreme court for each day spent in conducting the examinations of the applicants for admission to the bar and in performing and conducting administrative duties and shall also be reimbursed for additional expenses* necessarily incurred in the performance of such duties.

**31.l(2)** *Duties.*

*a.* The board, subject to the approval of the supreme court, may make such rules, not inconsistent with the rules of this court, with reference to the method of conducting the bar examination.

*b.* The authority to pass on the sufficiency of applications for permission to take the bar examination is vested in the Iowa board of law examiners, subject, however, to review by the supreme court.

*c.* The members of the board authorized to grade examinations shall make the final decision on passage or failure of each applicant, subject to the rules of the supreme court. The board shall also recommend to the supreme court for admission to practice law in this state all applicants who pass the examination and who meet the requisite character and fitness requirements. The board, in its discretion, may permit an applicant to take the bar examination prior to finally approving that person as to character and fitness. It may impose specific conditions for admission based on its evaluation of character and fitness and shall withhold recommendation of admission until those conditions are satisfied. An applicant who passes the bar examination shall satisfy such character and fitness conditions, and any other conditions imposed by the board within one year of the date of the applicant's passage of the examination. This period may be extended by the board upon the applicant's showing of good cause. If any conditions imposed are not satisfied within the applicable period of time, the applicant's passage of the examination is null and void and the applicant must retake the bar examination in order to gain admission. The supreme court shall make the final determination as to those persons who shall be admitted to practice in this state. [Court Order July 2, 1975; September 20, 1976; April 17, 1990, effective June 1, 1990; January 17, 1995, effective March 1, 1995; June 5, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002]

**See* rules 22.19, 22.20, and 22.21(2).

**Rule 31.2 Registration by law students.**

**31.2(1)** Every person intending to apply for admission to the bar of this state by examination shall, by November 1 of the year in which the person commences the study of law in an accredited law school, register with the Iowa board of law examiners on forms furnished by the board and pay the required fee of $25. The board may designate data submitted as a confidential record. Any confidential data shall be segregated by the board and the clerk of the supreme court from the portion of the registration filed as a public record.

**31.2(2)** If any person shall fail to so register, but shall do so by December 1 preceding the July examination or July 1 preceding the February examination, the board may, if it finds that a strict enforcement of this rule would work a hardship and that sufficient excuse exists for failing to comply with rule 31.2(1), waive the requirements of this rule as to date of filing. Refusal of the board to waive such requirement shall be subject to review by the supreme court. If the registration is not on file by the November 1 deadline, the registration fee will be $75. This fee is not refundable and shall be in addition to the fee required under rule 31.6.

**31.2(3)** Registration as a law student under this rule is not deemed an application for permission to take the bar examination.

**31.2(4)** The registration shall be accompanied by letters prepared by three persons not related to applicant by consanguinity or affinity attesting to the registrant's good moral character.

**31.2(5)** The board shall review each registration and may require the personal presence of any registrant at such time and place as the board may prescribe for interview and examination concerning the registrant's character and fitness. The board may at any time find it advisable to make further inquiry into the character, fitness and general qualifications of the registrant, and with regard to each registration, the board shall have all of the powers given it in respect to inquiry and investigation of candidates for admission to the bar. [Court Order July 2, 1975; September 20, 1976; December 16, 1983—received for publication May 30, 1984; February 16, 1990, effective March 15, 1990; April 16, 1992, effective July 1, 1992; March 26, 1993, effective July 1, 1993; December 2, 1993; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 112); November 9, 2001, effective February 15, 2002]

**Rule 31.3 Required examinations.**

**31.3(1)** *Iowa bar examination.*

*a.* Written examinations for admission to the bar shall be held in Polk County, Iowa, on the Monday preceding the last Wednesday in July in each even-numbered year, and on the Monday preceding the last Wednesday in February in each odd-numbered year.

Such examinations shall be held in Johnson County, Iowa, on the Monday preceding the last Wednesday in July in each odd-numbered year, and on the Monday preceding the last Wednesday in February in each even-numbered year.

*b.* The examination shall consist of three components: an Iowa essay test, the Multistate Bar Examination (MBE), and the Multistate Performance Test (MPT). There shall be two, three-hour essay sessions of four questions each, one MPT session containing two 90-minute performance tests, and two MBE sessions of 100 multiple-choice questions each. The essay test shall consist of one question each covering:

(1) Business associations

(2) Civil procedure (Iowa and federal)

(3) Constitutional law

(4) Contracts (including contracts with respect to real estate)

(5) Criminal law and procedure (Iowa)

(6) Family law

(7) Torts

(8) Probate (intestate succession, wills, and probate administration)/trusts/guardianships and conservatorships.

*c.* Beginning with the February 2001 examination, applicants must achieve a combined scaled score of 266 or above in order to pass the examination. All passes and all failures shall be on a vote of at least four members of the board of law examiners admitted to practice law in Iowa.

**31.3(2)** *Multistate Professional Responsibility Examination.* Every applicant for admission to practice law in the state of Iowa must have on file with the clerk of the supreme court examination results from the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners no later than March 1 preceding the July examination or October 1 preceding the February examination. For MPREs taken after July 1, 1996, each applicant must obtain a scaled score of at least 80 in order to be admitted to practice law in Iowa. MPRE scores shall only be accepted for three years after the date the MPRE is taken.

It is the responsibility of the applicant to ensure that a score report from the National Conference of Bar Examiners is sent to the clerk of the Iowa supreme court by the date indicated above. [Court Order July 2, 1975; September 17, 1984; October 23, 1985, effective November 1, 1985; January 3, 1996; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 101); July 26, 1996; September 12, 1996; October 3, 1997; July 11, 2000; November 9, 2001, effective February 15, 2002]

**Rule 31.4 Transfer and banking of MBE scaled scores.**

**31.4(1)** Applicants may transfer any MBE scaled score they received from an examination taken in another jurisdiction within two years of the deadline for filing the bar application for the Iowa examination. Applicants must indicate their intent to transfer an MBE score on their bar application. The applicant's MBE score from a prior examination must be certified from the other jurisdiction or the National Conference of Bar Examiners by October 1 preceding the February examination and by March 1 preceding the July examination. Applicants may not transfer MBE scaled scores from a concurrent administration of the test.

**31.4(2)** Applicants who were unsuccessful on a previous Iowa bar examination taken not more than two years prior to the deadline for filing the bar application for a subsequent examination may rely upon their prior MBE scaled score. Applicants choosing to rely upon their prior MBE scaled score shall indicate their intention on the bar application form.

**31.4(3)** Applicants who choose to rely on a transferred or banked MBE scaled score shall only be required to take the MPT and essay portions of the bar examination. Such applicants will not be permitted to take the MBE portion of the examination. Applicants who fail to meet the above deadlines for indicating their intention to transfer or bank MBE scores will not be allowed to do so and must sit for all portions of the Iowa examination. It is the applicant's responsibility to ensure that the scaled MBE score is sent to the clerk of the Iowa supreme court by the pertinent date indicated above. [Court Order June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 102); November 9, 2001, effective February 15, 2002]

**Rule 31.5 Bar examination application—contents and deadlines.**

**31.5(1)**—The board of law examiners and the clerk of the supreme court shall prepare such forms as may be necessary for application for examination. The application shall require the applicant to demonstrate the applicant is a person of honesty, integrity and trustworthiness, and one who appreciates and will adhere to the code of professional responsibility as adopted by the supreme court, together with such other information as the board and clerk determine necessary and proper.

**31.5(2)**—Every applicant for admission to the bar shall make application, under oath, and upon a form furnished by the clerk of the supreme court. The applicant shall file the application with the clerk of the supreme court no later than March 1 preceding the July examination or October 1 preceding the February examination. An applicant who fails the Iowa bar examination and wants to take the next examination must file a new application within 30 days of the date the applicant's score is posted in the supreme court clerk's office. There shall be no waiver of these deadlines. If any changes occur after the application is filed which affect the applicant's answers, the applicant must amend the application. A new and complete application shall be filed for each examination for admission.

**31.5(3)**—The board may designate portions of the data submitted for this purpose by the applicant or third parties as a confidential record. The board and the clerk of the supreme court shall segregate that portion of the application data deemed confidential from the portion which is filed as a public record. In the event of a request for a hearing on character or fitness under rule 31.11(3)(*i*) following an initial determination by the board, it may designate any additional information received at the hearing and all proceedings before the board as a confidential record. [Court Order October 14, 1968; July 2, 1975; November 21, 1977; March 20, 1987, effective June 1, 1987; February 16, 1990, effective March 15, 1990; March 26, 1993, effective July 1, 1993; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 103); November 9, 2001, effective February 15, 2002]

**Rule 31.6 Fee.** Every applicant for admission to the bar upon examination shall, as a part of the application, remit to the Iowa board of law examiners a fee in the amount of $325. This fee is not refundable and cannot be applied to a subsequent application. [Court Order July 2, 1975; December 16, 1983—received for publication May 30, 1984; April 16, 1992, effective July 1, 1992; March 26, 1993, effective July 1, 1993; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 113); October 11, 2001; November 9, 2001, effective February 15, 2002]

**Rule 31.7 Affidavit of intent to practice.** All applicants for the Iowa bar examination shall demonstrate a bona fide intention to practice law in Iowa. This showing must be by affidavit made before an officer authorized to administer oaths and having a seal.

The affidavit must include the applicant's designation of the clerk of the supreme court as the applicant's agent for service of process in Iowa for all purposes. [Court Order July 2, 1975; November 21, 1977; October 28, 1982; December 30, 1983; April 25, 1985; March 23, 1994, effective July 1, 1994; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 105); November 9, 2001, effective February 15, 2002]

**Rule 31.8 Degree requirement.** No person shall be permitted to take the examination for admission without proof that the person has received the degree of LL.B. or J.D. from a reputable law school fully approved by the American Bar Association. Proof of this requirement shall be by affidavit of the dean of such law school, and shall show that the applicant has actually and in good faith pursued the study of law resulting in the degree required by this rule. The affidavit must be made before an officer authorized to administer oaths and having a seal.

If an applicant is a student in such a law school and expects to receive the degree of LL.B. or J.D. within 45 days from the first day of the July or February examination, the applicant shall be permitted to take the examination upon the filing of an affidavit by the dean of said school stating that the dean expects the applicant to receive such a degree within this time. No certificate of admission or license to practice law shall be issued until the applicant has received the required degree. If the applicant fails to obtain the degree within the 45-day period, the results of the applicant's examination shall be null and void. [Court Order July 15, 1963; February 9, 1967; December 30, 1971; February 15, 1973; July 2, 1975; November 21, 1977; June 13, 1983; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 106); May 2, 1997; November 9, 2001, effective February 15, 2002]

**Rule 31.9 Moral character and fitness.**

**31.9(1)**—The Iowa board of law examiners shall make an investigation of the moral character and fitness of any applicant and may procure the services of any bar association, agency, organization, or individual qualified to make a moral character or fitness report.

Immediately upon the filing of the application, the chairperson of the Iowa board of law examiners shall notify the president of the county bar association and the county attorney of the county in which the applicant resides of the filing of the application. If either of said officers is possessed of information which reflects adversely on the moral character of the applicant, such information shall be transmitted to the chairperson of the board of law examiners not less than 60 days in advance of the holding of the examination.

The Iowa board of law examiners shall, subject to review by the supreme court, determine whether or not the applicant is of good moral character and fitness.

**31.9(2)** The supreme court may refuse to issue a license to practice law to an applicant for admission to the bar by examination or on motion who fails to comply with a support order.

*a. Procedure.* The child support recovery unit (the unit) shall file any certificate of noncompliance which involves an applicant with the clerk of the supreme court. The procedure, including notice to the applicant, shall be governed by Iowa Ct. R. 35.19(1), except that the notice shall refer to a refusal to issue a license to practice law to the applicant instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an application for hearing from the applicant, the clerk of district court shall schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing shall be governed by Iowa Ct. R. 35.19(2).

*c. Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, shall immediately take such steps as are necessary to issue a license to the applicant if the applicant is otherwise eligible under rules of the supreme court.

*d. Sharing information.* Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the clerk of the supreme court is authorized to share information with the unit for the sole purpose of allowing the unit to identify applicants subject to enforcement under Iowa Code chapter 252J or 598.

**31.9(3)** The Iowa supreme court may refuse to issue a license to practice law to an applicant for admission to the bar by examination or on motion who defaults on an obligation owed to or collected by the College Student Aid Commission.

*a. Procedure.* The College Student Aid Commission (the commission) shall file any certificate of noncompliance which involves an applicant with the clerk of the supreme court. The procedure, including notice to the applicant, shall be governed by Iowa Ct. R. 35.20(1), except that the notice shall refer to a refusal to issue a license to practice law to the applicant instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an application for hearing from the applicant, the clerk of district court shall schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing shall be governed by Iowa Ct. R. 35.20(2).

*c. Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, shall immediately take such steps as are necessary to issue a license to the applicant if the applicant is otherwise eligible under rules of the court. [Court Order July 2, 1975; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 104); December 20, 1996; November 25, 1998; November 9, 2001, effective February 15, 2002]

**Rule 31.10 Preservation of anonymity.** Each applicant permitted to take the bar examination shall be randomly assigned a number at the beginning of the examination, by which number the applicant shall be known throughout the examination.

Either the clerk of the Iowa supreme court or the state court administrator, or their representatives, shall prepare a list of the applicants, showing the number assigned to each at the beginning of the examination, certify to such facts, seal said list in an envelope immediately after the beginning of said examination and retain the same sealed, in their possession, unopened until after the applicant's score has been properly recorded. The envelope shall then be opened in the presence of the Iowa board of law examiners and the correct name entered opposite the number assigned to each applicant, in the presence of the Iowa board of law examiners. [Court Order July 2, 1975; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 107); November 9, 2001, effective February 15, 2002]

**Rule 31.11 Appeal and review.** Appeal from action of the Iowa board of law examiners shall be as follows:

**31.11(1)** An applicant who has failed the Iowa bar examination only once shall have no right of appeal, but the applicant may apply to take a subsequent regular examination.

**31.11(2)** An applicant who has failed two or more Iowa bar examinations may appeal from the board's determination as to the scoring of the written portion of the bar examination as follows:

*a.* The applicant, and the applicant's attorney if a member of the Iowa bar, may examine the applicant's most recent examination paper in the office of the clerk of the Iowa supreme court and obtain copies thereof at the applicant's expense.

*b.* Not later than 30 days after the date the applicant's score is posted in the supreme court clerk's office, the applicant may file eight copies of a petition with the supreme court clerk. The petition shall be typed or printed, shall state specifically how the board allegedly erred, and shall contain a legible copy of all of the applicant's bar examination answers. The applicant shall also attach eight copies of a typed or printed brief setting forth all applicable legal authorities supporting each allegation of claimed error. Neither the petition nor the brief shall contain the applicant's name, but instead they shall merely refer to "the applicant." An attached sheet shall contain the applicant's name and be signed by the applicant and the applicant's attorney if any. The supreme court clerk shall remove the attached sheet prior to submitting the petition to the board, and the petition shall be submitted on an anonymous basis without oral argument or hearing.

*c.* The board on appeal shall be at least three of the five attorneys and one of the laypersons, but the lay members of the board shall have no vote in the decision rendered.

*d.* The appeal shall be confined to the errors claimed in the applicant's petition.

*e.* Upon consideration of the petition, the board shall either affirm its previous decision or recommend to the supreme court that the applicant be admitted to the practice of law in Iowa. The original of the decision shall be filed with the supreme court clerk, and a copy shall be mailed by the clerk to the applicant at the address shown in the petition. The board's determination shall be subject to supreme court review in accordance with the provisions of rule 31.11(3)(*i*).

**31.11(3)** When the board of law examiners determines that any person who registers or makes application should not be permitted to take a bar examination, or that an applicant who has passed a bar examination should not be recommended for admission to practice law in Iowa, the board shall notify the applicant in writing of its determination.

*a.* The notice shall advise the applicant of the right to hearing of the determination upon filing a written request for hearing with the clerk of the supreme court within ten days after service of the notice.

*b.* The clerk of the supreme court shall serve the notice on the applicant by mail to the address shown on the person's application.

*c.* If no request for hearing is filed, the board's determination shall be final and not subject to review.

*d.* If a request for hearing is filed, the chairperson of the board shall appoint a lawyer member of the board to act as hearing officer. The hearing officer shall promptly set a hearing, and the clerk of the supreme court shall notify the applicant by mail at least ten days before the hearing date of the time and place of hearing.

*e.* Not less than ten days before the hearing date the board shall furnish the applicant with copies of all documents and summaries of all other information relied on by the board in making its determination.

*f.* The clerk of court in the county where the hearing is held shall have authority to issue any necessary subpoenas for the hearing.

*g.* At the hearing the applicant shall have the right to appear in person and by counsel. The board may be represented by the attorney general of the State of Iowa or a duly appointed assistant attorney general. The hearing shall be reported. The hearing officer shall take judicial notice of the information considered by the board in the case and shall consider such additional evidence and arguments as may be presented at the hearing. At the hearing, the board shall first present any additional evidence or information that it deems necessary to the proceeding. Thereafter the applicant shall present evidence. The attorney for the board may offer rebuttal evidence at the discretion of the hearing officer. In presiding at the hearing the hearing officer shall have the power and authority possessed by administrative hearing officers generally.

*h.* Within 30 days after completion of the hearing, the hearing officer shall provide the board with a hearing transcript, exhibits, and written summary of the evidence, without fact findings or legal conclusions. Based on this information, the board shall make and file with the clerk of the supreme court its final determination. The clerk of the supreme court shall, by mail, promptly notify the applicant of the board's final determination.

*i.* Any applicant aggrieved by a final determination of the board made pursuant to rule 31.11(2)(*e*) or rule 31.11(3)(*h*) may file a petition requesting review of the determination in the supreme court of Iowa within 20 days of the mailing of notice of final determination. If no such petition is filed the board's determination shall not be subject to review. When a petition for review is filed the applicant shall state in it all claims of error and reasons for challenging the board's determination. The board shall transmit to the supreme court its files and complete record in the case. Unless the court orders otherwise the petition shall be deemed submitted for the court's review on the record previously made. After consideration of the record, the court shall enter its order sustaining or denying the petition. The order of the court shall be conclusive. No subsequent application for admission by a person denied under rule 31.11(3)(*h*) shall be considered by the board unless authorized by the court upon the person's motion accompanied by a prima facie showing of a substantial change of circumstances.

**31.11(4)** In the event an applicant or person who is registered takes an appeal under rule 31.11(2) or 31.11(3) and is unsuccessful, the costs of the appeal shall be taxed against the unsuccessful applicant and judgment therefor may be entered in the district court of that person's county of residence, if an Iowa resident, or in the district court for Polk County if a nonresident. [Court Order July 2, 1975; September 20, 1976; April 25, 1985; March 31, 1986, effective May 1, 1986; April 17, 1990, effective June 1, 1990; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 117.1) July 19, 1999; November 9, 2001, effective February 15, 2002]

**Rule 31.12 Admission of attorneys from other jurisdictions—requirements and fees.**

**31.12(1)** A person may, in the discretion of the court, be admitted to the practice of law in this state without examination if the person applying for admission demonstrates that the following requirements are fully satisfied. When making application the person shall pay to the clerk of the supreme court a nonrefundable fee of $575, with the portion of the fee so paid that exceeds the admission fee required by law considered to be an investigation fee. The character investigation services of the National Conference of Bar Examiners shall be procured in all cases where application for admission on motion is made.

**31.12(2)** The application and supporting affidavits, containing specific facts and details as opposed to conclusions and made before an officer authorized to administer oaths, must demonstrate the following:

*a.* The person has a bona fide intention to practice law in Iowa.

*b.* The person has been admitted to the bar of any other of the United States or the District of Columbia, and has practiced law five full years while licensed within the seven years immediately preceding the date of the application and still holds a license, provided that:

(1) The teaching of law as a full-time instructor in a law school approved by the section of legal education and admission to the bar of the American Bar Association in this state or some other state shall, for the purposes of this rule, be deemed the practice of law; and

(2) The period during which such person shall have discharged actual legal duties as a member of one of the armed services of the United States shall be considered as the practice of law for the purposes of this rule, if certified as such by the judge advocate general of such service; and

(3) Service as an employee or officer of any business shall not constitute the practice of law for purposes of this rule unless such service would ordinarily constitute the practice of law and is performed in a jurisdiction in which the applicant has been admitted to practice.

*c.* The applicant is a person of honesty, integrity and trustworthiness, and one who will adhere to the code of professional responsibility adopted by the supreme court. In evaluating this factor the court may consider any findings filed with the clerk of the supreme court by the unauthorized practice commission pursuant to Iowa Ct. R. 37.3.

*d.* The person provides such information as the court deems necessary and proper in connection with the application. If any changes occur which affect the applicant's answers, the applicant must immediately amend the application. [Court Order July 2, 1975; September 20, 1976; February 12, 1981; Note September 30, 1981; Court Order December 17, 1982; December 30, 1983; April 23, 1985; November 8, 1985; March 31, 1986, effective May 1, 1986; November 21, 1991, effective January 2, 1992; November 30, 1994, effective January 3, 1995; January 17, 1995, effective March 1, 1995; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 114); May 2, 1997; October 11, 2001; November 9, 2001, effective February 15, 2002; February 22, 2002]

**Rule 31.13 Proofs of qualifications.** The following proofs must be filed with the Iowa board of law examiners to qualify an applicant for admission under rule 31.12:

**31.13(1)** Certificate of admission in state of licensure.

**31.13(2)** Certificate of clerk or judge of a court of record that the applicant was regularly engaged in the practice of law in said state for five years.

**31.13(3)** Certificate of applicant's good moral character from judge or clerk of the Iowa district court or of a court where applicant has practiced within the last five years.

**31.13(4)** Affidavit showing a bona fide intent to practice law in Iowa.

Applicants must appear for admission before the supreme court or a member thereof. [Court Order July 2, 1975; December 30, 1982; December 30, 1983; April 23, 1985; November 8, 1985; January 17, 1995, effective March 1, 1995; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 115); November 9, 2001, effective February 15, 2002]

**Rule 31.14 Admission pro hac vice before Iowa courts and administrative agencies.**

**31.14(1)** Any attorney admitted to practice in any state and not admitted in Iowa may appear in an action in an Iowa court and may, further, in the discretion of the court in which the action is pending, be permitted to conduct such cause or other matter pending, by satisfying the following conditions: The attorney not admitted in Iowa must promptly file with the clerk of such court the written appearance of a resident attorney admitted to practice in this state upon whom service may be had in all matters connected with said cause or matter with the same effect as if personally made upon the attorney not admitted to practice in Iowa and shall file a verified statement which contains an agreement to submit to and comply with all provisions and requirements of the Iowa Code of Professional Responsibility for Lawyers. If such appearance and agreement are not filed and maintained, the court before which the matter is pending shall notify the attorney not admitted to practice in Iowa and the parties the attorney represents to comply with Iowa Code section 602.10111 and this rule within 20 days of the date of the notice. In the event of failure to comply within such period, the court, on its motion or on motion of the adverse party, may dismiss the action, or strike the pleadings of the noncomplying party from the files, and enter thereafter such judgment as is appropriate.

**31.14(2)** Any attorney admitted to practice in any state and not admitted in Iowa may represent others in a contested case before an administrative agency of this state, at the discretion of such agency, provided that such attorney promptly files with the agency the written appearance of a resident attorney admitted to practice in Iowa upon whom service may be had in all matters connected with said case with the same effect as if personally made on the attorney not admitted to practice in Iowa and shall file a verified statement which contains an agreement to submit to and comply with all provisions and requirements of the Iowa Code of Professional Responsibility for Lawyers. The terms "agency" and "contested case" as used in this rule are defined in Iowa Code section 17A.2. [Court Order July 2, 1975; June 22, 1976; December 2, 1993; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 116); April 1, 1999; November 9, 2001, effective February 15, 2002]

**Rule 31.15 Permitted practice by law students.**

**31.15(1)** A law student enrolled in a reputable law school as defined by rule 31.8 and Iowa Code section 602.10102 certified to the supreme court of Iowa by the dean of the school to have completed satisfactorily not less than the equivalent of three semesters of the work required by the school to qualify for the J.D. or LL.B. degree, may, under the following conditions, engage in the practice of law or appear as counsel in the trial or appellate courts of this state.

*a.* Appearance by students as defense counsel in a criminal matter in any court shall be confined to misdemeanors and shall be under the direct supervision of licensed Iowa counsel who shall be personally present.

*b.* Appearance by students in matters before the court of appeals or supreme court of Iowa shall be under the direct supervision of licensed Iowa counsel who shall be personally present.

*c.* Appearance by students in other matters shall be under the general supervision of licensed Iowa counsel, but such counsel need not be present in court unless required by order of the court.

**31.15(2)** A student who the dean certifies has completed not less than the equivalent of two semesters of work required to qualify for the J.D. or LL.B. degree may appear in a representative capacity in a contested case proceeding before an administrative agency. Appearance by students who have completed only two semesters of work shall be under the direct supervision of licensed Iowa counsel who shall be personally present.

**31.15(3)** No student may engage in the practice of law or appear as counsel in any court of this state or before an administrative agency unless such practice or appearance is part of an educational program approved by the faculty of the student's law school and not disapproved by the supreme court of the state of Iowa, and such program is supervised by at least one member of the law school's faculty.

**31.15(4)** A student shall not receive compensation other than general compensation from an employer-attorney or from a law-school-administered fund. [Court Order April 4, 1967; May 15, 1972; January 14, 1974; April 8, 1975 [withdrawn]; April 9, 1975; April 8, 1980; April 28, 1987; June 5, 1996, effective July 1, 1996 (Prior to July 1, 1996, Court Rule 120); January 9, 1998, effective February 2, 1998; November 9, 2001, effective February 15, 2002]

# CHAPTER 32
# IOWA CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS

## PREAMBLE

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which a lawyer may encounter can be foreseen, but fundamental ethical principles are an always present guide. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

The Code of Professional Responsibility points the way to the aspiring and provides standards by which to judge the transgressor. Each lawyer must find within the lawyer's own conscience the touchstone against which to test the extent to which actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the profession and of the society which the profession serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permits of no compromise. [Court Order November 9, 2001, effective February 15, 2002]

## PRELIMINARY STATEMENT

In furtherance of the principles stated in the preamble, this Code of Professional Responsibility consists of three separate but interrelated parts: Canons, Ethical Considerations, and Disciplinary Rules. The Code is designed to serve as both an inspirational guide to the members of the profession and as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards stated in the Disciplinary Rules.

The Canons, Ethical Considerations, and Disciplinary Rules apply to any lawyer who practices law in the state of Iowa, regardless of whether that lawyer is admitted to the bar of this state. Obviously the Canons, Ethical Considerations, and Disciplinary Rules cannot apply to nonlawyers; however, they do define the type of ethical conduct that the public has a right to expect not only of lawyers but also of their nonprofessional employees and associates in all matters pertaining to professional employment. Lawyers should ultimately be responsible for the conduct of their employees and associates in the course of professional representation of clients.

The Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. They embody the general concepts from which the Ethical Considerations and the Disciplinary Rules are derived.

The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial, the Disciplinary Rules should be uniformly applied to all lawyers, regardless of the nature of their professional activities. The Code makes no attempt to prescribe either disciplinary procedures or penalties for violation of a Disciplinary Rule, nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances. An enforcing agency, in applying the Disciplinary Rules, may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations. [Court Order November 9, 2001, effective February 15, 2002]

## DEFINITIONS*

As used in the disciplinary rules of the Code of Professional Responsibility:

(1) A *"bar association"* includes a bar association of specialists as referred to in DR 2–105(A)(1) or DR 2–105(E).

(2) *"Differing interests"* includes every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(3) *"Law firm"* includes a professional legal corporation, a professional limited liability company, and a registered limited liability partnership.

*"Confidence" and "secret" are defined in DR 4–101(A).

(4) *"Person"* includes a corporation, a professional limited liability company, a registered limited liability partnership, an association, a trust, a partnership, and any other organization or legal entity.

(5) *"Professional legal corporation"* means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(6) *"Professional limited liability company"* means a limited liability company authorized by law to practice law for profit.

(7) *"Qualified legal assistance organization"* means an office or organization of one of the four types listed in DR 2–103(D)(1) to (4), inclusive, that meets all the requirements thereof.

(8) *"Registered limited liability partnership"* means a registered limited liability partnership authorized by law to practice law for profit.

(9) A *"reputable legal directory"* is a publication which contains a list of lawyers or law firms in designated geographical areas, contains only the information permitted under DR 2–101, presents such information for each lawyer in the same size and style of type and in a dignified manner and the sole purpose of which is to assist laypersons and lawyers in selecting a lawyer in the geographical area which it covers. A directory which charges a fee for a listing is not reputable unless it makes a listing available to every practicing lawyer in the geographical area on the same terms and conditions as every other lawyer in the area. Notwithstanding the foregoing, any directory which has received the formal written approval of the Iowa Supreme Court Board of Professional Ethics and Conduct or has received the certification of the Law List Committee of the American Bar Association shall be considered reputable.

(10) *"State"* includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

(11) *"Tribunal"* includes all courts and all other adjudicatory bodies. [Court Order November 9, 2001, effective February 15, 2002]

## *CANON I*

## *A LAWYER SHOULD ASSIST IN MAINTAINING THE INTEGRITY AND COMPETENCE OF THE LEGAL PROFESSION*

### ETHICAL CONSIDERATIONS

**EC 1□1** A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer. [Court Order November 9, 2001, effective February 15, 2002]

**EC 1□2** The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education or moral standards or of other relevant factors but who nevertheless seek to practice law. To ensure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar. In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of pre-admission and post-admission legal education. [Court Order November 9, 2001, effective February 15, 2002]

**EC 1□3** Before recommending an applicant for admission, a lawyer should be satisfied that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, all unfavorable information relating to the character or other qualifications of an applicant should be reported to proper officials. [Court Order November 9, 2001, effective February 15, 2002]

**EC 1□4** The integrity of the profession can be maintained only if conduct of lawyers in violation of the disciplinary rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers believed clearly to be in violation of the disciplinary rules. A lawyer should, upon request, serve on and assist committees and boards having responsibility for the administration of the disciplinary rules. [Court Order November 9, 2001, effective February 15, 2002]

**EC 1□5** A lawyer should maintain high standards of professional conduct and should encourage other lawyers to do likewise. A lawyer should be temperate and dignified, and should refrain from all illegal and morally reprehensible conduct. Because of a lawyer's position in society, even minor violations of law may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude. [Court Order November 9, 2001, effective February 15, 2002]

**EC 1□6** An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice. In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to the full right to practice. [Court Order November 9, 2001, effective February 15, 2002]

DISCIPLINARY RULES

**DR 1–101 Maintaining Integrity and Competence of the Legal Profession.**

(A) A lawyer is subject to discipline if the lawyer has made a materially false statement in, or has deliberately failed to disclose a material fact requested in connection with, an application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person known by the lawyer to be unqualified in respect to character, education, or other relevant attribute. [Court Order November 9, 2001, effective February 15, 2002]

**DR 1–102 Misconduct.**

(A) A lawyer shall not:

(1) Violate a disciplinary rule.

(2) Circumvent a disciplinary rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on the fitness to practice law.

(7) Engage in sexual harassment or other unlawful discrimination on the basis of sex, race, national origin, or ethnicity in the practice of law or knowingly permit staff and agents subject to the lawyer's direction and control to do so. [Court Order November 9, 2001, effective February 15, 2002]

**DR 1–103 Disclosure of Information to Authorities.**

(A) A lawyer possessing unprivileged knowledge of a violation of DR 1–102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

(C) A lawyer possessing unprivileged knowledge or evidence that another lawyer or judge is suffering from such mental or emotional instability as renders that lawyer or judge unfit or unable to furnish competent legal services shall report such knowledge to a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

(D) No lawyer who is a member or designee of Lawyers Helping Lawyers Committee (committee) or Iowa Lawyers Assistance Program (program) of the Iowa State Bar Association shall be required to disclose any information concerning another lawyer's confidences or secrets received as a committee or program member or designee, except information concerning commingling, mishandling or misappropriation of client's funds, nor shall failure or refusal to disclose such information constitute a violation of any Ethical Consideration or Disciplinary Rule of this Code. [Court Order November 9, 2001, effective February 15, 2002]

*CANON 2*

*A LAWYER SHOULD ASSIST THE LEGAL PROFESSION IN FULFILLING ITS DUTY TO MAKE LEGAL COUNSEL AVAILABLE*

ETHICAL CONSIDERATIONS

**EC 2–1** The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laypersons to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available. [Court Order November 9, 2001, effective February 15, 2002]

*Recognition of Legal Problems*

**EC 2–2** The legal profession should assist laypersons to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Preparation of advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs should be motivated by a desire to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel rather than to obtain publicity for particular lawyers. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2–3** Whether a lawyer acts properly in volunteering in-person advice to a layperson to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laypersons in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that one may have legal problems or who is ignorant of one's legal rights or obligations. It is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause legal action to be taken merely to harass or injure another. A lawyer should not initiate an in-person contact with a nonclient, personally or through a representative, for the purpose of being re-

tained to represent that person for compensation. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□4** Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers in-person advice likely to produce legal controversy may well be suspect if the lawyer receives professional employment or other benefits as a result. A lawyer who volunteers in-person advice that one should obtain the services of a lawyer generally should not accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients, and existing clients. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□5** A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laypersons should caution them not to attempt to solve individual problems upon the basis of the information contained therein. [Court Order November 9, 2001, effective February 15, 2002]

*Selection of a Lawyer: Generally*

**EC 2□6** Formerly laypersons usually knew the reputations of local lawyers for competency and integrity and therefore could select a practitioner in whom they had confidence. This traditional selection process worked well because it was initiated by the potential client and the choice was an informed one. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□7** Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laypersons to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laypersons have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers. Lack of information about the availability of lawyers, the qualifications of particular lawyers, and the expense of legal representation may induce laypersons to avoid seeking needed legal advice. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□8** The attorney-client relationship is, in the highest degree, one of trust and confidence. The duty of a lawyer to the client is one of great delicacy and responsibility and, sometimes, of apparent hardship. Every consideration of personal advantage or profit must be subordinated to the interest and welfare of the client. The trust that a client places in a lawyer makes the client peculiarly susceptible to the lawyer's influence. The public expects any lawyer licensed by the supreme court to practice law to be a person of ability and integrity. The supreme court, therefore, has a compelling interest to ensure the public that its trust has not been misplaced. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□9** Selection of a lawyer by a layperson should be made on an informed basis. Advice and recommendation of third parties—relatives, friends, acquaintances, business associates, or other lawyers—and disclosure of relevant information about the lawyer and the lawyer's practice may be helpful. A layperson is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend employment. A lawyer should not compensate another person for a recommendation of employment, for influencing a prospective client to employ the lawyer, or to encourage future recommendations. Advertisements and public communications, whether in reputable legal directories, telephone directories, or newspapers, should be formulated to convey only information that is necessary to make an appropriate selection. [Court Order November 9, 2001, effective February 15, 2002]

*Selection of a Lawyer: Lawyer Advertising*

**EC 2□10** Competency may be a factor in the selection of a lawyer. However, competency cannot be determined from an advertisement. The cost of legal services may also be a factor in the selection of a lawyer. It might aid a layperson in the selection of a lawyer if the costs of legal services were available for comparison or could be considered in an atmosphere conducive to logic, reason, and reflection. This factual information can be made available through advertising. Care must be exercised to ensure that there is a proper basis for the comparison of costs communicated in a manner that will truthfully inform, and not mislead, a prospective client as to the total costs. For example, to state an hourly charge and to characterize it as a "reasonable fee" is misleading because the total cost or fee can vary greatly depending upon the number of hours spent. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□11** The lack of sophistication on the part of many members of the public concerning legal services, and the importance of the interests affected by the choice of a lawyer require that special care be taken by lawyers to avoid misleading the public and to ensure that the information set forth in any advertising is relevant to the selection of a lawyer. The lawyer must be mindful that the benefits to the public of lawyer advertising depend upon its reliability and accuracy. Advertising marked by excesses of content, volume, scope or frequency, or which unduly emphasizes unrepresentative biographical information, does not provide that public benefit. Fee advertising involves special concerns. With rare exception, lawyers render unique and varied services for each client, even as to so-called "routine" matters. When consulted about any matter, whether or not "routine," a lawyer should make relevant inquiries which may uncover the need for different services than those which the client originally sought. These factors make it difficult to set a fixed fee or a range of fees for a specific legal service in advance of rendering the service and provide temptation to depart from an advertised fee or to fail to render a needed service. Thus, a lawyer who advertises a fee for a service should exercise particular caution to avoid misleading prospective clients and should include appropriate disclaimers. A lawyer should also scrupulously avoid the use of fee advertising as an indirect means of attracting clients in the hope of performing other, more lucrative, legal services. If any doubt exists as to the propriety of a proposed advertisement, a lawyer should seek the opinion of the Iowa Supreme Court Board of Professional Ethics and Conduct, acting as a commission of the supreme court pursuant to chapter 35. If the lawyer disagrees with such opinion, the lawyer may follow the provisions of the board's rules of procedure regarding proposed changes in rules concerning lawyer advertising. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□12** A lawyer should ensure that the information contained in any advertising which the lawyer publishes, or causes to be published, is relevant, is dignified, is disseminated in an objective and understandable fashion, and would facilitate the prospective client's ability to make an informed choice about legal representation. A lawyer should strive to communicate such information without undue emphasis upon style and advertising stratagems which serve to hinder rather than to facilitate intelligent selection of counsel. Appeal should not be made to the prospective client's emotions, prejudices, or personal likes or dislikes. Care should be exercised to ensure that false hopes of success or undue expectations are not communicated. The desirability of affording the public access to information relevant to legal rights has resulted in some relaxation of the former restrictions against advertising by lawyers. Historically, those restrictions were imposed to prevent deceptive publicity that would mislead laypersons, cause distrust of the law and lawyers, and undermine public confidence in the legal system, and all lawyers should remain vigilant to prevent such results. Only unambiguous information relevant to a layperson's decision regarding legal rights or the selection of counsel, provided in ways that comport with the dignity of the profession and do not demean the administration of justice, is appropriate in public communications. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□13** The name under which a lawyer practices law may be a factor in the selection process. The use of a trade name or an assumed name could mislead laypersons concerning the identity, responsibility, and status of those practicing thereunder. Accordingly, lawyers in private practice should practice only under a designation containing their own names, the names of the lawyers employing them, the name of one or more of the lawyers practicing in a partnership, the name of a professional corporation, the name of a professional limited liability company, or the name of a registered limited liability partnership, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□14** Lawyers occupying a judicial, legislative, or public executive or administrative position who have the right to practice law concurrently may allow their names to remain in the name of the firm if actively continuing to practice law as a member thereof. Otherwise, their names should be removed from the firm name, and they should not be identified as a past or present member of the firm, nor appear to hold themselves out as being practicing lawyers. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□15** In order to avoid the possibility of misleading persons with whom they deal, lawyers should be scrupulous in the representation of their professional status. They should not hold themselves out as being partners or associates of a law firm if they are not in fact, and should not hold themselves out as partners or associates if they only share offices with another lawyer. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□16** In some instances lawyers limit their practice to, or practice primarily in, certain fields of law. In the absence of controls to ensure the existence of special competence, lawyers should not be permitted to hold themselves out as specialists or as having special training or ability other than in the field of patent law where a holding out as a specialist historically has been permitted. However, lawyers who comply with DR 2–105 may hold themselves out publicly as practicing in, or limiting their practice to, certain fields of law. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□17** The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layperson to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□18** The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in ethical activities designed to achieve that objective. [Court Order November 9, 2001, effective February 15, 2002]

*Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees*

**EC 2□19** The determination of a proper fee requires consideration of the interests of both client and lawyer. A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laypersons from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve clients effectively and to preserve the integrity and independence of the profession. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□20** The determination of the reasonableness of a fee requires consideration of all relevant circumstances, including those stated in the disciplinary rules. The fees of a lawyer will vary according to many factors, including the time required, the lawyer's experience, ability, and reputation, the nature of the employment, the responsibility involved, and the results obtained. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□21** As soon as feasible after a lawyer has been employed, it is desirable that the lawyer reach a clear agreement with the client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons may have had little or no experience with fee charges of lawyers, and for this reason the lawyer should explain fully to such persons the reasons for the particular fee arrangement proposed. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□22** Contingent fee arrangements in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute a claim, and (2) a successful prosecution of the claim produces a *res* out of which the fee can be paid. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings contingent fee contracts should be governed by the same consideration as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a *res* with which to pay the fee. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□23** A lawyer should not accept compensation or any thing of value incident to employment or services from one other than the client without the knowledge and consent of the client after full disclosure. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□24** Without the client's consent, a lawyer should not associate in a particular matter with another lawyer outside the lawyer's firm. A fee may properly be divided between lawyers properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer and if the total fee is reasonable. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□25** A lawyer should be zealous in efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. A lawyer should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client. [Court Order November 9, 2001, effective February 15, 2002]

*Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees*

**EC 2□26** Laypersons whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for them. Even persons of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□27** Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services. [Court Order November 9, 2001, effective February 15, 2002]

*Acceptance and Retention of Employment*

**EC 2□28** A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become a client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of the lawyer's share of tendered employment which may be unattractive both to the lawyer and the bar generally. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□29** History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□30** The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify rejection of tendered employment. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□31** When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, the lawyer should not seek to be excused from undertaking the representation except for compelling reasons. Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty, or the belief of the lawyer regarding the merits of the civil case. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□32** Employment should not be accepted by a lawyer who is unable to render competent service or who knows or should know that the person seeking to employ the lawyer desires to institute or maintain an action merely for the purpose of harassing or maliciously injuring another. Likewise, a lawyer should decline employment if intense personal feelings, as distinguished from a community attitude, may impair effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, the lawyer should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□33** Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel for a convicted defendant should continue to represent the client by advising whether to take an appeal and, if the appeal is prosecuted, by representing the client through the appeal unless new counsel is substituted or withdrawal is permitted by the appropriate court. [Court Order November 9, 2001, effective February 15, 2002]

**EC 2□34** A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances, and in a matter pending before a tribunal the lawyer must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of the client and the possibility

of prejudice to the client as a result of withdrawal. Even when withdrawal is justified, a lawyer should protect the welfare of the client by giving due notice of withdrawal, suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, a lawyer should refund to the client any compensation not earned during the employment. [Court Order November 9, 2001, effective February 15, 2002]

DISCIPLINARY RULES

**DR 2–101 Publicity.**

(A) *Advertising in general.* A lawyer shall not communicate with the public using statements that are false, deceptive, unfair or unverifiable. Advertising permitted under these rules shall not rely on emotional appeal or contain any statement or claim relating to the quality of the lawyer's legal services. In all communications under DR 2–101 and DR 2–102, the lawyer may use restrained subjective characterizations of rates or fees such as "reasonable," "moderate," and "very reasonable," but shall avoid all unrestrained subjective characterizations of rates or fees, such as, but not limited to, "cut-rate," "lowest," "giveaway," "below-cost," "discount," and "special."

With the exception of the prohibition against statements which are false, deceptive, unfair or unverifiable, the following communications shall not be considered advertising and are accordingly not subject to DR 2–101 and DR 2–105: (1) communications or solicitations for business between lawyers; (2) communications between a lawyer and an existing or former client, provided the lawyer does not know or have reason to know the attorney-client relationship has been terminated; or (3) communications by a lawyer that are in reply to a request for information by a member of the public that was not prompted by unauthorized advertising by the lawyer; information available through a hyperlink on a lawyer's Web site shall constitute this type of communication.

Notwithstanding the above provisions, any brochures or pamphlets containing biographical and informational data disseminated to existing clients, former clients, lawyers, or in response to a request for information by a member of the public, shall include the disclosures required by DR 2–101(D) and (F) when applicable.

(B) *Method of dissemination.* Subject to the limitations contained in these rules:

(1) *General print media.* Lawyer advertising may be communicated to the public in newspapers, periodicals, trade journals, "shoppers," and other similar advertising media.

(2) *Lawyer telephone and city directory listings.* A lawyer licensed to practice law in Iowa may permit the inclusion of the lawyer's name, address, telephone number, and designation as a lawyer, in a telephone or city directory, subject to the following requirements.

(a) *Alphabetical listings.* The lawyer's name, address, and telephone number and designation as a lawyer, only, may be listed alphabetically in the residential, business, and classified sections of the telephone or city directory.

(b) *Classified listings.* Listings in the classified section shall be under the general heading "Lawyers" or "Attorneys," except that a lawyer who has complied with DR 2–105(B) and (C) may be listed in classifications or headings identifying those fields or areas of practice as listed in DR 2–105(A)(2). By further exception, a lawyer qualified under DR 2–105 to practice in the field of taxation law also may be listed under the general heading "Tax Preparation" or "Tax Return Preparation," either in lieu of or in addition to, the general heading "Lawyers" or "Attorneys."

(c) *Display and box advertisements.* All other telephone or city directory advertising permitted by these rules, including display or box advertisements, shall include the disclosures required by DR 2–101(D) and (F) when applicable.

(3) *Law firm telephone and city directory listings.* Consistent with DR 2–102(D), a law firm may permit the inclusion of the firm name, address, and telephone number in a telephone or city directory, subject to the following requirements.

(a) *Alphabetical listings.* The firm name, a list of its members, address, and telephone number may be listed alphabetically in the residential, business, and classified sections of the telephone or city directory.

(b) *Classified listings.* Listings in the classified section shall be under the general heading "Lawyers" or "Attorneys," except that a law firm may be listed in each of the classifications or headings identifying those fields or areas of practice as listed in DR 2–105(A)(2) in which one or more members of the firm are qualified by virtue of compliance with DR 2–105(B) and (C).

(c) *Display and box advertisements.* All other telephone or city directory advertising permitted by these rules, including display or box advertising, may contain the firm name, address, and telephone number, and the names of the individual lawyer members of the firm. All display or box advertisements shall include within the ad the disclosures required by DR 2–101(D) and (F) when applicable.

(4) *Solicitation.*

(a) *In-person solicitation.* A lawyer may not engage in the in-person or telephone solicitation of legal business under any circumstance.

(b) *Written solicitation.* A lawyer may engage in written solicitation by direct mail to persons or groups who may need specific legal services because of a condition or occurrence known to the soliciting lawyer. Prior to the solicitation, the lawyer must file such proposed solicitation(s) with the Iowa Supreme Court Board of Professional Ethics and Conduct. The soliciting lawyer shall, in addition thereto, bear the burden of proof regarding:

(i) the truthfulness of all facts contained in the proposed communication;

(ii) how the identity and specific legal need of the potential recipient were discovered; and

(iii) how the identity and specific need of the potential recipient were verified by the soliciting lawyer.

No such dissemination shall be made until the board or its designee shall, upon the facts presented, render a written finding that the solicitation is not false, deceptive, unfair or unverifiable. No information disseminated by the soliciting lawyer shall make any reference to such submission and finding. Each separate written solicitation intended for dissemination must be submitted for a finding in accordance with this rule.

(c) *Direct mail.* Information permitted by these rules may be communicated by direct mail to the general public other than persons or groups of persons who may be in need of specific or particular legal services because of a condition or occurrence which is known or could with reasonable inquiry be known to the advertising lawyer.

(d) *Disclosures.* All communications authorized by DR 2–101(B)(4)(b) and (c) shall contain the disclosures required by DR 2–101(D) and (F) when applicable. These communications, and the envelope containing the same, shall in addition to other required disclosures carry the following disclosure in red ink in 9-point or larger type: "ADVERTISEMENT ONLY." A copy of all direct mail communications shall be filed with the administrator, or the administrator's designee, of the Iowa Supreme Court Board of Professional Ethics and Conduct, acting as commissioners of the supreme court as provided by chapter 35, contemporaneously with the mailing of the communications to the general public.

(5) *Electronic media.*

(a) Information permitted by these rules, articulated only by a single nondramatic voice, not that of the lawyer, and with no other background sound, may be communicated by radio or television, or other electronic or telephonic media. In the case of television, no visual display shall be allowed except that allowed in print as articulated by the announcer. All such communications shall contain the disclosures required by DR 2–101(D) and (F) when applicable.

(b) Whenever a disclosure or notice is required by these rules, a lawyer or law firm hosting a site on the World Wide Web shall display the required disclosure or notice on the site's home page.

(6) *Record retention.* Whether or not it contains fee information, a lawyer shall preserve a copy of each advertisement placed in a newspaper, in the classified section of the telephone or city directory, or in a periodical, a tape of any radio, television, or other electronic or telephonic media commercial, or recording, and a copy of all information placed on the World Wide Web, for at least three years and a record of the date or dates and name of the publication in which it appeared or the name of the medium through which it was aired.

(C) *Content (General Information).* The following information may be communicated to the public in the manner permitted by DR 2–101(B), provided it is presented in a dignified manner:

(1) Name, including name of law firm, names of professional associates, addresses, telephone numbers, Internet addresses and URLs, and the designation "lawyer," "attorney," "J.D.," "law firm," or the like;

(2) The following descriptions of practice:

(a) "General practice";

(b) "General practice including but not limited to" followed by one or more fields of

practice descriptions set forth in DR 2–105(A)(2); and

(c) Fields of practice, limitation of practice or specialization, but only to the extent permitted by DR 2–105;

(3) Date and place of birth;
(4) Date and place of admission to the bar of state and federal courts;
(5) Schools attended, with dates of graduation, degrees, and other scholastic distinctions;
(6) Public or quasi-public offices;
(7) Military service;
(8) Legal authorships;
(9) Legal teaching positions;
(10) Memberships, offices, and committee and section assignments in bar associations;
(11) Memberships and offices in legal fraternities and legal societies;
(12) Technical and professional licenses; and
(13) Memberships in scientific, technical, and professional associations and societies.

Nothing contained in these rules shall prohibit a lawyer from permitting the inclusion in reputable law lists and law directories intended primarily for the use of the legal profession of such information as traditionally has been included in these publications whether published in print or on the Internet or other electronic system.

(D) *Content (Fee Information).* The following fee information may be communicated to the public in the manner permitted by DR 2–101(B), provided it is presented in a dignified manner:

(1) Fee for an initial consultation;
(2) Availability upon request of either a written schedule of fees, or an estimate of the fee to be charged for specific services, or both;
(3) Contingent fee rates, subject to DR 2–106(C), provided that the statement discloses whether percentages are computed before or after deduction of costs and advises the public that in the event of an adverse verdict or decision, the contingent fee litigant could be liable for court costs, expenses of investigation, expenses of medical examinations, and costs of obtaining and presenting evidence; and
(4) Fixed fees or range of fees for specific legal services or hourly fee rates provided that, in print size at least equivalent to the largest print used in setting forth the fee information, the statement discloses:
(a) That the stated fixed fees or range of fees will be available only to clients whose matters are encompassed within the described services; and
(b) If the client's matters are not encompassed within the described services, or if an hourly fee rate is stated, the client is entitled, without obligation, to a specific written estimate of the fees likely to be charged.

Unless otherwise specified in the public communication concerning fees, the lawyer shall be bound, in the case of fee advertising in the classified section of the telephone or city directory, for a period of at least the time between printings of the directory in which the fee advertisement appears and in the case of all other fee advertising for a period of at least 90 days thereafter, to render the stated legal service for the fee stated in the communication unless the client's matters do not fall within the described services. In that event or if a range of fees is stated, the lawyer shall render the service for the estimated fee given the client in advance of rendering the service.

(E) *Content (Specific Legal Services).* For purposes of this rule, the term "specific legal services" shall be limited to the following services:

(1) Abstract examinations and title opinions not including services in clearing title;
(2) Uncontested dissolutions of marriage involving no disagreement concerning custody of children, alimony, child support or property settlement [see DR 5–105(A)];
(3) Wills leaving all property outright to one beneficiary and contingently to one beneficiary or one class of beneficiaries;
(4) Income tax returns for wage earners;
(5) Uncontested personal bankruptcies;
(6) Changes of name;
(7) Simple residential deeds;
(8) Residential purchase and sale agreements;
(9) Residential leases;
(10) Residential mortgages and notes;
(11) Powers of attorney; and
(12) Bills of sale.

The Iowa Supreme Court Board of Professional Ethics and Conduct, acting as commissioners of the supreme court as provided by chapter 35, on its own motion or upon the request of a lawyer admitted to practice in this state, shall, from time to time, consider and recommend to the court proposed amendments to these rules expanding or constricting the above list of "specific legal services." In considering such amendments the board shall apply the following criteria which have guided the supreme court in determining which services should be included in the above list:

(1) The description of the service would not be misunderstood by the average layperson or be misleading or deceptive;
(2) Substantially all of the service normally can be performed in the lawyer's office with the aid of standardized forms and office procedures;

(3) The service does not normally involve a substantial amount of legal research, drafting of unique documents, investigation, court appearances, or negotiation with other parties or their attorneys; and

(4) Competent performance of the service normally does not depend upon ascertainment and consideration of more than a few varying factual circumstances.

The board shall adopt regulations, subject to the approval of the supreme court, to provide a procedure to receive and consider such requests from lawyers, and for the prompt submission to this court of any appeal from a determination adverse to such request. Said board may further issue, subject to the approval of the supreme court, regulations further defining or describing "specific legal services" within the meaning of this rule.

(F) *Content (Institution of Litigation).* In the event that the communication seeks to advise the institution of litigation, the communication must also disclose that the filing of a claim or suit solely to coerce a settlement or to harass another could be illegal and could render the person so filing liable for malicious prosecution or abuse of process.

(G) *Content (Designation as Legal Clinic or Center).* The term "clinic," "center," or any other similar term shall not be used in any communication to the public unless the practice of the lawyer or the lawyer's firm is limited to specific matters as described in DR 2–101(E) for which costs of rendering the service can be substantially reduced because of the repetitive nature of the services performed and the use of standardized forms and office procedures.

(H) *Legal Assistance Organizations.* A lawyer recommended by, paid by, or whose legal services are furnished by, a qualified legal assistance organization may authorize, permit, or assist such organization to use means of dignified commercial publicity, which does not identify any lawyer by name, to describe the availability or nature of its legal services or legal service benefits.

(I) *Miscellaneous Publications.* This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

(1) In political advertisements when the professional status is germane to the political campaign or to a political issue;

(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients;

(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which the lawyer serves as a director or officer;

(4) In and on legal documents prepared by the lawyer;

(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof; and

(6) In communications by a qualified legal assistance organization, along with the biographical information permitted under DR 2–101(B), directed to a member or beneficiary of such organization.

(J) *Media Relations.* A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item nor voluntarily give any information to such representatives which, if published in a news item, would be in violation of DR 2–101(A).

(K) *Size of Disclosures.* All disclosures required to be published by these rules shall be in 9-point type or larger. [Court Order November 9, 2001, effective February 15, 2002]

**DR 2–102 Professional Notices, Letterheads, Offices, and Signs.**

(A) A lawyer or law firm shall not use professional cards, signs, letterheads, or similar professional notices or devices, except that the following may be used if they are in dignified form:

(1) A professional card of a lawyer identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the lawyer's law firm, and any information permitted under DR 2–105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification.

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in the lawyer's association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2–105. A dignified announcement of a change in location of office, the addition of a new partner, equity holder or associate, or a change in the name of a law firm may be published in one or more newspapers of general circulation over a period of no more than four weeks.

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2–105.

(4) A letterhead of a lawyer identifying the lawyer by name and as a lawyer and giving the lawyer's addresses, telephone numbers, the name of the lawyer's law firm, associates, and any information permitted under DR 2–105. A letterhead of a law firm may also give the names of members and associates, and names and dates related to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation, professional association, professional limited liability company, or registered limited liability partnership may contain "P.C.," "P.A.," "P.L.C.," "L.L.P." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, public, executive, or administrative post or office shall not permit the lawyer's name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use the lawyer's name in the firm name or in professional notices of the firm.

(C) A lawyer, professional corporation, professional limited liability company, or registered limited liability partnership shall not be held out as having a partnership with one or more other lawyers, professional corporations, professional limited liability companies, or registered limited liability partnerships unless they are in fact partners.

(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible public communications and listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on the lawyer's letterhead, office sign, or professional card, nor shall the lawyer be identified as a lawyer in any publication in connection with the lawyer's other profession or business.

(F) The text of a lawyer's letterhead, office sign, professional card, or other authorized notice or listing shall not violate the provisions of DR 2–101(A). [Court Order November 9, 2001, effective February 15, 2002]

**DR 2–103 Recommendation of Professional Employment.**

(A) Lawyers shall not, except as authorized in DR 2–101, recommend employment of themselves, their partners, or associates, as a private practitioner, to a nonlawyer who has not sought advice regarding employment of a lawyer.

(B) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the employment by a client, except that the lawyer may pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2–103(D).

(C) A lawyer shall not request a person or organization to recommend or promote the use of the lawyer's services or those of a partner or associate, or any other lawyer affiliated with the lawyer's firm, as a private practitioner, except as authorized in DR 2–101, except that:

(1) A lawyer may request referrals from a lawyer referral service operated or sponsored by the bar association and may pay its fees incident thereto.

(2) The Iowa Supreme Court Board of Professional Ethics and Conduct, acting as a commission of the supreme court, may authorize participation and directory listing by Iowa lawyers in an organization or association of lawyers engaged in a particular area of practice, upon a showing to the satisfaction of the board of all of the following:

(a) All Iowa participants have complied with the requirements of DR 2–105.

(b) Participation is based upon meeting stated high standards of professionalism and competence in the area of practice.

(c) The organization or association regularly conducts training or professional learning and exchange concerning the area of practice involved.

(d) Neither the organization or association nor anyone other than the Iowa lawyer has any part in or share in the conduct or practice of law in the area of practice of law involved and does not participate in any way in fees charged by the Iowa participant.

The board may revoke such authorization at any time for any reasons it deems appropriate.

(3) A lawyer may cooperate with the legal service activities of any of the offices or organizations enumerated in DR 2–103(D)(1) through (4) and may perform legal services for those to whom the lawyer was recommended by it to do such work if both or the following requirements are met:

(a) The person to whom the recommendation is made is a member or beneficiary of such office or organization.

(b) The lawyer remains free to exercise independent professional judgment on behalf of the client.

(D) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partners or associates or any other lawyer affiliated with the lawyer's firm, except as permitted in DR 2–101. However, this does not prohibit a lawyer, a partner, associate, or any other lawyer affiliated with the lawyer or firm, from being recommended, employed or paid by, or cooperating with, one of the following offices or organizations that promote the use of the lawyer's services or those of a partner, associate, or any other lawyer affiliated with the lawyer or the firm if there is no interference with the exercise of independent professional judgment on behalf of a client:

(1) A legal aid office or public defender office which is one of the following:

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide nonprofit community organization.

(c) Operated or sponsored by a governmental agency.

(d) Operated, sponsored, or approved by a bar association.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored or approved by a bar association.

(4) Any bona fide organization that recommends, furnishes or pays for legal services to its members or its beneficiaries provided all of the following conditions are satisfied:

(a) Such organization, including any affiliate, is so organized and operated that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with matters where such organization bears ultimate liability of its member or beneficiary.

(b) Neither the lawyer, nor any partner, associate, or other lawyer affiliated with the lawyer's firm, nor any nonlawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer.

(c) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(d) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.

(e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, independent of the arrangement, if such member or beneficiary so desires, and at the person's own expense, select counsel other than that furnished, selected or approved by the organization for the particular matter involved.

(f) The legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that the representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.

(g) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operations.

(h) Such organization has filed with the Iowa Supreme Court Board of Professional Ethics and Conduct on or before July 1 of each year a report, on a form approved by the board, with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel, and financial re-

sults of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure. If it appears from such annual report or any other source that the organization is not operating in accordance with the rules of the Iowa Supreme Court and the Iowa Code of Professional Responsibility, such facts shall be reported by the board to the court for such action as the supreme court may deem appropriate.

(E) A lawyer shall not accept employment when the lawyer knows or it is obvious that the person seeking legal services does so as a result of conduct prohibited under this disciplinary rule.

(F) A bona fide organization that recommends, furnishes or pays for legal services for its members or beneficiaries shall be developed, administered and operated so as to prevent all of the following:

(1) A third party from interfering with or controlling a lawyer's performance of duties.

(2) A third party's receipt of any part of the consideration paid to a lawyer for furnishing legal services.

(3) Any publicity and solicitation concerning the arrangement except by means of simple, dignified announcements. Such announcements may only set forth the purpose and activities of the organization and the nature and extent of the benefits provided under the arrangement. The announcements shall not identify the lawyers who render the legal services, and such announcements must be solely for the good faith purpose of developing, administering or operating the arrangement, and not for the purpose of soliciting business for any specific lawyer. Nothing in this rule shall prohibit a statement in response to individual inquiries regarding the identities of the lawyers rendering services for the organization. Such responses may provide the names, addresses, and telephone numbers of such lawyers. [Court Order November 9, 2001, effective February 15, 2002]

**DR 2–104 Suggestion of Need of Legal Services.**

(A) A lawyer who has given unsolicited advice in-person or by telephone to a layperson to obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, existing client or former client, provided the lawyer does not know or have reason to know the attorney-client relationship has been terminated.

(2) A lawyer may accept employment that results from personal participation in activities designed to educate laypersons to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2–103(D)(1) through (4), to the extent and under the conditions prescribed therein.

(3) A lawyer who is recommended, furnished or paid by a qualified legal assistance organization enumerated in DR 2–103(D)(1) through (4) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4) Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as such activities do not emphasize the lawyer's own professional experience or reputation and the lawyer does not undertake to give individual advice.

(5) If success in asserting rights or defenses of a client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder. [Court Order November 9, 2001, effective February 15, 2002]

**DR 2–105 Description and Limitation of Practice.**

(A) A lawyer may be identified as practicing in or limiting practice to certain fields of law as follows:

(1) *Patents.* A lawyer admitted to practice before the United States Patent and Trademark Office may use the designation "Patents," "Patent Attorney," "Patent Lawyer," or "Registered Patent Attorney" or any combination of those terms, on the lawyer's professional card, letterhead, office sign, professional notice or announcement, all as otherwise allowed by DR 2–102(A), and in newspapers, periodicals, telephone directory listings, and legal directories, as otherwise allowed by DR 2–101(B).

(2) *Fields of practice.* Subject to the exceptions and requirements of this rule, a lawyer may identify or describe his or her practice by reference to the following fields of practice:

Administrative Law
Admiralty and Maritime Law
Adoption Law
Agricultural Law
Alternate Dispute Resolution
Antitrust and Trade Regulation
Appellate Practice
Aviation and Aerospace
Banking Law
Bankruptcy
Business Law
Civil Rights and Discrimination
Collections Law
Commercial Law
Communications Law
Constitutional Law
Construction Law
Contracts
Corporate Law
Criminal Law
Debtor and Creditor
Education Law
Elder Law
Election, Campaign and Political
Eminent Domain
Employee Benefits
Employment Law
Energy
Entertainment and Sports
Environmental Law
Estate Planning
Family Law
Finance
Franchise Law
Government
Government Contracts
Health Care
Immigration
Indians and Native Populations
Information Technology Law
Insurance
Intellectual Property
International Law
International Trade
Investments
Labor Law
Legal Malpractice
Litigation
Media Law
Medical Malpractice
Mergers and Acquisitions
Military Law
Municipal Law
Natural Resources
Occupational Safety & Health
Pension and Profit Sharing Law
Personal Injury
Product Liability
Professional Liability
Public Utility Law
Real Estate
Securities
Social Security Disability
Taxation
Tax Returns
Technology and Science
Toxic Torts
Trademarks and Copyright Law
Transportation
Trial Law
Trusts and Estates
Wills and Probate
Workers' Compensation
Zoning, Planning and Land Use

The lawyer may, in describing the field of practice, use the suffix "law," "lawyer," "matters," "cases" or "litigation."

(B) *Prerequisites.* Prior to publicly describing one's practice as set forth above, a lawyer shall comply with the following prerequisites:

(1) For all fields of practice designated, a lawyer must have devoted the greater of 100 hours or 10 percent of the lawyer's time spent in the actual practice of law to each indicated field of practice for the preceding calendar year. In addition, the lawyer must have completed at least 10 hours of accredited continuing legal education courses of study in each indicated field of practice during the preceding calendar year.

(2) A lawyer who wishes to use the terms "practice limited to . . ." or "practicing primarily in . . ." must have devoted the greater of 400 hours or 40 percent of the lawyer's time spent in the actual practice of law to each separate indicated field of practice for the preceding calendar year. In addition, the lawyer must have completed at least 15 hours of accredited continuing legal education courses of study in each separate indicated field of practice during the preceding calendar year.

(C) *Filing requirements.* Prior to communication of a description or indication of limitation of practice permitted by DR 2–105(A) a lawyer shall report the lawyer's compliance with the eligibility requirements of DR 2–105(B) each year in the written report required to be submitted to the Commission on Continuing Legal Education. In reporting compliance with the percentage or hours of practice requirements in DR 2–105(B) a statement of compliance is sufficient. In reporting compliance with the continuing legal education requirements of DR 2–105(B), the lawyer shall identify the specific courses and hours that apply to each indicated field

of practice. Contents of the portion of the report required by this rule shall be public information.

If, due to hardship or extenuating circumstances, a lawyer is unable to complete the hours of accredited continuing legal education during the preceding calendar year as required by DR 2–105(B) or (C) the lawyer may apply to the commission on continuing legal education for an extension of time in which to complete the hours. No extension of time shall be granted unless written application therefor shall be made on forms prescribed by the commission. Extensions of time within which to fulfill the minimum educational requirements may, in individual cases involving hardship or extenuating circumstances, be granted by the commission for a period not to exceed six months immediately following expiration of the year in which the requirements were not met.

(D) *Exception.* A lawyer describing the lawyer's practice as provided in DR 2–101(C)(2)(b) shall not be required to comply with the requirements of DR 2–105(B) and (C).

(E) *Certification.* Unless a lawyer has been certified by an agency or program formally recognized by the Iowa Supreme Court Board of Professional Ethics and Conduct, a lawyer shall not use the following terms: "specialist," "specializing in," "certified," or "certified in." In the event that a lawyer is so certified, the lawyer may identify the certifying entity and describe the field of practice in accordance with the certification.

(F) *Amending fields of practice.* The Iowa Supreme Court Board of Professional Ethics and Conduct, acting as commissioners of the supreme court as provided by chapter 35 of the Iowa Court Rules, on its own motion or upon the request of a lawyer admitted to practice in this state, shall, from time to time, consider and recommend to the court proposed amendments to these rules expanding or restricting the permitted list of fields of law practice. [Court Order November 9, 2001, effective February 15, 2002; February 22, 2002]

**DR 2–106 Fees for Legal Services.**

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge or collect a contingent fee for representing a defendant in a criminal case, or either party in any action involving domestic relations. [Court Order November 9, 2001, effective February 15, 2002]

**DR 2–107 Division of Fees Among Lawyers.**

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of the lawyer's law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This disciplinary rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement. [Court Order November 9, 2001, effective February 15, 2002]

**DR 2–108 Agreements Restricting the Practice of a Lawyer.**

(A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts the lawyer's right to practice law. [Court Order November 9, 2001, effective February 15, 2002]

**DR 2–109 Acceptance of Employment.**

(A) A lawyer shall not accept employment on behalf of a person if it is known or it is obvious that such person wishes to:

(1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken merely for the purpose of harassing or maliciously injuring any person.

(2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for

an extension, modification, or reversal of existing law. [Court Order November 9, 2001, effective February 15, 2002]

**DR 2–110 Withdrawal From Employment.**

(A) *In general.*

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until reasonable steps have been taken to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) *Mandatory withdrawal.*

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) The lawyer knows or it is obvious that the client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken merely for the purpose of harassing or maliciously injuring any person.

(2) The lawyer knows or it is obvious that continued employment will result in violation of a disciplinary rule.

(3) The lawyer's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(4) The lawyer is discharged by the client.

(C) *Permissive withdrawal.*

If DR 2–110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the disciplinary rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out the employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the disciplinary rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) Continued employment is likely to result in a violation of a disciplinary rule.

(3) Inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) A mental or physical condition renders it difficult for the lawyer to carry out the employment effectively.

(5) The client knowingly and freely assents to termination of the lawyer's employment.

(6) The lawyer believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal. [Court Order November 9, 2001, effective February 15, 2002]

**DR 2–111 Sale or Purchase of Law Practice.**

(A) A lawyer or a law firm may sell or purchase, or the estate of a deceased lawyer may sell, a law practice, including good will, provided that:

(1) The practice is sold as an entirety to a single purchaser, which is another lawyer or law firm authorized to practice law in Iowa;

(2) If living, the seller ceases to engage in the private practice of law in the geographic area in which the practice has been conducted, except that:

(a) A lawyer may engage in activities necessary to complete pending litigation under DR 2-111(A)(4); and

(b) The parties may agree that the seller will have a professional affiliation with the purchaser, which may include an "of counsel" relationship, even though no prior practice relationship had existed between seller and purchaser;

(3) Written notice is given to each of the seller's clients advising them of:

(a) The proposed sale;

(b) The client's right to retain other counsel or take possession of the client's property from the file;

(c) The name and address of the proposed purchaser and the client's right to object to the disclosure of information to the purchaser within 30 days of the date of mailing the notice; and

(d) The fact that the client's consent to the sale and to the disclosure of information will be presumed if the client does not ob-

ject within 30 days of the date of mailing the notice;

(4) If a representation involves pending litigation, there shall be no substitution of counsel or termination of representation unless authorized by the client and the court or tribunal pursuant to applicable rules of procedure. The seller may disclose, *in camera*, to the court or tribunal, information relating to the representation only to the extent necessary to obtain an order authorizing the substitution of counsel or termination of representation. The buyer shall agree to keep confidential any revelation of the identity of a client of the seller;

(5) The fees charged clients shall not be increased by reason of the sale. Existing agreements between the seller and the client concerning fees and the scope of work must be honored by the purchaser, unless the client consents in writing after consultation;

(6) The sale shall not be effective as to:

(a) Any client to whom notice cannot be given as required;

(b) Any client for whom litigation is pending and the court refuses to substitute counsel or terminate the representation; and

(c) Any client for whom the proposed sale would create a conflict of interest for the buyer or who cannot be represented by the buyer because of other requirements of the Iowa Code of Professional Responsibility or rules of the Iowa Supreme Court governing the practice of law in Iowa, unless such conflict, requirement or rule can be waived by the client and is in fact waived by the client in writing;

(7) The sale agreement shall include a clear statement concerning the parties' respective responsibilities to maintain and preserve the records and files of the seller's practice, including client files. [Court Order November 9, 2001, effective February 15, 2002]

**Comment to DR 2–111.**

(1) *In general.*

(a) DR 2–111 permits a lawyer or law firm, or the estate of a deceased lawyer, to obtain compensation for the reasonable value of a private law practice in the same manner as withdrawing partners of law firms. *See* DR 3–102; Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct Formal Opinion, No. 86–17. DR 2–111 does not apply to the transfer of responsibility for legal representation from one lawyer to another when such transfer is unrelated to the sale of a practice. This rule does not govern admission to a law partnership or professional association, retirement from a law partnership or professional association, retirement plans or similar arrangements, or the sale of the tangible assets of a law practice.

(b) Lawyers participating as sellers or purchasers of a law practice remain subject to the ethical standards that apply when involving another lawyer in the representation of a client, e.g., the obligation to avoid disqualifying conflicts of interest and secure client consent after consultation for those conflicts that can be waived, and the preservation of client confidences. Even though the seller may not be a lawyer, the purchasing lawyer is obligated to comply with the Iowa Code of Professional Responsibility and will therefore be required to see that any purchase complies with DR 2–111.

(c) All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

(2) *Specific comments.*

(a) *Single purchaser.* DR 2–111 requires that the practice be sold as an entirety to a single purchaser. The prohibition against piecemeal sale of a practice is intended to protect those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchaser is required to undertake all client matters in the practice, subject to client consent or court authorization. A purchasing attorney remains subject to the obligations of the Iowa Code of Professional Responsibility with respect to competence to handle the matters assumed. If the purchaser is unable to undertake all client matters because of a conflict of interest in a specific matter, the requirement that there be a single purchaser is nevertheless satisfied. Similarly, if a number of the seller's clients decide not to be represented by the purchaser and take their matters elsewhere, DR 2–111 is not violated.

(b) *Private practice.* The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity which provides legal services to the poor or as in-house counsel to a business.

(c) *Geographic area or jurisdiction.* DR 2–111 contemplates that a lawyer may continue in the practice of law in Iowa provided that the lawyer removes to another geographic area of the state. No time limit is imposed to prevent the selling-attorney from returning to the practice of law in the geographic area in which that attorney's practice was sold. A restriction imposed by rule would unfairly penalize an attorney who left the private practice, e.g., to assume a full-time position as a prosecutor, who might subsequently be defeated for election or reelection. Such a restriction would presumably be a subject of negotiation between seller and purchaser.

(d) *Professional affiliation with the purchaser.* DR 2–111 specifically authorizes the creation of "of counsel" relationships between the seller and purchaser as a part of the sale transaction. The relationship would be subject to the ethical standards governing such an arrangement. *See* Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct Formal Opinion, No. 87–11.

(e) *Client confidences, consent and notice.* Just as the decision by a firm to associate another lawyer does not require client consent, the negotiations between seller and purchaser prior to disclosure of information relating to a specific representation of an identifiable client do not require client consent. Disclosure of the identity of the client as well as providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. Since negotiations may incidentally disclose the identity of a client, a provision of the rule requires that any identity thus disclosed be kept confidential by the prospective purchaser. DR 2–111 provides that, before such information can be disclosed by the seller to the purchaser, the client must be given actual written notice of the proposed sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 30 days. If a notice of the proposed sale cannot be given to a particular client, the sale is not effective as to that client and the seller-attorney retains all ethical obligations owed to that client under the Iowa Code of Professional Responsibility.

(f) *Pending litigation.* Withdrawal from matters in which litigation is pending depends on the rules of the court or tribunal involved. Substitution of counsel is permitted only pursuant to the rules of that court or tribunal. Disclosure of client information in connection with the request to withdraw is permitted only *in camera* in order to protect the client. If withdrawal is not permitted, the sale is not effective as to that client and the seller-attorney retains all ethical obligations owed to that client under the Iowa Code of Professional Responsibility and the rules of the court or tribunal.

(g) *Fee arrangements between client and purchaser.* The fees charged clients shall not be increased by reason of the sale, except as provided in DR 2–111. Adjustments for differences in fees charged by seller and purchaser should be made between seller and purchaser in valuing goodwill and not between the client and the purchaser. If the purchaser proposes to make a change in the fees charged to the client, the client must be given written notice of the proposed change. If the client does not affirmatively consent to the proposed change in writing after consultation, the purchaser must honor the existing agreement concerning fees and the scope of the representation.

(h) *Client matters not subject to sale.* Client matters concerning which notice cannot be given to the client or for which permission to withdraw cannot be obtained from the appropriate court or tribunal are not to be included in a sale. In addition, matters which cannot be transferred due to other requirements of the Iowa Code of Professional Responsibility or rules of the Iowa Supreme Court cannot be included in the sale. As to any matters not included in the sale, the seller-attorney remains fully responsible under the Iowa Code of Professional Responsibility and the rules of the Iowa Supreme Court.

*CANON 3*

*A LAWYER SHOULD ASSIST IN PREVENTING THE UNAUTHORIZED PRACTICE OF LAW*

ETHICAL CONSIDERATIONS

**EC 3□1** The prohibition against the practice of law by a layperson is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession. Therefore, the legal profession shall actively discourage the practice of law by nonlawyers; and lawyers, acting either individually or collectively in their bar associations, shall seek injunctive relief from a court of competent jurisdiction, whenever necessary to prevent the unauthorized practice of law. [Court Order November 9, 2001, effective February 15, 2002]

**EC 3□2** The sensitive variations in the considerations that bear on legal determinations often make it difficult even for a lawyer to exercise appropriate professional judgment, and it is therefore essential that the personal nature of the relationship of client and lawyer be preserved. Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment. [Court Order November 9, 2001, effective February 15, 2002]

**EC 3□3** A nonlawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. A lawyer is not only subject to that regulation but also is committed to high standards of ethical conduct. The public interest is best served in legal matters by a regulated profession committed to such standards. The disciplinary rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the attorney-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of a client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 3□4** A layperson who seeks legal services often is not in a position to judge whether proper professional attention will be received. The entrustment of a legal matter may well involve the confidences, the reputation, the property, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless that person is subject to the regulations of the legal profession. [Court Order November 9, 2001, effective February 15, 2002]

**EC 3□5** It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. However, the practice of law includes, but is not limited to, representing another before the courts; giving of legal advice and counsel to others relating to their rights and obligations under the law; and preparation or approval of the use of legal instruments by which legal rights of others are either obtained, secured or transferred even if such matters never become the subject of a court proceeding. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is the educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, nonlawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required. [Court Order November 9, 2001, effective February 15, 2002]

**EC 3□6** A lawyer often delegates tasks required in performance of the client's legal services to clerks, secretaries and other nonlawyer personnel employed by the lawyer. Such delegation which extends beyond duties merely ministerial in nature is proper under the following circumstances:

(1) If it is for the purposes of (a) investigation of a factual situation or consultation with a lawyer's client for the purpose, only, of obtaining factual information; or (b) legal research; or (c) preparation or selection of legal instruments and documents, provided, however, that in each such situation the delegated work will assist the employer-lawyer in carrying the matter to a completed service either through the lawyer's personal examination and approval thereof or by other additional participation by the lawyer. However, the delegated work must be such as loses its separate identity and becomes the service or is merged in the service of the lawyer.

(2) The lawyer must maintain an initial, continuing and direct relationship with the client, directly supervise the delegated work, and assume complete professional responsibility for the work product. This requirement must not be ignored by a lawyer or given superficial recognition.

(3) The lawyer shall not permit employed laypersons to counsel the lawyer's clients about legal matters, appear in any court or administrative proceeding except to the extent authorized by court rule or administrative rule or regulation, or otherwise engage in the unauthorized practice of law.* A lawyer should recognize the importance of being present, if practicable, when a client executes a will, contract, deed or other legal document, to ensure that it is executed in compliance with the law and to answer the client's questions. A lawyer has a continuing affirmative duty to preserve and enhance the public's confidence in the legal profession. This is best accomplished when the client has direct access to a lawyer for the purpose of asking for and receiving legal advice prior to or at the time the client takes any contemplated legal action.

(4) A nonlawyer employed by a lawyer, law firm, agency or other employer may be referred to as a legal assistant if the majority of the nonlawyer's job responsibilities include duties as defined in EC 3–6(1). Such a legal assistant and the responsible supervising lawyer are at all times subject to all the provisions of EC 3–6. Such a legal assistant may be furnished with, and use, a professional card. The card must contain the following information on its face: Name; "Legal Assistant" centered immediately below the name; the name of the lawyer, law firm, agency or other employer whose lawyer is authorizing the issuance of the card; name of the employer or agency, if applicable; address and telephone number of the attorney, law firm, agency or other employer.

(5) When communicating with persons outside the law office, including other lawyers, a nonlawyer employed by a lawyer must disclose the nonlawyer's status. The disclosure must be made in a way that avoids confusion. With respect to oral communications, disclosure must be made at the outset of the conversation. It is permissible for layperson office personnel to sign letters on the firm's stationery as long as the nonlawyer status is clearly indicated.

(6) The supervising lawyer must exercise care to ensure nonlawyer personnel comply with all applicable provisions of the Code of Professional Responsibility. This includes the obligation referred to in DR 4–101(D) and EC 4–2 to see that such employees preserve and refrain from using the confidence and secrets of the lawyer's clients. [Court Order November 9, 2001, effective February 15, 2002]

*See Interpretive Memorandum following DR 3-104.

**EC 3–7** The prohibition against a nonlawyer practicing law does not prevent laypersons from representing themselves, for then they are ordinarily exposing only themselves to possible injury. The purpose of the legal profession is to make educated legal representation available to the public; but persons who do not wish to avail themselves of such representation are not required to do so. Even so, the legal profession should help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences. [Court Order November 9, 2001, effective February 15, 2002]

**EC 3–8** Since a lawyer should not aid or encourage a layperson to practice law, a lawyer should not practice law in association with a layperson or otherwise share legal fees with a layperson. This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in a firm or practice may not be paid to the lawyer's estate or specified persons such as a surviving spouse or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include nonlawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with laypersons are permissible since they do not aid or encourage laypersons to practice law. [Court Order November 9, 2001, effective February 15, 2002]

**EC 3–9** Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where the lawyer is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle a client's legal affairs or upon the opportunity of a client to obtain the services of a lawyer of choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice. [Court Order November 9, 2001, effective February 15, 2002]

DISCIPLINARY RULES

**DR 3–101 Aiding Unauthorized Practice of Law.**

(A) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction. [Court Order November 9, 2001, effective February 15, 2002]

**DR 3-102 Dividing Legal Fees with a Nonlawyer.**

(A) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with a firm, partner, or associate may provide for the payment of money, over a reasonable period of time after death, to the lawyer's estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement. [Court Order November 9, 2001, effective February 15, 2002]

**DR 3-103 Forming a Partnership with a Nonlawyer.**

(A) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. [Court Order November 9, 2001, effective February 15, 2002]

**DR 3-104 Nonlawyer Personnel.**

(A) A lawyer or law firm may employ nonlawyer personnel to perform delegated functions under the direct supervision of a licensed attorney, but shall not permit such nonlawyer personnel to (i) counsel clients about legal matters, (ii) appear in court or in proceedings which are a part of the judicial process (except as permitted by rule 31.15 or rules of this or other courts or agencies), or (iii) otherwise engage in the unauthorized practice of law.*

(B) A lawyer or law firm employing nonlawyer personnel shall not permit any representation that such nonlawyer is a member of the Iowa Bar.

(C) A lawyer or law firm employing nonlawyer personnel shall exercise care to ensure compliance by the nonlawyer personnel with all applicable provisions of the Code of Professional Responsibility. The initial and continuing relationship with the client must be the responsibility of the employing lawyer or law firm.

(D) The delegated work of nonlawyer personnel shall be such that it will assist only the employing lawyer or law firm and will be merged into the lawyer's completed work product. A lawyer shall examine, supervise and be responsible for all work delegated to nonlawyer personnel.

(E) The lawyer or law firm employing nonlawyer personnel shall not permit such nonlawyer to communicate with clients or the public, including lawyers outside the firm, without first disclosing the nonlawyer's status. [Court Order November 9, 2001, effective February 15, 2002]

***INTERPRETIVE MEMORANDUM**

Any time judicial action is taken, it constitutes a proceeding which is a part of the judicial process. Therefore, the presentation of orders in probate or other proceedings constitutes a court appearance which a lawyer or law firm may not permit a nonlawyer employee to perform. [Issued by the Supreme Court of Iowa, June 15, 1982]

*CANON 4*

*A LAWYER SHOULD PRESERVE THE CONFIDENCES AND SECRETS OF A CLIENT*

ETHICAL CONSIDERATIONS

**EC 4-1** Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require lawyers to preserve the confidences and secrets of those who employ or seek to employ them. Clients must feel free to discuss whatever they wish with their lawyer and lawyers must be equally free to obtain information beyond that volunteered by their clients. A lawyer should be fully informed of all the facts of the matter being handled in order for the client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of a client not only facilitates the full development of facts essential to proper representation of the client but also encourages laypersons to seek early legal assistance. [Court Order November 9, 2001, effective February 15, 2002]

**EC 4–2** The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when a client consents after full disclosure, when necessary to perform professional employment, when permitted by a disciplinary rule, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of a client to partners or associates of the lawyer's firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to nonlawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training employees so that the sanctity of all confidences and secrets of the clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of a client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in a professional relationship. Thus, in the absence of consent of a client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should the lawyer, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or the client's confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning clients. [Court Order November 9, 2001, effective February 15, 2002]

**EC 4–3** Unless the client otherwise directs, it is not improper for a lawyer to give limited information from files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided the lawyer exercises due care in the selection of the agency and warns the agency that the information must be kept confidential. [Court Order November 9, 2001, effective February 15, 2002]

**EC 4–4** The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of a client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, a lawyer should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 4–5** A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of the client after full disclosure, such information for the lawyer's own purposes. Likewise, a lawyer should be diligent in efforts to prevent the misuse of such information by employees and associates. Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure. [Court Order November 9, 2001, effective February 15, 2002]

**EC 4–6** The obligation of a lawyer to preserve the confidences and secrets of a client continues after the termination of employment. Thus a lawyer should not attempt to sell a law practice as a going business because, among other reasons, to do so would involve the disclosure of confidences and secrets. A lawyer should also provide for the protection of the confidences and secrets of a client following the termination of the practice of the lawyer, whether termination is due to death, disability, or retirement. For example, a lawyer might provide for the personal papers of the client to be returned and for the papers of the lawyer to be delivered to another lawyer or to be destroyed. In determining the method of disposition, the instructions and wishes of the client should be a dominant consideration. [Court Order November 9, 2001, effective February 15, 2002]

DISCIPLINARY RULES

**DR 4–101 Preservation of Confidences and Secrets of a Client.**

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4–101(C), a lawyer shall not knowingly:
  (1) Reveal a confidence or secret of a client.
  (2) Use a confidence or secret of a client to the disadvantage of the client.
  (3) Use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:
  (1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.
  (2) Confidences or secrets when permitted under disciplinary rules or required by law or court order.
  (3) The intention of the client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect a fee or to defend oneself, employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4–101(C) through an employee. [Court Order November 9, 2001, effective February 15, 2002]

## *CANON 5*

## *A LAWYER SHOULD EXERCISE INDEPENDENT PROFESSIONAL JUDGMENT ON BEHALF OF A CLIENT*

### ETHICAL CONSIDERATIONS

**EC 5□1** The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of the client and free of compromising influences and loyalties. Neither personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute a lawyer's loyalty to a client. [Court Order November 9, 2001, effective February 15, 2002]

### *Interests That May Affect a Lawyer's Judgment*

**EC 5□2** A lawyer should not accept proffered employment if the lawyer's personal interests or desires will, or there is reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client. After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make the lawyer's judgment less protective of the interests of the client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□3** The self-interest of a lawyer resulting from ownership of property in which a client also has an interest or which may affect property of a client may interfere with the exercise of the lawyer's free judgment on behalf of the client. If such interference would occur with respect to a prospective client, a lawyer should decline proffered employment. After accepting employment, a lawyer should not acquire property rights that would adversely affect the lawyer's professional judgment in the representation of the client. Even if the property interests of a lawyer do not presently interfere with the exercise of independent judgment, but the likelihood of interference can reasonably be foreseen, a lawyer should explain the situation to the client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade a client to permit the lawyer to invest in a client's undertaking nor make improper use of their professional relationship to influence a client to invest in an enterprise in which the lawyer is interested. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□4** If, in the course of representation of a client, a lawyer is permitted to receive from a client a beneficial ownership in publication rights relating to the subject matter of the employment, the lawyer may be tempted to subordinate the interests of the client to the lawyer's own anticipated pecuniary gain. For example, a lawyer in a criminal case who obtains television, radio, motion picture, newspaper, magazine, book, or other publication rights from the client with respect to the case may be influenced, consciously or unconsciously, to pursue a course of conduct that will enhance the value of the lawyer's publication rights to the prejudice of the client. To prevent these potentially differing interests, such arrangements should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though the lawyer's employment has previously ended. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□5** A lawyer should not suggest to a client that a gift be made to the lawyer or for the lawyer's benefit. If a lawyer accepts a gift from a client, the lawyer is peculiarly susceptible to the charge of undue influence or overreaching. If a client voluntarily offers to make a gift, the lawyer may accept it, but before doing so, should urge that the client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. [Court Order December 16, 1977; November 9, 2001, effective February 15, 2002]

**EC 5□6** A lawyer should not consciously influence a client to name the lawyer as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name a lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□7** The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of a client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of the client or otherwise to become financially interested in the outcome of the litigation. However, it is not improper for a lawyer to protect the right to collect a fee for services by the assertion of legally permissible liens, even though by doing so the lawyer may acquire an interest in the outcome of litigation. Although a contingent fee arrangement gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layperson can obtain the services of a lawyer of choice. But a lawyer, being in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in those instances where the

arrangement will be beneficial to the client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□8** A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to the client. Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce a cause of action, but the ultimate liability for such costs and expenses must be that of the client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□9** Occasionally a lawyer is called upon to decide in a particular case whether the lawyer will be a witness or an advocate. If a lawyer is both counsel and witness, the lawyer becomes more easily impeachable for interest and thus may be a less effective witness. Conversely the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing the lawyer's own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□10** Problems incident to the lawyer-witness relationship arise at different stages; they relate either to whether a lawyer should accept employment or should withdraw from employment. Regardless of when the problem arises, the lawyer's decision is to be governed by the same basic considerations. It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that the lawyer will be called as a witness because the testimony would be merely cumulative or if the testimony will relate only to an uncontested issue. In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when the lawyer will likely be a witness on a contested issue, the lawyer may serve as advocate as well as witness. In making such decision, a lawyer should determine the personal or financial sacrifice of the client that may result from the refusal of employment or withdrawal therefrom, the materiality of the testimony, and the effectiveness of the lawyer's representation in view of the personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment. Where the question arises, doubts should be resolved in favor of the lawyer testifying and against becoming or continuing as an advocate. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□11** A lawyer should not permit personal interests to influence advice relative to a suggestion by a client that additional counsel be employed. In like manner, personal interests should not deter a lawyer from suggesting that additional counsel be employed; on the contrary, a lawyer should be alert to the desirability of recommending additional counsel when, based on sound judgment, the proper representation of a client requires it. However, a lawyer should advise a client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and the reason for that belief should be disclosed. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□12** Inability of co-counsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for resolution, and the decision of the client shall control the action to be taken. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□13** A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how the lawyer should fulfill professional obligations to a person or organization employing the lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, the lawyer should be vigilant to safeguard the fidelity of the lawyer to the employer, free from outside influences. [Court Order November 9, 2001, effective February 15, 2002]

*Interests of Multiple Clients*

**EC 5□14** Maintaining the independence of professional judgment required of a lawyer precludes the acceptance or continuation of employment that will adversely affect the lawyer's judgment on behalf of, or loyalty to, a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□15** If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, the lawyer must weigh carefully the possibility that the lawyer's judgment may be impaired or loyalty divided if the employment is accepted or continued. The lawyer should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which a lawyer would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, the lawyer would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that the employment be refused initially. On the other hand, there are many instances in which a law-

yer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that the lawyer can retain independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of the lawyer's clients. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5-16** In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate the need for representation free of any potential conflict and to obtain other counsel if desired. Thus before a lawyer may represent multiple clients, the lawyer should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, the lawyer should also advise all of the clients of those circumstances. [Court Order November 9, 2001, effective February 15, 2002

**EC 5-17** Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co-defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and insurer, and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse effect upon the lawyer's judgment is not unlikely. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5-18** A lawyer employed or retained by a corporation or similar entity owes allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and the lawyer's professional judgment should not be influenced by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent the person in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5-19** A lawyer may represent several clients whose interests are not actually or potentially differing. Nevertheless, the lawyer should explain any circumstances that might cause a client to question the lawyer's undivided loyalty. Regardless of the lawyer's belief that multiple clients may be properly represented, the lawyer must defer to a client who holds the contrary belief and withdraw from representation of that client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5-20** A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. A lawyer may serve in either capacity if such present or former relationships are first disclosed. After a lawyer has undertaken to act as an impartial arbitrator or mediator, the lawyer should not thereafter represent in the dispute any of the parties involved. [Court Order November 9, 2001, effective February 15, 2002]

*Desires of Third Persons*

**EC 5-21** The obligation of a lawyer to exercise professional judgment solely on behalf of a client requires that the lawyer disregard the desires of others that might impair free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to the client; and if the lawyer or client believes that the effectiveness of the lawyer's representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of the client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5-22** Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which the lawyer is compensated directly by the client and the lawyer's professional work is exclusively with the client. On the other hand, if a lawyer is compensated from a source other than the client, the lawyer may feel a sense of responsibility to someone other than the client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□23** A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to the individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. On some occasions, decisions on priority of work may be made by the employer rather than the lawyer with the result that prosecution of work already undertaken for clients is postponed to their detriment. Similarly, an employer may seek, consciously or unconsciously, to further its own economic interests through the actions of the lawyers employed by it. Since a lawyer must always be free to exercise professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of professional freedom. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□24** To assist a lawyer in preserving professional independence, a number of courses are available. For example, a lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law, if any director, officer, or stockholder of it is a nonlawyer. Although a lawyer may be employed by a business corporation with nonlawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of professional judgment from any layperson. Various types of legal aid offices are administered by boards of directors composed of lawyers and laypersons. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client served. Where a lawyer is employed by an organization, a written agreement that defines the relationship between the lawyer and the organization and provides for the lawyer's independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain professional independence remains constant, and the legal profession must ensure that changing circumstances do not result in loss of the professional independence of the lawyer. [Court Order November 9, 2001, effective February 15, 2002]

**EC 5□25** The unequal balance of power in the attorney-client relationship, rooted in the attorney's special skill and knowledge on the one hand and the client's potential vulnerability on the other, may enable the lawyer to dominate and take unfair advantage. When a lawyer uses this power to initiate a sexual relationship with a client, actual harm to the client, and the client's interest, may result. Such overreaching by an attorney is harmful in any legal representation but presents an even greater danger to the client seeking advice in times of personal crisis such as divorce, death of a loved one, or when facing criminal charges. Clients may rightfully expect that confidences vouchsafed to the lawyer will be solely used to advance the client's interest, and will not be used to advance the lawyer's interest, sexual or otherwise. [Court Order November 9, 2001, effective February 15, 2002]

DISCIPLINARY RULES

**DR 5□101 Refusing Employment When the Interests of the Lawyer May Impair the Lawyer's Independent Professional Judgment.**

(A) Except with the consent of the client after full disclosure, a lawyer shall not accept employment if the exercise of the lawyer's professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests.

(B) A lawyer shall not engage in sexual relations with a client, or a representative of a client, unless the person is the spouse of the lawyer or the sexual relationship predates the initiation of the attorney-client relationship. Even in these provisionally exempt relationships, attorneys should strictly scrutinize their behavior for any conflicts of interest to determine if any harm may result to the client or to the representation. If there is any reasonable possibility that the legal representation of the client may be impaired, or the client harmed by the continuation of the sexual relationship, the attorney should immediately withdraw from the legal representation.

(C) A lawyer or the lawyer's partners or associates shall not prepare an instrument in which a client desires to name the lawyer beneficially unless the lawyer is the spouse of, or is the son-in-law or daughter-in-law of, or is otherwise related by consanguinity or affinity, within the third degree, to the client.

(D) A lawyer shall not accept employment in contemplated or pending litigation if it is known or it is obvious that a member of the lawyer's firm ought to be called as a witness, except that the employment may be undertaken and the lawyer or a member of the firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or the firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or the firm as

counsel in the particular case. [Court Order November 9, 2001, effective February 15, 2002]

**DR 5–102 Withdrawal as Counsel When the Lawyer Becomes a Witness.**

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a member of the firm ought to be called as a witness on behalf of the client, the lawyer shall withdraw from the conduct of the trial and the firm, if any, shall not continue representation in the trial, except that the representation may continue and the lawyer or member of the firm may testify in the circumstances enumerated in DR 5–101(D)(1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or member of the firm may be called as a witness other than on behalf of the client, the lawyer may continue the representation until it is apparent that the testimony is or may be prejudicial to the client. [Court Order November 9, 2001, effective February 15, 2002]

**DR 5–103 Avoiding Acquisition of Interest in Litigation.**

(A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation being conducted for a client, except that a lawyer may:
  (1) Acquire a lien granted by law to secure a fee or expenses.
  (2) Contract with a client for a reasonable contingent fee in a civil case.

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to a client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses. [Court Order November 9, 2001, effective February 15, 2002]

**DR 5–104 Limiting Business Relations with a Client.**

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(B) Prior to conclusion of all aspects of the matter giving rise to employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which the lawyer acquires an interest in publication rights with respect to the subject matter of employment or proposed employment. [Court Order November 9, 2001, effective February 15, 2002]

**DR 5–105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.**

(A) In no event shall a lawyer represent both parties in dissolution of marriage proceedings whether or not contested or involving custody of children, alimony, child support or property settlement.

(B) A lawyer shall decline proffered employment if the exercise of independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5–105(D).

(C) A lawyer shall not continue multiple employment if the exercise of independent professional judgment on behalf of a client will be or is likely to be adversely affected by the representation of another client, except to the extent permitted under DR 5–105(D).

(D) In the situations covered by DR 5–105(B) and DR 5–105(C), a lawyer may represent multiple clients if it is obvious that the lawyer can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of the lawyer's independent professional judgment on behalf of each.

(E) If a lawyer is required to decline employment or to withdraw from employment, no partner or associate of the lawyer or the lawyer's firm may accept or continue such employment. [Court Order November 9, 2001, effective February 15, 2002]

**DR 5–106 Settling Similar Claims of Clients.**

(A) A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against the clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement. [Court Order November 9, 2001, effective February 15, 2002]

**DR 5–107 Avoiding Influence by Others Than the Client.**

(A) Except with the consent of a client after full disclosure, a lawyer shall not:
  (1) Accept compensation for legal services from one other than the client.
  (2) Accept from one other than the client any thing of value related to representation of or employment by the client.

(B) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
  (1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
  (2) A nonlawyer is a corporate director or officer thereof; or
  (3) A nonlawyer has the right to direct or control the professional judgment of a lawyer. [Court Order November 9, 2001, effective February 15, 2002]

## *CANON 6*

## *A LAWYER SHOULD REPRESENT A CLIENT COMPETENTLY*

### ETHICAL CONSIDERATIONS

**EC 6–1** Because of their vital role in the legal process, lawyers should act with competence and proper care in representing clients. They should strive to become and remain proficient in their practice and should accept employment only in matters which they are or intend to become competent to handle. [Court Order November 9, 2001, effective February 15, 2002]

**EC 6–2** A lawyer is aided in attaining and maintaining competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs, concentrating in particular areas of the law, and by utilizing other available means. A lawyer has the additional ethical obligation to assist in improving the legal profession, and may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of younger associates and the giving of sound guidance to all lawyers with whom the lawyer consults. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to personally meet those standards. [Court Order November 9, 2001, effective February 15, 2002]

**EC 6–3** While licensing is evidence that a lawyer has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which the lawyer is not qualified. However, a lawyer may accept such employment if in good faith the lawyer expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to a client. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which the lawyer is not and does not expect to

become so qualified should either decline the employment or, with the consent of the client, accept the employment and associate a lawyer who is competent in the matter. [Court Order November 9, 2001, effective February 15, 2002]

**EC 6-4** Having undertaken representation, a lawyer should use proper care to safeguard the client's interests. If a lawyer has accepted employment in a matter beyond the lawyer's competence but in which the lawyer expects to become competent, the lawyer should diligently undertake the work and study necessary to become qualified. In addition to being qualified to handle a particular matter, a lawyer's obligation to a client requires adequate preparation for and appropriate attention to legal work. [Court Order November 9, 2001, effective February 15, 2002]

**EC 6-5** A lawyer should have pride in professional endeavors. A lawyer's obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty. [Court Order November 9, 2001, effective February 15, 2002]

**EC 6-6** A lawyer should not seek, by contract or other means, to limit the lawyer's individual liability to clients for malpractice. A lawyer who handles the affairs of a client properly has no need to attempt to limit liability for professional activities and one who does not handle the affairs of a client properly should not be permitted to do so. A lawyer who is a stockholder in or is associated with a professional legal corporation may, however, limit liability for malpractice of associates in the corporation, but only to the extent permitted by law. [Court Order November 9, 2001, effective February 15, 2002]

DISCIPLINARY RULES

**DR 6-101 Failing to Act Competently.**

(A) A lawyer shall not:

(1) Handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a client's legal matter. [Court Order November 9, 2001, effective February 15, 2002]

**DR 6-102 Limiting Liability to Client.**

(A) A lawyer shall not attempt to be exonerated from or limit liability to a client for personal malpractice. [Court Order November 9, 2001, effective February 15, 2002]

## *CANON 7*

## *A LAWYER SHOULD REPRESENT A CLIENT ZEALOUSLY WITHIN THE BOUNDS OF THE LAW*

### ETHICAL CONSIDERATIONS

**EC 7□1** The duty of a lawyer, both to the client and to the legal system, is to represent the client zealously within the bounds of the law, which includes disciplinary rules and enforceable professional regulations. The professional responsibility of a lawyer derives from membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of individuals, members of our society are entitled to have their conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□2** The bounds of the law in a given case are often difficult to ascertain. The language of legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations, inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes. Certainty of law ranges from well-settled rules through areas of conflicting authority to areas without precedent. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□3** Where the bounds of law are uncertain, the action of a lawyer may depend on whether the lawyer is serving as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different. In asserting a position on behalf of a client, an advocate for the most part deals with past conduct and must take the facts as they are found. By contrast, a lawyer serving as adviser primarily assists a client in determining the course of future conduct and relationships. While serving as advocate, a lawyer should resolve in favor of the client doubts as to the bounds of the law. In serving a client as adviser, a lawyer in appropriate circumstances should give a professional opinion as to what the ultimate decisions of the courts would likely be as to the applicable law. [Court Order November 9, 2001, effective February 15, 2002]

### *Duty of the Lawyer to a Client*

**EC 7□4** The advocate may urge any permissible construction of the law favorable to a client, without regard to the lawyer's professional opinion as to the likelihood that the construction will ultimately prevail. A lawyer's conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supportable by a good faith argument for an extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□5** A lawyer as adviser furthers the interest of a client by giving a professional opinion as to what the lawyer believes would likely be the ultimate decision of the courts on the matter at hand and by informing the client of the practical effect of such decision. A lawyer may continue in the representation of a client even though the client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as the lawyer does not thereby knowingly assist the client to engage in illegal conduct or to take a frivolous legal position. A lawyer should never encourage or aid a client to commit criminal acts or counsel a client on how to violate the law and avoid punishment therefor. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□6** Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when a client is contemplating a course of conduct having legal consequences that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist a client in developing evidence relevant to the state of mind of the client at a particular time. A lawyer may properly assist a client in the development and preservation of evidence of existing motive, intent, or desire; obviously, the lawyer may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the client's state of mind, and in those situations the lawyer should resolve reasonable doubts in favor of the client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□7** In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make independent decisions. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on the lawyer. As typical examples in civil cases, it is for the client to decide whether to accept a settlement offer or whether to waive the right to plead an affirmative defense. A defense lawyer in a criminal case has the duty to advise a client fully on whether a particular plea to a charge appears to be desirable and as to the prospects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□8** A lawyer should exert the best efforts to ensure that decisions of a client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to a client need not be confined to purely legal considerations. A lawyer should advise a client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision-making process the fullness of the lawyer's experience as well as an objective viewpoint. In assisting a client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible. A lawyer may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of nonlegal factors is ultimately for the client and not for the lawyer. In the event that the client in a nonadjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by disciplinary rules, the lawyer may withdraw from the employment. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□9** In the exercise of professional judgment on those decisions which are for the lawyer's determination in the handling of a legal matter, a lawyer should always act in a manner consistent with the best interest of the client. However, when an action in the best interest of the client seems to the lawyer to be unjust, the lawyer may ask the client for permission to forego such action. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□10** The duty of a lawyer to represent a client with zeal does not militate against a concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□11** The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□12** Any mental or physical condition that renders a client incapable of making a considered judgment on the client's own behalf casts additional responsibilities upon the lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, a lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of personal interests, regardless of whether the client is legally disqualified from performing certain acts, the lawyer should obtain from the client all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for the client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the client's interests. But obviously a lawyer cannot perform any act or make any decision which the law requires a client to perform or make, either acting autonomously if competent, or by a duly constituted representative if legally incompetent. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□13** The responsibility of a public prosecutor differs from that of the usual advocate; the prosecutor's duty is to seek justice, not merely to convict. This special duty exists because: (1) The prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: The prosecutor should make timely disclosure to the defense of available evidence, known to the prosecutor, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because the prosecutor believes it will damage the prosecutor's case or aid the accused. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□14** A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes a controversy lacks merit should so advise the lawyer's superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and the lawyer should not use the position or the economic power of the government to harass parties or to bring about unjust settlements or results. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□15** The nature and purpose of proceedings before administrative agencies vary widely. The proceedings may be legislative or quasi-judicial or a combination of both. They may be *ex parte* in character, in which event they may originate either at the instance of the agency or upon motion of an interested party. The scope of an inquiry may be purely investigative or it may be truly adversary looking toward the adjudication of specific rights of a party or of classes of parties. The foregoing are but examples of some of the types of proceedings conducted by administrative agencies. A lawyer appearing before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of the lawyer's client within the bounds of the law. Where the applicable rules of the agency impose specific obligations upon a lawyer, it is the lawyer's duty to comply therewith, unless the lawyer has a legitimate basis for challenging the validity thereof. In all appearances before administrative agencies, a lawyer should identify oneself, and the client if identity of the client is not privileged, and the representative nature of the appearance. It is not improper, however, for a lawyer to seek from an agency information available to the public without identifying a client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□16** The primary business of a legislative body is to enact laws rather than to adjudicate controversies, although on occasion the activities of a legislative body may take on the characteristics of an adversary proceeding, particularly in investigative and impeachment matters. The role of a lawyer supporting or opposing proposed legislation normally is quite different from the lawyer's role in representing a person under investigation or on trial by a legislative body. When appearing in connection with proposed legislation, a lawyer seeks to affect the lawmaking process, but when appearing on behalf of a client in investigatory or impeachment proceedings, a lawyer is concerned with the protection of the rights of a client. In either event, the lawyer should identify oneself and the client, if identity of the client is not privileged, and should comply with applicable laws and legislative rules. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□17** The obligation of loyalty to a client applies only to a lawyer in the discharge of professional duties and implies no obligation to adopt a personal viewpoint favorable to the interests or desires of a client. While a lawyer must act always with circumspection in order that the lawyer's conduct will not adversely affect the rights of a client in a matter then being handled, a lawyer may take positions on public issues and espouse favored legal reforms without regard to the individual views of any client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□18** The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason a lawyer should not communicate on the subject matter of the representation of a client with a person known to be represented in the matter by a lawyer, unless pursuant to law or rule of court or with the consent of the lawyer for that person. If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give advice to the person who is attempting self-representation, except that a lawyer may advise the person to obtain a lawyer. [Court Order November 9, 2001, effective February 15, 2002]

*Duty of the Lawyer to the Adversary System of Justice*

**EC 7□19** Our legal system provides for the adjudication of disputes governed by the rules of substantive evidentiary, and procedural law. An adversary presentation counters the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known; the advocate, by zealous preparation and presentation of facts and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments. The duty of a lawyer to clients and to the legal system are the same: To represent the client zealously within the bounds of the law. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□20** In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently according to procedures that command public confidence and respect. Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules. Through the years certain concepts of proper professional conduct have become rules of law applicable to the adversary adjudicative process. Many of these concepts are the bases for standards of professional conduct set forth in the disciplinary rules. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□21** The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□22** Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or a lawyer may, in good faith and within the framework of the law, take steps to test the correctness of a ruling of a tribunal. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□23** The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to the lawyer's client. Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of a client, the lawyer should inform the tribunal of its existence unless an adversary has done so; but, having made such disclosure, the lawyer may challenge its soundness in whole or in part. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□24** In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact. It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to the lawyer's client. However, a lawyer may argue, on analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□25** Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of rules, a lawyer is not justified in consciously violating such rules and should be diligent in efforts to guard against unintentional violation of them. As examples, a lawyer should subscribe to or verify only those pleadings believed to be in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless the lawyer believes that the statement will be supported by admissible evidence; a lawyer should not ask a question solely for the purpose of harassing or embarrassing a witness; and a lawyer should not by subterfuge put before a jury matters which it cannot properly consider. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□26** The law and disciplinary rules prohibit the use of fraudulent, false, or perjured testimony or evidence. A lawyer who knowingly participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence a client desires to have presented unless the lawyer knows, or from facts within the lawyer's knowledge should know, that such testimony or evidence is false, fraudulent, or perjured. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□27** Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that the lawyer or client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to hide or to leave the jurisdiction of a tribunal for the purpose of becoming unavailable as a witness therein. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□28** Witnesses should always testify truthfully and should be free from any financial inducements that might tempt them to do otherwise. A lawyer should not pay or agree to pay a nonexpert witness an amount in excess of reimbursement for expenses and financial loss incident to being a witness; however, a lawyer may pay or agree to pay an expert witness a reasonable fee for services as an expert. But in no event should a lawyer pay or agree to pay a contingent fee to any witness. A lawyer should exercise reasonable diligence to see that clients and lay associates conform to these standards. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7□29** To safeguard the impartiality that is essential to the judicial process, venirepersons and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system

is enhanced. There should be no extrajudicial communication with venirepersons prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireperson or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as the lawyer refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, the lawyer could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7-30** Vexatious or harassing investigations of venirepersons or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on the lawyer's behalf who conducts an investigation of venirepersons or jurors should act with circumspection and restraint. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7-31** Communications with or investigations of members of families of venirepersons or jurors by a lawyer or by anyone on the lawyer's behalf are subject to the restrictions imposed upon the lawyer with respect to communications with or investigations of venirepersons and jurors. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7-32** Because of the duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireperson, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7-33** A goal of our legal system is that each party shall have the party's case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury. Such news or comments may prevent prospective jurors from being impartial at the outset of the trial and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the trial. The release by a lawyer of out-of-court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal. For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7-34** The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or employee of a tribunal. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7-35** All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which the judge presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if that person is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A lawyer should not condone or engage in private importunities by another with a judge or hearing officer on the lawyer's behalf or for a client. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7-36** Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent clients zealously, a lawyer should not engage in any conduct that offends the dignity and decorum of proceedings. While maintaining independence, a lawyer should be respectful, courteous, and aboveboard in relations with a judge or hearing officer before whom the lawyer appears. A lawyer should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7-37** In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7–38** A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of a client. A lawyer should follow local customs of courtesy or practice, unless timely notice is given to opposing counsel of the intention not to do so. A lawyer should be punctual in fulfilling all professional commitments. [Court Order November 9, 2001, effective February 15, 2002]

**EC 7–39** In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law. [Court Order November 9, 2001, effective February 15, 2002]

DISCIPLINARY RULES

**DR 7–101 Representing a Client Zealously.**

(A) A lawyer shall not intentionally:
- (1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules, except as provided by DR 7–101(B). A lawyer does not violate this disciplinary rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of a client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.
- (2) Fail to carry out a contract of employment entered into with a client for professional services, but a lawyer may withdraw as permitted under DR 2–110, DR 5–102, and DR 5–105.
- (3) Prejudice or damage a client during the course of the professional relationship, except as required under DR 7–102(B).

(B) In the representation of a client, a lawyer may:
- (1) Where permissible, exercise professional judgment to waive or fail to assert a right or position of a client.
- (2) Refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal. [Court Order November 9, 2001, effective February 15, 2002]

**DR 7–102 Representing a Client Within the Bounds of the Law.**

(A) In the representation of a client, a lawyer shall not:
- (1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of a client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.
- (2) Knowingly advance a claim or defense that is unwarranted under existing law, except that a lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.
- (3) Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.
- (4) Knowingly use perjured testimony or false evidence.
- (5) Knowingly make a false statement of law or fact.
- (6) Participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false.
- (7) Counsel or assist a client in conduct that the lawyer knows to be illegal or fraudulent.
- (8) Knowingly engage in other illegal conduct or conduct contrary to a disciplinary rule.

(B) A lawyer who receives information clearly establishing that:
- (1) A client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal in all circumstances except when barred from doing so by Iowa Code section 622.10. If barred from doing so by Iowa Code section 622.10, the lawyer shall immediately withdraw from representation of the client unless the client fully discloses the fraud to the person or tribunal.
- (2) A person other than a client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal. [Court Order November 9, 2001, effective February 15, 2002]

**DR 7–103 Performing the Duty of Public Prosecutor or Other Government Lawyer.**

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when the lawyer knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if unrepresented by counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. [Court Order November 9, 2001, effective February 15, 2002]

**DR 7–104 Communicating With One of Adverse Interest.**

(A) During the course of representing a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party known to be represented by a lawyer in that matter except with the prior consent of the lawyer representing such other party or as authorized by law.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client. [Court Order November 9, 2001, effective February 15, 2002]

**DR 7–105 Threatening Criminal Prosecution.**

(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter. [Court Order November 9, 2001, effective February 15, 2002]

**DR 7–106 Trial Conduct.**

(A) A lawyer shall not disregard or advise a client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but a lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Legal authority in the controlling jurisdiction known to be directly adverse to the position of a client and which is not disclosed by opposing counsel.

(2) Unless privileged or irrelevant, the identities of the clients represented and the persons by whom employed.

(C) In appearing in a professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that the lawyer has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that the lawyer has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but a lawyer may argue, during analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of an intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence. [Court Order November 9, 2001, effective February 15, 2002]

**DR 7–107 Trial Publicity.**

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or the accused's refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7–107(B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present.
(3) A request for assistance in obtaining evidence.
(4) The identity of the victim of the crime.
(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.
(6) The identity of investigating and arresting officers or agencies and the length of the investigation.
(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.
(8) The nature, substance, or text of the charge.
(9) Quotations from or references to public records of the court in the case.
(10) The scheduling or result of any step in the judicial proceedings.
(11) That the accused denies the criminal charges.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that a lawyer may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7–107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:
(1) Evidence regarding the occurrence or transaction involved.
(2) The character, credibility, or criminal record of a party, witness, or prospective witness.
(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
(4) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.
(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:
(1) Evidence regarding the occurrence or transaction involved.
(2) The character, credibility, or criminal record of a party, witness, or prospective witness.
(3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
(4) An opinion as to the merits of the claims, defenses, or positions of an interested person.
(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7–107 do not preclude a lawyer from replying to charges of misconduct publicly made against the lawyer or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent employees and associates from making an extrajudicial statement that the lawyer would be prohibited from making under DR 7–107. [Court Order November 9, 2001, effective February 15, 2002]

**DR 7–108 Communication With or Investigation of Jurors.**

(A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:
(1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.
(2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) DR 7–108(A) and DR 7–108(B) do not prohibit a lawyer from communicating with venirepersons or jurors in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireperson or a juror.

(F) All restrictions imposed by DR 7–108 upon a lawyer also apply to communications with or investigations of members of a family of a venireperson or a juror.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireperson or a juror, or by another toward a venireperson or a juror or a member of that person's family, of which the lawyer has knowledge. [Court Order November 9, 2001, effective February 15, 2002]

**DR 7–109 Contact With Witnesses.**

(A) A lawyer shall not suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to hide or to leave the jurisdiction of a tribunal for the purpose of becoming unavailable as a witness therein.

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness. [Court Order November 9, 2001, effective February 15, 2002]

**DR 7–110 Contact With Officials.**

(A) A lawyer shall not give or lend anything of substantial value to a judge, official or employee of a tribunal.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(1) In the course of official proceedings in the cause.

(2) In writing if a copy is promptly delivered to opposing counsel or to the adverse party if not represented by a lawyer.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if not represented by a lawyer.

(4) As otherwise authorized by law. [Court Order November 9, 2001, effective February 15, 2002]

*CANON 8*

*A LAWYER SHOULD ASSIST IN IMPROVING THE LEGAL SYSTEM*

ETHICAL CONSIDERATIONS

**EC 8–1** Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients. [Court Order November 9, 2001, effective February 15, 2002]

**EC 8–2** Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, the lawyer should endeavor by lawful means to obtain appropriate changes in the law. A lawyer should encourage the simplification of laws and the repeal or amendment of laws that are outmoded. Likewise, legal procedures should be improved whenever experience indicates a change is needed. [Court Order November 9, 2001, effective February 15, 2002]

**EC 8–3** The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the resultant need for legal services, and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce. [Court Order November 9, 2001, effective February 15, 2002]

**EC 8□4** Whenever seeking legislative or administrative changes, a lawyer should identify the capacity in which the lawyer appears, whether on the lawyer's own behalf or on behalf of a client, or the public. A lawyer may advocate such changes on behalf of a client even though the lawyer does not agree with them. But when purporting to act on behalf of the public, a lawyer should espouse only those changes which the lawyer conscientiously believes to be in the public interest. [Court Order November 9, 2001, effective February 15, 2002]

**EC 8□5** Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or condoned by lawyers. Unless constrained by the obligation to preserve the confidences and secrets of a client, a lawyer should reveal to appropriate authorities any knowledge the lawyer may have of such improper conduct. [Court Order November 9, 2001, effective February 15, 2002]

**EC 8□6** Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are qualified. It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism. While a lawyer as a citizen has a right to criticize such officials publicly, a lawyer should be certain of the merit of any complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified. [Court Order November 9, 2001, effective February 15, 2002]

**EC 8□7** Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the improvement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so. [Court Order November 9, 2001, effective February 15, 2002]

**EC 8□8** Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full- or part-time, should not engage in activities in which personal or professional interests are or foreseeably may be in conflict with official duties. [Court Order November 9, 2001, effective February 15, 2002]

**EC 8□9** The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements. [Court Order November 9, 2001, effective February 15, 2002]

DISCIPLINARY RULES

**DR 8□101 Action as a Public Official.**

(A) A lawyer who holds public office shall not:
  (1) Use a public position to obtain, or attempt to obtain, a special advantage in legislative matters, either personally or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest.
  (2) Use a public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.
  (3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.

(B) County attorneys and assistant county attorneys shall not engage in the defense of an accused in any criminal matter during the time they are holding this public office. [Court Order November 9, 2001, effective February 15, 2002]

**DR 8□102 Statements Concerning Judges and Other Adjudicatory Officers.**

(A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer. [Court Order November 9, 2001, effective February 15, 2002]

## *CANON 9*

## *A LAWYER SHOULD AVOID EVEN THE APPEARANCE OF PROFESSIONAL IMPROPRIETY*

### ETHICAL CONSIDERATIONS

**EC 9–1** Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. A lawyer should promote public confidence in our system and in the legal profession. [Court Order November 9, 2001, effective February 15, 2002]

**EC 9–2** Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laypersons to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform the lawyer's client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, a lawyer's duty to clients or to the public should never be subordinate merely because the full discharge of an obligation may be misunderstood or may tend to subject the lawyer or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should act in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession. [Court Order November 9, 2001, effective February 15, 2002]

**EC 9–3** After leaving judicial office or other public employment, a lawyer should not accept employment in connection with any matter in which the lawyer had substantial responsibility prior to leaving, since to accept employment would give the appearance of impropriety even if none exists. [Court Order November 9, 2001, effective February 15, 2002]

**EC 9–4** Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that the lawyer can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it. [Court Order November 9, 2001, effective February 15, 2002]

**EC 9–5** Separation of the funds of a client from those of the lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided. [Court Order November 9, 2001, effective February 15, 2002]

**EC 9–6** Every lawyer owes a solemn duty to uphold the integrity and honor of the profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with other lawyers in supporting the organized bar through the devotion of time, efforts, and financial support as the lawyer's professional standing and ability reasonably permit; to conduct oneself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety. [Court Order November 9, 2001, effective February 15, 2002]

### DISCIPLINARY RULES

**DR 9–101 Avoiding Even the Appearance of Impropriety.**

(A) A lawyer shall not accept private employment in a matter upon the merits of which the lawyer has acted in a judicial capacity.

(B) A lawyer shall not accept private employment in a matter in which the lawyer had substantial responsibility while a public employee.

(C) A lawyer shall not state or imply the ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official. [Court Order November 9, 2001, effective February 15, 2002]

**DR 9–102 Preserving Identity of Funds and Property of a Client.**

(A) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, except retainer fees paid on a regular and continuing basis, shall be deposited in one or more identifiable interest-bearing trust accounts maintained as set forth in DR 9–102(C). All such funds received from clients for matters arising out of the practice of law in Iowa, as the term "practice of law" is employed in chapter 39, shall be deposited only in trust accounts located in Iowa. No funds belonging to the lawyer or law firm shall be deposited in trust accounts except as follows:

(1) Funds reasonably sufficient to pay service charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of the client's funds, securities, or other properties, but shall not endorse or sign the client's name on any check, draft, security, or evidence of encumbrance or transfer of ownership of realty or personalty, or on any other document without the client's prior express authority. A lawyer signing an instrument in a representative capacity shall so indicate by initials or signature.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(C) Each trust account referred to in DR 9–102(A) shall be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company selected by the law firm or lawyer in the exercise of ordinary prudence authorized by federal or state law to do business in Iowa and insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Federal Savings and Loan Insurance Corporation. Interest-bearing trust funds shall be placed in accounts in which withdrawals or transfers can be made without delay when such funds are required, subject only to any notice period which the depository institution is required to reserve by law or regulation.

(1) A lawyer who receives client funds shall maintain a pooled interest-bearing trust account for deposit of client funds that are nominal in amount or reasonably expected to be held for a short period of time. The interest accruing on this account, net of any transaction costs, shall be paid to the Lawyer Trust Account Commission established by the Iowa Supreme Court. A lawyer may, but shall not be required to, notify the client of the intended use of such accrued interest.

(2) All client funds shall be deposited in the account specified in DR 9-102(C)(1) unless they are deposited in:

(a) A separate interest-bearing trust account for the particular client or client's matter on which the interest, net of any transaction costs, will be paid to the client; or

(b) A pooled interest-bearing trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any transaction costs, to the client.

(3) In determining whether to use the account specified in DR 9-102(C)(1) or an account specified in DR 9-102(C)(2), a lawyer shall estimate, using ordinary prudence, whether the funds to be invested could be utilized to provide a significant positive net return to the client, as determined by consideration of the following factors:

(a) The amount of interest which the funds would earn during the period they reasonably are expected to be deposited;

(b) The cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client's benefit; and

(c) The capability of financial institutions described in DR 9-102(C) to calculate and pay interest to individual clients.

(4) As to accounts created under DR 9-102(C)(1), lawyers or law firms shall direct the depository institution:

(a) To remit interest or dividends, net of any service charges or fees, as computed in accordance with the depository institution's standard accounting practice, at least quarterly, to the Lawyer Trust Account Commission;

(b) To transmit with each remittance to the Lawyer Trust Account Commission a copy of the depositor's statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the account balance(s) of the period for which the report is made.

(5) The Lawyer Trust Account Commission shall prepare and file an annual report with the Iowa Supreme Court that summarizes the commission's income, grants and operating expenses, implementation of its purposes, and any problems arising in the administration of the program established by DR 9-102(C) of this rule.

(6) The provisions of DR 9-102(C) shall not relieve a lawyer or law firm from any obligation imposed by these rules with respect to safekeeping of clients' funds, including the requirements of DR 9-102(B) that a lawyer shall promptly notify a client of the receipt of the client's funds and shall promptly pay or deliver to the client as requested all funds in the possession of the lawyer which the client is entitled to receive. [Court Order November 9, 2001, effective February 15, 2002]

**DR 9–103 Required Books and Records; Required Certificate.**

(A) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis books and records sufficient to demonstrate compliance with DR 9–102. Books and records relating to funds or property of clients shall be preserved for at least six years after completion of the employment to which they relate.

(B) Every lawyer subject to DR 9–103(A) shall certify, in such form as the Iowa Supreme Court may prescribe, that the lawyer or the law firm maintains books and records as required by DR 9–103(A). [Court Order November 9, 2001, effective February 15, 2002]

Historical notes from Third Edition of the Iowa Court Rules:
[Court Order September 16, 1958; December 29, 1969; October 4, 1971; November 1, 1973; October 15, 1976; February 28, 1977; December 16, 1977; February 17, 1978; October 11, 1978; March 5, 1979; May 29, 1979; December 31, 1979; January 21, 1980; May 6, 1980; July 11, 1983; December 28, 1984, effective July 1, 1985; April 25, 1985, effective July 1, 1985, (DR 9–102(A)); July 1, 1985, (DR 9–102(A)); October 19, 1987, effective December 1, 1987, (DR 9–102(B)(1)); January 29, 1988, effective March 1, 1988, (DR 9–102(B)(1)); April 28, 1989, effective June 1, 1989, (DR 2–101, DR 2–102 and DR 2–105); March 27, 1990, effective May 1, 1990, (DR 2–105(A)(2)); October 12, 1990, effective January 2, 1991, (DR 2–102(D)); July 12, 1991, effective January 2, 1992, (DR 2–102(A)); February 18, 1992, effective July 1, 1992, (DR 2–101(B)(2)(b)); October 23 and 29, 1992, effective January 4, 1993, (DR 2–102(B),(C)); March 26, 1993, effective July 1, 1993, (DR 2–101(B)(5)), (DR 2–105(A)(3)); May 20, 1993, gender neutral; March 9, 10, 1994, effective April 1, 1994, (Prel. Statement); March 9, 1994, (DR 2–101(C)); May 26, 1994, (DR 2–102(B),(C), Definitions), effective July 1, 1994; August 22, 1994, (DR 5–101(B) to (D)), effective January 2, 1995; September 26, 1994, effective January 3, 1995, (DR 2–105(A)(2)); October 26, 1994, (DR 2–103(C)), effective January 3, 1995; November 30, 1994, (DR 1–102(A)), effective January 3, 1995; December 15, 1994, (DR 2–101(B),(E), DR 2–105(A), Definition 11), effective January 3, 1995; January 17, 1995, (DR 2–101(B)(6)), effective March 1, 1995; June 7, 1995, (DR 2–105(A)(2)), effective August 1, 1995; June 7, 1995, (DR 2–105(B)), effective August 1, 1995; June 28, 1995, (DR 2–111), effective August 1, 1995; November 5, 1996, (DR 2–101(B)(1), (B)(2)(b), (B)(2)(c), (B)(3)(a), (B)(3)(b), (B)(3)(c), (B)(4)(b), (B)(4)(c), (B)(4)(d), (B)(5), (B)(6)), (DR 2–101(C)), (DR 2–103(C)(2)(e)); January 24, 1997, (DR 2–105(A)(2)); May 29, 1998; November 25, 1998, (DR 5–102); April 1, 1999, (Prelim. Statement); January 24, 2000, (DR2–105(A)(2)); January 5, 2001, (DR2–103(A), (C),(D),(F))]

# CHAPTER 33
# STANDARDS FOR PROFESSIONAL CONDUCT[1]

**Rule 33.1 Preamble.**

**33.1(1)** A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful and efficient manner.

**33.1(2)** A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality and protection against unjust and improper criticism or attack.

**33.1(3)** Conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay and often to deny justice.

**33.1(4)** The following standards are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

**33.1(5)** We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout the state.

**33.1(6)** Lawyers are alerted to the fact that, while the standards refer generally to matters which are in court, the same standards also apply to professional conduct in all phases of the practice of law.

**33.1(7)** These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 33.2 Lawyers' duties to other counsel.**

**33.2(1)** We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.

**33.2(2)** We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties or witnesses. We will abstain from disparaging remarks or acrimony toward other counsel, parties or witnesses. We will treat adverse witnesses and parties with fair consideration.

**33.2(3)** We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

**33.2(4)** We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.

**33.2(5)** We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

**33.2(6)** We will cooperate in the transfer of files, wills, and other documents to another attorney when requested to do so, orally or in writing, by a person authorized to make that request. We will provide reasonable assistance in organizing and explaining items transferred, recognizing that such cooperation assists the client in receiving competent legal representation.

**33.2(7)** We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

**33.2(8)** We will promptly acknowledge the receipt of contacts from other attorneys, whether those contacts are by telephone or in writing, and we will make an appropriate response to the subject matter of the contact as soon as reasonably possible.

**33.2(9)** When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

**33.2(10)** We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

[1] With the exception of rule 33.2(6) and rule 33.2(8) of the lawyers' duties to other counsel, the preamble and remaining rules in this chapter were taken from the final report of the committee on civility of the seventh federal judicial circuit and adopted by the Iowa Supreme Court on April 12, 1996.

**33.2(11)** In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

**33.2(12)** We will not use any form of discovery or discovery scheduling as a means of harassment.

**33.2(13)** We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

**33.2(14)** We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

**33.2(15)** We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

**33.2(16)** We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

**33.2(17)** We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

**33.2(18)** We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

**33.2(19)** We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

**33.2(20)** We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know the opposing counsel's identity.

**33.2(21)** We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

**33.2(22)** We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

**33.2(23)** We will not obstruct questioning during a deposition or object to deposition questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the court.

**33.2(24)** During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

**33.2(25)** We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

**33.2(26)** We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and nonprivileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

**33.2(27)** We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.

**33.2(28)** We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and nonprivileged information.

**33.2(29)** We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

**33.2(30)** When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

**33.2(31)** We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

**33.2(32)** Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 33.3 Lawyers' duties to the court.**

**33.3(1)** We will speak and write civilly and respectfully in all communications with the court.

**33.3(2)** We will be punctual and prepared for all court appearances so that all hearings, conferences and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

**33.3(3)** We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

**33.3(4)** We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

**33.3(5)** We will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities in any oral or written communication to the court.

**33.3(6)** We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

**33.3(7)** Before a date for hearing or trial is set or, if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

**33.3(8)** We will act and speak civilly to court attendants, clerks, court reporters, secretaries and law clerks with an awareness that they too are an integral part of the judicial system. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 33.4 Courts' duties to lawyers.**

**33.4(1)** We will be courteous, respectful and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and authority to ensure that all litigation proceedings are conducted in a civil manner.

**33.4(2)** We will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses.

**33.4(3)** We will be punctual in convening all hearings, meetings and conferences; if delayed, we will notify counsel, if possible.

**33.4(4)** In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties and witnesses.

**33.4(5)** We will make all reasonable efforts to decide promptly all matters presented to us for decision.

**33.4(6)** We will give the issues in controversy deliberate, impartial and studied analysis and consideration.

**33.4(7)** While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

**33.4(8)** We recognize that a lawyer has a right and duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

**33.4(9)** We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

**33.4(10)** We will do our best to ensure that court personnel act civilly toward lawyers, parties and witnesses.

**33.4(11)** We will not adopt procedures that needlessly increase litigation expense.

**33.4(12)** We will bring to lawyers' attention uncivil conduct which we observe. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 33.5 Judges' duties to each other.**

**33.5(1)** We will be courteous, respectful and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

**33.5(2)** In all written and oral communications, we will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge.

**33.5(3)** We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice. [Court Order November 9, 2001, effective February 15, 2002]

# CHAPTER 34
# RULES OF PROCEDURE OF THE IOWA SUPREME COURT BOARD OF PROFESSIONAL ETHICS AND CONDUCT

**Rule 34.1 Complaints.** Complaint forms, found in rule 34.23, shall be available to the public from the Iowa Supreme Court Board of Professional Ethics and Conduct, the chair of the board, or the chair's designee. [Court Order December 12, 1974; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.2 Filing.** Complaints shall be accepted from any person, firm, or other entity believing that an Iowa lawyer has been guilty of a disciplinary infraction.

**34.2(1)** Complaints must be sworn to, except when filed by an officer of the court.

**34.2(2)** Complaints shall include whatever exhibits complainant desires to submit.

**34.2(3)** Complaints shall be filed, without charge, with the Iowa Supreme Court Board of Professional Ethics and Conduct.

**34.2(4)** The board may, upon its own motion, initiate any investigation or disciplinary action. [Court Order December 12, 1974; June 20, 1980; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.3 Local committees.** Complaints may be filed either with a local bar association or directly with the Board of Professional Ethics and Conduct. The board may rely on local committees to investigate, forward, or dispose of complaints. Complaints involving prosecuting attorneys may be filed with or referred to the Prosecutorial Standards and Conduct Committee of the Iowa County Attorneys Association. If in any case discipline more serious than a private admonition appears warranted, a local committee or the Prosecutorial Standards and Conduct Committee shall submit the matter to the board. [Court Order November 9, 2001, effective February 15, 2002; February 22, 2002]

**Rule 34.4 Procedure.**

**34.4(1)** Upon receiving a complaint in proper form as provided in rules 34.1 and 34.2, the Iowa Supreme Court Board of Professional Ethics and Conduct shall make a record indicating the date filed, name and address of complainant, name and address of respondent lawyer, with a brief statement of the charges made. This record ultimately shall show the final disposition of the matter when it is completed.

**34.4(2)** The board shall keep all files in permanent form and confidential, unless otherwise provided or directed in writing by the chair of the board, or the chair's designee, for disciplinary purposes or by a specific rule of the supreme court. All such files shall be available for examination and for reproduction therefrom, by the designated officer or agent of the client security and attorney disciplinary commission, pursuant to proceedings under chapter 39 of the Iowa Court Rules.

Any such files, except for the work product of staff counsel, investigators, or administrators of the board, shall be open to the respondent's inspection. [Court Order December 12, 1974; November 2, 1981; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.5 Board procedure.** Upon receipt of any complaint the board shall notify the complainant in writing that the complaint has been received and will be acted upon. [Court Order December 12, 1974; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.6 Notification of respondent.** The board shall forward to the respondent by restricted certified mail, marked "Confidential," or by personal service in the manner of an original notice in civil suits, a copy of the complaint, requesting a written response thereto, and copies of the board rules and of chapter 35 of the Iowa Court Rules. [Court Order December 12, 1974; May 13, 1983; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.7 Failure to respond□notice□effect.** If after 20 days no such response has been received, the respondent shall be notified by restricted certified mail that unless a response is made within ten days from receipt of notice, the board may file a complaint with the grievance commission for failure to respond, and concerning all or any portion of the matter about which the original complaint was made. [Court Order December 12, 1974; November 16, 1984, effective November 26, 1984; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.8 Board actions upon receipt of response.** Upon receipt of response the board shall do one of the following:

**34.8(1)** Dismiss the complaint, and so notify complainant and respondent in writing.

**34.8(2)** Cause the case to be docketed for consideration by the board at its next hearing-meeting.

**34.8(3)** Arrange for investigation of the complaint either by a member of the young lawyers section of the Iowa State Bar Association, the board counsel, or another person, whichever in the judgment of the chair, or the chair's designee, is appropriate. [Court Order December 12, 1974; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.9 Board action upon report and recommendation of investigator.** When the report and recommendation of the investigator is returned to the board, which shall be within a reasonable time, the board shall do one of the following:

**34.9(1)** Dismiss the complaint, and so notify complainant and respondent.

**34.9(2)** Cause the case to be docketed for consideration by the board at its next hearing-meeting. [Court Order December 12, 1974; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.10 Prior notice of witnesses.** If any witness or party is required to give testimony before the board, such person or persons shall be given at least seven days' written notice in advance of the hearing-meeting at which they are requested to attend and testify. [Court Order December 12, 1974; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.11 Hearing meetings.** Hearing-meetings shall be held quarterly, as nearly as possible. A majority of the board shall constitute a quorum. The chair, or the chair's designee, shall see to the preparation of a record of such meetings which shall become a part of the permanent files of the supreme court. Any evidence taken shall be under oath and may be made of record. Upon completion of the consideration of any matter before the board, the members, by majority vote of those present shall do one of the following:

**34.11(1)** Continue the matter, if necessary, for appropriate reasons or purposes.

**34.11(2)** Dismiss the complaint.

**34.11(3)** Admonish the lawyer who shall be notified in writing that the lawyer has 30 days from the date of mailing thereof to file exceptions with the administrator of the board, who shall then refer the admonition to the board, which may dismiss, admonish, reprimand, or file formal complaint with the grievance commission.

**34.11(4)** Reprimand the lawyer or lawyers involved.

**34.11(5)** As complainant, file a complaint before the grievance commission of the supreme court, and thereafter shall do one of the following:

*a.* In cases of dismissal, so notify complainant and respondent.

*b.* In cases of admonition, notify complainant of the board's opinion concerning the matter and its communication with the lawyer involved.

*c.* In cases where a complaint is filed before the grievance commission, prosecute said complaint to final determination. [Court Order December 12, 1974; October 20, 1982; February 9, 1983; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.12 Lawyer advertising.** Any member of the bar desiring to expand the information authorized for disclosure pursuant to the provisions of DR 2–101 or DR 2–105, Iowa Code of Professional Responsibility for Lawyers, or to provide for its dissemination through forums other than therein authorized or otherwise to change those rules, may apply to the board. Such application shall be made in writing by restricted certified mail, and shall include such documentation as the applicant deems appropriate. The board thereafter shall determine, on the basis of documentation at hand, further investigation, or whatever hearings it deems to be necessary, whether all or any part of the proposal is necessary in the light of existing provisions of the Iowa Code of Professional Responsibility for Lawyers, accords with the standards of accuracy, reliability, and truthfulness, and would facilitate the process of informed selection of lawyers by potential consumers of legal services. [Court Order May 18, 1978; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.13 Denial of application effect.** If the board is of the opinion that no relief should be granted in response to any such application and no changes are necessary, it shall make a determination to that effect and then shall proceed as provided hereinafter. [Court Order May 18, 1978; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.14 Grant of application effect.** If the board concludes that relief should be granted in response to such application, it shall make its determination to that effect and submit the same to the supreme court by filing the same with the clerk of the court as a recommended amendment to the Iowa Code of Professional Responsibility for Lawyers, universally applicable to all lawyers admitted to practice in Iowa. [Court Order May 18, 1978; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.15 Notification of decision—appeal.** Within ten days after the board has made its determination under rules 34.12 and 34.13, it shall notify applicant of its determination by furnishing said applicant a copy thereof by restricted certified mail. Applicant shall have 30 days from the date of the said mailing by the board to the applicant to take exception to all or any part of the determination of the board. Said exceptions shall be taken by filing with the board within said 30-day period, complete written notice and documentation of the exceptions and the reasons therefor, which shall be forwarded to the board by restricted certified mail. [Court Order May 18, 1978; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.16 Submission of exceptions.** Within 30 days from the receipt of the exceptions, the board shall file with the clerk of the court a copy of said exceptions and documentations attached thereto, together with any written response which the board seeks to make to the court together with a certification of its mailing to the applicant a copy of its response to the exceptions, in order that the court may determine the whole matter, with or without hearing, as may appear appropriate and desirable to the court. [Court Order May 18, 1978; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.17 Court approval of expansion required.** Nothing herein contained shall permit any publication other than as provided in Iowa Code of Prof'l Responsibility DR 2–101 or DR 2–105 unless and until said DR 2–101 or DR 2–105 shall be amended by the supreme court. No applicant for expanded information for disclosure or other publication under the said rules shall make such disclosure or publication until the same specifically has been approved by rule of the supreme court. [Court Order May 18, 1978; November 9, 2001, effective February 15, 2002]

**Rule 34.18 Board findings—exception taken.** Within 20 days after receipt of the proposed document or written solicitation, the board or its designee shall render the written findings provided for by DR 2–101(B)(4)(b) of the Iowa Code of Professional Responsibility for Lawyers. The lawyer proposing the solicitation shall have 20 days after the board issues its findings in which to take exception to the board's findings. The exception must be in writing and must set forth the supporting facts. [Court Order July 14, 1989, effective August 1, 1989; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.19 Formal advisory opinion to exceptions.** No later than 20 days after receipt of any exceptions, the board shall issue a formal advisory opinion concerning the exceptions pursuant to rule 34.20. [Court Order July 14, 1989, effective August 1, 1989; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.20 Formal advisory opinions—discretionary.** Upon written request from an officer of the Iowa court, the board by majority vote may, if it deems appropriate, issue formal advisory opinions as to the propriety of proposed actions by members of the bar in their practice under the Iowa Code of Professional Responsibility for Lawyers. Such formal advisory opinions shall be effective unless and until modified in any way by decision of the supreme court, by amendment of the Iowa Code of Professional Responsibility for Lawyers, or by a superseding formal advisory opinion. [Court Order October 30, 1985, effective November 1, 1985; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.21 Exceptions to advisory opinions.** Exceptions to the formal advisory opinion must be filed in writing within 20 days of the filing of the opinion. The board shall respond to the exceptions as provided in rule 34.16. [Court Order July 14, 1989, effective August 1, 1989; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.22 Advisory opinions—availability.** Such formal advisory opinions issued by the board shall be in writing and catalogued annually, as nearly as possible, and shall be available for distribution at the board's office to members of the bar upon written request. [Court Order October 30, 1985, effective November 1, 1985; July 14, 1989, effective August 1, 1989 (renumbered); December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 34.23 Forms.**
**Rule 34.23 Form 1:** ***Board of Professional Ethics and Conduct Complaint Form.***

THE IOWA SUPREME COURT
BOARD OF PROFESSIONAL ETHICS AND CONDUCT

COMPLAINT FORM

Re _____ (Name of Attorney) of

_____, Iowa, Zip Code _____.

I, _____, residing at _____
(Complainant)

_____, in the City of _____, State of

_____, Zip Code _____, Telephone Number, (___) _____ hereby

complain that _____, whose address is _____

_____, has violated the rules of ethics and conduct of the legal profession in that:

(Here explain the basis for the complaint.)
(Additional pages may be attached if necessary.)

IN FILING THIS COMPLAINT, THE UNDERSIGNED HEREBY WAIVES THE ATTORNEY-CLIENT PRIVILEGE BETWEEN COMPLAINANT AND THE ABOVE-NAMED ATTORNEY.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

_____ _____
Date Signature

[Court Order June 23, 1975; March 6, 1987, effective May 1, 1987; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; December 9, 1997; November 9, 2001, effective February 15, 2002]

# CHAPTER 35
# ATTORNEY DISCIPLINE, DISABILITY, AND REINSTATEMENT

**Rule 35.1 Grievance commission.** There is hereby created a grievance commission consisting of five lawyers from each judicial election district, to be appointed by the supreme court. The court shall designate one of them, annually, as chair of the commission. The president-elect of the Iowa State Bar Association shall nominate lawyers, including nonmembers of the association, for appointment to the grievance commission. The grievance commission shall also consist of not less than five nor more than 26 laypersons appointed by the court. Members shall serve no more than three three-year terms or nine years, whichever is less. The grievance commission shall have an administrative committee consisting of the chair, the clerk, and a nonlawyer commission member appointed by the court. The administrative committee shall at least 60 days prior to the start of each calendar year submit to the court a budget for consideration and approval covering the commission's operations for the upcoming calendar year. The grievance commission, or a duly appointed division thereof, shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Code of Professional Responsibility for Lawyers or laws of the United States, and the laws of the state of Iowa or any other state or territory within their respective jurisdictions by lawyers who are members of the bar of the supreme court. The grievance commission, or a duly appointed division thereof, also shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Code of Professional Responsibility for Lawyers by lawyers practicing law in Iowa who are not members of the bar of the supreme court. The grievance commission shall have such other powers and duties as are provided in these rules. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 30, 1981; June 24, 1983; December 15, 1994, effective January 3, 1995; July 26, 1995; April 1, 1999; November 9, 2001, effective February 15, 2002]

**Rule 35.2 Board of professional ethics and conduct.**

**35.2(1)** There is hereby created the Iowa Supreme Court Board of Professional Ethics and Conduct. The board shall consist of seven lawyers and two laypersons appointed by the supreme court. The supreme court shall designate one of the lawyers, annually, as chair. The president-elect of the Iowa State Bar Association shall nominate lawyers for appointment to the board. The board shall have an executive committee consisting of the chair, the administrator and one nonlawyer member of the board appointed by the court. The executive committee shall at least 60 days prior to the start of each calendar year submit to the court for its consideration and approval a budget covering the operations of the board for the upcoming calendar year. This budget shall include proposed payments to the Iowa State Bar Association for staff, support staff, office space, equipment and supplies necessary to administer the responsibilities of the board as set out in these rules. Approval of the budget by the court shall authorize payment as provided in the budget. The board members are appointed commissioners of the supreme court to initiate or receive, and process complaints against any attorney licensed to practice law in this state for alleged violations of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States or the state of Iowa. Similarly, the members may initiate or receive, and process complaints against any attorney who is not licensed to practice law in this state, but who engages in the practice of law in Iowa, for alleged violations of the Iowa Code of Professional Responsibility. Upon completion of any such investigation the board of professional ethics and conduct shall either dismiss the complaint made, or admonish or reprimand the attorney, or file and prosecute the complaint before the grievance commission or any division thereof. Complaints involving attorneys who are not authorized to practice law in Iowa may additionally be referred to the commission on the unauthorized practice of law.

**35.2(2)** No member appointed to either the board of professional ethics and conduct or the grievance commission shall undertake to represent, in any stage of the investigative or disciplinary proceedings, any lawyer against whom an ethical complaint has been filed. To avoid even the appearance of impropriety, no member of the board of professional ethics and conduct should undertake to represent any lawyer in any malpractice, criminal, or other matter where it appears that the filing of an ethical complaint against that lawyer is reasonably likely. A member of the grievance commission may represent a lawyer in a malpractice, criminal, or other matter; however, a member must decline representation of the lawyer in any stage of the investigative or disciplinary proceedings, and not participate in any hearing or other proceeding before the commission. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 30, 1981; October 20, 1982; February 9, 1983; January 22, 1986, effective February 3, 1986; December 15, 1994, effective January 3, 1995; April 1, 1999; November 9, 2001, effective February 15, 2002]

**Rule 35.3 Reprimand.** In the event an attorney is reprimanded by the board of professional ethics and conduct, a copy of the reprimand shall be filed with the clerk of the grievance commission who shall forthwith cause a copy of the reprimand to be served on the attorney by personal service in the manner of an original notice in civil suits or by restricted certified mail, with a notice attached stating that the attorney has 30 days from the date of completed service to file exceptions to the reprimand with the clerk of the grievance commission. Service shall be deemed complete on the date of personal service or the date shown by the postal receipt of delivery of the notice to the attorney. If the attorney fails to file an exception such

failure shall constitute a waiver of any further proceedings and a consent that the reprimand be final and public. In that event, the clerk of the grievance commission shall cause a copy of the reprimand to be forwarded to the clerk of the supreme court, together with proof of the aforesaid service thereof and a statement that no exceptions had been filed within the time prescribed. The supreme court shall thereupon cause the reprimand to be spread upon the records of the court as a public document. In the event, however, the attorney concerned files a timely exception to the reprimand, no report of the reprimand shall be made to the clerk of the supreme court and the reprimand shall be stricken from the records. The board of professional ethics and conduct may, however, proceed further with any complaint against such attorney before the grievance commission. When a reprimand has been filed but exception is duly taken thereto, such reprimand shall not be admissible in evidence in any hearing before the grievance commission. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; June 15, 1983; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.4 Rules.** The grievance commission and the board of professional ethics and conduct shall each adopt reasonable rules prescribing the procedure to be followed in all disciplinary proceedings before each such body, which rules shall be subject to approval by the supreme court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.5 Complaints.** Every complaint filed against an attorney with the grievance commission shall be signed and sworn to by the chair of the board of professional ethics and conduct and served upon the attorney concerned as provided by the rules of the grievance commission. Such complaints shall be sufficiently clear and specific in their charges to reasonably inform the attorney against whom the complaint is made of the misconduct alleged to have been committed. All complaints, motions, pleadings, records, reports, exhibits, evidence and all other documents or things filed under this chapter or received in evidence in a hearing before the grievance commission shall be filed with and preserved by the clerk of the grievance commission in Des Moines, Iowa, all of which shall at all times be available to the supreme court or anyone designated by the court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.6 Discovery.** In any disciplinary proceeding or action taken by the board of professional ethics and conduct, discovery shall be permitted as provided in Iowa R. Civ. P. 1.501 to 1.517, 1.701, 1.702, and 1.714 to 1.717. The attorney against whom a complaint has been filed, in addition to the restriction stated in Iowa R. Civ. P. 1.503(1) shall not be required to answer an interrogatory pursuant to Iowa R. Civ. P. 1.509, a request for admission pursuant to Iowa R. Civ. P. 1.510, a question upon oral examination pursuant to Iowa R. Civ. P. 1.701, or a question upon written interrogatories, pursuant to Iowa R. Civ. P. 1.710, if the answer would be self-incriminatory. In addition thereto, evidence and testimony may be perpetuated as provided in Iowa R. Civ. P. 1.721 to 1.728. If either party is to utilize discovery, it must be commenced within 30 days after service of the complaint. The commission may permit amendments to the complaint to conform to the proof or to raise new matters as long as the respondent has notice thereof and a reasonable time to prepare a defense thereto prior to the date set for hearing. The grievance commission, or any division thereof, shall receive an application and may enter an order to enforce discovery or to perpetuate any evidence. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; March 15, 1983; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.7 Hearing.**

**35.7(1)** Upon the expiration of 30 days from the date of service of the complaint, the grievance commission shall immediately set the matter for hearing, and notify the parties by restricted certified mail or personal service. Such notice shall be provided at least ten days prior to the scheduled hearing date.

After the complaint is served and a division of the grievance commission is appointed to hear the matter, the clerk of the grievance commission shall arrange a telephone conference with members of the division and the parties to schedule the hearing. Notice of the hearing shall be provided at least ten days prior to the scheduled hearing. If a party does not participate in the scheduling conference, notice of the hearing shall be by restricted certified mail or personal service.

The hearing shall be held not less than 60 days nor more than 75 days after the service of the complaint. The commission may grant reasonable continuances upon written application supported by affidavit. Proceedings, hearings, and papers filed before the grievance commission or any division thereof shall be confidential unless the attorney involved requests otherwise.

**35.7(2)** In the event an attorney previously has been publicly reprimanded, or an attorney's license has been suspended, revoked, or the attorney has been disbarred, a certified copy of said action shall be admitted into evidence at any hearing involving disciplinary proceedings without the necessity of a bifurcated hearing. The grievance commission and the supreme court shall consider this evidence along with all other evidence in the case in determining the attorney's fitness to practice law in the state of Iowa.

**35.7(3)** Principles of issue preclusion may be used by either party in a lawyer disciplinary case if all of the following conditions exist:

*a.* The issue has been resolved in a civil proceeding that resulted in a final judgment, or in a criminal proceeding that resulted in a finding of guilt, even if the board of professional ethics and conduct was not a party to the prior proceeding.

*b.* The burden of proof in the prior proceeding was greater than a mere preponderance of the evidence.

*c.* The party seeking preclusive effect has given written notice to the opposing party, not less than ten days prior to the hearing, of the party's intention to invoke issue preclusion. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 30, 1981; August 27, 1982; September 27, 1984, effective October 10, 1984; October 25, 1993, effective January 3, 1994; December 15, 1994, effective January 3, 1995; May 23, 2001; November 9, 2001, effective February 15, 2002]

**Rule 35.8 Subpoenas.** The clerk of the district court of the county in which any disciplinary hearing is to be held shall issue subpoenas of all kinds upon request of the grievance commission, the complainant, or the attorney against whom a complaint has been filed. Any member of the grievance commission is hereby empowered to administer oaths to all witnesses, and shall cause such testimony to be officially reported by a court reporter. The grievance commission shall report to the supreme court the failure or refusal of any person to attend or testify in response to any subpoena or any ruling of said commission. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 9, 2001, effective February 15, 2002]

**Rule 35.9 Decision.** At the conclusion of a hearing upon any complaint against an attorney, the grievance commission shall dismiss the complaint, issue a private admonition, or recommend to the supreme court that the attorney be reprimanded or the license to practice law of the attorney be suspended or revoked. If the grievance commission recommends reprimand of the attorney or recommends suspension or revocation of the attorney's license, it shall report to the supreme court, in writing, its findings of fact, conclusions of law, and recommendations. A copy of this report shall also be filed with the client security and attorney disciplinary commission. The grievance commission may permit a reasonable time for the parties to file post-hearing briefs and arguments. The disposition or report of the commission shall be made or filed with the supreme court within 30 days of the date set for the filing of the last responsive brief and argument. If the commission cannot reasonably make its determination or file its report within such time limit, it shall report that fact and the reasons therefor to the parties and the clerk of the supreme court. Any determination or report of the commission need only be concurred in by a majority of the commissioners sitting. Any commissioner has the right to file with the supreme court a dissent from the majority determination or report. Such matter shall then stand for final disposition in the supreme court. If the grievance commission dismisses the complaint or issues a private admonition, no report shall be made to the supreme court, except as provided in rule 35.23; however, the grievance commission shall, within ten days of its determination, notify the complainant in writing of its report. If no appeal is applied for by the complainant within ten days after such notice, the grievance commission's determination shall be final. Any report of reprimand or recommendations for license suspension or revocation shall be a public document upon the filing thereof with the clerk of the supreme court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 17, 1984; September 26, 1984, effective October 10, 1984; October 25, 1985, effective November 1, 1985; March 9, 1994, effective April 1, 1994; November 9, 2001, effective February 15, 2002]

**Rule 35.10 Disposition by the supreme court.**

**35.10(1)** Any report filed by the grievance commission with the supreme court shall be served upon the attorney concerned as provided by chapter 36 of these rules. Such report shall be entitled in the name of the complainant versus the accused attorney as the respondent. Within 14 days after a report is filed with the clerk of the supreme court, the clerk of the grievance commission shall transmit to the clerk of the supreme court the entire record made before the commission. If no appeal is taken or application for permission to appeal is filed within ten days as provided in rule 35.11, the supreme court shall proceed to review de novo the record made before the commission and determine the matter without oral argument or further notice to the parties. Upon such review de novo the supreme court may impose a lesser or greater sanction than the discipline recommended by the grievance commission.

**35.10(2)** The supreme court may revoke or suspend the license of an attorney admitted to practice in Iowa upon any of the following grounds: conviction of a felony, conviction of a misdemeanor involving moral turpitude, violation of any provision of the Iowa Code of Professional Responsibility for Lawyers, or any cause now or hereafter provided by statute or these rules. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; January 15, 1975; July 18, 1983; July 1, 1985; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.11 Appeal.**

**35.11(1)** The respondent may appeal from the report filed by the grievance commission pursuant to rule 35.9 to the supreme court. Respondent's notice of appeal must be filed with the clerk of the grievance commission within ten days after the report is filed with the clerk of the supreme court. The respondent shall serve a copy of the notice of appeal on the complainant or its counsel pursuant to Iowa R. App. P. 6.31. Promptly after filing

notice of appeal with the clerk of the grievance commission, respondent shall mail or deliver a copy of the notice of appeal to the clerk of the supreme court.

**35.11(2)** The complainant, within ten days after filing of final disposition of a case by the grievance commission, may apply to the supreme court for permission to appeal from a ruling, report, or recommendation of the grievance commission. The supreme court may grant such appeal in a manner similar to the granting of interlocutory appeals in civil cases under the Iowa Rules of Appellate Procedure. The filing fee and the docket fee shall be waived upon complainant's written requests. If such appeal is from the grievance commission's dismissal of a complaint, or any charge contained therein, or a decision to issue a private admonition, such appeal shall remain confidential. In making such application the complainant shall refer to the respondent's initials, rather than respondent's name. All references to the respondent in briefs and oral arguments shall be by respondent's initials. In the event the supreme court reverses or modifies the report of the grievance commission, such court order of reversal or modification shall become a public record.

**35.11(3)** After the filing of a notice of appeal or the granting of permission to appeal, the appeal shall proceed pursuant to the Iowa Rules of Appellate Procedure to the full extent those rules are not inconsistent with this rule. Appellant shall cause the appeal to be docketed within ten days after the filing of notice of appeal or the granting of permission to appeal. The matter shall be docketed under the title given to the action before the grievance commission with the appellant identified as such pursuant to Iowa R. App. P. 6.12(1). The abbreviated time limits specified in Iowa R. App. P. 6.17 shall apply. Enlargements of time are not favored and shall not be granted except upon a verified showing of the most unusual and compelling circumstances. Review shall be de novo. If a respondent's appeal is dismissed for lack of prosecution pursuant to Iowa R. App. P. 6.19 or for any other reason, the supreme court shall proceed to review and decide the matter pursuant to rule 35.10 as if no appeal had been taken. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 18, 1983; August 14 and 24, 1987, effective September 1, 1987; March 9, 1994, effective April 1, 1994; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.12 Suspension.**

**35.12(1)** In the event the supreme court suspends an attorney's license to practice law, such suspension shall continue for the minimum time specified in such order and until the supreme court has approved the attorney's written application for reinstatement. In the order of suspension or by order at any time before reinstatement, the supreme court may require the suspended attorney to meet reasonable conditions for reinstatement including, but not limited to, passing the Multistate Professional Responsibility Examination.

**35.12(2)** An attorney whose license has been suspended for a period not exceeding 60 days shall not be required to file an application for reinstatement, and the court shall order reinstatement of the attorney's license on the day after the suspension period has expired, subject to the following exceptions. The board of professional ethics and conduct may file and serve within the suspension period an objection to the automatic reinstatement of the attorney. The filing of an objection shall stay the automatic reinstatement until ordered otherwise by the court. If the board files an objection, the court shall set the matter for hearing and the clerk shall enter written notice in conformance with rule 35.13, except that the court may waive the requirement of a 60-day waiting period prior to the hearing date. Automatic reinstatement shall not be ordered until all costs assessed under rule 35.25 have been paid.

**35.12(3)** Any attorney suspended shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**35.12(4)** Nothing in this rule shall preclude an attorney, law firm, or professional association from employing a suspended attorney to perform such services only as may be ethically performed by laypersons employed in attorneys' offices, under all of the following conditions:

*a.* Notice of employment, together with a full job description, shall be provided to the board of professional ethics and conduct before employment commences.

*b.* Informational reports, verified by the employer and employee, shall be submitted quarterly to the board of professional ethics and conduct. Such reports shall contain a certification that no aspect of the employee's work has involved the unauthorized practice of law.

*c.* No suspended attorney shall have direct or personal association with any client, or shall disburse or otherwise handle funds or property of a client. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 21, 1977; April 25, 1985; October 25, 1985, effective November 1, 1985; December 15, 1994, effective January 3, 1995; April 2, 2001; November 9, 2001, effective February 15, 2002]

**Rule 35.13 Procedure on application for reinstatement**. Any person whose certificate to practice law in this state was suspended may apply for reinstatement subject to the following rules:

**35.13(1)** *Application.*

*a.* A proceeding for reinstatement to the practice of law in Iowa must be commenced by a written application to the supreme court filed with the clerk of the supreme court not more than 60 days prior to expiration of the suspension period.

*b.* The application shall state the date of the applicant's original admission, the date and duration of suspension and that the applicant has complied in all respects with the orders and judgment of the supreme court relating to the suspension.

*c.* The application shall be verified by the oath of the applicant as to the truth of the statements made in the application.

*d.* The applicant shall also submit to the supreme court satisfactory proof that the applicant, at the time of the application, is of good moral character and in all respects worthy of the right to practice law. The application shall be accompanied by the recommendation of at least three reputable attorneys currently practicing law in the judicial district in which the applicant then lives and has lived at least one year prior to filing the application. If the applicant does not reside in the district in which the applicant lived at the time of the suspension, the applicant shall also file a recommendation from three reputable attorneys currently practicing law in the district where the applicant resided at the time of suspension. The required recommendations shall not be from judges or magistrates.

**35.13(2)** *Procedure.* Upon filing of such application and recommendations with the clerk of the supreme court, the clerk shall give written notice thereof to all of the following:

*a.* The attorney general.

*b.* The county attorney where the applicant resides.

*c.* The county attorney where the applicant resided at the time of suspension.

*d.* The chair of the Iowa board of law examiners.

*e.* The administrator of the board of professional ethics and conduct.

*f.* Each judge of the district in which the applicant resided at the time of suspension.

*g.* The president of the county bar association where the applicant resides.

*h.* The president of the county bar association where the applicant resided when the certificate was suspended.

*i.* The president of the Iowa State Bar Association.

**35.13(3)** *Written statements.* Such persons, after receipt of the notice and before the date fixed for hearing, may submit to the clerk of the supreme court written statements of fact and comments regarding the current fitness of the applicant to practice law. Such notice shall contain the date of the suspension, the date of filing the application, and the date of hearing thereon fixed by the supreme court, which shall in no case be less than 60 days after the filing of such application for reinstatement.

**35.13(4)** *Notice of witnesses and exhibits.* At least 14 days prior to the scheduled hearing date, the applicant and the board of professional ethics and conduct shall provide notice to the court and the opposing party of the names and expected testimony of any witnesses they intend to produce, and shall file and serve copies of any exhibits they intend to introduce at the hearing. The opposing party may provide notice of any rebuttal witnesses or exhibits no later than 7 days prior to the scheduled hearing date. These deadlines shall only be waived by the court upon good cause shown.

**35.13(5)** *Hearing.* The reinstatement hearing shall be held at the time and place designated by the court. The applicant shall bear the burden of demonstrating the applicant is of good moral character, is fit to practice law, and has complied in all respects with the terms of the order or judgment of suspension. The hearing shall be public unless the court orders otherwise upon motion of a party. The hearing shall be informal and the strict rules of evidence shall not apply. The court may impose reasonable time limits on the length of the hearing.

**35.13(6)** *Decision.* The court shall render its decision as soon as practicable after the hearing. The supreme court may require the person to meet reasonable conditions for reinstatement including, but not limited to, passing the Multistate Professional Responsibility Examination.

**35.13(7)** *Denial of reinstatement for failure to comply with a support order.* An attorney who fails to comply with a support order may be denied reinstatement of the attorney's license to practice law in Iowa.

*a. Procedure.* The child support recovery unit (the unit) shall file any certificate of noncompliance which involves an attorney with the clerk of the supreme court. The procedure, including notice to the attorney, shall be governed by rule 35.19(1), except that the notice shall refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an application for hearing by the attorney, the clerk of district court shall schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing shall be governed by rule 35.19(2).

*c. Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible for reinstatement.

*d. Sharing information.* Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the clerk of the supreme court is authorized to share information with the unit for the sole purpose of allowing the unit to identify licensees subject to enforcement under Iowa Code chapter 252J or 598.

**35.13(8)** *Denial of reinstatement for default on student loan obligation.* An attorney who defaults on an obligation owed to or collected by the College Student Aid Commission may be denied reinstatement of the attorney's license to practice law in Iowa.

*a. Procedure.* The College Student Aid Commission (the commission) shall file any certificate of noncompliance which involves an attorney with the clerk of the supreme court. The procedure, including notice to the attorney, shall be governed by rule 35.20(1), except that the notice shall refer to a refusal to reinstate an attor-

ney's license to practice law instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an application for hearing by the attorney, the clerk of district court shall schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing shall be governed by rule 35.20(2).

*c. Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible for reinstatement. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; June 5, 1996, effective July 1, 1996; December 20, 1996; November 25, 1998; December 17, 1998; November 9, 2001, effective Februrary 15, 2002]

**Rule 35.14 Conviction of a crime.**

**35.14(1)** Upon receipt by the supreme court of satisfactory evidence that an attorney had pled guilty to, or nolo contendere to, or has been convicted of a crime which would be grounds for license suspension or revocation, such attorney may be temporarily suspended from the practice of law by the supreme court regardless of the pendency of an appeal. Not less than 20 days prior to the effective date of such suspension, the attorney concerned shall be notified, in writing directed by restricted certified mail to the last address as shown by the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time, at a designated place and show cause why such suspension should not take place. Any hearing so held shall be informal and the strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time.

**35.14(2)** Any attorney suspended pursuant to this rule shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**35.14(3)** For good cause shown, the supreme court may set aside an order temporarily suspending an attorney from the practice of law as hereinabove provided, upon application by such attorney and hearing thereon in accordance with rule 35.13, but such reinstatement shall neither terminate a disciplinary proceeding then pending nor stand as a bar to any such proceeding thereafter instituted against such attorney.

**35.14(4)** An attorney temporarily suspended under the aforesaid provisions of this rule shall be promptly reinstated upon the filing of a good and sufficient certificate disclosing the underlying conviction of a crime has been finally reversed or set aside, but such reinstatement shall neither terminate a disciplinary proceeding then pending nor stand as a bar to any such proceeding thereafter instituted against such attorney.

**35.14(5)** The clerk of any court in this state in which an attorney has pled guilty or nolo contendere to, or been convicted of a crime as aforesaid shall, within ten days thereafter transmit a certificate thereof to the clerk of the supreme court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 21, 1977; April 25, 1985; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.15 Disbarment on consent.**

**35.15(1)** An attorney subject to investigation or a pending proceeding involving allegations of misconduct subject to disciplinary action may acquiesce to disbarment, but only by delivering to the grievance commission an affidavit stating the attorney consents to disbarment and indicating the following:

*a.* The consent is freely and voluntarily given absent any coercion or duress, with full recognition of all implications attendant upon such consent.

*b.* The attorney is aware of a presently pending investigation into, or proceeding involving allegations that there exist grounds for discipline the nature of which shall be specifically set forth.

*c.* The attorney acknowledges the material facts so alleged are true.

*d.* In the event proceedings were instituted upon the matters under investigation, or if existent proceedings were pursued, the attorney could not successfully defend against same.

**35.15(2)** Upon receipt of such affidavit the grievance commission shall cause same to be filed with the clerk of the supreme court whereupon the supreme court shall enter an order disbarring such attorney on consent.

**35.15(3)** Any order disbarring an attorney on consent shall be a matter of public record. However, the affidavit required as aforesaid shall not be publicly disclosed or made available for use in any other proceeding except upon order of the supreme court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.16 Disability suspension.**

**35.16(1)** In the event an attorney shall at any time in any jurisdiction be duly adjudicated a mentally incapacitated person, or an alcoholic, or a drug addict, or shall be committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which any such adjudication or commitment is entered shall, within ten days thereafter, certify same to the clerk of the supreme court.

**35.16(2)** Upon the filing of any such certificate or a like certificate from another jurisdiction or upon determination by the supreme court pursuant to a sworn application on behalf of a county bar association or the board of professional ethics and conduct, that an attorney is not discharging professional responsibilities due to disability, incapacity, abandonment of practice, or disappearance, the supreme court may enter an order suspending the license of such attorney to practice law in this state until further order of the supreme court. Not less than 20 days prior to the effective date of such suspension, the attorney concerned or the attorney's guardian and the director of the institution or hospital to which such attorney has been committed, if any, shall be notified, in writing directed by restricted certified mail to the last address as shown by the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time, at a designated place and show cause why such suspension should not take place; provided, however, that, upon a showing of exigent circumstances, emergency or other compelling cause, the supreme court may reduce or waive the 20-day period and the effective date of action above referred to. Any hearing so held shall be informal and the strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time. A copy of such suspension order shall be given to the suspended attorney, or to the attorney's guardian and the director of the institution or hospital to which such suspended attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

**35.16(3)** Any attorney suspended pursuant to this rule shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**35.16(4)** No attorney suspended due to disability under the aforesaid provisions of this rule may engage in the practice of law in this state until reinstated by order of the supreme court.

**35.16(5)** Upon being notified of the suspension of the attorney, the chief judge in the judicial district in which the attorney practiced shall appoint a lawyer or lawyers to serve as trustee to inventory the files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons. Such appointment shall be subject to confirmation by the supreme court. The appointed lawyer shall serve as a special member of the board of professional ethics and conduct and as a commissioner of the supreme court for the purposes of the appointment. While acting as a trustee, the trustee shall not serve as a lawyer for the clients of the disabled lawyer and other affected persons. Neither shall the trustee examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee shall, as to such matters, protect the privacy interests of the disabled lawyer's clients by prompt recusal or refusal of employment. The trustee may seek reasonable fees and reimbursement of costs of the trust from the suspended attorney. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security and Attorney Disciplinary Commission, in the exercise of its sole discretion, shall determine the merits of the claim and the amount of any payment from the fund. When the suspended attorney is reinstated to practice law in this state, or all pending representation of clients has been completed, or the purposes of the trust have been accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

**35.16(6)** Any attorney so suspended shall be entitled to apply for reinstatement to active status once each year or at such shorter intervals as the supreme court may, in the suspension order, provide or specify. An attorney suspended due to any aforesaid disability may be reinstated by the supreme court upon a showing, by clear and convincing evidence, that the attorney's disability has been removed and the attorney is fully qualified to resume the practice of law. Upon the filing of an application for reinstatement the supreme court may take or direct any action deemed necessary or proper to determine whether such suspended attorney's disability has been removed, including a direction for an examination of the applicant by such qualified medical experts as the supreme court shall designate. In its discretion the supreme court may direct that the expenses of such an examination be paid by the petitioning attorney.

**35.16(7)** The filing of an application for reinstatement to active status by an attorney suspended due to disability shall constitute a waiver of any doctor-patient privilege with regard to any treatment of the petitioning attorney during the period of the disability. Such attorney shall also set forth in the application for reinstatement the name of every psychiatrist, psychologist, physician and hospital or any other institution by whom or in which the petitioning attorney has been examined or treated since the suspension due to disability, and shall also furnish to the supreme court written consent that any such psychiatrist, psychologist, physician and hospital or other institution by whom or in which the petitioner has been examined or treated as aforesaid may divulge any and all

information and records requested by the supreme court or any court-appointed medical experts.

**35.16(8)** Where an attorney has been suspended due to any aforesaid disability and thereafter, in proceedings duly had, the attorney shall be judicially held to be competent or cured, the supreme court may dispense with further evidence regarding removal of the disability and may order reinstatement to active status upon such terms as are deemed reasonable. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 21, 1977; March 30, 1982; November 14, 1984, effective November 26, 1984; April 25, 1985; July 31, 1990, effective September 4, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.17 Death or suspension of practicing attorney.** Upon a sworn application on behalf of a county bar association or the board of professional ethics and conduct showing that a practicing attorney has died or been suspended or disbarred from the practice of law, and a reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced shall appoint a lawyer or lawyers to serve as trustee to inventory the files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons. Such appointment shall be subject to confirmation by the supreme court. The appointed lawyer shall serve as a special member of the board of professional ethics and conduct as a commissioner of the supreme court for the purposes of the appointment. While acting as a trustee, the trustee shall not serve as a lawyer for the clients of the disabled lawyer and other affected persons. Neither shall the trustee examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee shall, as to such matters, protect the privacy interests of the disabled lawyer's clients by prompt recusal or refusal of employment. The trustee may seek reasonable fees and reimbursement of costs of the trust from the deceased attorney's estate or the attorney whose license to practice law has been suspended or revoked. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security and Attorney Disciplinary Commission, in the exercise of its sole discretion, shall determine the merits of the claim and the amount of any payment from the fund. When all pending representation of clients has been completed or the purposes of the trust have been accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; March 30, 1982; May 19, 1982; July 31, 1990, effective September 4, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.18 Reciprocal discipline.**

**35.18(1)** Any attorney admitted to practice in this state, upon being subjected to professional disciplinary action in another jurisdiction or in any federal court, shall promptly advise the board of professional ethics and conduct, in writing, of such action. Upon being informed that an attorney admitted to practice in this state has been subjected to discipline in another jurisdiction or any federal court, the board shall obtain a certified copy of such disciplinary order and file it in the office of the clerk of the supreme court.

**35.18(2)** Upon receipt of a certified copy of an order disclosing an attorney admitted to practice in this state has been disciplined in another jurisdiction or any federal court, the supreme court shall promptly give notice thereof by restricted certified mail or personal service directed to such attorney containing: a copy of said disciplinary order from the other jurisdiction or federal court, and an order directing that such disciplined attorney file in the supreme court, within 30 days after receipt of said notice, any objection by such attorney that imposition of identical discipline in this state would be too severe or otherwise unwarranted, giving the specific reasons therefor. A like notice shall be sent, by ordinary mail, to the board, which shall have the right to object in like manner on the ground that the imposition of identical discipline in this state would be too lenient or otherwise unwarranted. If either party so objects, the matter shall be set for hearing before three or more justices of the supreme court and the parties notified thereof by restricted certified mail at least ten days prior to the date set. At such hearing a certified copy of the testimony, transcripts, exhibits, affidavits and other matters introduced into evidence in such jurisdiction or federal court shall be admitted into evidence as well as any findings of fact, conclusions of law, decision and orders decided or issued. Any such findings of fact shall be conclusive and not subject to readjudication. Thereafter, the supreme court shall enter such findings, conclusions and orders that it deems appropriate.

**35.18(3)** If neither party so objects within 30 days from service of notice issued pursuant to the foregoing provisions, the supreme court may impose the identical discipline, unless the court finds that on the face of the record upon which the discipline is predicated it clearly appears that any of the following exist:

*a.* The disciplinary procedure was so lacking in notice and opportunity to be heard as to constitute a deprivation of due process.

*b.* There was such infirmity of proof establishing misconduct as to give rise to the clear conviction that the supreme court could not, conscientiously, accept as final the conclusion on that subject.

*c.* The misconduct established warrants substantially different discipline in this state.

**35.18(4)** If the supreme court determines that any such factors exist, it may enter an appropriate order. Rule 35.13 shall apply to any subsequent reinstatement or reduction or stay of discipline. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.19 Suspension of attorney's license for failure to comply with a support order.** An attorney who fails to comply with a support order may be subject to a suspension of the attorney's license to practice law in Iowa.

**35.19(1)** *Procedure.* The child support recovery unit (the unit) shall file any certificate of noncompliance with a support order which involves an attorney with the clerk of the supreme court. Upon receipt of the certificate of noncompliance, the clerk shall issue a notice to the attorney. The following rules shall apply, and shall be recited in the notice:

*a.* The attorney's license to practice law will be suspended unless the attorney causes the unit to file a withdrawal of certificate of noncompliance within 30 days of the date of issuance of the notice.

*b.* The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the county in which the underlying support order is filed.

*c.* The application for hearing must be filed with the district court clerk within 30 days of the date of issuance of the notice and copies of the application must be provided to the unit and the supreme court clerk by regular mail.

*d.* The filing of the application shall automatically stay the supreme court's action on the certificate of noncompliance.

*e.* The provisions of this rule shall prevail over those of any other statute or rule to the extent they may conflict.

**35.19(2)** *District court hearing.*

*a.* Upon receipt of an application for hearing by the attorney, the clerk of the district court shall schedule a hearing to be held within 30 days of the date of filing of the application. The clerk shall mail copies of the order setting hearing to the obligor, the unit, and the clerk of the supreme court.

*b.* Prior to the hearing, the district court shall receive a certified copy of the unit's written decision and certificate of noncompliance from the unit and a certified copy of the notice from the clerk of the supreme court.

*c.* If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance shall be lifted.

*d.* The district court's scope of review shall be limited to determining if there has been a mistake of fact relating to the attorney's support delinquency. The court shall not consider visitation or custody issues, and shall not modify the support order.

*e.* If the district court concludes the unit erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of certificate of noncompliance, the court shall order the unit to file a withdrawal of certificate of noncompliance with the clerk of the supreme court.

**35.19(3)** *Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under rules of the court.

**35.19(4)** *Sharing information.* Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the clerk of the supreme court is authorized to share information with the unit for the sole purpose of allowing the unit to identify licensees subject to enforcement under Iowa Code chapter 252J or 598. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; December 20, 1996; November 9, 2001, effective February 15, 2002]

**Rule 35.20 Suspension of attorney's license for failure to comply with an obligation owed to or collected by the College Student Aid Commission.** An attorney who defaults on an obligation owed to or collected by the College Student Aid Commission may be subject to a suspension of the attorney's license to practice law in Iowa.

**35.20(1)** *Procedure.* The College Student Aid Commission (the commission) shall file any certificate of noncompliance which involves an attorney with the clerk of the supreme court. Upon receipt of the certificate of noncompliance, the clerk shall issue a notice to the attorney. The following rules shall apply, and shall be recited in the notice:

*a.* The attorney's license to practice law will be suspended unless the attorney causes the commission to file a withdrawal of certificate of noncompliance within 30 days of the date of issuance of the notice.

*b.* The attorney must contact the commission to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance.

*c.* The attorney may only challenge the supreme court's action under this rule by filing an application for hearing with the district court in the attorney's county of residence.

*d.* The application for hearing must be filed with the district court clerk within 30 days of the date of issuance of the notice and copies of the application must be provided to the commission and the supreme court clerk by regular mail.

*e.* The filing of the application shall automatically stay the supreme court's action on the certificate of noncompliance.

*f.* The provisions of this rule shall prevail over those of any other statute or rule to the extent they may conflict.

**35.20(2)** *District court hearing.*

*a.* Upon receipt of an application for hearing by the attorney, the clerk of district court shall schedule a hearing to be held within 30 days of the date of filing of the application. The clerk shall mail copies of the order setting hearing to the attorney, the commission, and the clerk of the supreme court.

*b.* Prior to the hearing, the district court shall receive a certified copy of the commission's written decision and certificate of noncompliance from the commission and a certified copy of the notice from the clerk of the supreme court.

*c.* If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance shall be lifted.

*d.* The district court's scope of review shall be limited to determining if there has been a mistake of fact relating to the attorney's delinquency.

*e.* If the district court concludes the commission erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of the certificate of noncompliance, the court shall order the commission to file a withdrawal of the certificate of noncompliance with the clerk of the supreme court.

**35.20(3)** *Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under rules of the court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; November 25, 1998; November 9, 2001, effective February 15, 2002]

**Rule 35.21 Notification of clients and counsel.**

**35.21(1)** In every case in which a respondent is ordered to be disbarred or suspended, the respondent shall do all of the following:

*a.* Within 15 days notify the respondent's clients in writing, in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another lawyer.

*b.* Within 15 days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

*c.* Within 30 days refund any part of any fees paid in advance that have not been earned.

*d.* Within 15 days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, of the respondent's disbarment or suspension and consequent disqualification to act as a lawyer after the effective date of such discipline or transfer to disability inactive status.

*e.* Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

*f.* Keep and maintain records of the steps taken to accomplish the foregoing.

*g.* Within 30 days file with the board of professional ethics and conduct copies of the notices sent pursuant to the requirements of this rule and proof of complete performance of the requirements, and this shall be a condition for application for readmission to practice.

**35.21(2)** The times set forth in 35.21(1)(*c*) and 35.21(1)(*g*) of this rule shall be reduced to 15 days for respondents who are exempted from filing an application for reinstatement under rule 35.12. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; January 15, 1979; April 14, 1989, effective May 15, 1989; December 15, 1994, effective January 3, 1995; April 2, 2001; November 9, 2001, effective February 15, 2002]

**Rule 35.22 Immunity.**

**35.22(1)** Complaints submitted to the grievance commission, or to the board of professional ethics and conduct, or testimony with respect thereto shall be privileged and no lawsuit predicated thereon may be instituted.

**35.22(2)** Members of the grievance commission, members of the board of professional ethics and conduct, and their respective staffs shall be immune from suit for any conduct in the course of their official duties.

**35.22(3)** A true copy of any complaint against a member of the grievance commission or the board of professional ethics and conduct involving alleged violations of an attorney's oath of office or of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States or state of Iowa shall be promptly forwarded to the chief justice of the supreme court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 31, 1987, effective September 1, 1987; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.23 Reports.** The chair of the grievance commission and the chair of the board of professional ethics and conduct shall, on July 1 of each year, submit to the supreme court a report of the number of complaints received and processed during the prior period, a synopsis of each such complaint, and the disposition thereof. The name of the attorney charged and the name of the complainant shall be omitted, but a synopsis of the charges made and a report of disposition shall be included.[Court Order June 10, 1964; October 8, 1970; November 8, 1974; October 16, 1987, effective December 1, 1987; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.24 Effective dates.** These rules shall have prospective and retrospective application to all alleged violations, complaints, hearings, and dispositions thereof on which a hearing has not actually been commenced before the grievance commission prior to the effective date of these rules. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 9, 2001, effective February 15, 2002]

**Rule 35.25 Costs.**

**35.25(1)** In the event that an order of revocation, suspension, or public reprimand results from formal charges of misconduct, the supreme court shall assess against the respondent attorney the costs of the proceeding. For the purposes of this rule costs shall include those expenses normally taxed as costs in state civil actions pursuant to the provisions of Iowa Code chapter 625.

**35.25(2)** Within 30 days of the filing of the commission report, the complainant shall serve the respondent with a bill of costs and file the bill with the clerk of the supreme court. An appeal does not obviate this requirement. The respondent shall have ten days from the date of service to file written objections with the supreme court. Any objections filed shall be considered by the supreme court upon disposition of the matter under rule 35.10 or 35.11. Additional costs associated with an appeal shall be taxed by the clerk as in other civil actions.

**35.25(3)** Concurrently with the filing of the final decision of the supreme court, the supreme court shall order restitution paid by the respondent to the complainant of such costs as the supreme court may approve. No suspended or disbarred attorney may file application for reinstatement or readmission until the amount of such restitution for costs assessed under this rule has been fully paid, or waived by the supreme court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; September 15, 1986, effective October 1, 1986; March 27, 1990, effective May 1, 1990; November 9, 2001, effective February 15, 2002]

# CHAPTER 36
# RULES OF THE GRIEVANCE COMMISSION

**Rule 36.1 Grievance commission clerk.** The grievance commission of the supreme court of Iowa is hereafter referred to as the commission, and the members thereof are referred to as the commissioners. The assistant court administrator for the disciplinary system shall serve as clerk for the grievance commission and shall designate an assistant clerk for the grievance commission. At least 60 days prior to the start of each calendar year, the clerk shall submit to the supreme court an annual budget of operations which may be amended as necessary. In the chair's absence or inability to act, the vice chair shall perform all duties of the chair. *See* rule 35.1. [Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 36.2 Grievance commission divisions.** The commissioners may act as a body or in such divisions as the chair may direct. Each division shall consist of five members. The personnel of each division shall be selected and designated by the chair for each complaint as required. The chair shall appoint one of said members to serve as president of said division. One additional member shall be selected as an alternate. [Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002]

**Rule 36.3 Complaints Iowa Supreme Court Board of Professional Ethics and Conduct.** Any complaint filed by the Iowa Supreme Court Board of Professional Ethics and Conduct shall be filed in the name of the board as complainant and against the attorney named in said charges as respondent. Thereafter such complaint and charges referred to therein shall be prosecuted by said board before the commission until final disposition thereof. [Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 36.4 Complaints filing docketing.** The clerk shall cause each such complaint to be separately numbered and filed and all subsequent motions, pleadings, orders or other documents relating thereto shall be made part of such file. The clerk shall also provide for a permanent docket to be kept as required by rule 35.5. All complaints filed by or on behalf of the board shall be docketed therein and such file and docket shall be kept in substantially the same manner as the records relating to civil actions in district court. [Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 36.5 Report of filing.** The clerk shall report the filing of each such complaint to the chair of the commission, who shall thereupon by written order filed in the cause direct that the same be heard by the commission as a whole or a specified division thereof. [Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 36.6 Notice.** Upon the filing of such complaint, the clerk shall serve a written notice thereof with a copy of the complaint and copies of Iowa Court Rules chapters 35 and 36 upon the respondent by personal service in the manner of an original notice in civil suits or by restricted certified mail. The notice shall also notify said respondent to file a written answer to the complaint within 20 days after completed service of the notice. Written return of service shall be made by the person making the service if by personal service, or by the clerk with postal receipts attached if by restricted certified mail, and such return of service shall be filed in the cause. Service shall be deemed complete on the date of personal service or date shown by the postal receipt of delivery of said notice to the respondent or refusal of the respondent to accept delivery. The notice shall be deemed sufficient if it substantially complies with the form that accompanies these rules. [Amendment by Court Order November 20, 1981; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; February 19, 2001; November 9, 2001, effective February 15, 2002]

**Rule 36.7 Answer.** The respondent shall file a written answer to the complaint within 20 days from the completed service of notice. For good cause shown upon written application, the grievance commission may grant an extension of time for filing an answer. If the respondent fails or refuses to file such answer within the time specified, the allegations of the complaint shall be considered admitted and the matter shall proceed to hearing on the issue of the appropriate sanction. [Amendment by Court Order December 28, 1989, effective February 15, 1990; January 5, 2001; November 9, 2001, effective February 15, 2002]

**Rule 36.8 Hearing.** The chair of the commission or the president of any division thereof to which a complaint has been referred, shall direct a hearing to be held upon such complaint within a reasonable time, in the county of respondent's residence or at the discretion of the chair within any other judicial district as shall most nearly serve the convenience of the parties, and shall designate by written order the time and place for such hearing and the personnel of the commission or division. The clerk

shall mail a copy of said order to all parties and attorneys at least ten days before the date set for said hearing. If the respondent files written objections to the hearing of said complaint in the county of the respondent's residence, the hearing shall be held at such other place as the chair or division president shall direct by written order in which case a new notice shall be given as above prescribed. [Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 36.9 Continuances.** No hearing shall be continued except for good cause. Except in case of emergency, any motion for continuance shall be filed at least seven days before the day of hearing. Any objections to continuance shall be filed promptly thereafter. [Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002]

**Rule 36.10 Subpoenas  oaths.** The chair of the commission or president or any member of a division to which a complaint has been referred, or any attorney against whom a complaint has been filed, may request the clerk of the district court of the county in which any disciplinary hearing is held to issue subpoenas of every kind in all matters pending before the commission or division thereof and the clerk shall issue same. Any member of the grievance commission is hereby empowered to administer oaths to all witnesses and shall cause such testimony to be officially reported by a court reporter. [Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002]

**Rule 36.11 Filing of documents.** All answers, motions, applications, petitions, and pleadings in connection with a complaint shall be filed in duplicate with the grievance commission clerk's office in Des Moines, Iowa. The clerk shall prepare and mail copies thereof to the respondent, the chair of the board, attorneys of record, and to the chair of the commission if sitting as a whole, or to the president of a division thereof to whom such complaint has been referred; provided, however, that on and after the day fixed for hearing any such papers may be filed in duplicate with the chair of the commission or the president of the division, as the case may be, who shall notify all parties and attorneys of the filing thereof and a copy shall be filed with the clerk. [Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 36.12 Request for hearing  preliminary mat ters.** If prompt written request is filed by or on behalf of any party for a hearing upon any preliminary motion or application filed in connection with a complaint, the chair of the commission sitting as a whole or the president of the division to whom such complaint has been referred shall by written order fix a time and place of hearing upon such motion or application and shall notify all parties and attorneys. After such hearing or if none is requested, such chair or president of a division, as the case may be, or any member of the commission or division designated by such chair or president, shall file a written ruling upon such motion or application and thereafter all parties shall promptly comply with the terms and conditions thereof. [Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002]

**Rule 36.13 Challenge regarding impartiality  four member divisions.** The respondent may challenge the impartiality of any member of the commission or division by motion setting forth the grounds therefor and filed within the time allowed for filing answer to the complaint. Said motion shall be disposed of as provided in rule 36.12 and if the challenge is sustained the vacancy thus created shall be filled as provided in rule 36.16.

With the consent of the complainant and the respondent, a division of the grievance commission may consist of four members. In the event the four-member division is evenly divided between a recommendation of sanction and dismissal, the division shall enter a dismissal of the complaint pursuant to the provisions of rule 35.9. Upon such dismissal the complainant may apply for permission to appeal pursuant to rule 35.11. [Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002]

**Rule 36.14 Conduct of hearing.** At the time and place fixed for the hearing upon any complaint, the commission or division thereof shall proceed to hear the evidence, briefs of authorities and arguments in connection therewith. The hearing shall be private unless a written request for a public hearing is filed by the respondent. All witnesses shall be sworn by a person authorized by law to administer oaths or any member of the grievance commission and their testimony shall be taken in writing by a duly qualified reporter. The rules governing procedures and the order and admissibility of evidence in causes tried in district court without a jury shall be adhered to as nearly as practicable. All questions of procedure, including objections to evidence, shall be determined by the chair of the commission or president of the division, as the case may be. [Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002]

**Rule 36.15 Action upon complaint — report of decision.** At the conclusion of a hearing upon any complaint against an attorney before such commissioners, the commissioners are empowered to dismiss such complaint, issue a private admonition, or reprimand the respondent, and in the event of such reprimand, the commissioners shall promptly file their report of such action with the clerk of the supreme court, or if action by the supreme court of suspension or revocation of the license of such attorney to practice in the courts of this state is recommended, the commissioners shall make a report to the supreme court of their recommendations and conclusions of fact and law concerning the complaint, answer, and proof within a reasonable time of the date of the last responsive brief and argument and thereupon such matters shall stand for consideration and disposition in the supreme court. Any member of the commission has the right to file with the supreme court a dissent from the majority determination or report.

The clerk shall promptly cause a copy of any such report to be served on the respondent in the manner prescribed by Iowa R. App. P. 6.31. Such report of the commissioners shall be filed with the supreme court, together with proof of service of a copy thereof upon the respondent, as provided by Iowa R. App. P. 6.31.

If the charges are dismissed by the commissioners, no publicity shall be given to any of the proceedings except at the request of the respondent. All reports and recommendations of the commissioners shall be concurred in by at least three members of the division or at least twelve members of the commission, as the case may be, all of whom shall have been present throughout the proceedings. [Amendment by Court Order December 10, 1982; July 18, 1983; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 36.16 Substitutions and vacancies.** In case of the absence or inability of the chair and vice chair of the commission sitting as a whole to perform any of the duties provided for herein, said commission may designate some other member to perform such duties as acting chair. In case of the absence or inability of the president of a division to perform any of the duties provided for herein, said division may designate some other member thereof as acting president to perform such duties. If a vacancy occurs in any division from any cause, the same shall be filled by the chair, vice chair or acting chair of the commission. [Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 36.17 Harmless error — substantial prejudice test.** No omission, irregularity, or other defect in procedure shall render void or ineffective any act of the commission or a division or any member thereof unless substantial prejudice is shown to have resulted therefrom. [Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002]

**Rules 36.18** to **36.20** Reserved.

**Rule 36.21 Forms.**
**Rule 36.21 Form 1:** ***Notice of Complaint.***

BEFORE THE GRIEVANCE COMMISSION OF
THE SUPREME COURT OF IOWA

| | |
|---|---|
| Iowa Supreme Court<br>Board of Professional<br>Ethics and Conduct,<br>Complainant,<br>vs.<br>Name, Attorney at Law,<br>of _____, Iowa,<br>Respondent. | **NOTICE OF COMPLAINT** |

To Name,
_____ Respondent above named.

To Name,
Respondent above named:

You are hereby notified that there is now on file with the Clerk of the Grievance Commission of the Supreme Court of Iowa at 431 East Locust Street, Suite 201, Des Moines, Iowa, a complaint alleging that you have committed unethical practices as an attorney and counselor at law as described therein.

A copy of the complaint and copies of Iowa Court Rules chapters 35 and 36 are attached and made a part of this notice.

You are further notified to file your written answer to the complaint within 20 days from the completed service of this notice and to abide by the further orders of the commission made in accordance with chapter 36.

You are further notified that the commission will hear this complaint in accordance with the rules and will take action as may be warranted by the facts and circumstances disclosed at the hearing.

Dated this _____ day of _____, 20 _____.

_____
Clerk of the Grievance Commission
431 East Locust Street, Suite 201
Des Moines, Iowa 50309

[Court Order June 23, 1975; November 20, 1981; June 25, 1987, effective August 3, 1987; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; February 19, 2001; November 9, 2001, effective February 15, 2002]

# CHAPTER 37
# COMMISSION ON THE UNAUTHORIZED PRACTICE OF LAW

**Rule 37.1 Commission on the unauthorized practice of law.**

**37.1(1)** There is created a commission for the abatement of the unauthorized practice of law, which shall be known as the Commission on the Unauthorized Practice of Law. This commission shall be comprised of not less than 10 nor more than 20 lawyer members, and not less than three nor more than five nonlawyer members who shall be appointed by the supreme court. The president-elect of the Iowa State Bar Association may recommend lawyers, including nonmembers of the association, to the court for appointment. The court shall designate annually one lawyer commission member to be the chair. The commission shall receive complaints and make investigations with respect to the alleged unauthorized practice of law within this state.

**37.1(2)** Commission expenses including, but not limited to, telephone, mail, meal, meeting and mileage expenses shall be submitted by the chair of the commission to the assistant court administrator for the disciplinary system and paid from the disciplinary fee account of the client security fund. The chair, a nonlawyer member of the commission selected by the court, and the assistant court administrator for the disciplinary system shall constitute the administrative committee of the commission, which shall annually on or before November 1, submit a budget to the supreme court for the next calendar year. [Court Order April 17, 1990, effective June 1, 1990; May 2, 1997; November 9, 2001, effective February 15, 2002]

**Rule 37.2 Injunctions.**

**37.2(1)** If the commission has reasonable cause to believe that any person who has not been admitted to practice law within this state is engaging in the practice of law or holding out to the public that the person is qualified to provide services constituting the practice of law in this state, the commission may file a verified complaint with the clerk of the district court in any county in which the unauthorized practice is alleged to have occurred.

**37.2(2)** The complaint shall be filed with the clerk of the district court, be given a docket number, and be captioned in the Iowa District Court for _____ County. The commission shall be designated as the complainant. The respondent shall be named and designated as the respondent. The complaint shall be presented to the chief judge of the judicial district for entry of an order to be served on the respondent requiring that person to appear before the court and show cause why that person should not be enjoined from such activity. The show-cause hearing shall be held before the chief judge or another judge designated by the chief judge.

**37.2(3)** If it appears that the facts are incapable of being adequately developed at a summary hearing, the matter may be set for trial before that judge, who shall hear the evidence and make findings of fact and an appropriate dispositional order. [Court Order April 17, 1990, effective June 1, 1990; November 9, 2001, effective February 15, 2002]

**Rule 37.3 Unauthorized practice of non-admitted attorneys.** If the commission makes a determination that any person who is admitted to practice in another jurisdiction but is not admitted to practice in this state has violated an injunction issued in compliance with rule 37.2, the commission shall report its findings to the clerk of the supreme court and the court may in its discretion use such information for purposes of admissions under Iowa Ct. R. 31.12. [Court Order May 2, 1997; November 9, 2001, effective February 15, 2002]

**Rule 37.4 Domestic violence and sexual assault victim counselors.**

**37.4(1)** In all proceedings under Iowa Code chapter 236, a victim counselor, as defined in Iowa Code section 915.20A(1)(*d*), who is affiliated with a member domestic violence program of the Iowa Coalition Against Domestic Violence or a member of the sexual assault program of the Iowa Coalition Against Sexual Assault, and whose program has registered with the Iowa Coalition Against Domestic Violence or the Iowa Coalition Against Sexual Assault as providing services under this rule, shall be allowed to do the following:

*a.* To distribute the pro se forms prescribed by the department of justice pursuant to Iowa Code section 236.3A and to assist victims of domestic violence in the preparation of such forms.

*b.* To describe to victims the proceedings under chapter 236 and to assist them in their role as witnesses.

*c.* To accompany victims throughout all stages of proceedings under Iowa Code chapter 236.

*d.* To attend all court proceedings, including sitting in chambers and at counsel table, to confer with the plaintiffs, and, at the judge's discretion, to address the court; however, domestic violence and sexual assault victim counselors shall not examine witnesses, make arguments to the court, or otherwise act in a representative capacity for victims of domestic violence.

**37.4(2)** The Iowa Coalition Against Domestic Violence and the Iowa Coalition Against Sexual Assault shall provide to the state court administrator, on an annual basis and more frequently as necessary, an updated list of its member programs which perform the services provided under this rule.

**37.4(3)** When they assist victims of domestic violence as specified in this rule, domestic violence and sexual assault victim counselors are not engaged in the unauthorized practice of law. [Court Order October 18, 1993, effective January 3, 1994; November 9, 2001, effective February 15, 2002; June 14, 2002, effective July 1, 2002]

**Rule 37.5 Limited real estate practice.**

**37.5(1)** *Purpose.* The purpose of this rule is to authorize nonlawyers to select, prepare, and complete certain legal documents incident to residential real estate transactions of four units or less. The preparation of documents beyond that authorized by this rule may constitute the unauthorized practice of law.

**37.5(2)** *Scope of practice authorized.* Except to the extent authorized by this rule, the selection, preparation, and completion of legal documents in connection with real estate transactions by nonlawyers constitutes the unauthorized practice of law unless the nonlawyer is acting on his or her own behalf as a buyer or seller.

*a.* Upon written request of a buyer or seller, a nonlawyer may select, prepare, and complete form documents for use incident to a residential real estate transaction of four units or less. Such documents shall be limited to:

(1) Purchase offers or purchase agreements, provided the parties are given written notice that these are binding legal documents and competent legal advice should be sought before signing;

(2) Groundwater hazard statements; and

(3) Declaration of value forms.

Nonlawyers may not charge for preparation of the legal documents authorized by this rule.

*b.* Nonlawyers shall not select, prepare or complete:

(1) Deeds;

(2) Real estate installment sales contracts;

(3) Affidavits of identity or nonidentity;

(4) Affidavits of payment of spousal or child support; or

(5) Any other documents necessary to correct title problems or deficiencies. [Court Order May 23, 2001; November 9, 2001, effective February 15, 2002]

# CHAPTER 38
# RULES OF PROCEDURE OF THE COMMISSION ON THE UNAUTHORIZED PRACTICE OF LAW

**Rule 38.1 Jurisdiction, authorization, and scope.** The Commission on the Unauthorized Practice of Law, as an official arm of the court, is charged under rule 37.2 with considering, investigating, and seeking the prohibition of matters pertaining to the unauthorized practice of law and the prosecution of alleged offenders. The rules contained in this chapter apply to all proceedings, functions, and responsibilities of the commission. [Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 38.2 Definitions.** In this chapter unless the content or subject matter otherwise requires:

*"Chairperson"* means the presiding officer of the commission and includes the chairperson of the commission, the vice chairperson, or any acting chairperson designated by the commission to preside in the absence of the chairperson.

*"Commission"* means the Commission on the Unauthorized Practice of Law.

*"Respondent"* is the person or entity whose conduct is the subject of a complaint to the commission or a proceeding in district court pursuant to rule 37.2.

*"Shall"* is mandatory and *"may"* is permissive. [Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 38.3 Officers.** At its first meeting in each year, the commission shall elect a vice chairperson to serve for the year and until a successor is elected. [Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 38.4 Meetings and quorum.**

**38.4(1)** Meetings of the commission shall be called by the chair of the commission and may be attended in person or by telephone. The commission shall meet at least once in each calendar quarter. Special meetings may be called by the chairperson or at the request of three or more members of the commission.

**38.4(2)** The commission shall act only upon the concurrence of a majority of the members present, except in the case of a vote to initiate an action pursuant to rule 37.2, in which case the commission shall act only upon the concurrence of a minimum of eight members or a majority of the members present, whichever is greater. [Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 38.5 Complaints to the commission.** Complaints shall be accepted from any person or other entity believing that an individual or entity has been engaged in the unauthorized practice of law.

**38.5(1)** In this context, *"complaint"* means any written communication to the commission which alleges or indicates that the unauthorized practice of law has been or is taking place.

**38.5(2)** Complaints shall be in writing but may be simple and informal. Complaints shall include whatever information or exhibits the complainant desires to submit.

**38.5(3)** Complaints shall be filed by submitting them to the commission or any of its members.

**38.5(4)** The commission may, upon its own motion and regardless of whether any complaint has been filed, initiate any investigation or action it deems appropriate.

**38.5(5)** Upon receiving a complaint or initiating any investigation or action on its own motion, the commission shall make a record indicating the date of filing or initiation, the name and address of complainant, the name and address of respondent, and a brief statement of the allegations made. This record shall also show the final disposition of the matter when it is completed.

**38.5(6)** All commission files shall be kept in permanent form and in a safe and secure place. [Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 38.6 Investigation procedure.**

**38.6(1)** Upon receipt of a complaint, the commission chair may notify the complainant in writing that the complaint has been received and will be considered by the commission.

**38.6(2)** Upon receipt of a complaint, the commission shall cause the complaint to be set for consideration by the commission at its next meeting.

**38.6(3)** When considering a complaint, the commission shall act in accordance with the following guidelines:

*a.* If it reasonably appears from the complaint that the respondent is not engaged in the unauthorized practice of law, the chair or the chair's designee shall notify the complainant in writing of the commission's position and that the commission will take no further action.

*b.* Other complaints shall be further investigated and acted upon by the commission consistent with this chapter and, if appropriate, referral may be made to a committee of the Iowa State Bar Association, the Iowa Department of Justice, or some other agency or entity.

*c.* If the commission determines that a complaint should be investigated further, it may direct that the investigation be conducted by a commission member or members, or by the Iowa Attorney General's office.

*d.* If the commission in its discretion determines that it would be helpful for the respondent to provide a written response to the matters alleged in the complaint, it may direct that a notice be directed to the respondent. In such circumstances the respondent shall be notified of the substance of the complaint and that it is requested, but not required, that the respondent provide a written response to the commission concerning the matters referred to in the notice within 20 days.

*e.* The commission may request the complainant to clarify the complainant's original statement, to furnish additional information, to disclose sources of information, or to verify by affidavit statements of fact within the complainant's knowledge.

*f.* The commission may also initiate inquiries of other sources.

**38.6(4)** Nothing in this rule shall prohibit the chair of the commission from referring any complaint for investigation in advance of the next commission meeting where, in the chair's discretion, such referral is warranted. [Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**38.7 Determination following investigation.** After the results of an investigation are returned to the commission, the commission may do any of the following:

**38.7(1)** Close the file and so notify the complainant; or

**38.7(2)** Contact the respondent to obtain an agreement by the respondent to cease and desist from the unauthorized practice of law; or

**38.7(3)** Initiate an action pursuant to rule 37.2. [Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

**Rule 38.8 Confidentiality.**

**38.8(1)** All unauthorized practice of law investigation matters, including but not limited to files, correspondence, investigation reports, memoranda, and records of investigations, are confidential unless otherwise provided in this chapter or ordered by the Supreme Court of Iowa. All statements, communications, or materials which may be received or obtained by any person investigating any complaint on behalf of the commission shall also be confidential unless otherwise provided in this chapter or ordered by the Supreme Court of Iowa.

**38.8(2)** Notwithstanding rule 38.8(1):

*a.* If the commission initiates an action pursuant to rule 37.2, the petition and all documents filed in that proceeding are public documents.

*b.* The chairperson or other designee of the commission may issue one or more clarifying announcements when the subject matter of a complaint or petition is of broad public interest. No other member of the commission shall make any public statement concerning any matter before the commission without prior approval of the commission.

*c.* Pursuant to the commission's order, records may be inspected by and their contents disclosed to a person conducting bona fide research for research purposes, provided that no personal identifying data or work product of commission counsel shall be disclosed to such a person.

*d.* Nothing in this chapter shall prohibit the commission from releasing information to its counsel.

*e.* Nothing in this chapter shall prohibit the commission from releasing information where appropriate to the Supreme Court of Iowa, the Iowa Department of Justice, the Iowa Supreme Court Board of Professional Ethics and Conduct, appropriate law enforcement authorities, or some other agency or entity. [Court Order February 17, 1992, effective July 1, 1992; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 38.9 Immunity.** Members of the commission and their respective staffs shall be immune from suit for any conduct in the course of their official duties. Complaints submitted to the commission, or testimony with respect thereto, shall be privileged and no lawsuit predicated thereon may be instituted. [Court Order February 17, 1992, effective July 1, 1992; November 9, 2001, effective February 15, 2002]

# CHAPTER 39
# CLIENT SECURITY AND ATTORNEY DISCIPLINARY COMMISSION

**Rule 39.1 Client security and attorney disciplinary commission.**

**39.1(1)** *Commission.* There is hereby created a Client Security and Attorney Disciplinary Commission, hereinafter referred to as "commission," which shall have the duties and powers provided in this chapter.

**39.1(2)** *Duties of commission.* The commission shall have the following duties and powers as hereinafter limited and defined in this chapter:

*a.* To examine lawyer defalcations and breaches of the Iowa Code of Professional Responsibility for Lawyers, the rules relating to the discipline of members of the Iowa bar, and to make recommendations to the supreme court concerning rule changes deemed necessary or desirable in this area.

*b.* To assist the court in administering both preventive and remedial attorney disciplinary procedures contained in these rules or other court rules.

*c.* To administer and operate the Clients' Security Fund of the Bar of Iowa, as hereinafter created, designated as the "fund."

**39.1(3)** *Appointment of commissioners.* The supreme court shall appoint five members of the bar of this state and two residents of this state who are not lawyers, representing the public, to the commission. The original appointment shall be two commissioners for a one-year term, two for a two-year term, one for a three-year term, one for a four-year term and one for a five-year term. At the expiration of such terms all subsequent appointments shall be for a term of five years, and no commissioner who has served two five-year terms shall be eligible for reappointment. A vacancy occurring during a term shall be filled by the supreme court for the unexpired portion thereof.

**39.1(4)** *Organization and meetings.* The commissioners shall organize annually and shall then elect from among their number a chair and a treasurer to serve for a one-year term and such other officers for such terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the chair or of the majority of the commissioners. Five commissioners shall constitute a quorum and may transact all business except as may be otherwise provided by this chapter and chapter 40 of the Iowa Court Rules.

**39.1(5)** *Regulations.* The commission shall adopt regulations, consistent with this chapter and subject to the approval of the supreme court, concerning all of the powers and duties granted to and imposed upon the commission by this chapter.

**39.1(6)** *Reimbursement.* The commissioners shall serve without compensation but shall be entitled to reimbursement from the fund hereinafter created, for their expenses reasonably incurred in the performance of their duties. [Court Order December 5, 1973; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 39.2 Assistant court administrator for the disciplinary system.**

**39.2(1)** *Appointment.* The supreme court will appoint an assistant court administrator for the disciplinary system (hereinafter "assistant administrator") to serve at its pleasure as the principal executive officer of the disciplinary system. The assistant administrator shall file a bond annually with the commission with such surety as may be approved by it and in such amount as it may fix. Premiums on said bond shall be paid by the fund.

**39.2(2)** *Compensation.* The assistant administrator shall receive such compensation and expenses reasonably incurred as the supreme court shall fix upon recommendations of the commission. Such compensation and expenses shall be paid from the fund.

**39.2(3)** *Duties of assistant administrator.* Subject to the supervision of the supreme court and the commission, the assistant administrator shall do the following:

*a.* Collect attorney fees and assessments for the fund, hereinafter created, and report to the commission the names and addresses of all attorneys who fail to pay said fee and assessment.

*b.* Serve as executive secretary to the commission and assist in the operation and administration of the fund.

*c.* Conduct investigations and audits of attorneys' accounts and office procedures to determine compliance with this chapter, the Iowa Code of Professional Responsibility for Lawyers, and specifically Canon 9 and DR 9-102; and to report violations to the commission.

*d.* Maintain an office in such place as the supreme court shall designate, act as a liaison between the court, the commission, and other commissions, committees, boards and personnel serving a function in the disciplinary system, and maintain for the court records of disciplinary proceedings and such other information and data as the court shall require.

*e.* Upon request of the commission, institute disciplinary proceedings before the grievance commission pursuant to chapter 35 of the Iowa Court Rules.

*f.* Perform such other functions and duties as may be directed by the supreme court. [Court Order December 5, 1973; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 39.3 Clients' security trust fund of the bar of Iowa.**

**39.3(1)** *Creation, operation and purpose.* A trust fund, to be known as the "Clients' Security Trust Fund of the Bar of Iowa" (hereinafter, the "fund") is hereby authorized and created.

**39.3(2)** *Administration.* The fund shall be operated and administered by the commission in accordance with this chapter.

**39.3(3)** *Purpose.* The purpose of the fund shall be to prevent defalcations by members of the Iowa bar, and insofar as practicable, to provide for the indemnification by the profession for losses caused to the public by the dishonest conduct of members of the bar of this state, and to provide funding for the administration of the lawyer disciplinary system and other programs which impact the disciplinary system including, but not limited to, the Iowa Lawyer's Assistance Program.

**39.3(4)** *Powers and duties of commission relating to the fund.* The commission, in addition to the powers granted elsewhere in this chapter, shall have the following powers and duties:

*a.* To receive, hold, manage, and distribute, pursuant to the direction of the supreme court and this chapter, the moneys raised hereunder, and any other amounts that may be received by the fund through voluntary contributions or otherwise.

*b.* To adopt, subject to the approval of the supreme court, regulations for the administration of the fund and the procedures for presentation, consideration, recognition, rejection and payment of claims, and for conducting business. A copy of such regulations shall be filed with the clerk of the supreme court.

*c.* To enforce claims for restitution, arising by subrogation or assignment or otherwise.

*d.* To invest the fund, or any portion thereof, in those investments and in the percentages authorized by Iowa Code section 97B.7, (investments for Iowa public employees' retirement system); provided, however, the commission shall not be required to invest such portions of the fund as it may deem necessary to be currently available for payment of claims and other expenses required by this chapter. All interest or other income received in the operation of the fund shall become a part of the fund.

*e.* To employ and compensate consultants, agents, legal counsel and employees.

*f.* To delegate the power to perform routine acts which may be necessary or desirable for the operation of the fund, including the power to authorize disbursements for routine operating expenses of the fund, and all necessary expenses of the assistant administrator and staff in the performance of their duties; but authorization for payment of claims shall be made only by the commission under the provisions of this chapter.

*g.* To sue in the name of the commission without joining any or all individual commissioners.

*h.* To purchase complementary fidelity coverage for the fund in such amount and with such limitations or deductible limits as in its discretion it determines proper.

*i.* To pay reasonable and necessary attorney fees incurred by the commissioners of the supreme court in implementing chapter 35 of the Iowa Court Rules in disciplinary proceedings based on attorney defalcations or which are initiated pursuant to rule 39.2(3)(*e*).

*j.* To fund programs which the commission believes will assist in preventing defalcations by attorneys. The annual allocation for any such program shall not exceed two and one-half percent of the fund value as of the beginning of the fiscal year in which the funding is to occur. No such funding may be provided unless there is at least twice the minimum balance required by rule 39.6(4) in the fund at the beginning of the fiscal year in which the funding is to occur.

**39.3(5)** *Applications to the supreme court.* The commission may apply to the supreme court for interpretations of this chapter and of the extent of the commission's powers thereunder and for advice regarding the proper administration of the fund. Interpretations of the supreme court shall be obligatory when rendered. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 39.4 Audit treasurer's duties budget.**

**39.4(1)** *Audit and report.* At least once a year, and at such additional times as the supreme court may order, the commission shall file with the supreme court a written report reviewing in detail the administration of the fund during the year together with an audit of the fund certified by a certified public accountant licensed to practice in Iowa.

**39.4(2)** *Treasurer's duties.* The treasurer elected by the commission shall maintain the assets of the fund in a separate account and shall disburse moneys from the fund only at the direction of the supreme court or upon the action of the commission pursuant to this chapter. The treasurer shall file a bond annually with the commission with such surety as may be approved by it and in such amount as it may fix. Premiums on said bond shall be paid by the fund. A separate bookkeeping account designated as the disciplinary fund account shall be maintained within the fund for moneys derived from the annual disciplinary fee set out in rule 39.5. Fees, penalties, or investment income derived from the investment of the income from annual disciplinary fees and penalties shall be placed in the disciplinary fund account.

**39.4(3)** *Budget.* At least 60 days prior to the commencement of each calendar year, the commission shall submit to the supreme court its budget of operations of such year, which may be amended thereafter as necessity dictates. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 39.5 Annual disciplinary fee.** As a condition to continuing membership in the bar of the supreme court, including the right to practice law before Iowa courts, every bar member, unless exempted, shall pay to the commission through the office of the assistant administrator an annual fee* as determined by the supreme court to finance the disciplinary system. The annual fee shall be due on or before March 1 of each year, for that calendar year. A calendar year is defined as the period of time from January 1 through December 31. Members of the bar of the supreme court who certify in writing to the commission that they are a justice, judge, associate judge, or full-time magistrate of any court, spend full time in the military service of the United States following admission to the Iowa bar, are admitted on examination to the bar of Iowa during the current calendar year or are issued a certificate of exemption pursuant to the provisions of rule 39.7 shall be exempt from payment of this fee. [Court Order November 9, 2001, effective February 15, 2002]

*$85 for calendar year 2000 [December 18, 2000]

**Rule 39.6 Fund assessments.**

**39.6(1)** *Assessments.* As a condition to continuing membership in the bar of the supreme court, including the right to practice law before Iowa courts, every bar member, except one to whom a certificate of exemption has been issued pursuant to the provisions of rule 39.7, shall pay to the commission through the office of the assistant administrator the assessment specified in rule 39.6(2), or assessments provided by court order, [subject to rules 39.6(3), 39.6(4), and 39.6(5)] annually to prevent defalcations and insofar as practicable to provide indemnification for losses caused to the public by dishonest conduct of members of the Iowa bar. Assessments shall be due on or before March 1 of each year, for that calendar year. A calendar year is defined as the period of time from January 1 through December 31.

**39.6(2)** *Assessment schedule.*

For the calendar year of the member's admission on examination to the bar of Iowa, and for the calendar year thereafter ..... None.

For the calendar year of the member's admission on motion to the bar of Iowa ..... $50.

For the years other than those heretofore exempted, up to and including the fifth calendar year of admission to the bar of Iowa ..... $ 50 annually.

For the years after the fifth calendar year of admission to the bar of Iowa ..... $100 annually.

In making any of the above calculations, time spent full-time in the military service of the United States following admission to the Iowa bar and during the years under consideration shall be excluded. [Court Order June 13, 1979; November 13, 1984; November 15, 1985; November 11, 1986; November 19, 1987; October 20, 1988; November 16, 1989; December 15, 1994, effective January 3,1995; November 9, 2001, effective February 15, 2002]

**39.6(3)** *Alternative to fixed assessment.* Members of the bar of the supreme court may, at their election, instead of the fixed assessment set forth in rule 39.6(2), pay to the commission, as their assessment for any particular calendar year, an amount equal to one percent of their net income derived from the practice of law in Iowa for the preceding calendar year, but in no event less than $25. Net income from the practice of law shall be for the purposes of this rule that amount shown on the federal income tax return of such members for the appropriate year as "profit or loss from business or profession." The commission may require members so electing to submit to the commission a copy of their federal income tax return for the appropriate year to substantiate the amount due hereunder.

**39.6(4)** *Certificate of sufficiency.* The commission shall determine the net value of the cash and securities in the fund for the purpose of preventing defalcation as of December 1 of each year. Whenever the value of such assets shall equal $600,000 after deducting all claims and requests for reimbursement against the fund, not disposed of at the date of valuation, and all expenses properly chargeable against the fund, the commission shall file with the supreme court prior to December 31 of such year a certificate to that effect which shall be known as a certificate of sufficiency. When a certificate of sufficiency is filed with the supreme court, the annual assessment set forth in rule 39.6(2) for the next calendar year after the date of evaluation in said certificate shall be waived for each member of the bar obligated under the above schedule to pay any amount and who has paid assessments to the fund in the total sum of $200 in prior years notwithstanding anything heretofore or hereinafter provided.

**39.6(5)** *Judges, government attorneys, corporate counsel.* In lieu of the assessment set forth in rule 39.6(2), any member of the bar of the supreme court who certifies in writing to the commission that the member is a justice, judge, associate judge, or full-time magistrate of any court, or one who performs legal services only for a governmental unit, or one who performs legal services only for a particular person, firm or corporation (other than a professional legal corporation or a law firm) and stands in the legal capacity with such person, firm or corporation as an employee, shall pay to the commission an assessment of $25 annually while so engaged, provided that if under rule 39.6(4) the commission has filed a certificate of sufficiency with the court then the annual assessment for each bar member referred to herein who has paid to the commission a total of $200 in assessments shall be waived each year that the certificate of sufficiency is filed by the commission. Provided, however, that a retired judge or justice recalled for temporary service shall not be required to pay an assessment or surrender their certificate of exemption. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 39.7 Certificate of exemption required statement.** A member of the bar of the supreme court who is not engaged in the practice of law in the state of Iowa may be granted a certificate of exemption by the commission, and thereafter no fee or assessment shall be required from such member unless the member thereafter engages in the practice of law in the state of Iowa, in which case the certificate of exemption shall without further order of court stand revoked and the member shall file at once the statement required by rule 39.8(1), and the questionnaire required by rule 39.11 and pay the fee and assessment due under rules 39.5 and 39.6. A member of the bar requesting a certificate of exemption shall file with the assistant administrator the statement required by rule 39.8(1), and such part of the rule 39.11 questionnaire as the assistant administrator may deem necessary to determine the member's status. The practice of law as that term is employed in this chapter includes the examination of abstracts, consummation of real estate transactions, preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns as well as the representation of others in any Iowa courts, the right to represent others in any Iowa courts, or to regularly prepare legal instruments, secure legal rights, advise others as to their legal rights or the effect of contemplated actions upon their legal rights, or to hold oneself out to so do; or to be one who instructs others in legal rights; or to be a judge or one who rules upon the legal rights of others unless neither the state nor federal law requires the person so judging or ruling to hold a license to practice law. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 39.8 Enforcement.**

**39.8(1)** To facilitate the collection of the annual fee and assessment provided for in rules 39.5 and 39.6, all members of the Iowa bar required to pay the fee and assessment, and those exempted other than by rule 39.7, shall, on or before March 1 of each year, file a statement, on a form prescribed by the assistant administrator, setting forth their date of admission to practice before the supreme court, their current residence and office addresses, and such other information as the assistant administrator may from time to time direct. In addition to such statement, every bar member shall file a supplemental statement of any change in the information previously submitted within 30 days of such change. All persons admitted to practice before the supreme court shall file the statement required by this rule at the time of admission but no annual fee or assessment shall be payable until the time above provided. All attorneys failing to file the required statement by March 1 of each year shall, in addition to the annual fee and assessment provided for above, pay a penalty of $25 if the envelope containing the statement is postmarked after March 1.

**39.8(2)** Attorneys who fail to timely pay the fee and assessment required under rules 39.5 and 39.6, or fail to file the statement or supplement thereto provided in rule 39.8(1), may have their right to practice law suspended by the supreme court, provided that at least 30 days prior to such suspension, a notice of delinquency has been served upon them in the manner provided for the service of original notices in Iowa R. Civ. P. 1.305, or has been forwarded to them by restricted certified mail, return receipt requested, addressed to them at their last-known address. Such attorneys shall be given the opportunity during said 30 days to file in duplicate in the office of the clerk of the supreme court an affidavit disclosing facts demonstrating the noncompliance was not willful and tendering such documents and sums and penalties which, if accepted, would cure the delinquency, or to file in duplicate in the office of the clerk of the supreme court a request for hearing to show cause why their license to practice law should not be suspended. A hearing shall be granted if requested. If, after hearing, or failure to cure the delinquency by satisfactory affidavit and compliance, an attorney is suspended, the attorney shall be notified thereof by either of the two methods above provided for notice of delinquency.

**39.8(3)** Any attorney suspended pursuant to this chapter shall do all of the following:

*a.* Within 15 days in the absence of co-counsel, notify clients in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another lawyer.

*b.* Within 15 days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

*c.* Within 30 days refund any part of any fees paid in advance that have not been earned.

*d.* Within 15 days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, of the suspension and consequent disqualification to act as a lawyer after the effective date of such discipline.

*e.* Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

*f.* Keep and maintain records of the steps taken to accomplish the foregoing.

*g.* Within 30 days file proof with the supreme court and with the Iowa Supreme Court Board of Professional Ethics and Conduct of complete performance of the foregoing, and this shall be a condition for application for readmission to practice.

**39.8(4)** Any attorney suspended pursuant to this chapter shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**39.8(5)** Attorneys who have been suspended pursuant to this chapter or who currently hold a certificate of exemption and who practice law or who hold themselves out as being authorized to practice law in this state are engaged in the unauthorized practice of law and may also be held in contempt of the court or may be subject to disciplinary action as provided by chapter 35 of the Iowa Court Rules.

**39.8(6)** An attorney who has been suspended for failure to pay the annual fee or assessment or for failure to file the statement, supplement, or questionnaire required by these rules may be reinstated upon a showing such failure was not willful and by paying the sums prescribed and filing such statement, supplement, or questionnaire. An attorney seeking reinstatement after being suspended for failure to comply with the provisions of this rule shall pay a fee of $50. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 39.9 Claims.**

**39.9(1)** The commission shall consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state acting either as an attorney or fiduciary, provided that all of the following are established:

*a.* Said conduct was engaged in while the attorney was a practicing member of the bar of this state and the claim arises out of the practice of law in this state.

*b.* Such defalcation or dishonest conduct occurred after January 1, 1974.

*c.* The claim is made within one year after the client's discovery of the loss; provided, however, such time limitation in unusual circumstances may be extended by the commission in its discretion for good cause shown.

*d.* The claim is made directly by or on behalf of the injured client or the client's personal representative or, if a corporation, by or on behalf of itself or its successors in interest.

*e.* The commission is satisfied that there is no other source or collateral source for the reimbursement of the loss.

*f.* Claims shall not be paid which arise out of an employer-employee relationship as distinguished from a lawyer-client relationship or a fiduciary relationship.

**39.9(2)** The commission is invested with the power, which it shall exercise in its sole discretion, to determine whether a claim merits reimbursement from the fund, and if so, the amount of such reimbursement, the time, place and manner of its payment, the conditions upon which payment shall be made, and the order in which payment shall be made. The commission's powers in this respect may be exercised only by the affirmative vote of at least four commissioners. In making such determinations, the commission shall consider among other appropriate factors, the following:

*a.* The amounts available and likely to become available to the fund for the payment of claims and the size and number of claims which are likely to be presented.

*b.* The total amount of reimbursable losses in previous years for which total reimbursement has not been made, if any, and the total assets of the fund.

*c.* The amount of the claimant's loss as compared to the amount of losses sustained by other eligible claimants.

*d.* The degree of hardship suffered by the claimant as a result of the loss.

*e.* The degree of negligence, if any, of the claimant which may have contributed to the loss.

*f.* The total amount of losses caused by defalcations of any one attorney or associated group of attorneys.

**39.9(3)** The commission shall, by regulation approved by the supreme court, fix the maximum amount which any one claimant may recover from the fund and the aggregate maximum amount which may be recovered because of the dishonest conduct of any one attorney.

**39.9(4)** No claimant or any other person or organization shall have any right in the fund as third-party beneficiary or otherwise. Reimbursement by claim on the fund shall be a matter of grace and not of right.

**39.9(5)** The commission may require as a condition to payment that the claimant execute an assignment of claimant's right against the defaulting lawyer.

**39.9(6)** No claimant need be represented by counsel before the commission. No attorney representing a claimant shall receive a fee for services from the fund. Any agreement for compensation between a claimant and any attorney retained for prosecution of the claim shall be subject to the approval of the commission.

**39.9(7)** The commission may request individual lawyers, bar associations, and other organizations of lawyers to assist the commission in the investigation of claims.

**39.9(8)** The payment or denial of any claim filed under the provisions of this rule shall be inadmissible as evidence in any disciplinary or contempt proceeding.

[Court Order December 5, 1973; April 22, 1974; October 16, 1974; April 9, 1975; April 10, 1975; August 29, 1975; October 28, 1976; November 21, 1977; January 15, 1979; June 20, 1980; April 21, 1982; November 13, 1984; April 25, 1985; February 16, 1990, effective March 15, 1990; December 15, 1994, effective January 3, 1995; March 6, 1995; January 24, 2000; November 9, 2001, effective February 15, 2002]

**Rule 39.10 Investigations and audits.**

**39.10(1)** Each member of the bar of Iowa, in filing the statement required by rule 39.8(1), shall authorize the assistant administrator to investigate, audit and verify all funds, securities, and other property held in trust by the member, and all related accounts, safe deposit boxes and any other form of maintaining trust property as required by the Iowa Code of Professional Responsibility for Lawyers, including but not restricted to DR 9-102, together with deposit slips, canceled checks and all other records pertaining to transactions concerning such property.

**39.10(2)** Each member of the bar of Iowa shall comply promptly with any request by the assistant administrator to execute and deliver to the assistant administrator a written authorization, directed to any bank or depository, for the assistant administrator to audit and inspect such accounts, safe deposit boxes, securities and other forms of maintaining trust property by the member in such bank or other depository.

**39.10(3)** Each member of the bar of Iowa shall do all of the following:

*a.* Cooperate fully with the assistant administrator in any investigation, audit, or verification of any funds, securities, or property held in trust by that lawyer.

*b.* Answer all questions posed by the assistant administrator which relate to any investigation, audit, or verification, unless claiming the privilege against self-incrimination.

*c.* Retain complete records of all trust fund transactions for a period of not less than six years following completion of the matter to which they relate, in accordance with DR 9-103(A) of the Iowa Code of Professional Responsibility for Lawyers.

**39.10(4)** The commission with the approval of the supreme court may retain, compensate from the fund, and furnish as staff for the assistant administrator, such public or certified accountants, investigators or attorneys as may be deemed necessary to carry out the duties and functions imposed upon the assistant administrator. When acting under the assistant administrator's supervision and direction, such staff personnel shall have all the powers granted to the assistant administrator by this chapter.

**39.10(5)** When the investigation, audit or verification provisions of this chapter disclose, in the opinion of the assistant administrator, a violation of the Iowa Code of Professional Responsibility for Lawyers, or when the member of the bar of Iowa affected by the investigation, audit or verification has refused to comply with the provisions of this chapter, the assistant administrator shall promptly report such circumstances to the commission. A copy of such report shall be furnished to the member affected.

**39.10(6)** However, client trust funds and property held by an Iowa licensed attorney whose law office is situated in another state shall not be subject to investigation, audit or verification except to the extent such funds and property are related to matters affecting Iowa clients. State or federal funds or property subject to state or federal auditing procedures and in control of an Iowa licensed attorney employed full- or part-time by a state or the United States shall not be subject to investigation, audit or verification under the provisions of this chapter. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 39.11 Annual questionnaire.**

**39.11(1)** The assistant administrator under the supervision of the supreme court and the commission shall prepare a questionnaire to be annually submitted to and completed by each member of the bar of Iowa except those who have been issued a certificate of exemption pursuant to rule 39.7. Said questionnaire may be (but is not required to be) incorporated as a part of the annual statement provided in rule 39.8(1). This questionnaire shall elicit information to determine whether the member is complying with the Iowa Code of Professional Responsibility for Lawyers, including but not restricted to DR 9-102 and other relevant data.

**39.11(2)** A failure to complete and return a questionnaire shall be dealt with as provided in rule 39.12. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 39.12 Investigations, audits, and annual questionnaire – enforcement.**

**39.12(1)** *Failure of bar members to cooperate.*

*a.* The continued right of a member of the Iowa bar to practice law in this state is conditioned upon the member executing and delivering the authorization provided in rule 39.10(2), furnishing the cooperation required in rule 39.10(3) and completing and returning the annual questionnaire described in rule 39.11. Upon failure of a member of the Iowa bar to comply with any of the rules specified in this paragraph, the member's right to practice law before Iowa courts may be suspended, following the procedure specified in rule 39.8(2).

*b.* A member of the bar of Iowa who willfully fails to comply with those rules enumerated in rule 39.12(1)(*a*) may be held in contempt of the supreme court or may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules.

**39.12(2)** *Violation of Iowa Code of Professional Responsibility.*

*a.* When the audit, investigation or verification of funds, securities or other property held in trust by any member of the bar of Iowa, or a return of any member on the annual questionnaire, discloses an apparent violation of the Iowa Code of Professional Responsibility for Lawyers, the assistant administrator upon request of the commission, or the commission, may institute disciplinary proceedings under chapter 35 of the Iowa Court Rules for the suspension or revocation of the member's license to practice law in this state.

*b.* All information obtained by the assistant administrator and staff by virtue of the audits, investigations and verifications, and annual questionnaire, shall be held in strict confidence by them and by the supreme court and the commission unless otherwise directed by the supreme court or unless proceedings are initiated pursuant to chapter 35 of the Iowa Court Rules or Iowa Code section 602.10123. If proceedings are initiated pursuant to chapter 35 of the Iowa Court Rules, such information relating to the named respondent may be released only to the respondent, the Board of Professional Ethics and Conduct, and the grievance commission. If proceedings are initiated pursuant to Iowa Code section 602.10123, such information relating to the named accused may be released only to the accused and the attorney general or the special assistant attorney general designated pursuant to Iowa Code section 602.10127, to prosecute the charges. [Court Order December 5, 1973; September 19, 1974; October 16, 1974; April 9, 1975; April 30, 1982; August 14, 1986, and August 18, 1986, effective September 2, 1986; May 10, 1990, effective July 2, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 39.13 Attorneys acting as fiduciaries.**

**39.13(1)** After January 1, 1974, unless a lawyer is the spouse of or is the son-in-law or daughter-in-law of or is related by consanguinity or affinity, within the third degree, to the decedent in an estate, the ward in a conservatorship, the settlor or beneficiary of a trust, or unless such attorney is coexecutor, cotrustee, or coconservator with another party or parties and such other party or parties will receive and pay out any of the funds, securities or other property of the estate, trust, or conservatorship, such lawyer shall not be appointed by a court in any fiduciary capacity for an estate, trust, or conservatorship until the lawyer has posted a bond in an amount to be determined by the court with sureties approved by the court, and no waiver of such bond shall be recognized by any court of this state. In the event the surety on the bond posted by the lawyer is not a corporate surety, the surety thereon shall not be the ward, any beneficiary or distributee or be related to the lawyer, the ward, or any beneficiary or distributee within the third degree of consanguinity or affinity.

**39.13(2)** A lawyer who willfully fails to comply with the provisions of this rule may be held in contempt of the supreme court, or may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules. [Court Order November 9, 2001, effective February 15, 2002]

*See* Iowa Code §§633.173, 633.175.

# CHAPTER 40
# REGULATIONS OF THE CLIENT SECURITY AND ATTORNEY DISCIPLINARY COMMISSION

**Rule 40.1 Definitions.** For the purpose of this chapter, the following definitions shall apply:

The *"commissioner"* shall mean the commissioners of the Client Security and Attorney Disciplinary Commission.

*"Dishonest conduct"* shall mean wrongful acts committed by a lawyer against a person in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

The *"fund"* shall mean the Clients' Security Trust Fund of the Bar of Iowa.

A *"lawyer"* shall mean one who, at the time of the act complained of, had the right to practice law in Iowa. The fact that the act complained of took place outside the state of Iowa does not necessarily mean that the lawyer was not engaged in the practice of law in the state of Iowa.

*"Reimbursable losses"* are only those losses as set out in rule 39.9. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 40.2 Applications for reimbursement.**

**40.2(1)** The commissioners shall prepare a form of application for reimbursement; in their discretion, the commissioners may waive a requirement that a request be filed on such form.

**40.2(2)** The form shall require, at a minimum, the following information:

*a.* The name and address of the lawyer.

*b.* The amount of the alleged loss claimed.

*c.* The date or period of time during which the alleged loss was incurred.

*d.* Name and address of the party requesting reimbursement.

*e.* The general statement of facts relative to the request for reimbursement.

*f.* Verification by the party requesting reimbursement.

**40.2(3)** The form or application shall contain the following statement in bold type:

"IN ESTABLISHING THE CLIENTS' SECURITY TRUST FUND OF THE BAR OF IOWA THE SUPREME COURT OF IOWA DID NOT CREATE, NOR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS IN THE PRACTICE OF LAW. ALL REIMBURSEMENTS OF LOSSES OF THE CLIENTS' SECURITY TRUST FUND SHALL BE A MATTER OF GRACE IN THE SOLE DISCRETION OF THE COMMISSIONERS ADMINISTERING THE FUND AND NOT AS A MATTER OF RIGHT. NO CLIENT OR ANY OTHER PERSON OR ORGANIZATION SHALL HAVE ANY RIGHT IN THE FUND AS A THIRD-PARTY BENEFICIARY OR OTHERWISE."

**40.2(4)** Applications shall be in the form attached and shall be addressed to the Assistant Administrator, Client Security and Attorney Disciplinary Commission, Statehouse, Des Moines, Iowa 50319. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 40.3 Processing applications.**

**40.3(1)** The commission's chair shall cause each such application to be sent to the commissioners or other parties or organizations for investigation and report. A copy shall be served upon or sent by certified mail to the lawyer, at the lawyer's last-known address, who it is claimed committed the dishonest act. Whenever feasible, any lawyer to whom such application is referred shall not practice in the county wherein the alleged defalcating attorney practiced. From time to time, the chair may request of the applicant further information with respect to the alleged claim.

**40.3(2)** When, in the opinion of the person or persons to whom the application has been referred the application is clearly not for a reimbursable loss, no further investigation need be conducted, but a report with respect to such application shall be made to the commission.

**40.3(3)** The person or persons to whom a report is referred for investigation shall conduct such investigation as to them seems necessary and desirable in order to determine whether the same is for a reimbursable loss and in order to guide the commissioners in determining the extent, if any, to which the claim shall be reimbursed from the fund. Any information so obtained by the person or persons shall be used solely by or for the commissioners and shall otherwise constitute confidential information. When information is received by the commission indicating an apparent violation of the criminal laws by a lawyer, such information shall be reported to the supreme court for such action as the court deems necessary by letter addressed to the state court administrator enclosed in an envelope marked "CONFIDENTIAL."

**40.3(4)** Reports with respect to applications shall be submitted by the person or persons to whom they have been referred for investigation to the chair as soon as reasonably possible. The chair shall summarize each report in detail as deemed necessary and shall send to each member of the commission a copy of such summary.

**40.3(5)** At the meetings of the commission the commissioners will conduct such investigation or review as seems necessary or desirable in order to determine whether the applications are for a reimbursable loss, and to guide the commissioners in determining the extent, if any, to which the applicant shall be reimbursed. After studying the summaries or applications to be processed, any commissioner may request that testimony be presented. Absent such recommendation or request, applications shall be processed on the basis of information contained in the report of the person or persons who investigated such application and in the summary. In all

cases, the alleged defalcating attorney or the attorney's personal representative shall be given an opportunity to be heard by the commissioners if they so request.

**40.3(6)** The commission in its sole discretion shall determine the amount of loss, if any, for which any person shall be reimbursed from the fund. [See rule 39.9(2)] However, the maximum amount which any one claimant may recover from the fund shall be $50,000 and the aggregate maximum amount which may be recovered from the fund because of the dishonest conduct of any one attorney shall be $150,000. [Regulation amendment July 8, 1981; Court Order July 16, 1984; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 40.4 Subrogation for reimbursement made.** In the event reimbursement is made to a person or organization, the fund shall be subrogated to their rights in said amount and may bring such action as is deemed advisable against the lawyer, the lawyer's assets or estate, either in the name of the person, or in the name of the Clients' Security Trust Fund of the Bar of Iowa. The party receiving funds shall be required to execute a subrogation agreement in said regard. Upon commencement of an action by the fund pursuant to its subrogation rights, it shall advise the reimbursed party at the party's last-known address. That party may then join in such action to press a claim for any loss in excess of the amount of the above reimbursement, but the fund shall have first priority to any recovery on such suit. [Amended by Court Order December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 40.5 General purposes.** In any given case, the commissioners may waive technical adherence to these regulations in order to achieve the objectives of the fund. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 40.6 General provisions.** The annual report of the commissioners to the supreme court shall be public information after it is filed with the court. Upon prior approval of the commission, such information as the commission may approve concerning payments made to applicants for reimbursement, including information with regard to the lawyer involved and the facts upon which the reimbursement is made, may be released as public information. Other than as set out above, other information regarding applications for reimbursement, payments made by the fund or any actions of the commissioners shall not be public information without the express prior approval of the court. [Regulation Order January 4, 1974; February 15, 1979; November 9, 2001, effective February 15, 2002]

**Rule 40.7 Copy of application for reinstatement.** An attorney who has been summarily suspended under rule 39.8 must file an application with the clerk of the supreme court for reinstatement and a copy of said application shall be forwarded to the assistant court administrator and to the Iowa Supreme Court Board of Professional Ethics and Conduct at least ten days prior to any action upon the application. [Regulation Order October 28, 1976; Court Order December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

# CHAPTER 41
# CONTINUING LEGAL EDUCATION FOR LAWYERS

**Rule 41.1 Purpose.** Only by continuing their legal education throughout their period of the practice of law can attorneys fulfill their obligation competently to serve their clients. Failure to do so shall be grounds for disciplinary action by the supreme court. This chapter establishes minimum requirements for such continuing legal education and the means by which the requirements shall be enforced. [Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

**Rule 41.2 Continuing legal education commission.**

**41.2(1)** There is hereby established a commission on continuing legal education consisting of 12 members. The supreme court shall appoint to the commission ten resident members of this state who are currently licensed to practice law in the state of Iowa, and two residents of this state who are not lawyers. The court shall designate from among the members of the commission a chairperson who shall serve as such at the pleasure of the court. Of the members first appointed to the commission four shall serve a term of three years, four shall serve a term of four years and four shall serve a term of five years. Members thereafter appointed, except for those appointed to fill unexpired terms, shall be appointed for a term of three years. No member shall serve more than two consecutive complete terms as a member of the commission. The supreme court shall adopt rules and regulations governing the operations and activities of the commission.

**41.2(2)** The commission shall have the following duties:

*a.* To exercise general supervisory authority over the administration of this chapter.

*b.* To accredit courses, programs and other educational activities which will satisfy the educational requirements of this chapter; all being subject to continuous review by the commission.

*c.* To foster and encourage the offering of such courses, programs and educational activities.

*d.* To submit to the supreme court proposed rules and regulations* not inconsistent with this chapter to govern the operations and activities of the commission.

*See Chapter 42 of the Iowa Court Rules

*e.* Subject to the approval of the supreme court, to employ such persons as it deems necessary for the proper administration of this chapter.

*f.* To report at least annually to the supreme court concerning its activities and, from time to time, to make recommendations to the supreme court concerning this chapter and the enforcement thereof; to present an annual budget and a recommended annual fee for costs of administering this chapter.

*g.* To report promptly to the supreme court concerning any violation of this chapter by any member of the bar of this state.

**41.2(3)** Members of the commission shall not be compensated but shall be reimbursed for expenses incurred by them in the performance of their duties upon vouchers approved by the supreme court. [Court Order April 9, 1975; July 5, 1978; November 13, 1984; November 14, 1985; November 11, 1986; November 19, 1987; November 21, 1988; November 16, 1989; November 9, 2001, effective February 15, 2002; February 22, 2002]

**Rule 41.3 Continuing legal education requirement.**

**41.3(1)** Each attorney admitted to practice in this state shall complete a minimum of 15 hours of legal education accredited by the commission, during each calendar year. The commission is authorized, pursuant to guidelines established by the supreme court, to determine the number of hours for which credit will be given for particular courses, programs or other legal education activities. Under rules to be promulgated by the supreme court, an attorney may be given credit in one or more succeeding calendar years, not exceeding two such years, for completing more than 15 hours of accredited education during any one calendar year.

**41.3(2)** The 15 hours required by rule 41.3(1) shall include a minimum of 2 hours, every two calendar years, devoted exclusively to the area of legal ethics. Excess hours of education devoted to legal ethics can be carried over for purposes of the annual 15-hour requirement under rule 41.3(1) but cannot be carried over beyond the two-year period for the special legal ethics requirement under this rule.

**41.3(3)** Commencing July 1, 2002, up to 6 hours of the 15 hours required by rule 41.3(1) each calendar year may be obtained through completion of computer-based legal education accredited by the commission. [Court Order April 9, 1975; December 6, 1978; January 8, 1988; November 9, 2001, effective February 15, 2002; February 22, 2002]

**Rule 41.4 Annual fee and report by attorneys to commission.**

**41.4(1)** On or before March 1 of each year, each attorney admitted to practice in this state shall pay to the commission a prescribed fee for costs of administering this chapter.

**41.4(2)** On or before March 1 of each year, each attorney admitted to practice in this state shall make a written report to the commission, in such form as the commission shall prescribe, concerning completion of accredited legal education during the preceding calendar year; provided, however, that an attorney shall not be required to comply with this rule nor comply with the continuing legal education requirements set forth in rule 41.3 for the year during which the attorney was admitted to practice. Each annual report shall be accompanied by proof satisfactory to the commission that the attorney has met the requirements for continuing legal education for the calendar year for which such report is made.

**41.4(3)** Each attorney admitted to practice in this state shall make a written report to the commission, in such form as the commission shall prescribe, concerning completion of accredited legal ethics education. The report is to be filed on or before March 1 following completion of each two-year period under the requirement. An attorney shall not be required to comply with this requirement for the year of admission to practice.

**41.4(4)** All attorneys who fail by March 1 of each year to file the annual report or to pay the prescribed fee shall, in addition, pay a penalty of $25 unless the envelope containing the annual report and prescribed fee is postmarked on or before March 1.

**41.4(5)** An attorney seeking reinstatement after being suspended for failure to comply with the provisions of this rule shall pay a fee of $50. [Court Order April 9, 1975; August 28, 1975; August 12, 1980; January 8, 1988; January 24, 2000; November 9, 2001, effective February 15, 2002]

**Rule 41.5 Penalty for failure to satisfy continuing legal education requirements.**

**41.5(1)** Attorneys who fail to comply with the provisions of rule 41.4 or who file a report showing on its face that they have failed to complete the required number of hours of continuing legal education may have their right to practice law suspended by the supreme court, provided that at least 30 days prior to such suspension, notice of such delinquency has been served upon them in the manner provided for the service of original notices in Iowa R. Civ. P. 1.305 or has been forwarded to them by restricted certified mail, return receipt requested, addressed to them at their last-known address. Such attorneys shall be given the opportunity during said 30 days to file in the office of the clerk of the supreme court an affidavit disclosing facts demonstrating their noncompliance was not willful and tendering such documents and sums and penalties which, if accepted, would cure the delinquency, or to file in duplicate in the office of clerk of the supreme court a request for hearing to show cause why their license to practice law should not be suspended. A hearing shall be granted if requested. If, after hearing, or failure to cure the delinquency by satisfactory affidavit and compliance, an attorney is suspended, the attorney shall be notified thereof by either of the two methods above provided for notice of delinquency.

**41.5(2)** Any attorney suspended pursuant to this chapter shall do all of the following:

*a.* Within 15 days in the absence of co-counsel, notify clients in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another lawyer.

*b.* Within 15 days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

*c.* Within 30 days refund any part of any fees paid in advance that have not been earned.

*d.* Within 15 days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, of the suspension and consequent disqualification to act as a lawyer after the effective date of such discipline.

*e.* Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

*f.* Keep and maintain records of the steps taken to accomplish the foregoing.

*g.* Within 30 days file proof with the supreme court and with the Iowa Supreme Court Board of Professional Ethics and Conduct of complete performance of the foregoing, and this shall be a condition for application for readmission to practice.

**41.5(3)** Any attorney suspended pursuant to this chapter shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**41.5(4)** In addition, any attorney who willfully fails to comply with this chapter may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules, upon report filed by the commission with the Iowa Supreme Court Board of Professional Ethics and Conduct.

**41.5(5)** For good cause shown, the commission may, in individual cases involving hardship or extenuating circumstances, grant waivers of the minimum educational requirements or extensions of time within which to fulfill the same or make the required reports. [Court Order April 9, 1975; November 21, 1977; December 6, 1978; January 15, 1979; August 12, 1980; April 25, 1985; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 41.6 Confidentiality.** Unless otherwise directed by the supreme court, the files, records and proceedings of the commission, as they relate to or arise out of any failure of any attorney to satisfy the requirements of this chapter, shall be deemed confidential and shall not be disclosed, except in furtherance of its duties or upon the request of the attorney affected, or as they may be introduced in evidence or otherwise produced in proceedings taken in accordance with this chapter. [Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

**Rule 41.7 Inactive practitioners.** A member of the bar who is not engaged in the practice of law in the state of Iowa as defined in Iowa Ct. R. 39.7, upon application to the commission, may be granted a waiver of compliance with this chapter and obtain a certificate of exemption. No person holding such certificate of exemption shall practice law in this state until reinstated. The supreme court will make rules and regulations governing the continuing legal education requirements for reinstatement of attorneys who, for any reason, have not theretofore been entitled to practice law in this state for any period of time subsequent to their admission to the bar. [Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

**Rule 41.8 Application of this chapter.** This chapter shall apply to every person licensed to practice law in the state of Iowa. [Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

# CHAPTER 42
# REGULATIONS OF THE COMMISSION ON CONTINUING LEGAL EDUCATION

**Rule 42.1 Definitions.** For the purpose of these regulations, the following definitions shall apply:

An *"accredited program or activity"* shall mean a continuing legal education activity meeting the standards set forth in rule 42.3 which has received advanced accreditation by the commission pursuant to rule 42.4.

An *"attorney"* shall mean any person licensed to practice law in the state of Iowa.

The *"commission"* shall mean the Commission on Continuing Legal Education or any division thereof.

An *"hour"* of continuing legal education shall mean a clock-hour spent by an attorney in actual attendance at or completion of an accredited legal education activity.

A *"quorum"* of the entire commission shall mean six or more members of the commission. [Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; February 22, 2002]

**Rule 42.2 Continuing legal education requirement.**

**42.2(1)** A minimum of 15 hours of continuing legal education must be completed by each attorney for each calendar year in the manner stated in Iowa Ct. R. 41.3(1). Effective January 15, 1988, each attorney shall, every two years, complete a minimum of two hours of legal education devoted specifically to the area of legal ethics.

**42.2(2)** Hours of continuing legal education credit may be obtained by attending or participating in a continuing legal education activity, either previously accredited by the commission or which otherwise meets the requirements herein and is retroactively accredited by the commission pursuant to rule 42.4(3).

**42.2(3)** An attorney desiring to obtain credit for one or more succeeding calendar years, not exceeding two such years, for completing more than 15 hours of accredited legal education during any one calendar year, under Iowa Ct. R. 41.3(1), shall report such "carry-over" credit at the time of filing the annual report to the commission on or before March 1 of the year following the calendar year during which the claimed additional legal education hours were completed. [Court Order November 25, 1975; December 6, 1978; January 8, 1988; November 9, 2001, effective February 15, 2002]

**Rule 42.3 Standards for accreditation.**

**42.3(1)** A continuing legal education activity qualifies for accreditation if the commission determines that the activity complies with all of the following:

*a.* It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of an attorney.

*b.* It pertains to common legal subjects or other subject matters which integrally relate to the practice of law.

*c.* It is conducted by attorneys or individuals who have a special education, training, and experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and preferably is accompanied by a paper, manual, or written outline which substantively pertains to the subject matter of the program.

*d.* It is presented live or by computer-based transmission. Activities presented by computer-based transmission must be interactive as defined by the accreditation policies of the commission.

**42.3(2)** No activity will be accredited which involves solely self-study, including television viewing, video or sound recorded programs, or correspondence work, except as may be allowed pursuant to rule 42.5. [Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; February 22, 2002]

**Rule 42.4 Accreditation of programs and activities.**

**42.4(1)** *Prior accreditation of activities.* An organization or person that desires prior accreditation of a course, program or other legal education activity satisfying Iowa Ct. R. 41.2, or an attorney who desires to establish accreditation of such activity prior to attendance, shall apply for accreditation to the commission at least 60 days in advance of the commencement of the activity on a form provided by the commission. The commission shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers, and other pertinent information.

**42.4(2)** *Post-accreditation of activities.* An attorney or organization on behalf of an attorney seeking credit for attendance at or participation in an educational activity which has not received prior accreditation shall submit to the commission, within 30 days after completion of such activity, a request for credit, including a brief résumé of the activity, its dates, subjects, instructors and their qualifications, and the number of credit hours requested therefor. Within 30 days after receipt of such application, the commission shall advise the attorney or organization in writing by ordinary mail whether the activity is accredited and the number of hours allowed therefor. An attorney or organization not complying with the requirements of this rule may be denied credit for such activity. [Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; February 22, 2002]

**Rule 42.5 Hardships or extenuating circumstances.**

**42.5(1)** The commission may, in individual cases involving hardship or extenuating circumstances, grant waivers of the minimum educational requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms prescribed by the commission. A $25 fee will be assessed on all waiver or extension of time applications received after January 15 of the year following the year in which the alleged hardship occurred.

**42.5(2)** Waivers of the minimum educational requirements may be granted by the commission for any period of time not to exceed one year. In the event that the hardship or extenuating circumstances upon which a waiver has been granted continue beyond the period of the waiver, the attorney must reapply for an extension of the waiver. The commission may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the commission.

**42.5(3)** Extensions of time within which to fulfill the minimum educational requirements may, in individual cases involving hardship or extenuating circumstances, be granted by the commission for a period not to exceed six months immediately following expiration of the year in which the requirements were not met. Hours of minimum educational requirement completed within such an extension period shall be applied first to the minimum educational requirement for the preceding year and shall be applied to the current or following year only to the extent that such hours are not required to fulfill the minimum educational requirement for the preceding year. [Court Order November 25, 1975; August 12, 1980; November 9, 2001, effective February 15, 2002]

**Rule 42.6 Exemptions for inactive practitioners.** A member of the bar who is not engaged in the practice of law in the state of Iowa as defined in Iowa Ct. R. 39.7 residing within or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the commission. The application shall contain a statement that the applicant will not engage in the practice of law in Iowa, as defined in Iowa Ct. R. 39.7, without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form prescribed by the commission. [Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

**Rule 42.7 Reinstatement of inactive practitioners.**

**42.7(1)** Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of law in the state of Iowa as defined in Iowa Ct. R. 39.7, satisfy the following requirements for reinstatement:

*a*. Submit written application for reinstatement to the commission upon forms prescribed by the commission together with a reinstatement fee of $25.

*b*. Furnish in the application evidence of one of the following:

(1) Having engaged in the full-time practice of law, as defined in Iowa Ct. R. 39.7, in another state of the United States or the District of Columbia and completion of continuing legal education for each year of inactive status substantially equivalent in the opinion of the commission to that required under chapter 41 of the Iowa Court Rules.

(2) Successful completion of an Iowa state bar examination conducted within one year immediately prior to the submission of such application for reinstatement.

(3) Completion of a total number of hours of accredited continuing legal education computed by multiplying 15 by the number of years a certificate of exemption shall have been in effect for such applicant. The continuing legal education required for reinstatement shall include hours devoted specifically to the area of legal ethics, computed as follows: two hours for every two calendar years following January 15, 1988, in which a certificate of exemption shall have been in effect. Alternatively, the legal ethics requirement may be satisfied by obtaining a scaled score of 80 or higher on the Multistate Professional Responsibility Examination within one year immediately prior to the submission of the application for reinstatement.

**42.7(2)** Notwithstanding that an applicant for reinstatement has not fully complied with the requirements for reinstatement set forth in rule 42.7(1)(*b*), the commission may conditionally reinstate such applicant on such terms and conditions as it may prescribe regarding the period of time in which the applicant shall furnish evidence of compliance with the requirements of rule 42.7(1)(*b*). [Court Order November 25, 1975; July 28, 1977; January 8, 1988; December 15, 1994, effective January 3, 1995; April 10, 1997; November 9, 2001, effective February 15, 2002]

**Rule 42.8 Staff.** The commission may, subject to the approval of the court, employ a director and such other employees as the commission deems necessary to carry out its duties under chapter 41 of the Iowa Court Rules, who shall perform such duties as the commission may from time to time direct. [Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

**Rule 42.9 Divisions.** The commission may organize itself into divisions of not fewer than three members for the purpose of considering and deciding matters assigned to them. [Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

**Rule 42.10 Hearings.** In the event of denial, in whole or in part, of any application, the applicant shall have the right, within 20 days after the sending of the notification of the denial by ordinary mail, to request in writing a hearing before the commission which shall be held within 90 days after receipt of the request for hearing. The decision of the commission after such hearing shall be final. Any hearing on a revocation of the accreditation of an accredited sponsor, the denial of a hardship application, or a recommendation for disciplinary action under Iowa Ct. R. 41.5(4) shall be before a quorum of the entire commission. [Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

**Rule 42.11 Notice of failure to comply.** In the event an attorney fails to comply with the provisions of Iowa Ct. R. 41.4 or files a report showing on its face failure to complete the required number of accredited hours of continuing legal education, the commission shall notify said attorney in writing of such apparent noncompliance and said attorney shall have 15 days from the mailing of said notice to cure said failure to comply or make an appropriate application under rule 42.5. If the failure to comply is not cured or such application not approved, the commission shall report promptly to the supreme court the failure of the attorney to comply with chapter 41 of the Iowa Court Rules. [Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

# CHAPTER 43
# LAWYER TRUST ACCOUNT COMMISSION

**Rule 43.1 Composition.**

**43.1(1)** *Members.* The Lawyer Trust Account Commission shall consist of seven members, four of whom shall be members of the bar of Iowa having their principal offices in this state. Three members shall be residents of this state who are not lawyers.

**43.1(2)** *Appointment.* The members shall be appointed by the supreme court of Iowa.

**43.1(3)** *Terms.* The term of office shall be for three years except that two of the members first appointed shall serve for an initial term of one year and two of the members first appointed shall serve for an initial term of two years. Each member shall continue to serve until a successor is appointed and qualified. No member may serve for longer than two successive terms and until a successor is appointed and qualified.

**43.1(4)** *Vacancies.* Vacancies shall be filled by appointment of a person to serve for the unexpired portion of the vacant term. [Court Order December 28, 1984; November 9, 2001, effective February 15, 2002]

**Rule 43.2 Powers and duties.**

**43.2(1)** *General.* The commission shall have general supervisory authority over the administration of these rules.

**43.2(2)** *Receipt and investment of funds.* The commission shall receive funds from lawyers' interest-bearing trust accounts and make appropriate temporary investments of such funds pending disbursement of them. The commission may also accept funds from other sources. All funds received shall be held by the commission as an agency of the supreme court.

**43.2(3)** *Disbursement of funds.* The commission shall disburse funds received as follows:

*a.* Such sums as are necessary for the employment of staff and administration of activities authorized under these rules.

*b.* The remaining funds for the tax-exempt public purposes which the supreme court may prescribe from time to time consistent with Internal Revenue Code regulations and rulings.

**43.2(4)** *Records and reports.* The commission shall maintain adequate books and records reflecting all transactions and shall submit quarterly reports of its financial and other activities to the supreme court. At least once a year, and at such additional times as the supreme court may order, the commission shall file with the supreme court a written report reviewing in detail the administration of the fund during the year together with an audit of the fund certified by an Iowa certified public accountant. [Court Order December 28, 1984; October 23, 1985, effective November 1, 1985; November 9, 2001, effective February 15, 2002]

**Rule 43.3 Officers.**

**43.3(1)** *Chairperson.* The supreme court shall designate from among the members of the commission a chairperson who will serve as such at the pleasure of the court.

**43.3(2)** *Other officers.* The commission may elect other officers as it deems appropriate and may specify their duties. [Court Order December 28, 1994; November 9, 2001, effective February 15, 2002]

**Rule 43.4 Director.**

**43.4(1)** *Appointment.* The commission may appoint an executive director to serve on a full- or part-time basis at the pleasure of the commission and to be paid such compensation as the commission shall determine.

**43.4(2)** *Duties.* The director shall be responsible and accountable to the commission for the proper administration of these rules.

**43.4(3)** *Services.* The director may employ persons or contract for services as the commission may approve.

**43.4(4)** *Records.* All information obtained by the commission in the administration of these rules shall be public information, except that individual remittance reports with required attachments shall be confidential unless directed by the court or chairperson to be made public. Individual remittance reports and attachments shall be available for examination and reproduction by an officer or agent of the client security and attorney disciplinary commission, for purposes of carrying out duties under chapter 39. [Court Order December 28, 1984; October 23, 1985, effective November 1, 1985; July 26, 1995, effective September 5, 1995; November 9, 2001, effective February 15, 2002]

**Rule 43.5 Compensation and expenses**. Members of the commission shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. All expenses of the operation of the commission shall be paid from funds the commission receives from lawyers' interest-bearing trust accounts or income earned thereon. [Court Order December 28, 1984; November 9, 2001, effective February 15, 2002]

**Rule 43.6 Disposition of funds upon dissolution**. If the Lawyer Trust Account Commission is discontinued, any funds then on hand shall be transferred to its successor agency or organization qualifying under the Internal Revenue Code, if any, for distribution for the purposes specified under rule 43.2 or, if there is no successor, to the general fund of the state of Iowa. [Court Order December 28, 1984; November 9, 2001, effective February 15, 2002]

**Rule 43.7 Supplemental rules**. Subject to approval of the supreme court, the commission may make and adopt rules not inconsistent with these rules to govern the conduct of its business and performance of its duties. [Court Order December 28, 1984; November 9, 2001, effective February 15, 2002]

**Rule 43.8 Immunity and duty to defend and indemnify**. Members of the commission and its staff shall be immune from suit for any conduct in the course of their official duties. In the event this immunity is determined to be inapplicable the state shall defend members of the commission or its staff, and shall indemnify and hold harmless such members against any claim based on any conduct in the course of their official duties, including claims arising under the Constitution, statutes or rules of the United States or of any state. [Court Order April 25, 1985; November 9, 2001, effective February 15, 2002]

# CHAPTER 44
# LAWYER TRUST ACCOUNT COMMISSION GRANT CRITERIA AND GUIDELINES

**Rule 44.1 Interest on lawyers' trust account program (IOLTA).**

**44.1(1)** The Lawyer Trust Account Commission (commission) was created by the supreme court to receive interest on lawyers' pooled trust accounts. Lawyers' pooled trust accounts hold client funds that are so small in amount or held for such a brief period that it is not possible for the funds to economically benefit the individual client. Previously, attorneys' pooled trust accounts earned no interest. Effective July 1, 1985, an interest on lawyers' trust account program (IOLTA) was created to benefit charitable and educational interests. The commission has adopted grant criteria by which the interest earned will be disbursed. The commission reserves the right to change these criteria as it continues to assess how and where its funds might be best used.

**44.1(2)** The commission provides the following information in this chapter to guide grant applicants in applying for funds.

**44.1(3)** Grant applications are available from the commission at the following address:

Lawyer Trust Account Commission
State Capitol
Des Moines, Iowa 50319
(515) 281-3718

[Court Order December 27, 1985, effective February 3, 1986; December 23, 1987; November 9, 2001, effective February 15, 2002]

**Rule 44.2 Statement of purpose.**

**44.2(1)** The commission will use the interest earned on IOLTA accounts as directed by the supreme court. The funds are to be used for the tax-exempt public purposes which the supreme court may prescribe from time to time consistent with Internal Revenue Code regulations and rulings.

**44.2(2)** The IOLTA program is intended to fill a critical need for legal services to the poor in civil cases as well as educational and other specific law-related programs designed to improve the administration of justice in Iowa. [Court Order December 27, 1985, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 44.3 Grant criteria.** The commission desires to make the best use of IOLTA funds and obtain maximum effect from each grant. The following guidelines, with exception where necessary, will be used to assist in the grant decision-making process:

**44.3(1)** The commission favors funding groups or organizations as opposed to individuals.

**44.3(2)** The commission favors challenge grants, or other types of fund-matching arrangements to leverage IOLTA money.

**44.3(3)** Grant applicants should, if possible, have sources of income in addition to the IOLTA funds requested. Generally, the commission does not intend to be the primary source of financial support for a sustained period of time and the applicant should demonstrate an ability to function eventually without the assistance of the commission.

**44.3(4)** Greater weight will be given to applicants with a prior history of service reflecting clear ability to deliver quality services successfully.

**44.3(5)** Greater weight will be given to applicants that work to develop cooperative efforts between grantees in a given service area.

**44.3(6)** The commission prefers to fund applicants that have community support.

**44.3(7)** The commission will fund applicants to achieve broad geographic and demographic distribution of IOLTA funds throughout the state.

**44.3(8)** The commission prefers to avoid replacing other funding sources. The commission also prefers neither to fund agencies primarily funded by state appropriations, nor will funding be granted to state agencies to perform statutory duties.

**44.3(9)** In reviewing grants for renewal, greater weight will be given to previous recipients that have successfully utilized IOLTA funds.

**44.3(10)** All grant recipients are expected to propose criteria by which their projects will be reviewed at least annually and to assist the commission in conducting periodic evaluations.

**44.3(11)** The commission is especially interested in using its limited funds as seed money to establish new programs which contribute to the increased availability of legal services to indigents in all parts of the state or will provide increased education about the rights and responsibilities of all citizens under our legal system.

**44.3(12)** The commission will not fund political campaigns, lobbying or legislative advocacy nor will it fund programs to provide for criminal indigent defense. [Court Order December 27, 1985, effective February 3, 1986; February 27, 1987; November 9, 2001, effective February 15, 2002]

**Rule 44.4 Eligible applicants.** To be eligible to receive funds from the commission an applicant must do all of the following:

**44.4(1)** Qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), or otherwise demonstrate the charitable purposes of the applicant organization and project.

**44.4(2)** Submit a grant application form and written narrative proposal within the commission's time schedule.

**44.4(3)** Respond adequately in the proposal to the commission's grant proposal format.

**44.4(4)** Respond adequately to questions about the application by telephone or in writing.

**44.4(5)** Agree to carry out the program for which funds were requested.

**44.4(6)** Account for the grant funds separately in its financial reporting system.

**44.4(7)** Unless exempted, agree to file with the commission, within 90 days after the end of the grant period, an audit of IOLTA funds received certified by a certified public accountant licensed to practice in Iowa.

**44.4(8)** Report to the commission on progress and results. [Court Order December 27, 1985, effective February 3, 1986; December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.5 Rejection of grant applications.** The commission reserves the right to reject any or all grant applications which do not, in its opinion, meet the purposes of this program. [Court Order December 27, 1985, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 44.6 Grant applications are property of commission.** Upon submission, all grant applications become the property of the commission which has the right to use any or all ideas presented in any application, whether or not the application is approved for funding. All grant applications are open to public inspection and comment upon receipt by the commission. [Court Order December 27, 1985, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 44.7 Grantee costs.** Neither the supreme court nor the commission will be liable for any expenses incurred by any prospective grantee prior to the issuance of the grant. [Court Order December 27, 1985, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 44.8 Inquiry.** Questions should be directed to: Executive Director of the Lawyer Trust Account Commission, State Capitol, Des Moines, Iowa 50319. [Court Order December 27, 1985, effective February 3, 1986; December 23, 1987; November 9, 2001, effective February 15, 2002]

**Rule 44.9 Copies of applications, signature.** Eight copies of a grant application will be required. These copies should be signed by an official who has authority to bind the organization to the proposed obligations. Applications must state that they are valid for a minimum period of 60 days from the date of submission. [Court Order December 27, 1985, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 44.10 Prime grantee responsibility.** A selected grantee will be required to assume responsibility for all services offered in its application. The selected grantee will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the grant. [Court Order December 27, 1985, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 44.11 Access to books and records.** The commission or any of its duly authorized representatives, shall have access for purposes of audit and examination to any books, documents, papers and records of the grantee. [Court Order December 27, 1985, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 44.12 Contract terms.** The grant application must state when the grantee will start the project, which should be within 60 days of the award. If during the performance of the project the grantee deviates from the grant, the grant may, at the discretion of the commission, be terminated at any time. If a dispute arises in the performance of the grant which cannot be settled between the parties, the dispute shall be submitted to arbitration pursuant to Iowa Code chapter 679A. [Court Order December 27, 1985, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 44.13 Project completion date.** The completion date of the project must be specified in the application. If the project will continue for more than one year, the applicant should specify the budget and evaluation cycle on a twelve-month basis. [Court Order December 27, 1985, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 44.14 Additional grant requests.** Applicants who submit proposals in the initial funding cycle will not be precluded from applying in later funding cycles if need exceeds the amount of the initial award. [Court Order December 27, 1985, effective February 3, 1986; November 9, 2001, effective February 15, 2002]

**Rule 44.15 Grant application procedures.** To aid in the comparative evaluation of proposals, all grant applications must be submitted in writing and contain the following information in the order listed:

**44.15(1)** *Organization and contents of proposal.*

*a.* Cover sheet (Rule 44.21, Form 1).

*b.* Summary of grant request (Rule 44.21, Form 2).

*c.* A written narrative proposal on 8½ x 11 inch paper, not to exceed ten double-spaced typewritten pages, which sets forth:

(1) The objectives of the project/organization for which funds are requested.

(2) The methods by which the objectives are to be accomplished.

(3) The qualifications of key individuals responsible for the project/organization.

(4) The period of time expected to complete the project (if applicable).

(5) Whether support has been or is being requested from other funding sources.

(6) The audit mechanism which will be utilized to provide accountability for the requested funds.

(7) The extent to which the program serves a reasonable number of clients, its service area, the nature and scope of legal services provided and its impact on the community's demonstrated needs.

(8) The extent to which two or more programs in the service area cooperate in the provision of legal assistance.

(9) The extent of participation from the bar within the program's service area in the program.

(10) The extent to which the program has systems to assure the quality of services provided.

(11) The plans for evaluating the success of the project/organization in meeting the objectives.

(12) Such additional information as the applicant believes desirable.

*d.* Financial budget form (Rule 44.21, Forms 3, 4, and 5).

*e.* Funding sources (Rule 44.21, Form 6).

*f.* Legal problem categories (Rule 44.21, Form 7).

*g.* Program activity (Rule 44.21, Form 8).

*h.* Nondiscrimination statement (Rule 44.21, Form 9).

*i.* Checklist of enclosures (Rule 44.21, Form 10).

**44.15(2)** *Processing of grant applications.*

*a.* Grant Applications — Application should be directed to the Executive Director of the commission at the following address:

Lawyer Trust Account Commission
State Capitol
Des Moines, Iowa 50319

The commission will make all recommendations on grant awards, subject to final approval by the supreme court.

*b.* Applicant must submit one original and eight complete copies of its proposal.

There can be no extensions of or exceptions to established deadlines.

*c.* Grant awards will be announced by the supreme court or by the commission with the approval of the court. [Court Order December 27, 1985, effective February 3, 1986; December 23, 1987; December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.16** to **44.20** Reserved.

**Rule 44.21 FORMS  Grant Application Forms**
**Rule 44.21  Form 1:** ***Cover Sheet.***

## GRANT APPLICATION

## LAWYER TRUST ACCOUNT COMMISSION

Amount of Grant Request $_____

Name of Organization/Applicant _____

Address _____

City _____ County _____ Zip _____

Telephone Number (include area code) _____

Number of Counties Served _____

Number of Indigent Persons in Service Area _____

Program Director or _____
Chief Executive Officer

_____
Signature

Chairperson or _____
Chief Policy-Making Officer

_____
Signature

Current Fiscal Year Budget $ _____
(Exclude IOLTA Funding)

Define Fiscal Year: Starts _____ Ends _____

Funds Requested are For:

_____ Legal Services for the Poor _____ Law Related Education

_____ Pro Bono _____ Administration of Justice

_____ Other _____

I HEREBY CERTIFY THAT ALL THE INFORMATION CONTAINED IN THIS GRANT PROPOSAL IS ACCURATE AND COMPLETE.

_____ _____
SIGNATURE DATE

[Court Order December 27, 1985, effective February 3, 1986; December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.21  Form 2:** ***Summary of Grant Request.***

## SUMMARY OF GRANT REQUEST

Using only the space provided, summarize those aspects of your grant application that you most wish to highlight to help the Lawyer Trust Account Commission evaluate your proposal.

[Court Order December 27, 1985, effective February 3, 1986; December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.21 Form 3:** ***Financial Budget Form.***

# FINANCIAL BUDGET FORM

Name of Organization/Applicant _____

Please complete the following form on a "grant year" basis. We recognize that many programs do not operate on a fiscal year which coincides with the "grant year," but we need to compare the data you submit with the information provided by other applicants.

Please refer to explanations on reverse side when completing budget request form.

| COST CATEGORY | IOLTA FUNDS REQUESTED | TOTAL BUDGET* |
|---|---|---|
| **PERSONNEL** | | |
| Lawyers No. _____ | | |
| Paralegals No. _____ | | |
| Other No. _____ | | |
| Salary Subtotal _____ | | |
| Employee Benefit _____ | | |
| **Total Personnel Costs** | | |
| **NONPERSONNEL** | | |
| Space | | |
| Equipment | | |
| Supplies | | |
| Telephone | | |
| Travel | | |
| Training | | |
| Library | | |
| Insurance | | |
| Audit | | |
| Litigation | | |
| Capital Additions | | |
| Contract Services | | |
| Other | | |
| **Total Nonpersonnel Costs** | | |
| **TOTAL** | | |

*Excluding IOLTA Funds Requested

Financial Budget Form *(cont'd)*

# FINANCIAL BUDGET FORM

## EXPLANATIONS

**LAWYERS:** This category should include all salaries and wages paid to program attorneys, whether employed directly or supervised by the program (e.g., VISTA volunteers), and whether part time, full time, or temporary.

**PARALEGALS:** This category should include salaries and wages paid to program paralegals, whether employed directly or supervised by the program (e.g., VISTA volunteers), and whether part time, full time, or temporary. Paralegals are persons whose duties consist primarily of such activities as intake interviewing, case investigations, checking court records, legal research, client representation at administrative hearings, and outreach and community work.

**OTHER STAFF:** This category should include salaries and wages paid to all other program staff, whether employed directly or supervised by the program (e.g., VISTA volunteers, CETA workers, etc.), whether administrative/clerical staff, students, or others, and whether full time, part time, or temporary.

**EMPLOYEE BENEFITS:** This category should include all those commonly accepted fringe benefits paid on behalf of employees, such as retirement, FICA, health and life insurance, worker's compensation, unemployment insurance, and other payroll-related costs approved by the program's board of directors.

**SPACE:** This category includes estimated rent, utility payments, and maintenance or janitorial expenses.

**EQUIPMENT RENTAL:** This category includes lease or rental expenses for office furniture, fixtures, and equipment (except telephone). It also includes an estimate of maintenance costs for that equipment whether pursuant to a service contract or an estimate of individual repair bills.

**OFFICE SUPPLIES AND EXPENSES:** This category includes all basic office accessories and supplies, including material used in copiers. Printing and postage, which may be recorded in special accounts, are included in this category. All equipment purchases under $100 may be placed under this line item.

**TELEPHONE:** This category includes estimates for the rent of telephone equipment and long distance calls. Similar and related expenses such as telegraph or other telecommunications should be included as well.

**PROGRAM TRAVEL:** Travel expenses directly related to specific client matters, circuit calls, administration of the program, etc. While most travel placed in this category will be local or intrastate, some interstate travel should also be included here.

**TRAINING:** All nonpersonnel costs to be paid for with regular program funds associated with the training or continuing education of staff members should be included here. Examples would be: travel to/from training events, per diem, conference registration fees or tuition, purchase of training materials, rent for facilities used in a training event, etc. Materials or equipment purchased for training with a value in excess of $100 should be reported under "Capital Additions." No program personnel costs should be included here.

**LIBRARY:** This category includes expenses for the maintenance and normal expansion of office libraries, including subscriptions to periodicals, books, reference materials, and multiple volume sets of law books. Capital additions to the library holdings over $100 should be included under "Capital Additions."

**INSURANCE:** This category includes professional liability insurance, bonding, property insurance (fire and theft), and liability insurance for property and automobiles.

**AUDIT:** This category includes expenses for auditors.

**LITIGATION:** This category includes court costs, witness fees, expert witness expenses, sheriff fees, courthouse copying fees, and other expenses incurred but not recovered in litigation on behalf of eligible clients.

**CAPITAL ADDITIONS:** This category includes equipment and library purchases over $100 per item and other major expenses which occur infrequently (e.g., major renovation). Items included should be certain expenditures (e.g., report "office equipment" rather than "typewriters, dictating equipment, adding machines," etc.).

**CONTRACT SERVICES:** This category includes two sections: one for all payments to private attorneys who provided legal services to clients and the other for service to the program, such as legal counsel for program operations, consultant fees exclusive of those paid for training, use of a computer service bureau, bookkeeping or other accounting services, etc.

**OTHER:** This category includes all program expenses not included above.

[Court Order December 27, 1985, effective February 3, 1986; December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.21 – Form 4:** ***Financial Budget Form – Personnel Costs.***

## FINANCIAL BUDGET FORM

## PERSONNEL COSTS

Please provide a detailed breakdown and explanation by line item of your funding request. Comment on methodology used in determining each funding request for Personnel Costs.

(Attach additional sheets if necessary)

[Court Order December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.21 Form 5:** ***Financial Budget Form Nonpersonnel Costs.***

## FINANCIAL BUDGET FORM

## NONPERSONNEL COSTS

Please provide a detailed breakdown and explanation by line item of your funding request. Comment on methodology used in determining each funding request for Nonpersonnel Costs.

(Attach additional sheets if necessary)

[Court Order December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.21  Form 6:** ***Funding Sources.***

## FUNDING SOURCES

Name of Applicant: _____

List Sources of Public and Private Funds:

Do Not Include Any Estimates for "In-Kind" or Volunteer Services

(EXPLANATION OF "FUNDS" ON REVERSE)

| | SOURCE | AMOUNT |
|---|---|---|
| 1. Local: | | |
| 2. Federal: | | |
| 3. Community Funds: | | |
| 4. Foundations: | | |
| 5. Bar Associations/Groups: | | |
| 6. Individual Contributions: | | |
| 7. Corporate: | | |
| 8. Law Firms: | | |
| 9. Others: | | |
| TOTAL | | |

Funding Sources *(cont'd)*

**EXPLANATION OF "FUNDS"**

1. **LOCAL** — List all public sources of funds from city, county, and state agencies. This does not include federal funds. If the applicant receives allocations through city, county, or state offices, such as social service departments, list sources in this category.

2. **FEDERAL** — List all sources of funds from federal sources including: Legal Services Corporation; Title XX; Title III; Title IV; Community Development Block Grants; Revenue Sharing; Action/VISTA; other federal grants.

3. **COMMUNITY FUNDS** — List community nonprofit organization funds, e.g., United Way, Community Chest, and other consolidated community funds in this category.

4. **FOUNDATIONS** — List private charitable foundation funds in this category.

5. **BAR ASSOCIATIONS/GROUPS** — List state, local and specialty bar associations and related organizations which provide monetary contributions.

6. **INDIVIDUAL CONTRIBUTIONS** — Indicate the total amount of individual contributions received by the program.

7. **CORPORATE** — List all funds received from corporations, corporate foundations, and corporate law departments.

8. **LAW FIRMS** — List all funds received from law firms, including support from annual fundraiser/benefit over $200.00.

9. **OTHER** — List all other sources of income, including special events such as annual benefit or dinner. Continue on another sheet of paper if necessary.

[Court Order December 27, 1985, effective February 3, 1986; December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.21  Form 7:** ***Legal Problem Categories.***

## LEGAL PROBLEM CATEGORIES

Define what is meant by your use of the term "Legal Problem" and "Case" as a measure of services provided:

_____

_____

_____

_____

_____

_____

1. **CONSUMER/FINANCE** — refers to bankruptcy, debtor relief, collections, deficiency, garnishment, contracts, warranties, credit access, energy, loans, installment purchase, public utilities, unfair sales practice, repossession, and other consumer/finance.
2. **EDUCATION/EMPLOYMENT** — refers to education, job discrimination, wage claims, and other employment (including CETA).
3. **FAMILY** — refers to adoption, custody, visitation, dissolution, separation, annulment, guardianship, conservatorship, name change, parental rights termination, paternity, spouse abuse, support, and other family.
4. **JUVENILE** — refers to neglected, delinquent, and other juvenile.
5. **HEALTH** — refers to Medicare, Medicaid, and other health.
6. **HOUSING** — refers to federally subsidized housing rights, home ownership, real property, landlord-tenant, public housing, and other housing.
7. **INCOME MAINTENANCE** — refers to AFDC, welfare, food stamps, social security, SSI, unemployment compensation, veterans benefits, worker's compensation, and other income maintenance.
8. **INDIVIDUAL RIGHTS** — refers to immigration, naturalization, mental health, prisoners' rights, physically disabled rights, and other individual rights.
9. **MISCELLANEOUS** — refers to incorporation, dissolution, license (auto and other), torts, wills, estates, and other miscellaneous.

[Court Order December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.21  Form 8:** ***Program Activity*.**

## PROGRAM ACTIVITY

Please provide information on the number of indigent persons assisted during the year.

| ACTIVITY | NUMBER |
|---|---|
| Counsel and Advice | _____ |
| Brief Service | _____ |
| Referred After Legal Assessment | _____ |
| Insufficient Merit to Proceed | _____ |
| Client Withdrew or Did Not Return | _____ |
| Negotiated Settlement | _____ |
| Admin. Agency Decision | _____ |
| Court Decision | _____ |
| Change in Eligibility | _____ |
| Other | _____ |
| Total Closed Cases | _____ |

**STAFF PATTERN**
Please describe the staffing pattern of your organization by completing the following chart.

| | Full Time | Part Time | Temporary | Volunteer |
|---|---|---|---|---|
| 1. Number of Attorneys | _____ | _____ | _____ | _____ |
| 2. Number of Paralegals | _____ | _____ | _____ | _____ |
| 3. Number of Other Staff | _____ | _____ | _____ | _____ |

COMMENTS: _____

_____

_____

_____

_____

Court Order December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.21  Form 9:** ***Nondiscrimination Statement.***

## NONDISCRIMINATION STATEMENT

On behalf of the _____,
(Organization)

I, _____, the undersigned state

that the _____ does not
(Organization)

discriminate against clients, job applicants, or its employees on the basis of race, creed, color, sex, age, national origin, handicap, or Vietnam veteran status.

_____
(Name)

_____
(Title)

_____
(Date)

[Court Order December 27, 1985, effective February 3, 1986; December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

**Rule 44.21  Form 10:** ***Checklist of Enclosures.***

## CHECKLIST OF ENCLOSURES

Please number and enclose the following supplemental materials with this Grant Application. If your organization has previously submitted any of these items to the Lawyer Trust Account Commission and it is still in full force and effect, check "Submitted Previously" and omit from this application.

| ENCLOSED | SUBMITTED PREVIOUSLY | | ATTACHMENT # |
|---|---|---|---|
| _____ | _____ | List of board members — name, address, occupation, indicate officers, their title and terms | _____ |
| _____ | _____ | Current articles of incorporation or association, bylaws or other organizational documents | _____ |
| _____ | _____ | Proof of tax exempt status and last IRS form 990 | _____ |
| _____ | _____ | Current client financial eligibility guidelines | _____ |
| _____ | _____ | Description of your organization's professional liability coverage | _____ |
| _____ | _____ | A copy of applicant organization's most recent audited financial statement | _____ |
| _____ | _____ | Any evaluation reports prepared by other funding sources within the last two years | _____ |

All documents required shall have attached a certificate signed by the secretary or similar officer that the documents are true and correct copies, have not been retracted or amended, and are in full form and effect.

[Court Order December 27, 1991, effective January 6, 1992; November 9, 2001, effective February 15, 2002]

CHAPTERS 45 to 50
Reserved

**CHAPTER 45**

**CHAPTER 46**

**CHAPTER 47**

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**CHAPTER 50**

# CHAPTER 51
# IOWA CODE OF JUDICIAL CONDUCT


| | |
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| CANON 1 | A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY |
| CANON 2 | A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES |
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# CHAPTER 52
# RULES OF PROCEDURE OF THE STATE OF IOWA COMMISSION ON JUDICIAL QUALIFICATIONS


| | |
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# CHAPTER 51
# IOWA CODE OF JUDICIAL CONDUCT

*CANON 1*

*A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY*

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this code should be construed and applied to further that objective. [Court Order November 9, 2001, effective February 15, 2002]

*CANON 2*

*A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES*

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of the office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

C. A judge shall not hold membership in any organization that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin. [Amended Court Order July 7, 1994, effective September 1, 1994; November 9, 2001, effective February 15, 2002]

*CANON 3*

*A JUDGE SHOULD PERFORM THE DUTIES OF OFFICE IMPARTIALLY AND DILIGENTLY*

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply:

A. *Adjudicative Responsibilities.*

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in all proceedings.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of court staff, court officials, and others subject to the judge's direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before that judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) Subject at all times to the authority of the presiding judge to control the conduct of proceedings before the court to ensure decorum and prevent distractions and to ensure the fair administration of justice in the pending cause, electronic media and still photography coverage of public judicial proceedings in the trial and appellate courts of this state shall be allowed in accordance with the Rules for Expanded Media Coverage found in chapter 25 of the Iowa Court Rules.

(8) A judge shall not in the performance of judicial duties by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon sex, race, national origin, or ethnicity, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(9) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon sex, race, national origin, or ethnicity, against parties, witnesses, counsel or others. This section does not preclude legitimate advocacy when sex, race, national origin or ethnicity are issues in the proceeding.

B. *Administrative Responsibilities.*

(1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require court staff and court officials subject to the court's direction and control to observe the same applicable standards of fidelity and diligence that apply to a judge.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. A judge should exercise the power of appointment only on the basis of merit, avoiding nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

C. *Disqualification.*

(1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following instances:

a. The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

b. The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning the matter;

c. The judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

d. The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person, is any of the following:

i. A party to the proceeding, or an officer, director, or trustee of a party;

ii. Acting as a lawyer in the proceeding;

iii. Known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

iv. To the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should inform himself or herself about any personal and fiduciary financial interests, and make a reasonable effort to be informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

(3) For the purposes of this section:

a. The degree of relationship is calculated according to the civil law system;

b. "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

c. "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

i. Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

ii. An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

iii. The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

iv. Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. *Remittal of Disqualification.* A judge disqualified by the terms of Canon 3(C)(1)(c) or Canon 3(C)(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that the judge's financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding. [Amended Court Order July 19, 1989, effective September 1, 1989; November 9, 2001, effective February 15, 2002]

*CANON 4*

*A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE*

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cast doubt on the judge's capacity to decide impartially any issue that may come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice. [Court Order November 9, 2001, effective February 15, 2002]

*CANON 5*

*A JUDGE SHOULD REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES*

A. *Avocational Activities.* A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of office or interfere with the performance of judicial duties.

B. *Civic and Charitable Activities.* A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of office for that purpose, but may be listed as an officer, director, or trustee of such an organization. A judge should not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. *Financial Activities.*

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) Subject to the requirements of Canon 5(C)(1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, investments and other financial interests that might require frequent disqualification should be divested.

(4) A judge should not accept or solicit a gift, bequest, favor or loan from anyone if the conduct is prohibited by rule 22.22. In addition, neither a judge nor a member of the judge's family should accept a gift, bequest, favor, or loan from anyone except as follows:

a. A judge may accept a gift incident to a public testimonial to the judge; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

b. A judge or a member of the judge's family may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular

course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

c. A judge or a member of the judge's family may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and, if its value exceeds $100, the judge reports it in the statement of personal disclosure required by rule 22.26;

d. For the purposes of Canon 5(C), "member of the judge's family" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(5) A judge is not required by this code to disclose the judge's income, debts, investments, or other financial interests, except as provided in Canon 3 and rule 22.26.

(6) Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's official duties.

D. *Fiduciary Activities.* A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) A judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

E. *Arbitration.* A judge should not act as an arbitrator or mediator.

F. *Practice of Law.* A judge should not practice law after assuming judicial duties. *See* rule 22.11. [Amended Court Order April 29, 1980]

G. *Extra-judicial Appointments.* A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities. [Court Order November 9, 2001, effective February 15, 2002]

*CANON 6*

*COMPENSATION RECEIVED FOR QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES*

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety and the compensation is not prohibited by rules 22.24 and 22.25. [Court Order November 9, 2001, effective February 15, 2002]

*CANON 7*

*A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO THE JUDICIAL OFFICE*

A. *Political Conduct in General.*

(1) A judge should not:

a. Act as a leader or hold any office in a political organization;

b. Make speeches for a political organization or candidate or publicly endorse a candidate for public office;

c. Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

(2) A judge should resign from office when becoming a candidate either in a party primary or in a general election for a nonjudicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if otherwise permitted by law to do so.

(3) A judge should not engage in any political activity except on behalf of measures to improve the law, the legal system, or the administration of justice except as provided in Canon 7(B). [Amended Court Order March 21, 1988, effective May 2, 1988]

B. *Campaign Conduct.*
(1) A judge who is a candidate for retention in judicial office:
a. Should maintain the dignity appropriate to judicial office, and should encourage family members to adhere to the same standards of political conduct that apply to judges;
b. Should prohibit public officials or employees subject to the judge's direction or control from doing for the judge that which is prohibited under this Canon; and except to the extent authorized under Canon 7(B)(2), the judge should not allow any other person to do for the judge that which is prohibited under this Canon;
c. Should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce views on disputed legal or political issues; or misrepresent the judge's identity, qualifications, present position, or other fact.
(2) A judge who is a candidate for retention in office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may establish committees of responsible persons to obtain publicly stated support and campaign funds. [Amended Court Order March 21, 1988, effective May 2, 1988; November 9, 2001, effective February 15, 2002]

*COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT*

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an associate juvenile judge, hospitalization or probate referee, special master, or magistrate, is a judge for the purpose of this code. All judges should comply with this code except as provided below.

A. *Part-time Judge.* A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:
(1) Is not required to comply with Canon 5(C)(2), (D), (E), (F), and (G).
(2) Shall not practice law in the court on which the judge serves.
(3) Shall not practice law before another magistrate or represent a client seeking appellate review of a magistrate's decision. [Amended Court Order December 19, 1979; June 28, 1985, effective July 1, 1985; March 21, 1988, effective May 2, 1988; December 29, 1992, effective January 1, 1993]

B. *Permitted Practices.* When it would not otherwise be prohibited by the code of professional responsibility for lawyers, a magistrate may appear as counsel for a client in a matter that is within the jurisdiction of a magistrate so long as the matter is heard by a district judge or a district associate judge.* Partners or associates of a magistrate may appear before a magistrate other than their partner or associate. [Court Order March 21, 1988, effective May 2, 1988]

C. *Senior or Retired Judge.* A senior judge or a retired judge who is eligible for recall to judicial service should comply with all the provisions of this code except Canons 5(E) and 5(G), but shall not act as an arbitrator or mediator or hold an extra-judicial appointment prohibited by Canon 5(G) while assigned to judicial service or when such action or appointment will interfere with an assignment to judicial service. A senior judge or a retired judge shall not use the title "senior judge" or the title "judge" in any form while acting as an arbitrator or mediator. [Amended Court Order December 19, 1979; April 24, 1981; March 21, 1988, effective May 2, 1988; November 9, 2001, effective February 15, 2002]

*See Iowa Code §602.1605

*EFFECTIVE DATE OF COMPLIANCE*

A person to whom this code becomes applicable should arrange that person's affairs as soon as reasonably possible to comply with it. If, however, the demands of time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this code becomes effective may:

A. Continue to act as an officer, director, or nonlegal advisor of a family business;
B. Continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a family member. [Amended Court Order March 21, 1988, effective May 2, 1988; November 9, 2001, effective February 15, 2002]

# CHAPTER 52
# RULES OF PROCEDURE OF THE STATE OF IOWA COMMISSION ON JUDICIAL QUALIFICATIONS

**Rule 52.1 Authorization and scope.** The rules in this chapter are adopted pursuant to Iowa Code section 602.2105. They apply to all proceedings, functions, and responsibilities of the commission. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.2 Definitions.** In this chapter unless the content or subject matter otherwise requires:

*"Chairperson"* means the presiding officer of the commission and includes the chairperson of the commission, the vice chairperson, or any acting chairperson designated by the commission to preside in the absence of the chairperson.

A *"charge"* is the written specification by which formal proceedings are instituted pursuant to Iowa Code section 602.2104.

*"Commission"* means the commission on judicial qualifications.

A *"complaint"* shall be any written communication to the commission which indicates a violation of Iowa Code section 602.2106(3).

*"Employee"* means an officer or employee of the judicial branch, except a judicial officer subject to the jurisdiction of the commission.

*"Judicial officer"* means a supreme court justice, a court of appeals judge, a district court judge, a district associate judge, associate juvenile judge, associate probate judge, or magistrate of this state subject to the jurisdiction of the commission.

*"Oath"* is synonymous with "affirmation" and *"swear"* is synonymous with "affirm."

*"Shall"* is mandatory and *"may"* is permissive. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.3 Officers and staff.**

**52.3(1)** The commission shall elect a chairperson and a vice chairperson to serve for the calendar year and until successors are elected.

**52.3(2)** The state court administrator or designee of the state court administrator shall be executive secretary of the commission.

**52.3(3)** The commission may employ such additional investigative personnel as it deems necessary.

**52.3(4)** The commission may employ or contract for the employment of legal counsel. However, the attorney general shall prosecute the charge(s) before the commission on behalf of the state. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.4 Replacement of interested judicial member.**

**52.4(1)** If the judicial member of the commission is the subject of a complaint before the commission under rule 52.9, the chief justice of the supreme court shall appoint a district judge of another judicial district to the commission until the person charged is exonerated, or for the unexpired portion of the term if the person charged is not exonerated.

**52.4(2)** If the judicial member of the commission is a resident judge of the same judicial district as the judicial officer who is the subject of a complaint before the commission under rule 52.9, the chief justice of the supreme court shall appoint a district judge of another judicial district to the commission to act as the judicial member during that proceeding. However, if the judicial member recuses himself or herself from the matter prior to the commission acting on the complaint, and a quorum is present to act on the matter, the judicial member shall not be replaced by the chief justice of the supreme court, unless formal proceedings under rule 52.12 are commenced.

**52.4(3)** The executive secretary shall notify the chief justice of the supreme court of any need for such replacement appointment. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.5 Confidentiality.**

**52.5(1)** Notwithstanding the provisions of Iowa Code chapters 21 and 22, all records, papers, proceedings, meetings, and hearings of the commission shall be confidential, unless the commission applies to the supreme court to retire, discipline, or remove a judicial officer or employee.

**52.5(2)** If the commission applies to the supreme court to retire, discipline, or remove a judicial officer or employee the following records and papers shall become public documents:

*a.* The initial complaint(s).

*b.* The notice of charge(s) filed by the commission initiating the charge(s) against the judicial member or employee.

*c.* All pleadings, motions and discovery filed with the commission after the notice of charge(s).

*d.* A transcript of any hearing of the commission that was made by a certified shorthand reporter.

*e.* All exhibits admitted at any hearing of the commission.

*f.* The application of the commission made to the supreme court.

**52.5(3)** Any records and papers contained in the commission's investigation file shall remain privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the judicial officer, employee, the attorneys, or the attorneys' agents involved in the proceeding before the commission. The judicial officer, employee, the attorneys, or the attorneys' agents involved in the proceeding before the commission shall not disclose any records and papers contained in the commission's investigation file to any third parties unless disclosure is required in the prosecution or defense of the charges. The records and papers contained in the commission's investigation file shall not be admissible in evidence in a judicial or administrative proceeding other than the formal commission proceeding under rule 52.12.

**52.5(4)** Every witness in every proceeding under this chapter shall swear or affirm to tell the truth, and not to disclose the existence of the proceedings or the identity of the judicial officer or employee until the proceeding is no longer confidential under these rules.

**52.5(5)** All communications, papers, and materials concerning any complaint which may come into the hands of a commission member shall remain confidential and the member shall keep the same in a safe and secure place.

**52.5(6)** All statements, communications, or materials received by any person investigating any complaint on behalf of the commission shall be confidential.

**52.5(7)** The executive secretary, chairperson or a member of the commission designated by the chairperson may issue one or more clarifying announcements when the subject matter of a complaint or charge(s) is of broad public interest and failure to supply information on the status and nature of the formal proceedings could threaten public confidence in the administration of justice. No other member of the commission shall make any public statement concerning any matter before the commission without prior approval of the commission.

**52.5(8)** Nothing in this chapter shall prohibit the commission from releasing any information regarding possible criminal violations to appropriate law enforcement authorities, wherever located, or any information regarding possible violations of the Iowa Code of Professional Responsibility for Lawyers to the Iowa Supreme Court Board of Professional Ethics and Conduct. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.6 Meetings.** The commission shall meet at least once in each calendar quarter. Meetings may be held by telephone conference or at such place as the chairperson may designate if no member of the commission objects. If there is an objection by a member of the commission to holding a meeting by telephone conference or at a place other than the Statehouse in Des Moines, the meeting shall be held at the Statehouse in Des Moines. Special meetings may be called by the chairperson or at the request of three or more members of the commission. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.7 Quorum.** A quorum for the transaction of business by the commission shall consist of four members. Only members present may vote. Members participating in a telephone conference shall be deemed to be present at the meeting. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.8 Minutes.** Minutes shall be kept of each meeting of the commission and shall record the action taken, the names of those present, and any other matter that the commission may deem appropriate. The minutes shall be confidential. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.9 Complaints.**

**52.9(1)** A complaint shall be in writing but may be simple and informal. It shall be mailed to or filed with the executive secretary of the commission.

**52.9(2)** The executive secretary shall promptly acknowledge receipt of any writing and transmit a copy of the writing to each member of the commission.

**52.9(3)** A complaint may be initiated by the commission's own motion. A separate writing signed by the chairperson shall be filed with the commission if the complaint was initiated on the commission's own motion. This filing shall constitute the complaint. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.10 Initial inquiry.**

**52.10(1)** Upon receipt of a complaint a determination shall be made whether or not the complaint is of substantial nature and involves matters which could be grounds for a charge within the jurisdiction of the commission to make application to the supreme court:

*a.* To retire a judicial officer or employee for permanent physical or mental disability which substantially interferes with the performance of his or her duties.

*b.* To discipline or remove a judicial officer or employee for persistent failure to perform duties, habitual intemperance, willful misconduct in office, conduct which brings the judicial office into disrepute, or a substantial violation of the canons of judicial ethics.

**52.10(2)** If the commission finds the complaint on its face is clearly unfounded, frivolous, or could not be the basis for a charge within the jurisdiction of the commission, the complaint shall be dismissed with notice to the complainant.

**52.10(3)** If the commission finds the complaint on its face is substantial, and, if true, would warrant application to the supreme court the commission may formulate a charge and institute formal proceedings, without any further inquiry or investigation.

**52.10(4)** Upon the making of the determination provided in rule 52.10(1), when the commission has received a complaint or initiated a complaint on its own motion, the commission or the chairperson may direct that an additional inquiry be made by the executive secretary, or a commission member. The chairperson of the commission may further direct that the judicial officer or employee about whom a complaint has been made be notified that a complaint has been received, and of the substance of the complaint. When such notice is directed it shall advise the judicial officer or employee that the matter is in a preliminary stage and is not the subject of a formal investigation under rule 52.11(1), nor is the notice intended to be notice required under rule 52.11(2) of the commission. In such circumstances the judicial officer or employee shall be notified that because of the substance of the complaint or the commission's concern, the commission or chairperson feels that it would be desirable for the judicial officer or employee to provide in writing a report to the commission concerning matters referred to in the notice, and that it is requested, but not required, that the judicial officer or employee give to the commission such report.

**52.10(5)** The commission or the chairperson may request the complainant to clarify the complainant's original statement to furnish additional information, to disclose sources of information, or to verify by affidavit statements of fact within the complainant's knowledge.

**52.10(6)** The commission or the chairperson may also initiate inquiries of other sources.

**52.10(7)** The commission shall dismiss the complaint and so inform the complainant if the initial inquiry confirms the fact that the complaint is clearly unfounded, frivolous, or could not be the basis for a charge within the jurisdiction of the commission. If the judicial officer or employee has been given notice of the initial inquiry as contemplated in rule 52.10(4), the judicial officer or employee shall likewise be informed of the dismissal of the complaint.

**52.10(8)** If after the initial inquiry the complaint appears to be substantiated in whole or in part but does not warrant application to the supreme court the commission may dispose of the complaint informally by conference with or communication to the judicial officer or employee. The complainant shall be notified of such action.

**52.10(9)** The commission shall direct that an investigation of the complaint be made if the initial inquiry indicates that the complaint may constitute a charge within the commission's jurisdiction and formal proceedings have not been initiated.

**52.10(10)** The commission may formulate a charge and institute formal proceedings if the initial inquiry indicates that the matter investigated appears to be substantiated and, if true, would warrant application to the supreme court. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.11 Investigation and disposition.**

**52.11(1)** The commission may direct an investigation on its own motion, without any initial inquiry under rule 52.10.

**52.11(2)** The judicial officer or employee involved shall be notified of the investigation and the nature of the complaint. The commission in its discretion may disclose the name of the complainant or that the investigation is on the commission's own motion. Notification shall be by prepaid certified or registered mail marked "confidential" and addressed to the judicial officer's chambers, employee's business address or last known residence of the judicial officer or employee. The judicial officer or employee may be requested to provide in writing a report to the commission concerning matters referred to in the complaint. The judicial officer or employee shall be notified that it is not mandatory that the judicial officer or employee provide such report.

**52.11(3)** In the event the investigation indicates that the complaint has merit, then the commission in its discretion may grant to the judicial officer or employee an opportunity to present to the commission such information relevant to the complaint as the judicial officer or employee may desire to submit.

**52.11(4)** The commission shall dismiss the complaint and so inform the judicial officer or employee and the complainant if the investigation shows it to be groundless.

**52.11(5)** After the investigation, if the complaint appears to be substantiated in whole or in part but does not warrant application to the supreme court, the commission may dispose of the complaint informally by conference with or communication to the judicial officer or employee. The complainant shall be notified of such action.

**52.11(6)** The commission shall formulate a charge and institute formal proceedings if the investigation indicates that the matter investigated appears to be substantiated and, if true, would warrant application to the supreme court. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.12 Formal proceedings.**

**52.12(1)** The service of the notice of charge(s) shall constitute the commencement of formal proceedings against a judicial officer or employee.

**52.12(2)** Formal proceedings to inquire into a charge shall be entitled "Before the Commission on Judicial Qualifications, State of Iowa. Inquiry Concerning (name of judicial officer or employee)."

**52.12(3)** The notice of charge(s) shall specify the charge(s) against the judicial officer or employee with a concise, general summary of the alleged facts on which it is based, and shall state the time and place of hearing. The hearing shall be held in the county where the judicial officer or employee resides unless the commission and the judicial officer or employee agree to a different location.

**52.12(4)** The notice of charge(s) shall be signed by the chairperson of the commission or on the chairperson's behalf by the executive secretary of the commission pursuant to the express direction of the chairperson.

**52.12(5)** The notice of charge(s) shall be sent by prepaid certified or registered mail addressed to the judicial officer or employee at the judicial officer's or employee's residence and marked "confidential," at least 20 days prior to the time set for the hearing.

**52.12(6)** A copy of the complaint upon which the notice of charge(s) is based and the complete investigative file shall be sent to the judicial officer or employee with the notice of charge(s). The investigative file of the commission does not include the recommendations of the attorney general to the commission. The recommendations of the attorney general to the commission are privileged and are not to be transmitted. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.13 Answer.** Within 15 days after service of the notice of formal proceedings, the judicial officer or employee may file a verified answer at the office of the commission in the Statehouse in Des Moines. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.14 Allowable motions – prehearing conference.**

**52.14(1)** The following prehearing motions may be filed:

*a.* A judicial officer or employee may request that the hearing be held at a place other than the county where the judicial officer or employee resides. Such motion shall be contained in the answer or filed with the commission in the time for filing an answer. The chairperson or a member of the commission designated by the chairperson shall have authority to rule on this motion. A hearing need not be held prior to entering a ruling. Any hearing may be held telephonically and without a record being made of the hearing.

*b.* Either party may file a motion regarding discovery disputes which shall be governed by rule 52.15.

*c.* Either party may request a prehearing conference. The chairperson or a member of the commission designated by the chairperson may conduct the prehearing conference. The prehearing conference may be held telephonically and without a record being made of the hearing. The commission on its own motion may require a prehearing conference.

*d.* Either party may file a motion for a continuance which may be granted pursuant to rule 52.16.

**52.14(2)** The commission will not consider any other prehearing motions or applications.

**52.14(3)** The commission will not consider any dispositive motions prior to the close of all the evidence of a hearing.

**52.14(4)** The action of the chairperson or a single member of the commission designated by the chairperson under rule 52.14, 52.15 or 52.16 may be reviewed by the commission on its own motion or a motion of a party. A motion by a party for review of an action of the chairperson or a single member of the commission designated by the chairperson shall be served and filed within ten days after the filing of the challenged order. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.15 Discovery.**

**52.15(1)** In any formal proceeding taken by the commission, discovery shall be permitted as provided in Iowa R. Civ. P. 1.501 to 1.517 inclusive; 1.701 and 1.702; and in 1.714 to 1.717. The judicial officer or employee against whom a notice of charge(s) has been filed, in addition to the restriction stated in Iowa R. Civ. P. 1.503(1), shall not be required to answer an interrogatory pursuant to Iowa R. Civ. P. 1.509, a request for admission pursuant to Iowa R. Civ. P. 1.510, a question upon oral examination pursuant to Iowa R. Civ. P. 1.701, or a question upon written interrogatories, pursuant to Iowa R. Civ. P. 1.710, if the answer would be self-incriminatory. In addition thereto, evidence and testimony may be perpetuated as provided in Iowa R. Civ. P. 1.721 to 1.728.

**52.15(2)** The time to respond to any discovery allowed under rule 52.15(1) shall be 15 days, regardless of time allowed by the Iowa Rules of Civil Procedure.

**52.15(3)** All discovery shall be timed so that it is completed, including the time to receive responses to all propounded discovery, no later than 50 days after service of the notice of charge(s).

**52.15(4)** All motions or applications pertaining to discovery shall be filed with the commission as soon as practicable. The chairperson or a member of the commission designated by the chairperson shall have authority to rule on any motions or applications. A hearing need not be held prior to entering a ruling. Any hearing may be held telephonically and without a record being made of the hearing. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.16 Continuances.** The commission may grant reasonable continuances but only upon written application supported by affidavit. The motion for continuance shall be filed with the commission as soon as the reason for continuance becomes apparent to the movant. The chairperson or a member of the commission designated by the chairperson shall have authority to rule on any motion for continuance. A hearing need not be held prior to entering a ruling. Any hearing may be held telephonically and without a record being made of the hearing. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.17 Final hearing.**

**52.17(1)** The commission may proceed with the final hearing at the time and place set, whether or not the judicial officer or employee has filed an answer or appears at the hearing.

**52.17(2)** The chairperson of the commission shall preside over and conduct the final hearing. The presentation of evidence shall conform to the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence insofar as such rules may be applicable to cases tried in equity.

**52.17(3)** All evidence received shall be taken only on oath or affirmation.

**52.17(4)** The attorney general, on behalf of the state, shall present the case in support of the charge(s) before the commission.

**52.17(5)** A complete record of the evidence shall be made by a certified shorthand reporter. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.18 Procedural rights of judicial officer or employee.**

**52.18(1)** The judicial officer or employee may defend and shall have the right to participate in the proceedings in person and by counsel, to cross-examine, to be confronted by witnesses, and to present evidence in accordance with the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence.

**52.18(2)** A judicial officer shall continue judicial duties during the pendency of any complaint, charge(s), investigation, or formal proceeding unless otherwise ordered by the commission. An employee shall continue his or her duties during the pendency of any complaint, charge(s), investigation, or formal proceeding unless otherwise ordered by the commission. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.19 Amendment to notice of charge(s) or answer.** Amendments shall be governed by the Iowa Rules of Civil Procedure. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.20 Subpoena power.**

**52.20(1)** The commission shall have subpoena power during any investigation conducted on its behalf compelling the appearance of persons or the production of documents before the person designated to conduct the investigation on behalf of the commission. [Court Order November 9, 2001, effective February 15, 2002]

**52.20(2)** The commission shall have subpoena power on behalf of the state and the judicial officer or employee compelling the appearance of persons or the production of documents during discovery and the final hearing.

**52.20(3)** Disobedience of the commission's subpoena shall be punishable as contempt in the district court in and for the county in which the hearing is to be held or where the investigation is being conducted.

**52.20(4)** Any application for a subpoena shall be made to the commission's executive secretary or chairperson. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.21 Privilege in defamation actions.** The making of charges before the commission, the giving of evidence or information before the commission or to its investigator and the presentation of transcripts, extensions of evidence, briefs, and arguments in the supreme court shall be privileged in actions for defamation. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.22 Physical or medical examinations.** Where a judicial officer's or employee's physical or mental health is in issue, the commission may order the judicial officer or employee to submit to a physical or mental examination by a duly licensed health care professional designated by the commission. The failure of the judicial officer or employee to submit to a physical or mental examination ordered by the commission may be considered by the commission, unless it appears that such failure was due to circumstances beyond the control of the judicial officer or employee. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.23 Compensation of witnesses.** Each witness compelled to attend any proceedings under this chapter, other than an officer or employee of the state or a political subdivision, shall receive for attendance the same fees and mileage allowed by law to a witness in a civil case, payable from the commission's funds. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.24 Findings and determination by commission.**

**52.24(1)** In accordance with its findings on the evidence at the hearing, the commission shall dismiss the charge(s) or make application to the supreme court to retire, discipline, or remove the judicial officer or employee. A copy of the application shall be sent to the judicial officer or employee by prepaid certified or registered mail. Copies shall also be provided to the attorneys of record.

**52.24(2)** Any application by the commission to the supreme court or any action by the commission which affects the final disposition of a complaint shall require the affirmative vote of at least four commission members who were present at the hearing.

**52.24(3)** Any person filing a complaint with the commission shall be notified by ordinary mail of its final disposition. [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.25 Application to supreme court.** If the commission makes application to the supreme court to retire, discipline, or remove a judicial officer or employee, it shall promptly file in the supreme court all items set forth in rule 52.5(2). [Court Order November 9, 2001, effective February 15, 2002]

**Rule 52.26 Letters of caution and warning.** In some cases, the commission may conclude that a judicial officer's or employee's conduct has been questionable but does not amount to misconduct, or that misconduct of a very minor nature has occurred which does not warrant formal discipline. In these cases, the commission may inform the judical officer or employee that no present formal disciplinary action will be taken but that the judge should avoid similar conduct in the future. [Court Order November 9, 2001, effective February 15, 2002]

Historical notes from Third Edition of the Iowa Court Rules:
[Court Order December 26, 1985, effective February 3, 1986; April 30, 1987, effective June 1, 1987; August 31, 1987, effective October 1, 1987; January 10, 1990; July 5, 2000]