

In the Supreme Court of Iowa

**Adoption of Clarifying
Amendments to New
Discovery Rules and Forms**)
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Order

CLERK SUPREME COURT

On January 1, 2015, changes to the Iowa Rules of Civil Procedure relating to disclosure and discovery took effect.

Since January 1, the court has received feedback requesting clarifications to these new rules and forms in three areas. After consulting with the Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations chaired by Justice Edward Mansfield, and the implementation committee chaired by Chief Judge Marlita Greve, the Iowa Supreme Court has decided to make clarifying changes in all three areas. They are as follows.

A. Exemption of Domestic Relations Proceedings from the New Discovery Conference and Trial Scheduling Requirements.

A concern has been raised in several judicial districts that the new rules have led to an unanticipated change in how family law cases are processed. In those districts, family law cases historically have not gone through the same civil trial setting process as other civil cases. A further concern has been raised that the discovery conference requirement may not be well-suited to family law cases because of the number of pro se litigants.

An Iowa Family Law Case Processing Reform Task Force was recently formed. This task force, chaired by Justice Thomas Waterman, is expected to identify best practices for family law case processing for statewide adoption.

Accordingly, the supreme court has decided to suspend the new requirements relating to initial discovery conferences and trial setting as

they apply to domestic relations cases. These matters will be reviewed by Justice Waterman's task force.

The accompanying amendments to rules 1.507(1) and 1.906 are designed to achieve that purpose. No change is being made concerning initial disclosures except the deadline for initial disclosures must be modified in domestic relations cases, because under rule 1.500(1) it is tied to the date of the initial discovery conference, which will no longer be required in domestic relations cases. Thus, rule 1.500(1) is being amended to provide that in domestic relations proceedings initial disclosures must occur "within 60 days of filing of petition unless a different time is set by stipulation or court order or unless the court, upon motion, relieves the parties from the obligation to provide initial disclosures."

B. Signature Block on Trial Scheduling and Discovery Plan Forms.

In the versions that became effective January 1, 2015, Rule 23.5—Form 2: Trial Scheduling and Discovery Plan and Form 3: Trial Scheduling and Discovery Plan for Expedited Civil Action retained an "optional" signature block from the former Rule 23.5—Form 2: Trial Scheduling Order. Under EDMS, however, at least one party to the action *must sign* the new rule 23.5 forms 2 and 3 for proper electronic filing. This has led to some confusion.

To eliminate this confusion, the court approves amendments to the new forms that provide the standard EDMS signature block and clarify that at least one party must sign the form.

C. Deadline for Pretrial Submissions on Trial Scheduling and Discovery Plan Forms.

In the versions of Rule 23.5—Form 2 and Form 3 that became effective January 1, 2015, it was intended that the standard deadline for

final pretrial submissions would be 14 days before trial and that the parties could propose a modified deadline, but not less than 7 days before trial. This would insure that the court receives the submissions at least 7 days before trial. The wording in paragraph 9 of both forms, however, has led to confusion. To eliminate the confusion, the court approves a further amendment to both forms.

The amendments to rules 1.500(1), 1.507(1), 1.906, and 23.5—Forms 2 and 3 effectuated by this order are provided herewith.

The amendments to rules 1.500(1), 1.507(1), 1.906 are effective immediately, subject to Legislative Council review pursuant to Iowa Code section 602.4202.

The amendments to rule 23.5—Forms 2 and 3 are effective immediately.

Dated this 1st day of April, 2015.

The Supreme Court of Iowa

By Mark S. Cady
Mark S. Cady, Chief Justice

CHAPTER 1
RULES OF CIVIL PROCEDURE
DIVISION V
DISCOVERY AND INSPECTION

Rule 1.500 Duty to disclose; required disclosures.

1.500(1) *Initial disclosures*

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f. Time for initial disclosures in general. Except in domestic relations proceedings, a party must make the initial disclosures at or within 14 days after the parties' rule 1.507 discovery conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure. In domestic relations proceedings, a party must make the initial disclosures within 60 days of filing of the petition unless a different time is set by stipulation or court order or unless the court, upon motion, relieves the parties from the obligation to provide initial disclosures.

CHAPTER 1
RULES OF CIVIL PROCEDURE
DIVISION V
DISCOVERY AND INSPECTION

Rule 1.507 Discovery conference.

1.507(1) *Conference timing.* Except in a proceeding exempt from initial disclosure under rule 1.500(1)(e), a domestic relations proceeding, or when the court orders otherwise, the parties must confer as soon as practicable, but no later than 21 days after any defendant has answered or appeared. The plaintiff must notify all parties of the discovery conference deadline. Except as otherwise stipulated or ordered by the court, the filing of a pre-answer motion under rule 1.421 does not affect the obligation to participate in the discovery conference or to make disclosures required by rule 1.500(1).

CHAPTER 1
RULES OF CIVIL PROCEDURE
DIVISION IX
TRIAL AND JUDGMENT

Rule 1.906 Civil trial-setting conference. Except in domestic relations proceedings, ~~No~~ no later than 21 days after any defendant has answered or appeared, the clerk shall provide a notice of civil trial-setting conference to all parties not in default. The clerk shall use Iowa Court Rule 23.5—Form 1: Notice of Civil Trial-Setting Conference, to provide the notice. The notice shall schedule a trial-setting conference no earlier than 35 days after and no later than 50 days after any defendant has answered or appeared. The parties are responsible for obtaining a timely trial-setting conference regardless of whether a party receives notice of the trial-setting conference. Failure to receive notice shall not be grounds to avoid dismissal under rule 1.944. A party may move for an earlier trial-setting conference upon giving notice to all parties. The court and the parties shall use Iowa Court Rule 23.5—Form 2: Trial Scheduling and Discovery Plan to set the trial date. If a trial is continued, the court shall set the trial to a date certain. Unless otherwise ordered, all previous deadlines will continue to apply to the case.

Rule 23.5—Form 2: Trial Scheduling and Discovery Plan

Do not file this form in an Expedited Civil Action case, instead use Form 3.

- This form is to be filed within 7 days after the parties' discovery conference and before the trial-setting conference with the court.
- The parties should complete the entire form except as otherwise indicated.

In the Iowa District Court for _____ County	
<p>_____</p> <hr/> <p>Plaintiff(s) / Petitioner(s) <i>Full name: first, middle, last</i></p> <p>vs.</p> <p>_____</p> <hr/> <p>Defendant(s) / Respondent(s). <i>Full name: first, middle, last</i></p>	<p>No. _____</p> <p style="text-align: center;">Trial Scheduling and Discovery Plan</p> <p style="text-align: center;"><i>Use of this form is mandatory</i></p> <p>Date Petition filed: _____ / _____ / _____ <i>mm</i> <i>dd</i> <i>yyyy</i></p> <p>Case type: <input type="checkbox"/> Law <input type="checkbox"/> Equity <input type="checkbox"/> Other <input type="checkbox"/> PCR <input type="checkbox"/> Judicial Review</p> <p>Trial type: <input type="checkbox"/> Jury <input type="checkbox"/> Nonjury</p> <p>Expected trial length: _____ days</p> <p>The amount in controversy exceeds \$10,000. <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

Appearances:

Plaintiff(s) / Petitioner(s)

Defendant(s) / Respondent(s)

It is ordered:

1. Trial *Note to parties: Unless you have obtained a trial date from court administration, leave this date blank; the court will enter the date after the trial-setting conference.*

Trial of this case is set for _____, 20_____, at _____:_____.
Month *Day* *Year* *Time* a.m. p.m.

in the district court in the courthouse of the county named above.

2. Pretrial conference *Check one. Note to parties: If box A is checked, leave the date blank unless you have obtained a pretrial conference date from court administration. If you do not have a pretrial conference date and check box A, the court will enter the date, by order, after the trial-setting conference.*

A. A pretrial conference will be held on _____, 20_____, at _____:_____.
Month *Day* *Year* *Time* a.m. p.m.

The conference may be held telephonically with prior approval of the court.

B. A pretrial conference will be held upon request.

3. New parties

No new parties may be added later than 180 days before trial or _____ / _____ / _____.
mm *dd* *yyyy*

If you need assistance to participate in court due to a disability, contact the disability coordinator at: (_____) _____. Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). Disability coordinators cannot provide legal advice. Disability coordinator contact information available at: http://www.iowacourts.gov/Administration/Directories/ADA_Access/

4. Transcripts and records

All required agency records or prior criminal transcripts will be filed within 30 days of the date of this Plan or by / / .
mm dd yyyy

5. Pleadings

Pleadings will be closed 60 days before trial or / / .
mm dd yyyy

6. Initial disclosures *Check all that apply*

- A. The parties have exchanged initial disclosures.
- B. The parties will provide initial disclosures no later than _____.
- C. The parties have stipulated that the following will not be included in initial disclosures:
List items not included

- D. The parties have stipulated not to provide any initial disclosures.
- E. The following party objects to providing initial disclosures on the following grounds:
Identify the party and state all applicable grounds

7. Discovery

The parties have held a discovery conference as required by Iowa Rule of Civil Procedure 1.507.

All written discovery will be served no later than 90 days before trial. All depositions will be completed no later than 60 days before trial. Or, all discovery will be completed by

 / / .
mm dd yyyy

Check all that apply

- A. No discovery of electronically stored information is expected in this case.
- B. The parties have conferred about discovery of electronically stored information and reached agreement as set out in Attachment ____.
- C. The parties have conferred about discovery of electronically stored information and have been unable to reach an agreement. *Note to parties: If box C is checked, leave the following information blank unless the parties have obtained a hearing date, time, and location from court administration.*

A hearing is set for / / , at: : a.m. p.m.
mm dd yyyy Time

at the _____ County Courthouse, courtroom _____, or
County Courtroom number

at the following location: _____.

- D. The parties have agreed to a discovery plan, and their agreement is set forth in Attachment ____.
- E. The parties have agreed to deviate from the limits on discovery otherwise applicable to this action, and their agreement is set forth in Attachment ____.
- F. The parties have agreed to conduct discovery in phases, and their agreement is set forth in Attachment ____.

include the following information about the evidence that the disclosing party may present at trial other than solely for impeachment:

- (1) The name and, if not previously provided, the address, telephone numbers, and electronic mail address of each witness, separately identifying those the party expects to present and those the party may call if the need arises.
 - (2) The page and line designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition.
 - (3) An identification of each document or other exhibit, including summaries of other evidence, separately identifying those items the party expects to offer and those it may offer if the need arises. The following rules govern exhibits and exhibit lists:
 - a. Plaintiff will use numbers and Defendant will use letters. Pretrial exhibit lists will identify each exhibit by letter or number and description. Exhibits must be marked before trial.
 - b. Immediately before commencement of trial, the court must be provided with a bench copy, and the court reporter with a second copy, of the final exhibit list for use in recording the admission of evidence.
 - c. In nonjury cases, immediately before commencement of trial, parties must provide the court with a bench copy of all exhibits identified on the exhibit lists.
 - d. Within 7 days after the filing of an exhibit list, or within 4 days if the deadline for filing of the list is less than 10 days before trial, counsel and self-represented litigants must file with the clerk of court, and serve on each party, any identification, authentication, and foundation objections to the exhibits listed; otherwise such objections are deemed **waived** for trial purposes. In electronic cases, any identification, authentication, and foundation objections will be electronically filed, and the EDMS system will serve copies on all registered parties. Electronic filing of these objections must be done within 7 days of the filing of an exhibit list, or within 4 days if the deadline for filing of the list is less than 10 days before trial; otherwise, such objections are deemed **waived** for trial purposes.
- B. File and serve **motions in limine**, with supporting legal authority.
- C. File and serve **all proposed jury instructions** in a form to be presented to the jury, including a statement of the case, the stock jury instruction numbers, and verdict forms. The court must be provided the instructions in written form and electronically.
- D. Deliver to the judge and serve a concise **trial brief** addressing factual, legal, and evidentiary issues, with citation to legal authorities.

10. Motions

All motions including motions for summary judgment and except motions in limine, must be filed with the clerk of court's office or electronically filed at <https://www.iowacourts.state.ia.us/EFile/> at least 60 days before trial, with copies to the assigned judge.

11. Settlement conference *Note to parties: If A or B is checked, leave any date blank; the court will enter the settlement conference date, by order, after the trial-setting conference.*

A. A settlement conference will be held on _____, 20____, at _____:____ a.m. p.m.
Month Day Year Time
 at the _____ County Courthouse.

All parties with authority to settle must be present.

B. A settlement conference will be held on _____, 20____, at _____:____ a.m. p.m.
Month Day Year Time
 at the following location _____.

All parties with authority to settle must be present.

Rule 23.5—Form 3: Trial Scheduling and Discovery Plan for Expedited Civil Action

Use of this form is mandatory in Expedited Civil Actions under Iowa Rule of Civil Procedure 1.281.

- This form is to be filed within 7 days after the parties' discovery conference and before the trial-setting conference with the court.
- The parties should complete the entire form except as otherwise indicated.

In the Iowa District Court for _____ County	
<p>_____</p> <p>_____</p> <p>Plaintiff(s) / Petitioner(s) <i>Full name: first, middle, last</i></p> <p>vs.</p> <p>_____</p> <p>_____</p> <p>Defendant(s) / Respondent(s) <i>Full name: first, middle, last</i></p>	<p>No. _____</p> <p>Trial Scheduling and Discovery Plan for Expedited Civil Action</p> <p>Date Petition filed: _____ / _____ / _____ <i>mm</i> <i>dd</i> <i>yyyy</i></p> <p>Case type: <input type="checkbox"/> Law <input type="checkbox"/> Equity <input type="checkbox"/> Other <input type="checkbox"/> PCR <input type="checkbox"/> Judicial Review</p> <p>Trial type: <input type="checkbox"/> Jury <input type="checkbox"/> Nonjury</p> <p>Expected trial length: 2 days</p> <p>The amount in controversy exceeds \$10,000. <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

Appearances:

Plaintiff(s) / Petitioner(s)

Defendant(s) / Respondent(s)

1. Trial *Note to parties: Unless you have obtained a date from court administration, leave this date blank; the court will enter the date after the trial-setting conference.*

Trial of this case is set for _____, 20____, at _____:_____
Month *Day* *Year* *Time* a.m. p.m.

in the district court in the courthouse of the above-named county.

2. Pretrial conference *Check one. Note to parties: If box A is checked, leave the date blank unless you have obtained a pretrial conference date from court administration. If you do not have a pretrial conference date and check box A, the court will enter the date, by order, after the trial-setting conference.*

A. A pretrial conference will be held on _____, 20____, at _____:_____
Month *Day* *Year* *Time* a.m. p.m.

The conference may be held telephonically with prior approval of the court.

B. A pretrial conference will be held upon request.

3. New parties

No new parties may be added later than 180 days before trial or _____ / _____ / _____.
mm *dd* *yyyy*

If you need assistance to participate in court due to a disability, contact the disability coordinator at: (_____)_____. Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). Disability coordinators cannot provide legal advice. Disability coordinator contact information available at: http://www.iowacourts.gov/Administration/Directories/ADA_Access/

4. Pleadings

Pleadings will be closed 60 days before trial or / / .
mm dd yyyy

5. Initial disclosures. *Check all that apply*

- A. The parties have exchanged initial disclosures.
- B. The parties will provide initial disclosures no later than _____.
- C. The parties have stipulated that the following will not be included in initial disclosures:
List items not included

- D. The parties have stipulated not to provide any initial disclosures.
- E. The following party objects to providing initial disclosures on the following grounds:
Identify the party and state all applicable grounds

6. Discovery

The parties have held a discovery conference as required by Iowa Rule of Civil Procedure 1.507.

All written discovery will be served no later than 90 days before trial. All depositions will be completed no later than 60 days before trial. Or, all discovery will be completed by

 / / .
mm dd yyyy

Check all that apply and attach any appropriate exhibits

- A. No discovery of electronically stored information is expected in this case.
- B. The parties have conferred about discovery of electronically stored information and reached agreement as set out in Attachment ____.
- C. The parties have conferred about discovery of electronically stored information and have been unable to reach an agreement. *Note to parties: If box C is checked, leave the following information blank unless the parties have obtained a hearing date, time, and location from court administration.*

A hearing is set for / / , at: : a.m.
mm dd yyyy Time p.m.

at the _____ County Courthouse, courtroom _____, or
County Courtroom number

at the following location: _____

- D. The parties have agreed to a discovery plan, and their agreement is set forth in Attachment ____.
- E. The parties have agreed to deviate from the limits on discovery otherwise applicable to this action, and their agreement is set forth in Attachment ____.
- F. The parties have agreed to conduct discovery in phases, and their agreement is set forth in Attachment ____.
- G. The parties have reached an agreement under Iowa Rule of Evidence 5.502 as set forth in Attachment ____.

- H. The parties have reached an agreement under Iowa Rule of Civil Procedure 1.504 as set forth in Attachment ____.
- I. The parties have conferred about a discovery plan and have been unable to reach agreement on the issues set forth in Attachment _____. *Note to parties: If box I is checked, leave the following information blank unless the parties have obtained a hearing date, time, and location from court administration.*

A hearing is set for _____ / _____ / _____, at: _____: _____ a.m.
mm dd yyyy Time p.m.

at the _____ County Courthouse, courtroom _____, or
County Courtroom number

at the following location: _____.

7. Health care provider statement

Unless otherwise stipulated or ordered by the court, a copy of any completed Health Care Provider Statement in Lieu of Testimony, Iowa R. Civ. P. 1.281(4)(g)(3), must be served on all parties at least 150 days before trial. Any objection to the Health Care Provider Statement must be filed with the court, together with a copy of the statement, within 30 days after receipt of the statement.

8. Expert witnesses

- A. A party who intends to call an expert witness, including rebuttal expert witnesses, must certify to the court and all other parties the expert's name, subject matter of expertise, and qualifications, within the following time period, unless the Iowa Code requires an earlier designation date (see, e.g., Iowa Code section 668.11):

(1) Plaintiff: 210 days before trial or _____ / _____ / _____.

(2) Defendant/Third Party Plaintiff: 150 days before trial or _____ / _____ / _____.

(3) Third Party Defendant/Others/Rebuttal: 90 days before trial or _____ / _____ / _____.

- B. Any disclosures required by Iowa Rule of Civil Procedure 1.500(2)(b) will be provided:
Check each that applies

(1) At the same time the expert is certified.

(2) According to the following schedule:

a. Plaintiff: _____ / _____ / _____.

b. Defendant/Third Party Plaintiff: _____ / _____ / _____.

c. Third Party Defendant/Others/Rebuttal: _____ / _____ / _____.

- C. This section does not apply to court-appointed experts.

The deadlines listed in paragraphs 4, 5, 6, 7, and 8 may be amended, without further leave of court, by filing a Stipulated Amendment to this Plan listing the dates agreed upon and signed by all counsel and self-represented litigants. Such Stipulated Amendment may not override any requirement of the Iowa Court Rules and cannot serve as a basis for a continuance of the trial date or affect the date for pretrial submissions.

9. Pretrial submissions

At least **14** or ____ (the parties may enter another number but not less than **7**) **days before trial**, counsel for the parties and self-represented litigants must:

- A. File a **witness and exhibit** list with the clerk of court, serve a copy on opposing counsel and self-represented litigants, and exchange exhibits. In electronic cases, witness and exhibit lists must be electronically filed, and the EDMS system will serve copies on all registered parties. Exhibits must be electronically submitted in lieu of exchanging them. These disclosures must include the following information about the evidence that the disclosing party may present at trial other than solely for impeachment:
- (1) The name and, if not previously provided, the address, telephone numbers, and electronic mail address of each witness, separately identifying those the party expects to present and those the party may call if the need arises.
 - (2) The page and line designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition.
 - (3) An identification of each document or other exhibit, including summaries of other evidence, separately identifying those items the party expects to offer and those it may offer if the need arises. The following rules govern exhibits and exhibit lists:
 - a. Plaintiff will use numbers and Defendant will use letters. Pretrial exhibit lists will identify each exhibit by letter or number and description. Exhibits must be marked before trial.
 - b. Immediately before commencement of trial, the court must be provided with a bench copy, and the court reporter with a second copy, of the final exhibit list for use in recording the admission of evidence.
 - c. In nonjury cases, immediately before commencement of trial, parties must provide the court with a bench copy of all exhibits identified on the exhibit lists.
 - d. Within 7 days after the filing of an exhibit list, or within 4 days if the deadline for filing of the list is less than 10 days before trial, counsel and self-represented litigants must file with the clerk of court, and serve on each party, any identification, authentication, and foundation objections to the exhibits listed; otherwise such objections are deemed **waived** for trial purposes. In electronic cases, any identification, authentication, and foundation objections must be electronically filed, and the EDMS system will serve copies on all registered parties. Electronic filing of these objections must be done within 7 days of the filing of an exhibit list, or within 4 days if the deadline for filing of the list is less than 10 days before trial; otherwise, such objections are deemed **waived** for trial purposes.
- B. File and serve **motions in limine**, with supporting legal authority.
- C. File and serve a complete set of **joint jury instructions and verdict forms**, in a form to be presented to the jury or judge, including a statement of the case and any stock jury instruction numbers. If there is any disagreement about an instruction or verdict form, each side must include its specific objections, supporting authority, and a proposed alternative instruction or verdict form for the court's approval. The court must be provided the instructions in written form and electronically.
- D. Deliver to the judge and serve a concise **trial brief** addressing factual, legal, and evidentiary issues, with citation to legal authorities.

10. Motions

All motions including motions for summary judgment and except motions in limine, must be filed with the clerk of court's office or electronically filed at <https://www.iowacourts.state.ia.us/EFile/> at least 90 days before trial, with copies to the assigned judge.

11. Settlements

The parties are responsible for immediately notifying the court administrator of settlement.

