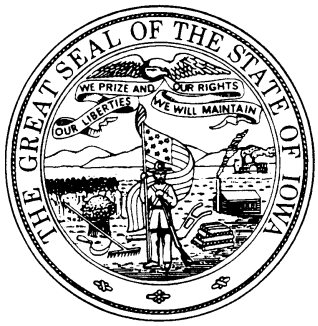
IOWA
COURT RULES

FIFTH EDITION

December 2009 Supplement



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KATHLEEN K. WEST
ADMINISTRATIVE CODE EDITOR

PREFACE

The Fifth Edition of the Iowa Court Rules was published in July 2009 pursuant to Iowa Code section 2B.5(2). Subsequent updates to the Iowa Court Rules, as ordered by the Supreme Court, are published in electronic format only and include chapters that have been amended or adopted.

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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 R. of Prof'l Conduct
Chapter 51	Iowa Code of Judicial Conduct

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

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August 2009

September 2009

October 2009

November 2009

December 2009 Supplement

Changes in this supplement

Rule 1.442(5)..... Amended
Rule 2.11(12)..... Amended
Rules 22.39 and 22.40 ..... Adopted

INSTRUCTIONS FOR UPDATING THE IOWA COURT RULES

Replace Chapter 1
Replace Chapter 2
Replace Chapter 22

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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, reformatory 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 purpose, 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 Rules of Professional Conduct.

[Report 1980; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

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.iowacourts.gov) 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) The original notice shall be signed by the clerk and be under the seal of the court.

1.302(3) An original notice shall be served with a copy of the petition. The plaintiff is responsible for service of an original notice and petition within the time allowed under rule 1.302(5) and shall furnish the person effecting service with the necessary copies of the original notice and petition. This rule does not apply to small claims actions.

1.302(4) 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(5) 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; November 22, 2002, effective February 1, 2003]

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, a copy may be delivered to such person who resides with the individual or is either a member of the individual's family or the manager or proprietor 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; November 22, 2002, effective February 1, 2003]

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.

1.404(3) *Limited appearance.* Pursuant to Iowa R. Prof'l Conduct 32:1.2(c), an attorney's role may be limited to one or more individual proceedings in the action, if specifically stated in a notice of limited appearance filed and served prior to or simultaneously with the proceeding. If the attorney appears at a hearing on behalf of a client pursuant to a limited representation agreement, the attorney shall notify the court of that limitation at the beginning of that hearing.

1.404(4) *Termination of limited appearance.* At the conclusion of a proceeding in which an attorney has appeared pursuant to a limited representation agreement, the attorney's role terminates without the necessity of leave of court upon the attorney's filing a notice of completion of limited appearance. The notice of completion of limited appearance shall state that the attorney was retained to perform a limited service; shall describe the limited service; shall state that the service has been completed; and shall include the personal identification number, address, telephone number and, if available, facsimile transmission number of the client. The attorney shall serve a copy of the notice on the client and all other parties to the action or their attorneys.

[Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; March 12, 2007, effective May 15, 2007]

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 and e-mail address 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; May 14, 2007, effective July 15, 2007]

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 single 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 does not contain any matter specified in rule 1.421(1) or 1.421(2) that matter shall be deemed 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; September 16, 2004, effective December 1, 2004]

Rule 1.422 Protected information. It is the responsibility of counsel and the parties to ensure that protected information is omitted or redacted from documents or exhibits filed with the court. The clerk of court will not review filings to determine whether the required omissions or redactions have been made.

1.422(1) *Omission or redaction required.* In all civil proceedings and special actions a party shall omit or redact protected information from documents and exhibits filed with the court unless the information is material to the proceedings or disclosure is otherwise required by law.

a. "Protected information" includes the following:
(1) Social security numbers.
(2) Financial account numbers.
(3) Personal identification numbers.
(4) Other unique identifiers.

b. If a social security number must be included in a document only the last four digits of that number should be used. If financial account numbers must be included only incomplete numbers should be recited in the document.

c. Parties are not required to omit or redact protected information from materials or cases deemed confidential by any statute or rule of the supreme court; however, omission or redaction is required for materials that are initially confidential but which later become public, such as records in dissolution proceedings.

1.422(2) *Omission or redaction allowed.* A party may omit or redact any of the following information from documents and exhibits filed with the court unless the information is material to the proceedings or disclosure is otherwise required by law:

a. Other personal identifying numbers, such as driver's license numbers.
b. Information concerning medical treatment or diagnosis.
c. Employment history.
d. Personal financial information.
e. Proprietary or trade secret information.
f. Information concerning a person's cooperation with the government.
g. Information concerning crime victims.
h. Sensitive security information.
i. Home addresses.
j. Dates of birth.
k. Names of minor children.

[Report May 31, 2006, effective September 1, 2006; August 28, 2006, effective November 1, 2006]

Rule 1.423 Limited representation pleadings and papers.

1.423(1) *Disclosure of limited representation.* Every pleading or paper filed by a pro se party that was prepared with the drafting assistance of an attorney who contracted with the client to limit the

scope of representation pursuant to Iowa R. Prof'l Conduct 32:1.2(c) shall state that fact before the signature line at the end of the pleading or paper that was prepared with the attorney's assistance. The attorney shall advise the client that such pleading or other paper must contain this statement. The pleading or paper shall also include the attorney's name, personal identification number, address, telephone number and, if available, facsimile transmission number, but shall not be signed by the attorney. If the drafting assistance was provided as part of services offered by a nonprofit legal services organization or a volunteer component of a nonprofit or court-annexed legal services program, the name, address, telephone number and, if available, facsimile transmission number of the program may be included in lieu of the business address, telephone number, and facsimile transmission number of the drafting attorney.

1.423(2) *Drafting attorney's duty.* In providing drafting assistance to the pro se party, the attorney shall determine, to the best of the attorney's knowledge, information, and belief, that the pleading or paper 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 filed for any improper purpose, such as to harass or to cause an unnecessary delay or needless increase in the cost of litigation. The attorney providing drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representation is false or materially insufficient, in which instance the attorney shall make an independent, reasonable inquiry into the facts.

1.423(3) *Not an appearance by attorney.* The identification of an attorney who has provided drafting assistance in the preparation of a pleading or paper shall not constitute an entry of appearance by the attorney for purposes of rule 1.404(1) and does not authorize service on the attorney or entitle the attorney to service as provided in rule 1.442.

[Report March 12, 2007, effective May 15, 2007]

Rules 1.424 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 is required.* Unless the court otherwise orders, everything required to be filed by the rules in this chapter; 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) *How service is 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 on an attorney who has made a limited appearance for a party shall constitute valid service on the represented party only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared. 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; 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.

Service may also be made upon a party or attorney by electronic mail (e-mail) if the person consents in writing in that case to be served in that manner. The written consent shall specify the e-mail address for such service. The written consent may be withdrawn by written notice served on all other parties or attorneys. Service by electronic means is complete upon transmission, unless the party making service learns that the attempted service did not reach the person to be served.

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 judicial

officer may permit them to be filed with the judicial officer, who shall note thereon the filing date and time 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; November 22, 2002, effective February 1, 2003; March 12, 2007, effective May 15, 2007; November 12, 2009, effective January 11, 2010]

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.

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, e-mail, or facsimile transmission.* 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, e-mail, or facsimile transmission, 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; November 22, 2002, effective February 1, 2003]

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. The clerk is authorized to deliver any judgments, orders, decrees or notices to the e-mail address provided by the attorney or party.
[Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; June 29, 2009, effective August 28, 2009]

Rule 1.454 Reserved.

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, counterclaim; 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 shall be as provided in this division.

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.

Unless otherwise provided in a request for discovery, a request for the production of a "document" or "documents" shall encompass electronically stored information. Any reference in the rules in this division to a "document" or "documents" shall encompass electronically stored information.

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.

1.503(5) *Claims of privilege or protection of trial-preparation materials.*

a. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial-preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

b. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received that information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

[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; February 14, 2008, effective May 1, 2008]

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 burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

1.504(2) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of rule 1.504(1)(*b*). The court may specify conditions for the discovery.

1.504(3) 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; February 14, 2008, effective May 1, 2008]

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 issues relating to the discovery and preservation of electronically stored information, including the form in which it should be produced.

e. Any issues relating to claims of privilege or protection as trial-preparation material, including (if the parties agree on a procedure to assert such claims after production) whether to ask the court to include their agreement in an order.

f. Any other proposed orders with respect to discovery.

g. 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; February 14, 2008, effective May 1, 2008]

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.

[Report 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 unless the interrogatories are provided in an electronic format in which an answer can be inserted. 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 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, including electronically stored information, 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; February 17, 2006, effective May 1, 2006; February 14, 2008, effective May 1, 2008]

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 only as an evidentiary admission in any other proceeding.

[Report 1943; amendment 1957; amendment 1973; February 13, 1986, effective July 1, 1986; November 9, 2001, effective February 15, 2002; July 11, 2002, effective October 1, 2002]

Rule 1.512 Production of documents, electronically stored information, and things; entry upon land for inspection and other purposes.

1.512(1) *Requests.* Any party may serve on any other party a request:

a. To produce and permit the party making the request, or someone acting on that party's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained—translated, if necessary, by the respondent into a reasonably usable form.

b. To inspect, copy, test, or sample any designated 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.

c. To permit, except as otherwise provided by statute, 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.

1.512(2) *Procedure.*

a. 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 request may specify the form in which electronically stored information is to be produced.

b. 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, including an objection to the requested form for producing electronically stored information, stating the reasons for the objection. If objection is made to part of an item or category, the part shall be specified. If objection is made to the requested form for producing electronically stored information—or if no form was specified in the request—the responding party must state the form it intends to use.

c. 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.

d. Unless the parties otherwise agree, or the court otherwise orders:

(1) A party who produces documents for inspection 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 request.

(2) If a request does not specify the form for producing electronically stored information, the responding party must produce the information in a form in which it is ordinarily maintained or in a form that is reasonably usable.

(3) A party need not produce the same electronically stored information in more than one form.

[Report 1943; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; February 14, 2008, effective May 1, 2008]

Rule 1.513 Reserved.

Rule 1.514 Action for production or entry against persons not parties. Rule 1.512 does 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; February 14, 2008, effective May 1, 2008]

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.

1.517(6) *Electronically stored information.* Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

[Report 1943; amendment 1957; amendment 1973; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; February 14, 2008, effective May 1, 2008]

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) Provisions for discovery of electronically stored information.

(3) Any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation materials after production.

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

(5) 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; February 14, 2008, effective May 1, 2008]

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 rule 1.512 for the production of documents and tangible things at the taking of the deposition. The procedure of rule 1.512(2) 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; February 14, 2008, effective May 1, 2008]

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) The officer taking the deposition, or any other person with whom such officer has a principal and agency relationship, shall not enter into an agreement for reporting services which does any of the following:

a. Requires the court reporter reporting the deposition to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney.

b. Requires the court reporter to provide special financial terms or other services that are not offered at the same time and on the same terms to all other parties in the litigation.

c. Gives an exclusive monetary or other advantage to any party.

1.713(3) 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(4) 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(5) 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; April 9, 2003, effective July 1, 2003]

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 more than 50 miles from 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; August 10, 2009, effective October 9, 2009]

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 Trial of issues; reporting.

1.903(1) *Trial of issues.* 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.

1.903(2) *Reporting.* Unless waived by the parties, all trial proceedings shall be reported including:

a. All oral comments or statements of the court during the progress of the trial, any objections, and the court's rulings.

b. The proceedings impaneling the jury, any objections, and the court's rulings.

c. Opening statements, any objections, and the court's rulings.

d. The oral testimony, offers of proof, any objections, and the court's rulings.

e. The fact that the testimony was closed to the public.

f. The identification of exhibits, by letter or number or other appropriate mark, all written or other evidence offered, any objections, and the court's rulings.

g. All motions or other pleas made during the trial, any objections, and the court's rulings.

h. Closing arguments, any objections, and the court's rulings.

i. The return of the verdict.

j. Any other proceedings before the court or jury which might be preserved and made of record by a bill of exceptions.

1.903(3) *Court reporter memorandum.* Promptly after reporting a proceeding a court reporter shall file a memorandum that includes all of the following:

a. The type of proceeding that was reported.

b. The date(s) on which the proceeding occurred.

c. The name of the court reporter who reported the proceeding.

d. The name of the judge who presided over the proceeding.

e. The reporting fee for the proceeding.

The court reporter shall use the court reporter memorandum form found in rule 1.1901, form 12. The form shall be signed by the court reporter. The court reporter is not required to serve the memorandum on the parties. The district court clerk shall enter the memorandum on the docket. This memorandum shall constitute the certification required by Iowa Code section 624.10.

1.903(4) *Transcripts—rates for transcribing a court reporter's official notes.* Pursuant to Iowa Code section 602.3202, the maximum compensation of shorthand reporters for transcribing their official notes shall be as provided in Iowa Ct. R. 22.28.
[Report 1943; November 9, 2001, effective February 15, 2002; April 27, 2006, effective July 1, 2006; March 15, 2007, effective June 1, 2007; July 31, 2008, effective October 1, 2008; August 10, 2009, effective October 9, 2009]

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 90 days after the action is commenced, the clerk shall send a notice of civil trial-setting conference to all parties not in default. The clerk shall use Iowa Court Rule 23.5—Form 1, the Notice of Civil Trial-Setting Conference, to send the notice. The notice shall schedule a trial-setting conference no later than 150 days after commencement of the action. The parties are responsible for obtaining a trial-setting conference within 150 days after commencement of the action 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 shall use Iowa Court Rule 23.5—Form 2, the Trial Scheduling Order, to set the trial date. If a trial is continued, the court shall set the trial to a date certain. Unless otherwise ordered, the deadlines established in the trial scheduling order shall continue to apply to the case.
[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; June 27, 2008, effective September 1, 2008]

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 chapter668 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 tried 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 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 Servicemembers Civil Relief Act [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; February 25, 2004, effective May 1, 2004]

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; October 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. After the pleadings a party may move for judgment on the pleadings.
[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; August 10, 2009, effective October 9, 2009]

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 Reserved.

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. When the court fails to assess costs upon disposition of an action, the clerk shall notify the judicial officer of such failure. If the court does not, within ten days of such

notification, make an assessment of costs, the clerk shall enter judgment for costs against the party initiating the action.
[Report 1961; November 9, 2001, effective February 15, 2002; June 16, 2003, effective September 1, 2003]

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. 6.101.

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; October 31, 2008, effective January 1, 2009]

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 Certiorari petition. A party may commence a certiorari action when authorized by statute or when the party claims an inferior tribunal, board, or officer, exercising judicial functions, or a judicial magistrate exceeded proper jurisdiction or otherwise acted illegally.
[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; October 31, 2008, effective January 1, 2009]

Rule 1.1402 Procedure.

1.1402(1) *Title.* The petition shall be captioned 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 challenged decision. 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 challenged decision. The motion and any resistance may be supported by copies of relevant portions of the record of the proceedings being challenged, 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; October 31, 2008, effective January 1, 2009]

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 the legality of the challenged acts, unless otherwise provided by statute.
[Report 1943; November 9, 2001, effective February 15, 2002; October 31, 2008, effective January 1, 2009]

Rule 1.1404 The writ. A district court judge may order the issuance of a writ to an inferior tribunal, board, or officer, or to a judicial magistrate. 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 the defendant's records and proceedings as are pertinent to the petition, together with the facts of the case, described 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; October 31, 2008, effective January 1, 2009]

Rule 1.1405 Stay, bond. The court may stay the original proceedings even though no stay is requested. If the court grants the plaintiff's request for a stay, the stay may be conditioned upon the plaintiff's filing of a bond with penalty and conditions, including security for costs, as prescribed by the court and with sureties approved by the court or the clerk.
[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; October 31, 2008, effective January 1, 2009]

Rule 1.1406 Notice of issuing writ. The court may issue the writ without notice upon the filing of the petition, or it may fix a time and place for hearing and prescribe reasonable notice to the defendant. If the petition is filed before a final order or decree in the original proceeding or if the plaintiff seeks a stay, the court shall fix a time and place for hearing and prescribe reasonable notice to the defendant before issuing the writ. Any 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; October 31, 2008, effective January 1, 2009]

Rule 1.1407 Service of writ. The writ shall be served by a sheriff or deputy sheriff, unless the defendant accepts service of the writ. If the writ is issued to a magistrate, service shall be on the magistrate or clerk of that court; if issued to a board or other tribunal, it shall be served on its secretary, clerk, or any member. Service shall be by delivery of the original writ. A copy, with return of service, shall be returned to the clerk of the court issuing the writ.
[Report 1943; November 9, 2001, effective February 15, 2002; October 31, 2008, effective January 1, 2009]

Rule 1.1408 Return to writ, by whom. If the writ is issued to a magistrate, the return shall be made and signed by the magistrate whose decision is challenged, if practicable, otherwise by the clerk of that court. If issued to an officer, the officer shall make and sign the return. If issued to a board or tribunal, the return shall be made and signed by its presiding officer, clerk, or secretary.
[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; October 31, 2008, effective January 1, 2009]

Rule 1.1409 Defective return. If the return is defective, the court issuing the writ, on the court's own motion or that of any party, may order a further return. The court may 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; October 31, 2008, effective January 1, 2009]

Rule 1.1410 Hearing. When full return has been made, the court shall fix a time and place for hearing. In addition to the record made by the return, the court may receive any transcript or recording of the original proceeding and such other oral or written evidence explaining the matters contained in the return. Unless otherwise specially provided by statute, such transcript, recording, or additional evidence shall be considered only to determine the legality of the proceedings or the sufficiency of the evidence before the original tribunal, board, officer, or magistrate.
[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; October 31, 2008, effective January 1, 2009]

Rule 1.1411 Judgment. Unless otherwise provided by statute, the judgment on certiorari shall be limited to annulling the writ or to sustaining it, in whole or in part, to the extent the proceedings below were illegal or in excess of jurisdiction. The judgment shall prescribe the manner in which either party may proceed, and shall not substitute a different or amended decree or order for that being reviewed.
[Report 1943; November 9, 2001, effective February 15, 2002; October 31, 2008, effective January 1, 2009]

Rule 1.1412 Appeal. An appeal from an order or judgment of the district court in a certiorari proceeding is governed by the rules of appellate procedure applicable to appeals in ordinary civil actions. An appeal is discretionary when the order or judgment sought to be reviewed is itself a discretionary review of another tribunal, board, officer, or magistrate.
[Report 1943; December 28, 1993, effective March 1, 1994; November 9, 2001, effective February 15, 2002; October 31, 2008, effective January 1, 2009]

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 Subpoena.

1.1701(1) *Form and contents.*

a. Requirements. Every subpoena must:

(1) State the court from which it issued;

(2) State the title of the action and its docket number;

(3) Command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(4) Set out the text of rules 1.1701(4) and 1.1701(5).

b. Command to attend a deposition; notice of the recording method. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

c. Combining or separating a command to produce or to permit inspection; specifying the form for electronically stored information. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

d. Command to produce; included obligations. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

e. Forms for subpoenas. Subpoena forms can be found in rule 1.1901, Form 13, 14 and 15.

1.1701(2) *Issued by whom.* The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. A request may be made either orally or in writing. An attorney licensed or otherwise authorized to practice law in Iowa also may issue and sign a subpoena as an officer of the court.

1.1701(3) *Service.*

a. By whom; tendering fees; serving a copy of certain subpoenas. Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance and, if demanded, tendering the fees for one day's attendance and traveling fees to and from the court. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party.

b. Permissible place of service. A subpoena may be served at any place:

(1) Within the state of Iowa;

(2) That the court authorizes on motion and for good cause, if a statute so provides.

c. Proof of service. Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of persons served. The server must certify the statement in accordance with Iowa Code section 622.1.

1.1701(4) *Protecting a person subject to a subpoena.*

a. Avoiding undue burden or expense; sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

b. Command to produce materials or permit inspection.

(1) *Appearance not required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(2) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises, or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

1. At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

2. These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

c. Attendance. Any party shall be permitted to attend at the same time and place and for the same purposes specified in the subpoena. No prior notice of intent to attend is required.

d. Quashing or modifying a subpoena.

(1) *When required.* On timely motion, the issuing court must quash or modify a subpoena that:

1. Fails to allow a reasonable time to comply;

2. Requires a person who is neither a party nor a party's officer to travel more than 50 miles from where that person resides, is employed, or regularly transacts business in person, except that 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, if no exception or waiver applies; or

4. Subjects a person to undue burden.

(2) *When permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

1. Disclosing a trade secret or other confidential research, development, or commercial information; or

2. Disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

3. A person who is neither a party nor a party's officer to incur substantial expense to travel more than 50 miles to attend trial.

(3) *Specifying conditions as an alternative.* In the circumstances described in rule 1.1701(4)(*d*)(2), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

1. Shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

2. Ensures that the subpoenaed person will be reasonably compensated.

1.1701(5) *Duties in responding to a subpoena.*

a. Producing documents or electronically stored information. These procedures apply to producing documents or electronically stored information:

(1) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(2) *Form for producing electronically stored information not specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(3) *Electronically stored information produced in only one form.* The person responding need not produce the same electronically stored information in more than one form.

(4) *Inaccessible electronically stored information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of rule 1.504(1)(*b*). The court may specify conditions for the discovery.

b. Claiming privilege or protection.

(1) *Information withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

1. Expressly make the claim; and

2. Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(2) *Information produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

1.1701(6) *Duties of issuer of subpoena; producing copies of materials obtained by subpoena.* When a party on whose behalf a subpoena under rule 1.1701(1) has been issued thereby creates or obtains copies of designated electronically stored information, books, papers, documents or tangible things, that party shall make available a duplicate of such copies at the request of any other party, who shall be responsible for payment of the reasonable cost of making the copies.

1.1701(7) *Contempt.* The issuing court may hold in contempt a person who, having been served and if necessary been provided fees and traveling expenses allowed by law, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of rule 1.1701(4)(*d*)(1)2.

[Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; February 14, 2008, effective May 1, 2008; August 10, 2009, effective October 9, 2009]

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) vs. Defendant(s)	No. _____ **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 _____, Petitioner, and concerning _____, Respondent.	**DISSOLUTION OF MARRIAGE** **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				$_____
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: ***Financial Affidavit/Application for Appointment of Counsel/Order.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

State of Iowa, or **_____,** **Plaintiff/Petitioner** **vs.** **_____,** **Defendant/Respondent**	**No. _____**

Financial Affidavit/Application for Appointment of Counsel/Order

Name: _____ Birth date _____

Address: _____ Phone _____
Street City State Zip

Charges _____ Jail ____ yes ____ no

Do you have a job? _____ Who do you work for? _____
Full Time Part Time

How much money do you make before taxes or deductions? _____ per hr/mo/yr (Circle)
Hours/Week _____

Does your spouse live with you? _____ Number of children living with you _____

Does anyone who lives with you have a job? _____ How much money do they make? _____ per hr/mo/yr (Circle)

List all other money you have coming in, or anyone living with you has coming in: _____
_____

List what you own including money in banks, cars, trucks, other vehicles, land, houses, buildings, cash, or anything else worth more than $100: _____
_____

List what you pay monthly for mortgages, rent, car loans, credit cards, child support, any other debts: _____
_____

I understand I may be required to repay the State for my attorney fees and costs, I may be required to sign a wage assignment, and I must report any changes in this information. I promise under penalty of perjury the statements I make in this application are true and I am unable to pay an attorney.

Date: _____ Signature: _____

Order

The Court finds as follows: _____ Not eligible for court-appointed counsel.
_____ Income at or below 125% of guidelines, defendant unable to pay an attorney.
_____ Income between 125% and 200% of guidelines, not appointing would cause substantial financial hardship.
_____ Income over 200% of guidelines, felony charge, not appointing would cause substantial financial hardship.

In parole violations, additional findings are required for appointment of counsel. Iowa Code sec. 908.2A(c).

Application is _____ denied _____ approved _____ (_____) is appointed.
(attorney) (phone)

If attorney is not State Public Defender Office or organization designated by State Public Defender, attorney is _____ contract attorney _____ is not contract attorney and qualified contract attorney is not available. "Contract attorney" means attorney on contract list for this county or, in appellate cases, with an appellate contract.

Date _____ Judge _____

[Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002; April 11, 2008, effective July 1, 2008; June 26, 2008, effective September 1, 2008]

Rule 1.1901 — Form 9: ***Financial Affidavit of Parent/Application for Appointment of Counsel/Order.***

In the Juvenile Court for _____ County, Iowa

In the Interest of _____ **Child/children**	**Juvenile No.** _____

Financial Affidavit of Parent/Application for Appointment of Counsel for _____ Child _____ Parent/Order

Name: _____ Birth date _____

Address: _____ Phone _____
Street City State Zip

Case: CINA _____ TPR _____ Del _____ Other _____ Relationship to Child: Parent _____ Other _____

Do you have a job? _____ Who do you work for? _____
Full Time Part Time

How much money do you make before taxes or deductions? _____ per hr/mo/yr (Circle)
Hours/Week _____

Does your spouse live with you? _____ Number of children living with you _____

Does anyone who lives with you have a job? _____ How much money do they make? _____ per hr/mo/yr (Circle)

List all other money you have coming in, or anyone living with you has coming in: _____
_____

List what you own including money in banks, cars, trucks, other vehicles, land, houses, buildings, cash, or anything else worth more than $100: _____
_____

List amounts you pay monthly for mortgages, rent, car loans, credit cards, child support, any other debts: _____
_____

I understand I may be required to repay the State for my attorney fees and costs and those of my child, I may be required to sign a wage assignment, and I must report any changes in this information. I promise under penalty of perjury the statements I make in this application are true and I am unable to pay an attorney.

Date: _____ Signature: _____

Order

In ch. 600A TPR, there is a different standard for indigence and additional findings are required for appt. of Respondent's counsel. Iowa Code sec. 600A.2(11), 600A.6A(2), 600A.6B; do not use this order for 600A TPR.

The Court finds as follows: _____ Child/Applicant not eligible for court-appointed counsel.
_____ Child/Applicant income at or below 125% of guidelines, unable to pay an attorney.
_____ Child/Applicant income 125%-200% and 200% of guidelines, not appointing will cause substantial financial hardship.
_____ Child/Applicant income over 200% of guidelines, case is felony-level delinquency, not appointing will cause substantial financial hardship.

Application is _____ denied _____ approved _____ (_____) is appointed.
(attorney) (phone)

If attorney is not State Public Defender Office or organization designated by State Public Defender, attorney is _____ contract attorney _____ is not contract attorney and qualified contract attorney is not available. "Contract attorney" means attorney on contract list for this county or, in appellate cases, with an appellate contract.

Date _____ Judge _____

[Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002; April 11, 2008, effective July 1, 2008; June 26, 2008, effective September 1, 2008]

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), vs. Defendant(s).	No. _____ **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 _____, Child(ren), _____, Petitioner. (Father)	Case No. _____ (Leave blank—Clerk of Court will complete) **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]

Rule 1.1901 — Form 12: ***Court Reporter Memorandum and Certificate.***

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

_____ Plaintiff/Petitioner, vs. _____ Defendant/Respondent.	No._____ **COURT REPORTER MEMORANDUM AND CERTIFICATE**

COURT REPORTER MEMORANDUM

(The court reporter shall file this memorandum with the district court clerk.)

Appearances:

For Plaintiff/Petitioner _____

For Defendant/Respondent _____

Other _____

Information required by Iowa Rule of Civil Procedure 1.903(3):

I _____ (*insert name*) am providing the following information as required by Iowa Rule of Civil Procedure 1.903(3):

1. The type of proceeding that was reported:_____
_____

2. The date(s) on which the proceeding occurred:_____
_____

3. The name of the court reporter who reported the proceeding:_____
_____

4. The name of the judge who presided over the proceeding:_____
_____

5. The reporting fee for the proceeding:_____
_____

6. We, the undersigned judge before whom the above-entitled case was tried, and the official court reporter who, by order of the court, reported the same, do hereby certify that the above and foregoing is the report of the whole proceedings upon the trial and/or hearing of the above-entitled cause made and take pursuant to the order and direction of the court,

in accordance with Iowa Code section 624.10.

DATED this ___ day of _____, ___.

_____
(Signature of Court Reporter)

_____
(Signature of Judge)

[Court Order July 31, 2008, effective October 1, 2008; August 10, 2009, effective October 9, 2009]

Rule 1.1901 — Form 13: ***Subpoena Form to Testify at Deposition or Produce Documents.***

THE IOWA DISTRICT COURT FOR _____ COUNTY

)	
)	**No. _____**
)	
)	**SUBPOENA TO TESTIFY AT A DEPOSITION**
)	**OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION**
)	

To: _____

☐ **YOU ARE COMMANDED** to appear at the time, date, and place specified below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other person who consents to testify on your behalf about the following matter, or those set forth in an attachment:

Place: _____

Date: _____ Time: _____

The deposition will be recorded by this method: _____

☐ You or your representative must also bring with you to the deposition the following books, documents, electronically stored information, or tangible things, and permit their inspection, copying, testing, or sampling of the material:

Form of electronically stored information to be produced: _____

Date: _____

_____
Signature of Clerk of the District Court

OR

_____
Attorney's signature

PLEASE NOTE: 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).

The name, address, e-mail, and telephone number of the attorney representing (*name of party*)_____

_____, who issues or requests this subpoena:

_____

PROOF OF SERVICE

This subpoena for (*name of individual and title, if any*) _____ was received by me on (*date*)_____.

☐ I personally served the subpoena on the individual at (*place*) _____ _____ on (*date*) _____; or

☐ I left the subpoena at the individual's dwelling house or usual place of abode with (*name*) _____ _____, a person residing therein who is at least 18 years old; or

☐ I served the subpoena on (*name of individual*) _____, who is designated by law to accept service of process on behalf of (*name of organization*)_____ _____ on (*date*)_____; or

☐ I returned the subpoena unexecuted because _____; or

☐ Other (*specify*):

WITNESS FEES

☐ No witness fee requested or required under Iowa Code section 622.74.

☐ I have tendered to the witness fees for one day's attendance in the amount of $_____and the mileage allowed by law in the amount of $ _____, for a total of $_____.

My fees are $ _____ for travel and $_____ for services, for a total of $ _____.

I declare under penalty of perjury that this information is true.

Date: _____ _____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a genuine copy of the foregoing document was served upon the persons named below and at the address indicated on the ___ day of _____, 20__ by the following method_____ _____:

Name and address of party or attorney: _____

_____
Signature of server

[Court Order August 10, 2009, effective October 9, 2009]

Rule 1.1901 — Form 14: ***Subpoena Form to Testify at Hearing or Trial.***

THE IOWA DISTRICT COURT FOR _____ COUNTY

)	
)	**No. _____**
)	
)	**SUBPOENA TO APPEAR AND TESTIFY**
)	**AT A HEARING OR TRIAL IN A CIVIL ACTION**
)	

To: _____

YOU ARE COMMANDED to appear in the Iowa District Court for _____ County at the time, date, and place specified below to testify at a hearing or trial in the above case. When you arrive, you must remain in the court until a judge or court officer allows you to leave. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other person who consents to testify on your behalf about the following matter, or those set forth in an attachment:

Place: _____

Date: _____ Time: _____

You must also bring with you the following books, documents, electronically stored information, or tangible things:

Form of electronically stored information to be produced: _____

Date: _____

_____
Signature of Clerk of the District Court

OR

_____
Attorney's signature

PLEASE NOTE: 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).

The name, address, e-mail, and telephone number of the attorney representing (name of party)_____

_____, who issues or requests this subpoena:

_____

PROOF OF SERVICE

This subpoena for (*name of individual and title, if any*) _____ was received by me on (*date*)_____.

☐ I personally served the subpoena on the individual at (*place*) _____ _____ on (*date*) _____; or

☐ I left the subpoena at the individual's dwelling house or usual place of abode with (*name*) _____ _____, a person residing therein who is at least 18 years old; or

☐ I served the subpoena on (*name of individual*) _____, who is designated by law to accept service of process on behalf of (*name of organization*)_____ _____ on (*date*)_____; or

☐ I returned the subpoena unexecuted because _____; or

☐ Other (*specify*):

WITNESS FEES

☐ No witness fee requested or required under Iowa Code section 622.74.

☐ I have tendered to the witness fees for one day's attendance in the amount of $_____and the mileage allowed by law in the amount of $ _____, for a total of $_____.

My fees are $ _____ for travel and $_____ for services, for a total of $ _____.

I declare under penalty of perjury that this information is true.

Date: _____ _____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a genuine copy of the foregoing document was served upon the persons named below and at the address indicated on the ___ day of _____, 20__ by the following method_____ _____:

Name and address of party or attorney: _____

_____
Signature of server

[Court Order August 10, 2009, effective October 9, 2009]

Rule 1.1901 — Form 15: ***Subpoena Form to Produce Documents or Permit Inspection.***

THE IOWA DISTRICT COURT FOR _____ COUNTY

)	
)	**No. _____**
)	
)	**SUBPOENA TO PRODUCE BOOKS, DOCUMENTS,**
)	**ELECTRONICALLY STORED INFORMATION, OR**
)	**TANGIBLE THINGS OR TO PERMIT INSPECTION OF**
)	**PREMISES**

To: _____

☐ **YOU ARE COMMANDED** to produce at the time, date, and place specified below the following books, documents, electronically stored information, or tangible things, and permit their inspection, copying, testing, or sampling of the material:

Place: _____

Date: _____ Time: _____

Form of electronically stored information to be produced: _____

☐ **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated objection or operation on it.

Place: _____

Date: _____ Time: _____

Date: _____

_____
Signature of Clerk of the District Court

OR

_____
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (*name of party*)_____

_____, who issues or requests this subpoena:

_____

PROOF OF SERVICE

This subpoena for (*name of individual and title, if any*) _____ was received by me on (*date*)_____.

☐ I personally served the subpoena on the individual at (place) _____ _____ on (*date*) _____; or

☐ I left the subpoena at the individual's dwelling house or usual place of abode with (*name*) _____ _____, a person residing therein who is at least 18 years old; or

☐ I served the subpoena on (*name of individual*) _____, who is designated by law to accept service of process on behalf of (*name of organization*)_____ _____ on (*date*)_____; or

☐ I returned the subpoena unexecuted because _____; or

☐ Other (*specify*):

WITNESS FEES

☐ No witness fee requested or required under Iowa Code section 622.74.

☐ I have tendered to the witness fees for one day's attendance in the amount of $_____and the mileage allowed by law in the amount of $ _____, for a total of $_____.

My fees are $ _____ for travel and $_____ for services, for a total of $ _____.

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a genuine copy of the foregoing document was served upon the persons named below and at the address indicated on the ___ day of _____, 20__ by the following method_____ _____:

Name and address of party or attorney: _____

_____
Signature of server

[Court Order August 10, 2009, effective October 9, 2009]

CHAPTER 2
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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 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; December 23, 2008, effective February 23, 2009; April 2, 2009, effective June 1, 2009]

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 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; December 23, 2008, effective February 23, 2009; April 2, 2009, effective June 1, 2009]

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 of the parties. Otherwise, defendants shall be tried separately. When jointly tried, defendants shall be adjudged separately on each count.

c. When charged or appearing jointly, those defendants may share an interpreter if in the discretion of the court a shared interpreter will not result in prejudice to one of the parties. Otherwise, defendants shall have separate interpreters.

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[1] 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

1. See §902.7

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]

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; December 22, 2003, effective November 1, 2004]

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. If the above procedures are waived in such a plea, the defendant shall sign a written document that includes a statement that conviction of a crime may result in the defendant's deportation or other adverse immigration consequences if the defendant is not a United States citizen.

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; December 22, 2003, effective November 1, 2004]

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.

h. Motion for separate interpreters.

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 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 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. In separate notices made

within the times provided for above, the parties shall provide each other with the addresses of such witnesses. These notices shall not be made part of the record and shall not be filed with the court.

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.

2.11(12) *State's duty to disclose witnesses.*

a. Duty to disclose addresses of law enforcement, governmental, and licensed professional witnesses. In the minutes of testimony, the state shall provide the defense with a written list of the known employment addresses of the following persons who are expected to testify in their official or professional capacity during the state's case in chief: sworn peace officers; federal, state, local and municipal employees and elected officials; and licensed professionals. If the state contends disclosure of an address would result in substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, coercion, or undue invasion of privacy, the state may withhold disclosure and shall inform the defense of the basis of such nondisclosure.

b. Duty to disclose addresses of other witnesses. In the minutes of testimony, the state shall provide the defense with a written list of the known residential and employment addresses of the other witnesses, who are expected to testify during the state's case in chief. If the state contends disclosure of an address would result in substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, coercion, or undue invasion of privacy, the state may withhold disclosure and shall inform the defendant's attorney of the basis of such nondisclosure.

c. Disclosure of address withheld by the state. If the state withholds disclosure of an address, or the defendant requests the residential or alternative address of a witness, the defendant or the defendant's attorney may request in writing the disclosure of addresses for investigative purposes or to ensure service of a subpoena. Within five days of receipt of the request, the state shall confer with the defendant or the defendant's attorney and provide such information to the defendant or the defendant's attorney or seek a protective order from the court. The court may deny, defer, or otherwise restrict disclosure to the defendant or the defendant's attorney if the state proves such disclosure would result in substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, coercion, or undue invasion of privacy, which outweighs any usefulness of the disclosure to the defendant or the defendant's attorney. In establishing the usefulness of the disclosure to the defendant or the defendant's attorney, the defendant or the defendant's attorney may provide the court with a written statement to be reviewed by the court in camera. Any such written statement shall not be served on the state, but shall be made a part of the file, placed under seal, and not subject to disclosure absent further order of a court. If the court denies the defendant or the defendant's attorney's request, the court may enter an order allowing the defendant or the defendant's attorney an opportunity to meet with any

witness who is willing to talk to the defendant in an environment that provides for the protection of the witness. The court shall also enter an order facilitating the defendant or the defendant's attorney's ability to serve a subpoena on the witness for deposition or trial.

d. Further disclosure by the defendant or the defendant's attorney. Any address disclosed by the state in the minutes of testimony may be disclosed by the attorney to the defendant, persons employed by the attorney, persons appointed by the court to assist in the preparation of a defendant's case, or any other person if the disclosure is required for preparation of the defendant's case. An attorney shall inform persons provided this information that further dissemination of the information, except as provided by court order, is prohibited. A willful violation of this rule by the defendant, an attorney, persons employed by an attorney, persons appointed by the court, or other persons authorized by the court to receive the address is subject to punishment by contempt.

e. Continuing duty to update. The state has a continuing duty to inform the opposing party of any change in the last known residential address or employment address of any witness that the state intends to call during its case in chief as soon as practicable after the state obtains that information.

f. Interference with witnesses. The defendant, attorneys representing the defendant or the state, and their representatives and agents shall not instruct or advise persons, except the defendant, having relevant information that he or she should refrain from discussing the case with opposing counsel or an unrepresented defendant or from showing opposing counsel or an unrepresented defendant any relevant evidence. The defendant, attorneys representing the defendant or the state, and their representatives and agents shall not otherwise impede investigation of the case by opposing counsel or an unrepresented defendant. *See* Iowa Court Rule 32:3.4(a) and (f).

g. Service of subpoenas. The most recent address provided by the state for a witness shall be the authorized address where the witness can be served, except when the defendant or the defendant's attorney has reason to believe that such address is not accurate for that witness at the time of service, or the person in fact no longer works or resides at that address.

[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; December 22, 2003, effective November 1, 2004; April 2, 2009, effective June 1, 2009; October 28, 2009, effective December 28, 2009]

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 judgment 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 revocation hearings, unless the defendant waives such appointment.

An alleged parole violator who is an indigent person as defined in Iowa Code section 815.9 shall be advised during his or her initial appearance of the right to request the appointment of counsel for the parole revocation proceedings.

2.28(2) *Compensation.* When counsel is appointed to represent an indigent defendant or alleged parole violator, 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; January 3, 2003, effective March 17, 2003; January 4, 2005, effective March 15, 2005]

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: *Financial Affidavit/Application for Appointment of Counsel/Order.*

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

State of Iowa, or **_____,** **Plaintiff/Petitioner** **vs.** **_____,** **Defendant/Respondent**	**No. _____**

Financial Affidavit/Application for Appointment of Counsel/Order

Name: _____ Birth date _____

Address: _____ Phone _____
Street City State Zip

Charges _____ Jail ____ yes ____ no

Do you have a job? _____ Who do you work for? _____
Full Time Part Time

How much money do you make before taxes or deductions? _____ per hr/mo/yr (Circle)
Hours/Week _____

Does your spouse live with you? _____ Number of children living with you _____

Does anyone who lives with you have a job? _____ How much money do they make? _____ per hr/mo/yr (Circle)

List all other money you have coming in, or anyone living with you has coming in: _____
_____

List what you own including money in banks, cars, trucks, other vehicles, land, houses, buildings, cash, or anything else worth more than $100: _____
_____

List what you pay monthly for mortgages, rent, car loans, credit cards, child support, any other debts: _____
_____

I understand I may be required to repay the State for my attorney fees and costs, I may be required to sign a wage assignment, and I must report any changes in this information. I promise under penalty of perjury the statements I make in this application are true and I am unable to pay an attorney.

Date: _____ Signature: _____

Order

The Court finds as follows: _____ Not eligible for court-appointed counsel.
_____ Income at or below 125% of guidelines, defendant unable to pay an attorney.
_____ Income between 125% and 200% of guidelines, not appointing would cause substantial financial hardship.
_____ Income over 200% of guidelines, felony charge, not appointing would cause substantial financial hardship.

In parole violations, additional findings are required for appointment of counsel. Iowa Code sec. 908.2A(c).

Application is _____ denied _____ approved _____ (_____) is appointed.
(attorney) (phone)

If attorney is not State Public Defender Office or organization designated by State Public Defender, attorney is _____ contract attorney _____ is not contract attorney and qualified contract attorney is not available. "Contract attorney" means attorney on contract list for this county or, in appellate cases, with an appellate contract.

Date _____ Judge _____

[Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002; April 11, 2008, effective July 1, 2008; June 26, 2008, effective September 1, 2008]

Rule 2.32 — Form 2: ***Financial Affidavit of Parent/Application for Appointment of Counsel/Order.***

In the Juvenile Court for _____ County, Iowa

In the Interest of _____ **Child/children**	**Juvenile No.** _____

Financial Affidavit of Parent/Application for Appointment of Counsel for _____ Child _____ Parent/Order

Name: _____ Birth date _____

Address: _____ Phone _____
Street City State Zip

Case: CINA _____ TPR _____ Del _____ Other _____ Relationship to Child: Parent _____ Other _____

Do you have a job? _____ Who do you work for? _____
Full Time Part Time

How much money do you make before taxes or deductions? _____ per hr/mo/yr (Circle)
Hours/Week _____

Does your spouse live with you? _____ Number of children living with you _____

Does anyone who lives with you have a job? _____ How much money do they make? _____ per hr/mo/yr (Circle)

List all other money you have coming in, or anyone living with you has coming in: _____
_____

List what you own including money in banks, cars, trucks, other vehicles, land, houses, buildings, cash, or anything else worth more than $100: _____
_____

List amounts you pay monthly for mortgages, rent, car loans, credit cards, child support, any other debts: _____
_____

I understand I may be required to repay the State for my attorney fees and costs and those of my child, I may be required to sign a wage assignment, and I must report any changes in this information. I promise under penalty of perjury the statements I make in this application are true and I am unable to pay an attorney.

Date: _____ Signature: _____

Order

In ch. 600A TPR, there is a different standard for indigence and additional findings are required for appt. of Respondent's counsel. Iowa Code sec. 600A.2(11), 600A.6A(2), 600A.6B; do not use this order for 600A TPR.

The Court finds as follows: _____ Child/Applicant not eligible for court-appointed counsel.
_____ Child/Applicant income at or below 125% of guidelines, unable to pay an attorney.
_____ Child/Applicant income 125%-200% and 200% of guidelines, not appointing will cause substantial financial hardship.
_____ Child/Applicant income over 200% of guidelines, case is felony-level delinquency, not appointing will cause substantial financial hardship.

Application is _____ denied _____ approved _____ (_____) is appointed.
(attorney) (phone)

If attorney is not State Public Defender Office or organization designated by State Public Defender, attorney is _____ contract attorney _____ is not contract attorney and qualified contract attorney is not available. "Contract attorney" means attorney on contract list for this county or, in appellate cases, with an appellate contract.

Date _____ Judge _____

[Report February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002; April 11, 2008, effective July 1, 2008; June 26, 2008, effective September 1, 2008]

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, orders 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, orders and papers.* Service and filing of written motions, notices, orders 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; June 29, 2009, effective August 28, 2009]

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, vs. _____ (Defendant).	Before (Judge, Magistrate) _____ Criminal Case No._____ **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:

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, vs. _____, Defendant.	**TRIAL INFORMATION** 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, vs. A _____ B _____. 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, Plaintiff, vs. _____, Defendant.	**WRITTEN ARRAIGNMENT AND PLEA OF NOT GUILTY** 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, vs. STATE OF IOWA, Respondent.	Law No. CL _____ **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 magistrate, 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 R. App. P. 6.106.

[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; October 31, 2008, effective January 1, 2009]

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
County of _____
Criminal Case No. _____
State of Iowa
vs.
A _____ B _____, Defendant.

Before (Judge, Magistrate) _____

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 22
JUDICIAL ADMINISTRATION

Rule 22.1	Supervision of courts
Rule 22.2	Recall and transfer of judges
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Rule 22.4	Order appointing chief judge
Rule 22.5	Duties and powers of chief judges
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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 judge. An order appointing a chief judge shall be filed with the clerk of the supreme court who shall mail a copy to the clerk of the district court in each county in the judicial district. The clerk of the supreme court may mail the copies of the order electronically.
[Report 1969; Court Order November 9, 2001, effective February 15, 2002; April 11, 2007]

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, Iowa Judicial Branch Building, 1111 East Court Avenue, 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; April 9, 2003]
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, including reappointment of an applicant to an additional term, may consider the following factors:

a. The applicant's demonstrated willingness and ability to undertake and complete all assigned work during the applicant's service as a judge or a senior judge.

b. The result of a confidential vote of all full-time judges of the judicial district or appellate court in which the applicant served as a full-time judge. In addition, if the applicant is requesting assignment to another district or to an appellate court in which the applicant did not serve as a full-time judge, the court shall consider the result of a confidential vote of all full-time judges of the judicial district or the appellate court to which the applicant requests assignment: i.e., (suggested) "Shall X be appointed a senior judge?"

c. The result of the most recent judicial plebiscite.

d. The applicant's monthly reports issued pursuant to rule 22.10.

e. The applicant's agreement to perform duties as scheduled and assigned by the chief judge of the district or appellate court where the senior judge is assigned.

f. The applicant's plans, if any, to regularly spend time or reside out-of-state or to become a resident of a state other than Iowa, or an applicant's residency in a state other than Iowa.

g. The applicant's work or plans to work as a mediator, arbitrator or provider of other alternative dispute resolution services.

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.

22.12(3) An applicant for appointment to become a senior judge or a senior judge who applies for reappointment to an additional term shall provide evidence to the satisfaction of the supreme court that the applicant or senior judge does not suffer from a physical or mental disability or an illness that would substantially interfere with the performance of duties agreed to under this rule. Evidence shall include:

a. A statement of ability to serve by the applicant and a written opinion of a doctor of medicine or doctor of osteopathic medicine and surgery.

b. Prior to or following appointment or reappointment, a judge or senior judge must provide the court with additional information about the senior judge's physical and mental health and authorization for the release of medical information upon request.

22.12(4) A senior judge shall cease holding office when the senior judge reaches seventy-eight years of age. However, the supreme court may appoint a senior judge to serve up to two additional one-year terms after reaching seventy-eight years of age. To be eligible for consideration, a senior judge must file an application for reappointment within 30 days prior to the expiration of the senior judge's term. Under no circumstances shall a senior judge serve after reaching the age of eighty.

22.12(5) A senior judge must file the following reports:

a. At the end of each calendar quarter, a senior judge shall file a report with the clerk of the supreme court indicating the dates on which the senior judge performed judicial or other assigned duties and the nature of the duties performed or the name of the cases over which the judge presided on each date of service. A senior judge assigned to a judicial district shall provide a copy of the report to the chief judge and the district court administrator. A senior judge assigned to an appellate court shall provide a copy of the report to the chief judge of the court of appeals or the chief justice, whichever is appropriate, and to the state court administrator. For purposes of this rule, a calendar quarter is a three-month period in the one-year period that commences on the date a retired judge becomes a senior judge and continues for each successive one-year period while the judge continues to be a senior judge.

b. At the end of each calendar quarter, a senior judge who has engaged in private mediation or dispute resolution activities during the quarter shall file a report with the clerk of the supreme court. The senior judge shall report the date or time period when the mediation occurred, the county where the mediation occurred, the county in which the dispute arose, the names of the parties, and the names of the lawyers and insurers, if any, involved in the mediation. A senior judge assigned to a judicial district shall provide a copy of the report to the chief judge and to the district court administrator. A senior judge assigned to an appellate court shall provide a copy of the report to the chief judge of the court of appeals or the chief justice, whichever is appropriate, and to the state court administrator. For purposes of this rule, a calendar quarter is a three-month period in the one-year period that commences on the date a retired judge becomes a senior judge and continues for each successive one-year period while the judge continues to be a senior judge.

22.12(6) Senior judges and applicants for appointment and reappointment to the senior judge program must provide information and reports required by this section on forms approved by the supreme court.

[Court Order December 17, 1996, effective January 2, 1997; November 9, 2001, effective February 15, 2002; February 27, 2008; October 31, 2008, effective January 1, 2009]

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 22 working days of vacation per calendar year. After 15 years of service with the judicial branch, 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 27 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 27 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; August 29, 2002; November 22, 2004, effective January 1, 2005]

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 branch 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; August 29, 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 branch"* means an officer or employee of the judicial branch 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 branch 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. "Judicial officer and 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 judicial officer and court reporter. The official domicile of a judicial officer and a court reporter shall be the courthouse in the county in which the judge or court reporter works more than 50 percent of the time. When the judge or reporter does not work more than 50 percent of the time in the same courthouse, the judge's or reporter's official domicile shall be a courthouse designated by the chief judge. Notification of the official domicile must be filed with the state court administrator's office.

c. Reserved.

d. For purposes of this definition, the following are official domicile-defining metropolitan areas.

Metropolitan Areas		Inclusions	
1.	Cedar Rapids	1.	Hiawatha
			Marion
2.	Clinton	2.	Camanche
			Elvira
			Low Moor
3.	Council Bluffs	3.	Bellevue
			Bennington
			Boys Town
			Carter Lake
			Elkhorn
			Irvington
			LaPlatte
			LaVista
			Millard
			Omaha
			Papillion
			Ralston
			Springfield
4.	Davenport	4.	Bettendorf
			East Moline
			Hampton
			Milan
			Moline
			Pleasant Valley
			Riverdale
			Rock Island
			Silvis
5.	Des Moines	5.	Polk County
6.	Dubuque	6.	Asbury
			Centralia
			East Dubuque
			Sageville
7.	Iowa City	7.	Coralville
8.	Mason City	8.	Clear Lake
9.	Sioux City	9.	North Sioux City
			Sergeant Bluff
			South Sioux City
10.	Waterloo	10.	Cedar Falls
			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 branch 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 branch.

(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; August 29, 2002; Supervisory Order August 10, 2004]

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 branch 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 branch or pursuant to Iowa Code section 232.141, as applicable.

[Court Order November 9, 2001, effective February 15, 2002; August 29, 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 and judicial officers be reimbursed for more than actual miles driven, or for commuting to and from their residence and their official domicile or a courthouse within their county of residence. Carpooling is required whenever possible. A judge and the judge's court reporter shall not be separately reimbursed for duplicate mileage expense in traveling to court assignments. The allowance for use of a private automobile on official judicial branch business shall be established by order[1] 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.

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; August 29, 2002; Supervisory Order August 10, 2004]

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 $50 (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; June 16, 2006, effective July 1, 2006]

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. A maximum of $28 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 $28.

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 $13.

1. 40 cents per mile, Supervisory Order 7/18/07, effective 8/1/07.

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 $23.

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 $8.

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.

22.20(3) *Overnight lodging required.* The provisions for meal reimbursement in rules 22.20(1) and 22.20(2) apply only when the travel includes overnight lodging.

[Court Order November 9, 2001, effective February 15, 2002, May 8, 2006; July 18, 2007, effective August 1, 2007]

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 branch'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; August 29, 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 be filed even if there is no financial information to report. The disclosure must contain:

a. A list of each business, occupation, or profession (other than employment by the judicial branch) in which the person is engaged and the nature of that business, occupation, or profession, unless already apparent.

b. A list of any sources of income (other than income from employment by the judicial branch) if the source produces more than one thousand dollars annually in gross income. "Sources of income" includes those sources which are held jointly with one or more persons and which in total generate more than $1000 of income. "Jointly" means the ownership of the income source is undivided among the owners and all owners have one and the same interest in an undivided possession, each with full rights of use and enjoyment of the total income. Sources of income that are co-owned but with ownership interests that are legally divisible, without full rights of use of enjoyment of the total income, need not be reported unless the person's portion of the income from that source exceeds $1000. For purposes of this rule, income earned solely by the spouse of a person subject to reporting is not income to that person and need not be reported as a source of income.

Sources of income listed pursuant to this rule may be listed under any of the following categories:

(1) Securities.
(2) Instruments of financial institutions.
(3) Trusts.
(4) Real estate.
(5) Retirement systems.
(6) Other income categories specified in state and federal income tax regulations.

22.26(2) 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. The statement of personal financial disclosure forms shall be retained for a period of two years.

[Court Order December 29, 1992, effective January 1, 1993; Statement required April 1, 1994; November 9, 2001, effective February 15, 2002; November 22, 2004]

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 Transcripts — rates for transcribing a court reporter's official notes.

22.28(1) Pursuant to Iowa Code section 602.3202, the maximum compensation of shorthand reporters for transcribing their official notes shall be as follows:

a. Ordinary transcript (a transcript of all or part of the proceedings) - $3.50 per page for the original and one copy to the party ordering the original and 50 cents per page for each additional copy.

b. Expedited transcript (a transcript of all or part of the proceedings to be delivered within seven calendar days after receipt of an order) - $4.50 per page for the original and one copy to the party ordering the original and 75 cents per page for each additional copy.

c. Daily transcript (a transcript of all or part of the proceedings to be delivered following adjournment for the day and prior to the normal opening hour of the court on the following morning whether or not it actually is a court day) - $5.50 per page for the original and one copy to the party ordering the original and $1.00 per page for each additional copy.

d. Unedited transcript (an unedited draft transcript produced as a byproduct of realtime or computer aided transcription software to be delivered on electronic media or paper) - $2.25 per page for the original and 25 cents per page for each copy. The unedited disk or printed draft transcript shall not be certified and may not be used to contradict the official district court transcript.

e. Realtime transcript (an unedited draft transcript produced by a certified realtime reporter as a byproduct of realtime to be delivered electronically during proceedings for viewing and retention) -

$2.75 per page for the original and $1.00 per page for each copy. The unedited text of the proceedings shall not be certified and may not be used to contradict the official district court transcript. Litigants who order realtime services, and subsequently order an original certified transcript of the same proceeding, will not receive credit toward the purchase cost of the certified transcript. Only certified realtime reporters may be compensated for such transcripts.

22.28(2) These rates of compensation shall apply to each separate page of transcript even if they are produced in a condensed transcript format.

22.28(3) These rates of compensation shall be the same whether the transcript is produced in an electronic or paper format. A certified transcript may be sold in an electronic format only if a paper transcript is produced, certified, and filed with the clerk of court for the records of the court or delivered to the custodial attorney. No additional charge is permitted for an ASCII disk or other form of electronic media when it accompanies a paper transcript.

22.28(4) Court reporters are only required to prepare ordinary transcripts. They may, but are not required to, produce the types of transcripts described in rule 22.28(1)(*b*-*e*).

22.28(5) An official court reporter shall file with the state court administrator a report that discloses the compensation received and the expenses paid by the reporter for the production of transcripts and copies of transcripts of court proceedings during the reporting period. This report shall include the following information for each transcript or copy of a transcript:

a. The caption, county, and number of the case in which the court reporter produced the transcript or copy.

b. The person, government body, or entity that paid for the transcript or copy.

c. The amount received for the transcript or copy.

d. The number of pages of the transcript or copy.

e. Whether the transcript was requested pursuant to rule 6.803.

f. The expenses paid by the court reporter directly related to the cost of preparing the original or copies of the transcript, including paper, copying services, transcription services, audio tapes, binding services, and materials and shipping and postage.

22.28(6) In addition to the information required by rule 22.28(5), the report shall disclose the expenses paid by the court reporter for equipment and software, including computers, laptop computers, audio recorders, stands, printers, and related accessories used to produce transcripts and copies of transcripts. Software includes application software necessary for the operation of court reporting equipment and the production of notes and a transcript of official court proceedings, annual updates to court reporting application software, and the support and maintenance of court reporting application software.

22.28(7) The reporter shall electronically file the report required by this rule every six months on forms approved by the supreme court. The report for the months of January through June shall be filed by the first day of August of that year and for the months of July through December by the first day of February of the following year. The information required by rule 22.28(6) shall be reported annually in the February report and shall include expenses incurred in the preceding calendar year. A reporter's first report should disclose expenses for equipment and software purchased prior to, but used during, the reporting period. If a reporter ceases employment, the report required by this rule shall be filed within 30 days of cessation of employment.

22.28(8) These reporting requirements apply to all types of transcripts described in rule 22.28(1)(*a*) to (*e*). The state court administrator shall retain the reports required by this rule for a minimum of two years. These reports shall be public information.

[Court Order March 15, 2007; November 9, 2009]

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 $200.

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; March 16, 2006]

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.

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; appellate judges and justices shall file their original designations with the clerk of the supreme court. 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; June 3, 2009]

Rule 22.31 Juror compensation.

22.31(1) Compensation for a juror's first seven days of attendance and service on a case shall be $30 per day, including attendance required for the purpose of being considered for service.

22.31(2) When a juror's attendance and service on a case exceed seven days, the rate of compensation shall be $50 for each day after the seventh day.

22.31(3) For purposes of juror compensation, the days of attendance and service do not have to be consecutive.
[Court Order September 25, 2006; October 22, 2007]

Rule 22.32 Magistrates — annual school of instruction. Each magistrate shall be required to attend a judicial branch 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; August 29, 2002]

Rule 22.33 Nepotism. No judicial officer or employee of the judicial branch 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 branch 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 judicial branch to relocate within the branch 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; August 29, 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]

Rule 22.39 Staffing offices of clerks of court. The supreme court shall allocate staff to the clerk of court office in each county. The court shall take into account workload and availability of funds for state court operations. The court shall set the business hours of each office. To facilitate case processing, the court may allow each office of the clerk of court to operate without being open to the public for a portion of each day the office is open for business to enable an office to process its work without interruption.

[Court Order November 12, 2009]

Rule 22.40 Public business hours of offices of clerks of court. For purposes of Iowa Code section 4.1(34), the word "day" means the period of time defined by the public business hours of an office

of the clerk of court as established by order of the supreme court. If the supreme court has by order closed an office of the clerk of court for an entire day, that day shall be treated as a holiday or a weekend. Nothing in this rule shall prevent a party from filing with the court pursuant to Iowa Rule of Civil Procedure 1.442(5).
[Court Order November 12, 2009]