

## CHAPTER 271

## RULES OF CIVIL PROCEDURE

In The Matter Of  
The  
Rules Of Civil Procedure

Report Of  
The Supreme Court  
Of  
The State Of Iowa

*To the Fifty-fourth General Assembly of the State of Iowa:*

1 In accordance with Sections 684.18 and 684.19 of the 1950 Code  
2 of Iowa, the Supreme Court of Iowa has prescribed and herewith  
3 reports to the General Assembly the following rules in the nature  
4 of amendments, revisions, and additions to the Rules of Civil Pro-  
5 cedure, as follows, to wit:

## RULE 52

6 Amend Rule 52 by adding a new sentence as follows:

7 "A party, his agent or attorney may take an acknowledgment of  
8 service and deliver copy of notice in connection therewith, and may  
9 mail copy of original notice when mailing is required or permitted  
10 under any rule or statute."

## RULE 53

11 Amend Rule 53 by substituting for the first sentence thereof the  
12 following:

13 "A defendant served by publication or by publication and mail-  
14 ing, as provided in rule 60.1, must appear on or before the date fixed  
15 in the notice as published, which date shall not be less than twenty  
16 days after the day of last publication."

## RULE 60.1

17 Add immediately after Rule 60, the following:

18 "Rule 60.1. Known Defendants.

19 "(a) In every case where service of original notice is made upon  
20 a known defendant by publication, copy of the notice shall also be sent  
21 by ordinary mail addressed to such defendant at his last known mail-  
22 ing address, unless an affidavit of a party or his attorney is filed  
23 stating that no mailing address is known and that diligent inquiry  
24 has been made to ascertain it.

25 "(b) Such copy of notice shall be mailed by the party, his agent  
26 or attorney not less than twenty days before the date set for ap-  
27 pearance.

28 "(c) Proof of such mailing shall be by affidavit, and such affidavit  
29 or the affidavit referred to in rule 60.1(a) shall be filed before the  
30 entry of judgment or decree. The court, in its judgment or decree, or  
31 prior thereto, shall make a finding that the address to which such copy  
32 was directed is the last known mailing address, or that no such ad-  
33 dress is known, after diligent inquiry."

## RULE 62

34 Amend Rule 62 by striking the last sentence thereof which reads:

35 "Service is complete on the date of the last publication."

**RULE 234**

36 Revise Rule 234 to read:

37 "No personal judgment shall be entered against a person served  
38 only by publication or by publication and mailing, as provided in rule  
39 60.1, unless he has appeared."

**RULE 251**

40 Revise Rule 251 (a) to read:

41 "Except in actions for divorce and annulment of marriage, if judg-  
42 ment is entered against a defendant who did not appear and was  
43 served only by publication or by publication and mailing, as provided  
44 in rule 60.1, he or any person legally representing him may apply for  
45 retrial within six months after entry of judgment, and on giving se-  
46 curity for costs is then entitled to his defense and trial as though there  
47 were no judgment."

**RULE 49**

48 Revise Rule 49 to read as follows:

49 "For the purpose of determining whether an action has been com-  
50 menced within the time allowed by statutes for limitation of actions,  
51 whether the limitation inheres in the statutes creating the remedy or  
52 not, the delivery of the original notice to the sheriff of the proper  
53 county with the intent that it be served immediately (which intent  
54 shall be presumed unless the contrary appears) shall also be deemed a  
55 commencement of the action."

**RULE 331**

56 Add as new sentence to Rule 331 (a) :

57 "For the purpose of this rule any order granting a new trial (not  
58 including an order setting aside a judgment by default other than in  
59 actions for divorce or annulment) and any order denying a new trial  
60 shall be deemed a final decision. Any order setting aside a default  
61 decree of divorce or annulment shall also be deemed a final decision."

**CERTIFICATE**

62 I, Charles F. Wennerstrum, do hereby certify that I am the Chief  
63 Justice of the Supreme Court of Iowa; that the foregoing amendments,  
64 revisions and additions to the Rules of Civil Procedure were adopted  
65 and approved by the Supreme Court of Iowa and are herewith reported  
66 to the Fifty-fourth General Assembly of the State of Iowa pursuant to  
67 Code Sections 684.18 and 684.19 of the 1950 Code of Iowa by delivering  
68 same to the Secretary of the Senate and to the Chief Clerk of the House  
69 of Representatives as of the date hereinafter noted.

70 Dated at Des Moines, Iowa this 26 day of January, 1951.

(S) Charles F. Wennerstrum  
Chief Justice of the  
Supreme Court of Iowa.

ATTEST:

(S) Helen O. Galvin,  
Clerk of the Supreme Court of Iowa.

## ACKNOWLEDGMENT

71 I, Carroll Lane, Secretary of the Senate of the State of Iowa, here-  
 72 with acknowledge delivery to me on January 26, 1951 of the within  
 73 report of the Supreme Court of the State of Iowa pertaining to amend-  
 74 ments, revisions, and additions to the Rules of Civil Procedure.

(S) Carroll Lane  
 Secretary of the Senate,  
 Fifty-fourth General Assembly,  
 of the State of Iowa.

## ACKNOWLEDGMENT

75 I, A. C. Gustafson, Chief Clerk of the House of Representatives of  
 76 the State of Iowa, herewith acknowledge delivery to me on January 26,  
 77 1951 of the within report of the Supreme Court of the State of Iowa  
 78 pertaining to amendments, revisions, and additions to the Rules of  
 79 Civil Procedure.

(S) A. C. Gustafson  
 Chief Clerk, House of Representatives,  
 Fifty-fourth General Assembly,  
 of the State of Iowa.

## CERTIFICATE

80 I, W. H. Nicholas, do hereby certify that I am the President of the  
 81 Senate of the Fifty-fourth General Assembly of the State of Iowa;  
 82 and I, Carroll Lane, do hereby certify that I am the Secretary of the  
 83 Senate of the Fifty-fourth General Assembly of the State of Iowa, and  
 84 we do hereby jointly certify that as such President and Secretary that  
 85 on the 26th day of January, 1951 the Supreme Court of the State of  
 86 Iowa reported to said Senate, and filed with it, the attached and fore-  
 87 going modifications, amendments, revisions and additions to the Rules  
 88 of Civil Procedure, heretofore reported by said Supreme Court to the  
 89 Fiftieth General Assembly of the State of Iowa;

90 THAT the date of making said report to the Fifty-fourth General  
 91 Assembly was within the twenty days subsequent to the convening of  
 92 the regular session of the Fifty-fourth General Assembly;

93 THAT no other report pertaining to the Rules of Civil Procedure was  
 94 made or filed by said Supreme Court with said Senate;

95 THAT no other or different changes, modifications, amendments, re-  
 96 visions or additions to the Rules of Civil Procedure were made or  
 97 enacted at such regular session of said Fifty-fourth General Assembly.

98 Signed this 17th day of April, 1951, being the last legislative day of  
 99 the Fifty-fourth General Assembly.

(S) W. H. Nicholas, President

(S) Carroll Lane, Secretary

SENATE  
 Fifty-fourth General Assembly.  
 of the State of Iowa

## CERTIFICATE

100 I, William S. Lynes, do hereby certify that I am the Speaker of  
 101 the House of Representatives of the Fifty-fourth General Assembly  
 102 of the State of Iowa; and I, A. C. Gustafson, do hereby certify that I

103 am the Chief Clerk of the House of Representatives of the Fifty-  
104 fourth General Assembly of the State of Iowa, and we do hereby joint-  
105 ly certify that as such Speaker and Chief Clerk that on the 26th day of  
106 January, 1951 the Supreme Court of the State of Iowa reported to  
107 said House of Representatives, and filed with it, the attached and  
108 foregoing modifications, amendments, revisions and additions to the  
109 Rules of Civil Procedure, heretofore reported by said Supreme Court  
110 to the Fiftieth General Assembly of the State of Iowa;

111 THAT the date of making said report to the Fifty-fourth General  
112 Assembly was within the twenty days subsequent to the convening of  
113 the regular session of the Fifty-fourth General Assembly;

114 THAT no other report pertaining to the Rules of Civil Procedure  
115 was made or filed by said Supreme Court with said House of Repre-  
116 sentatives;

117 THAT no other or different changes, modifications, amendments,  
118 revisions or additions to the Rules of Civil Procedure were made or  
119 enacted at such regular session of said Fifty-fourth General Assem-  
120 bly.

121 Signed this 17th day of April, 1951, being the last legislative day  
122 of the Fifty-fourth General Assembly.

(S) William S. Lynes, Speaker

(S) A. C. Gustafson, Chief Clerk

HOUSE OF REPRESENTATIVES

Fifty-fourth General Assembly

of the State of Iowa