

## COMMENCING ACTIONS

### Footnotes

For Iowa court rules concerning commencement of actions, see R.C.P. 1.3011.315

#### **617.1 Process criminal defendant.**

Any defendant in any criminal action pending or to be brought in any court in the state of Iowa may be served with process, either civil or criminal, in any other action pending or to be brought against the defendant in the courts of this state while the defendant is present in this state, either voluntarily or involuntarily.

[C39, § **11056.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.1]

#### **617.2 Penalty amendment.**

If a notice is not filed or returned by the sheriff to the person from whom it was received, or if the return thereon is defective, the officer making the same shall be guilty of a simple misdemeanor, and the officer shall be liable to an action for damages by any person aggrieved thereby. The court may, before or after judgment is entered, permit an amendment according to the truth of the case.

[R60, § 2820; C73, § 2606; C97, § 3521; C24, 27, 31, 35, 39, § **11063**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.2]

#### **617.3 Foreign corporations or nonresidents contracting or committing torts in Iowa.**

If the action is against any corporation or person owning or operating any railway or canal, steamboat or other rivercraft, or any telegraph, telephone, stage, coach, or carline, or against any express company, or against any foreign corporation, service may be made upon any general agent of such corporation, company, or person, wherever found, or upon any station, ticket, or other agent, or person transacting the business thereof or selling tickets therefor in the county where the action is brought; if there is no such agent in said county, then service may be had upon any such agent or person transacting said business in any other county.

If a foreign corporation makes a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if such foreign corporation commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such foreign corporation for the purpose of service of process or original notice on such foreign corporation under this section, and, if the corporation does not have a registered agent or agents in the state of Iowa, shall be deemed to constitute the appointment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process or original notice in actions or proceedings arising from or growing out of such contract or tort. If a nonresident person makes a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if such person commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such person for the purpose of service of process or original notice on such person under this section, and shall be deemed to constitute the appointment of the secretary of state of the state of Iowa to be the true and lawful attorney of such person upon whom may be served all lawful process or original notice in actions or proceedings arising from or growing out of such contract or tort. The term "*nonresident person*" shall include any person who was, at the time of the contract or tort, a resident of the state of Iowa but who removed from the state before the commencement of such action or proceedings and ceased to be a resident of Iowa or, a resident who has remained continuously absent from the state for at least a period of six months following commission of the tort. The making of the contract or the committing of the tort shall be deemed to be the agreement of such corporation or such person

that any process or original notice so served shall be of the same legal force and effect as if served personally upon such defendant within the state of Iowa. The term "*resident of Iowa*" shall include any Iowa corporation, any foreign corporation holding a certificate of authority to transact business in Iowa, any individual residing in Iowa, and any partnership or association one or more of whose members is a resident of Iowa.

Service of such process or original notice shall be made (1) by filing duplicate copies of said process or original notice with said secretary of state, together with a fee of ten dollars, and (2) by mailing to the defendant and to each of them if more than one, by registered or certified mail, a notification of said filing with the secretary of state, the same to be so mailed within ten days after such filing with the secretary of state. Such notification shall be mailed to each foreign corporation at the address of its principal office in the state or country under the laws of which it is incorporated and to each such nonresident person at an address in the state of residence. The defendant shall have sixty days from the date of such filing with the secretary of state within which to appear. Proof of service shall be made by filing in court the duplicate copy of the process or original notice with the secretary of state's certificate of filing, and the affidavit of the plaintiff or the plaintiff's attorney of compliance herewith.

The secretary of state shall keep a record of all processes or original notices so served upon the secretary of state, recording therein the time of service and the secretary of state's actions with reference thereto, and the secretary of state shall promptly return one of said duplicate copies to the plaintiff or the plaintiff's attorney, with a certificate showing the time of filing thereof in the secretary of state's office.

The original notice of suit filed with the secretary of state shall be in form and substance the same as provided in rule of civil procedure 1.901, form 3, Iowa court rules.

The notification of filing shall be in substantially the following form, to wit:

To ..... (Here insert the name of each defendant with proper address.) You will take notice that an original notice of suit or process against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa by filing a copy of said notice or process on the ..... day of ..... (month), ..... (year), with the secretary of state of the state of Iowa.

Dated at ....., Iowa, this ..... day of ..... (month), ..... (year) ..... Plaintiff By .....

Attorney for Plaintiff

Actions against foreign corporations or nonresident persons as contemplated by this law may be brought in the county of which plaintiff is a resident, or in the county in which any part of the contract is or was to be performed or in which any part of the tort was committed.

[C51, § 1727; R60, § 2825; C73, § 2611; C97, § 3529; S13, § 3529; C24, 27, 31, 35, 39, § **11072**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.3; 81 Acts, ch 21, § 20]

83 Acts, ch 101, § 123; 2000 Acts, ch 1058, §56; 2002 Acts, ch 1119, §106

#### **617.4 Consolidated railways.**

If the action is against any railway corporation which has sold or leased its property and franchises to any other railway corporation as authorized by section 327E.2, service of the original notice may be made upon any station, ticket, or other agent of the merged, vendee, or lessee corporation in the county where the action is brought; if there is no such agent in said county, then service may be made upon such agent or person in any other county.

[S13, § 3529; C24, 27, 31, 35, 39, § **11073**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.4]

### **617.5 Insurance company.**

If the action is against an insurance company, for loss or damage upon any contract of insurance or indemnity, service may be had upon any general agent of the company wherever found, or upon any recording agent or agent who has authority to issue policies.

[C97, § 3530; C24, 27, 31, 35, 39, § **11074**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.5]

### **Footnotes**

Actions against bonding companies, § 636.20, 636.21

### **617.6 Other corporations.**

When the action is against any other corporation, service may be made on any trustee or officer thereof, or on any agent employed in the general management of its business, or on any of the last known or acting officers of such corporation.

[C51, § 1726; R60, § 2824; C73, § 2612; C97, § 3531; C24, 27, 31, 35, 39, § **11077**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.6]

### **617.7 Unknown defendants.**

Where it is necessary to make an unknown person defendant, the petition shall be sworn to and state the claim of plaintiff with reference to the property involved in the action, that the name and residence of such person is unknown to the plaintiff, and that the plaintiff has sought diligently to learn the same.

[R60, § 2836; C73, § 2622; C97, § 3538; SS15, § 3538; C24, 27, 31, 35, 39, § **11082**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.7]

### **617.8 Holidays.**

No person shall be held to answer or appear in any court on any day now or hereafter made a legal holiday.

[C97, § 3541; S13, § 3541; C24, 27, 31, 35, 39, § **11090**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.8]

### **Footnotes**

Legal public holidays, § 1C.1

### **617.9 Unserved parties optional procedure.**

When the action is against two or more defendants, and one or more of them shall have been served, but not all, the plaintiff may proceed as follows:

If the action is against defendants who are jointly, or jointly and severally, or severally liable only, the plaintiff may, without prejudice to the plaintiff's rights in that or any other action against those not served, proceed against those served in the same manner as if they were the only defendants; if the plaintiff recovers against those jointly liable only, the plaintiff may take judgment against all thus liable, which may be enforced against the joint and separate property of those served, but not against the separate property of those not served, until they have had opportunity to show cause why judgment should not be enforced against their separate property.

[R60, § 2841; C73, § 2627; C97, § 3542; C24, 27, 31, 35, 39, § **11091**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.9]

#### **617.10 Real estate action indexed.**

When a petition affecting real estate is filed, the clerk of the district court where filed shall forthwith index same in an index book to be provided therefor, under the tract number which describes the property, entering in each instance the cause number as a guide to the record of court proceedings which affect such real estate. If the petition be amended to include other parties or other lands, same shall be similarly indexed. When the cause is finally determined the result shall be indicated in said book wherever indexed.

[R60, § 2842; C73, § 2628; C97, § 3543; S13, § 3543; C24, 27, 31, 35, 39, § **11092**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.10]

#### **617.11 Lis pendens.**

When so indexed said action shall be considered pending so as to charge all third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's rights.

[R60, § 2842; C73, § 2628; C97, § 3543; S13, § 3543; C24, 27, 31, 35, 39, § **11093**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.11]

#### **617.12 Exceptions.**

If the real property affected be situated in the county where the petition is filed it shall be unnecessary to show in said index lands not situated in said county.

[R60, § 2842; C73, § 2628; C97, § 3543; S13, § 3543; C24, 27, 31, 35, 39, § **11094**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.12]

#### **617.13 Real estate in other county.**

When any part of real property, the subject of an action, is situated in any other county than the one in which the action is brought, the plaintiff must, in order to affect third persons with constructive notice of the pendency of the action, file with the clerk of the district court of the other county a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected by the action. The clerk shall at once index and enter a memorandum of the notice in the encumbrance book.

[R60, § 2843; C73, § 2629; C97, § 3544; C24, 27, 31, 35, 39, § **11095**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.13]

89 Acts, ch 83, §83

#### **617.14 Constructive notice.**

From the time of such indexing, the pendency of the action shall be constructive notice to subsequent purchasers or encumbrancers thereof, who shall be bound by all the proceedings taken after the filing of such notice, to the same extent as if parties to the action.

[R60, § 2843; C73, § 2629; C97, § 3544; C24, 27, 31, 35, 39, § **11096**; C46, 50, 54, 58, 62, 66, 71, 73, 75,

77, 79, 81, § 617.14]

**617.15 Notice perpetuated.**

Within two months after the determination of the action, there shall also be filed with such clerk a certified copy of the final order, judgment, or decree, who shall enter and index the same as though rendered in that county, or such notice of pendency shall cease to be constructive notice.

[R60, § 2843; C73, § 2629; C97, § 3544; C24, 27, 31, 35, 39, § **11097**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 617.15]

**617.16 Frivolous actions.**

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.

86 Acts, ch 1211, § 36