

CHAPTER 351

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-ninth General Assembly of the State of Iowa:

In accordance with sections 684.18 and 684.19, Code of Iowa, 1958, and chapter 367, Laws of the 58th General Assembly, the Supreme Court of Iowa has prescribed and herewith reports to you rules of practice and procedure for proceedings of a civil nature in courts of this state and has adopted and herewith reports to you rules for the administration of courts other than the Supreme Court.

In the consideration and formulation of these rules the Supreme Court has had the valuable assistance of an advisory committee of the following able lawyers and district judges:

T. M. Ingersoll, Chairman, Cedar Rapids

W. L. Beecher, Waterloo

Judge Folsom Everest, Council Bluffs

Wendell B. Gibson, Des Moines

Edward C. Halbach, Clinton

Albert V. Hass, Chariton

Alan Loth, Fort Dodge

George C. Murray, Sheldon

John S. Redd, Sidney

Judge G. Belvel Richter, Waukon

Henry J. TePaske, Orange City

Allan D. Vestal, Iowa City

Judge Matthew Westrate, Muscatine

Judge Bruce M. Snell, Ida Grove, was a member of the committee until he became a member of the Supreme Court at the beginning of 1961

All members of the committee served without compensation.

The Comment which follows some of the rules reported herewith does not form part of the rules but is explanatory thereof.

Other rules, both of practice and procedure and for administration of the courts, are under consideration.

Respectfully submitted

THE SUPREME COURT OF IOWA

By S/ T. G. Garfield
Chief Justice

Des Moines
January 30, 1961

1 **RULE 117 Motion days—disposition of motions.**

2 RULES 117(a) and (b), now in effect, are superseded by the
3 following:

4 (a) The judges of each judicial district shall provide by rule for
5 at least one motion day to be held each month in each county, when
6 all motions made prior to trial on issues of fact on file ten days or
7 more shall be deemed submitted unless by other rule, statute or order
8 of court entered for good cause shown another time for submission
9 is fixed. Such motions not orally argued for any reason shall be
10 deemed submitted without argument unless they are then, or have
11 previously been, set down for argument at some time somewhere in
12 the judicial district not more than ten days thereafter, when they
13 must be submitted without further postponement. Each motion filed
14 shall set out the specific points upon which it is based. A concise
15 memorandum brief may be appended if it is desired to cite supporting
16 rules, statutes or other authorities.

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

19 (c) No change in present Iowa rule.

20 (d) Rule 117(d) is changed by inserting a comma in lieu of the
21 period at the end and adding "including a special appearance."

22 RULE 117 is amended by adding the following subparagraph thereto:

23 (e) The clerk of each court shall maintain a motion calendar on
24 which every "motion" within the purview of (d), above, shall be
25 entered. It shall be arranged to show (1) docket, page and cause
26 number of action in which filed, (2) abbreviated title of the case
27 with surname of the first-named party on each side, (3) counsel of
28 record for parties, (4) denomination of the "motion," (5) date filed,
29 (6) party by whom filed, (7) date entered on calendar, and (8) date
30 of disposition by ruling, order or otherwise. Separate motion cal-
31 endars for law, equity or other divisions may be maintained.

1 **RULE 136 is revised to read:**

2 136. **Pretrial conference.** After issues are joined the court may
3 in its discretion, and shall on written request of any attorney in the
4 case, direct all attorneys in the action to appear before it for a con-
5 ference to consider, so far as applicable to the particular case:

6 (a) The necessity or desirability of amending pleadings by formal
7 amendment or pretrial order;

8 (b) Agreeing to admissions of facts, documents or records not
9 really controverted, to avoid unnecessary proof;

10 (c) Limiting the number of expert witnesses;

11 (d) Settling any facts of which the court is to be asked to take
12 judicial notice;

13 (e) Stating and simplifying the factual and legal issues to be
14 litigated;

15 (f) Specifying all damage claims in detail as of the date of the
16 conference;

17 (g) All proposed exhibits and mortality tables and proof thereof;

18 (h) Consolidation, separation for trial, and determination of
19 points of law;

20 (i) Questions relating to voir dire examination of jurors and

- 21 selection of alternate jurors, to serve if a juror becomes incapacitated;
 22 (j) Possibility of settlement;
 23 (k) Filing of advance briefs when required;
 24 (l) Any other matter which may aid, expedite or simplify the
 25 trial of any issue.
 26 The pretrial judge may direct the parties to the action to be present
 27 or immediately available at the time of conference.

Comment: Rule 136 in its present form has implicit in it most of the matters set forth in revised rule 136 but it is believed the procedure will be more effectively employed if more matters to be considered at pretrial are specified.

1 RULE 174 is revised to read:

2 174. Jury fees. If trial is by a jury after change pursuant to rule
 3 167 the court shall certify the amount of county expenses incurred for
 4 meals, lodging, mileage and fees of jurors and the county where the
 5 action was brought shall pay the county where it was tried the sum
 6 so certified. However, the amount certified shall not exceed the
 7 amount taxable as costs if the action had been commenced in the
 8 county where trial is held.

Comment: Old rule 174, providing for payment of \$3 per day for each juror who tried the case, is deemed inadequate and unfair to the county where the trial is held. The legislature might consider amending Code section 623.1 relating to jury fees in criminal actions transferred to another county for trial.

1 177. Demand for jury trial.

2 (a) No change in present Iowa rule.

1 RULE 177(b) is revised to read:

2 (b) A party desiring jury trial of an issue must make written
 3 demand therefor by filing a separate instrument clearly designating
 4 such demand not later than ten days after the last pleading directed
 5 to that issue. A copy thereof must be filed for each adverse party
 6 appearing and it shall be mailed or delivered by the clerk in the man-
 7 ner provided by rule 82.

8 (c) and (d) No change in present Iowa rule.

1 RULE 178.1, reading as follows, is prescribed:

2 178.1 Reporter's fee—small cases. No court reporter shall be
 3 provided in the trial of actions when the amount in controversy as
 4 shown by the pleadings is three hundred dollars or less, unless the
 5 party demanding one shall pay the clerk in advance the taxable fee
 6 of the reporter for one day, at the beginning of each day. Amounts
 7 so paid shall be taxed as costs in the case, unless otherwise ordered by
 8 the court.

1 RULE 181, now in effect, is superseded by the following:

2 181. Certificate of readiness for trial. If a certificate of readi-
 3 ness for trial of any action is filed, the action shall be entered on the
 4 Ready Calendar List. If parties stipulate for trial assignment, the
 5 certificate shall be filed with the stipulation.

6 The certificate shall be in substantially the following form:
 7 In the..... Court of..... Iowa
 8 Law)
 9 Caption Equity) No.....
 10 Probate)

Certificate of Readiness for Trial

11 The undersigned hereby certifies that:
 12 1. The issues are joined and the case is ready for trial in all re-
 13 spects;
 14 2. Necessary use of discovery rules has been completed and the
 15 taking of desired depositions concluded;
 16 3. The adverse party has had reasonable time to obtain inspections,
 17 examinations and reports under rules 131 to 133;
 18 4. Sufficient time has elapsed to afford the adverse party reasonable
 19 opportunity to be ready for trial;
 20 5. Pretrial conference (a) has or (b) has not been held;
 21 6. Settlement of the case (a) has or (b) has not been discussed; and
 22 7. Assignment for trial (a) by jury upon timely demand filed
 23 or (b) by the court is requested.
 24 Dated this..... day of....., 19.....

25
 26 Attorney for.....
 27 P. O. Address.....
 28 Telephone No.....

29 Strike 3 and (a) or (b) of 5, 6 and 7 if not applicable.
 30 A copy of the certificate must be filed for each adverse party appear-
 31 ing and it shall be mailed or delivered by the clerk in the manner
 32 provided by rule 82.
 33 Objections must be filed, if at all, within seven days after the date
 34 of mailing or delivery of copy of certificate. Hearing thereon shall be
 35 held at the earliest practicable date and the action shall not be re-
 36 moved from the Ready Calendar List unless the objector establishes
 37 that it is not ready for trial notwithstanding reasonable diligence on
 38 his part, or other good cause is shown.

1 RULE 181.1, reading as follows, is prescribed:
 2 181.1 Ready calendar list. The clerk shall maintain a current
 3 list of pending actions wherein a certificate of readiness for trial has
 4 been filed. It shall be known as the Ready Calendar List and be avail-
 5 able for public examination. It shall be arranged in columnar form
 6 to show: (1) caption of cause, (2) docket, page and cause number, (3)
 7 date of filing of certificate of readiness, (4) jury or nonjury case, and
 8 (5) if removed from list, date of such removal. If removed by order
 9 of court the clerk may re-list it only upon the filing of a new certificate
 10 of readiness. If not so removed, actions will remain on list until final
 11 disposition.

1 RULE 181.2, reading as follows, is prescribed:
 2 181.2 Trial Assignments.
 3 (a) Initial assignment day—actions having precedence. District
 4 and superior courts shall provide by rule for an initial assignment day
 5 to be held at an hour and day certain, not more than fourteen days be-
 6 fore, nor more than three days after, the first day of each scheduled
 7 term. Actions on the Ready Calendar List shall have precedence in

8 the assignment for trial of civil and special actions, except those en-
 9 titled to priority under a statute. No action shall have precedence
 10 if objections under rule 181 have been filed and not determined or if
 11 the time for filing such objections has not expired. Insofar as prac-
 12 ticable actions are to be assigned in the order in which the petitions
 13 were filed. The court may assign a case for trial even though no cer-
 14 tificate of readiness for trial has been filed. Municipal courts shall in
 15 like manner provide for an initial assignment day and assign cases
 16 for trial.

17 (b) *Local court rules.* Subject to provisions of (a) hereof, courts
 18 may adopt local rules (1) designating days for holding additional
 19 calendar calls and assigning cases for trial, giving precedence so far
 20 as practicable to actions as in (a), (2) providing for the supervision
 21 of the calendar by one or more judges, for separate supervision of
 22 calls and assignment of cases by judges assigned to the law, equity or
 23 probate division of the court, and (3) prescribing such other pro-
 24 cedures as are deemed expedient for the orderly and efficient admini-
 25 stration of court business.

26 (c) *No notice of assignment days required—holidays.* Notice
 27 of days of assignment or calendar calls may be by any reasonable
 28 means but shall not be required except when the court orders a change
 29 to a day other than prescribed by local rule. If any such day falls on
 30 a legal holiday it shall take place at the same hour on the next succeed-
 31 ing judicial day without notice.

Comment: For definition of civil and special actions see Code section
 611.2.

1 RULE 181.3, reading as follows, is prescribed:

2 181.3 **Duty to notify court.**

3 (a) *Of settlements.* Whenever a case assigned for trial has been
 4 settled it shall be the duty of the attorneys or parties appearing in per-
 5 son to so notify the court immediately.

6 (b) *Of conflicting engagements and termination thereof.* When
 7 a case assigned for trial is reached and an attorney of record therein
 8 is then actually engaged in a trial in another court, it shall be his duty
 9 to so inform the court who may hold the trial of such case in abeyance
 10 until the engagement is concluded. As soon as the attorney is free
 11 from such engagement it shall be his duty to notify the court im-
 12 mediately and stand ready to proceed with trial of the case.

1 183. **Causes for continuance.** Before the period at the end of
 2 rule 183(a) there is inserted "and the court approves."

Comment: It is felt no continuance should be granted without court
 approval.

1 196. **Instructions.**

2 RULE 196 is amended by striking the first sentence and substituting
 3 the following therefor:

4 The court shall instruct the jury as to the law applicable to all
 5 material issues in the case and such instructions shall be in writing,
 6 in consecutively numbered paragraphs, and shall be read to the jury
 7 without comment or explanation; provided, however, that in actions
 8 triable to a jury where the amount in controversy as shown by the

9 pleadings is three hundred dollars or less, and in any action where
10 the parties so agree, the instructions may be oral.

1 RULE 215.1, reading as follows, is prescribed:

2 215.1 Uniform rule for dismissal for want of prosecution. It is
3 the declared policy that in the exercise of reasonable diligence every
4 civil and special action, except under unusual circumstances, shall be
5 brought to issue and tried within one year from the date it is filed and
6 docketed and in most instances within a shorter time.

7 All cases at law or in equity where the petition has been filed more
8 than one year prior to July 15 of any year shall be for trial at the
9 next term commencing after August 15 of said year. The clerk
10 shall prior to August 15 give notice to counsel of record as provided
11 in rule 82 of:

- 12 (a) the docket number,
- 13 (b) the names of parties,
- 14 (c) counsel appearing,
- 15 (d) date of filing petition,

16 and the notice shall state that such case will be for trial and subject
17 to dismissal if not tried in the next succeeding term pursuant to this
18 rule. All such cases shall be assigned and tried or dismissed without
19 prejudice at plaintiff's costs unless satisfactory reasons for want of
20 prosecution or grounds for continuance be shown by application and
21 ruling thereon after notice and not ex parte. This rule shall not apply
22 to cases (a) pending on appeal from a court of record to a higher
23 court or under order of submission to the court; (b) in which pro-
24 ceedings subsequent to judgment or decree are pending; (c) which
25 have been stayed pursuant to the Soldiers and Sailors Civil Relief Act;
26 (d) which have been filed but in which plaintiff has been unable by
27 due diligence to obtain service of original notice; (e) where a party
28 is paying a claim pursuant to written stipulation on file or court order;
29 and (f) awaiting the action of a referee, master or other court ap-
30 pointed officer; provided, however, that a finding as to (a) through (f)
31 is made and entered of record.

32 No continuance under this rule shall be by stipulation of parties
33 alone but must be by order of court. Where appropriate the order of
34 continuance shall be to a date or term certain.

1 RULE 227.1, reading as follows, is prescribed:

2 227.1 Taxation of costs. Where an action is disposed of without
3 payment, or provision for assessment, of court costs the clerk shall
4 at once enter judgment for costs against the plaintiff.

1 RULE 297 is amended by striking the words "two hundred dollars"
2 and inserting in lieu thereof "five hundred dollars."

Comment: Under this change the amount stated in rule 297 corre-
sponds with the amount stated in Code sections 638.41 and 668.33.

1 RULE 340 Record on appeal. There is added to rule 340 the fol-
2 lowing paragraph designated:

3 (j) *Agreed record.* Instead of proceeding under the foregoing
4 paragraphs (a) to (f) the parties may, promptly after taking an
5 appeal, present for his approval to the judge before whom the case
6 was tried, or if he is not available to any other judge of the same
7 court, an agreed record on appeal. It shall show how the questions

8 arose and were decided in the trial court. It shall either set out so
 9 much of the facts pleaded or proved as are necessary to a decision of
 10 such questions and to proper disposition of the appeal, or contain an
 11 abstract of the relevant proceedings which will enable the supreme
 12 court to decide the appeal. It shall include an abstract or copy of the
 13 judgment or order appealed from and a brief index of contents. Such
 14 agreed record, when approved by said judge, shall be the record on
 15 appeal and the appellant shall cause it to be printed, filed with the
 16 clerk of the trial court and transmitted to the clerk of the supreme
 17 court in accordance with rule 342.

1 RULE 370 is superseded by the following:

2 370. General provisions, comments and footnotes.

3 (a) The past, present and future tense shall each include the
 4 others; the masculine, feminine and neuter gender shall include the
 5 others; and the singular and plural number shall each include the
 6 other.

7 (b) Rule and subdivision headings do not in any manner affect
 8 the scope, meaning or intent of the provisions of these rules.

9 (c) All references to sources, comments, and footnotes are in-
 10 corporated solely for convenience in the use of the rules and do not
 11 form a part thereof.

1 RULE 372 is prescribed:

2 372. Rules by trial courts. Each district, superior and municipal
 3 court, by action of a majority of its judges, may from time to time
 4 make and amend rules governing its practice not inconsistent with
 5 these rules. A copy of all rules in effect July 4, 1961, and any amend-
 6 ments thereafter made by any such court shall be transmitted to the
 7 clerk of the supreme court. In all cases not provided for by rule
 8 courts may regulate their practice in any manner not inconsistent
 9 with these rules.

ACKNOWLEDGEMENTS

I, Carroll Lane, Secretary of the Senate of the State of Iowa, hereby
 acknowledge delivery to me on the 30th day of January, 1961 (January
 29, 1961, having been a Sunday), of the Report of the Supreme Court of
 Iowa, of which the foregoing is a duplicate copy.

S/ Carroll Lane
 Secretary of the Senate
 Fifty-ninth General Assembly
 of the State of Iowa

I, William R. Kendrick, Chief Clerk of the House of Representatives
 of the State of Iowa, hereby acknowledge delivery to me on the 30th day
 of January, 1961 (January 29, 1961, having been a Sunday), of the Report
 of the Supreme Court of Iowa, of which the foregoing is a duplicate copy.

S/ William R. Kendrick
 Chief Clerk of the House of
 Representatives, Fifty-ninth
 General Assembly of the State
 of Iowa

CERTIFICATE

I, W. L. Mooty, do hereby certify that I am the President of the Senate of the Fifty-ninth General Assembly of the State of Iowa; and I, Carroll A. Lane, do hereby certify that I am the Secretary of the Senate of the Fifty-ninth General Assembly of the State of Iowa, and we do hereby jointly certify that as such President and Secretary that on the 30th day of January, 1961, the Supreme Court of the State of Iowa reported to said Senate, and filed with it, the attached and foregoing modifications, amendments, revisions and additions to the Rules of Civil Procedure, heretofore reported by said Supreme Court to the Fiftieth General Assembly of the State of Iowa;

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

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

THAT no other or different changes, modifications, amendments, revisions or additions to the Rules of Civil Procedure were made or enacted at such regular session of said Fifty-ninth General Assembly.

Signed this 6th day of May, 1961, being the last legislative day of the Fifty-ninth General Assembly.

S/ W. L. Mooty
President of the Senate

S/ Carroll A. Lane
Secretary of the Senate
SENATE
Fifty-ninth General Assembly
of the State of Iowa

CERTIFICATE

I, Henry C. Nelson, do hereby certify that I am the Speaker of the House of Representatives of the Fifty-ninth General Assembly of the State of Iowa; and I, William R. Kendrick, do hereby certify that I am the Chief Clerk of the House of Representatives of the Fifty-ninth General Assembly of the State of Iowa, and we do hereby jointly certify that as such Speaker and Chief Clerk that on the 30th day of January, 1961, the Supreme Court of the State of Iowa reported to said House of Representatives, and filed with it, the attached and foregoing modifications, amendments, revisions and additions to the Rules of Civil Procedure, heretofore reported by said Supreme Court to the Fiftieth General Assembly of the State of Iowa;

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

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

THAT no other or different changes, modifications, amendments, revisions or additions to the Rules of Civil Procedure were made or enacted at such regular session of said Fifty-ninth General Assembly.

Signed this 6th day of May, 1961, being the last legislative day of the Fifty-ninth General Assembly.

S/ Henry C. Nelson
Speaker of the House

S/ William R. Kendrick
Chief Clerk
HOUSE OF REPRESENTATIVES
Fifty-ninth General Assembly
of the State of Iowa