

RULES OF CIVIL PROCEDURE

CHAPTER 1268

RULES OF CIVIL PROCEDURE

[See also chapter 1130 herein]

IN THE MATTER OF THE
RULES OF CIVIL PROCEDURE



REPORT OF THE
SUPREME COURT

TO THE 1982 REGULAR SESSION OF THE SIXTY-NINTH GENERAL ASSEMBLY OF THE STATE OF IOWA:

Pursuant to sections 684.18(1) and 684.19, The Code, the Supreme Court of Iowa has prescribed and hereby reports to the General Assembly changes in existing Rules of Civil Procedure as follows:

Rule 82(g).

That rule 82(g) be amended as follows:

"(g) Proof of Service. Proof of service of all papers required or permitted to be served, shall be filed in the clerk's office promptly, and, in any event, before action is to be taken thereon by the court or the parties. The proof shall show the time and manner of service and the names and addresses of the persons served. The proof may be by written acknowledgment of service, by certification of a member of the bar of this state, by affidavit of the person who served the papers, or by any other proof satisfactory to the court."

Rule 136(b).

That rule 136(b) be amended as follows:

"(b) Pretrial Conference. After issues are joined the court may in its discretion, and shall on written request of any attorney in the case, direct all attorneys in the action to appear before it for a conference to consider, so far as applicable to the particular case:

- (1) The necessity or desirability of amending pleadings by formal amendment or pretrial order;
- (2) Agreeing to admissions of facts, documents or records not really controverted, to avoid unnecessary proof;
- (3) Limiting the number of expert witnesses;
- (4) Settling any facts of which the court is to be asked to take judicial notice;
- (5) Stating and simplifying the factual and legal issues to be litigated;
- (6) Specifying all damage claims in detail as of the date of the conference;
- (7) All proposed exhibits and mortality tables and proof thereof;
- (8) Consolidation, separation for trial, and determination of points of law;
- (9) Questions relating to voir dire examination of jurors and selection of alternate jurors, to serve if a juror becomes incapacitated;
- (10) Possibility of settlement and imposition of a settlement deadline;
- (11) Filing of advance briefs when required;
- (12) Setting dates for closing of pleadings and discovery;
- (13) Assigning a date for trial;

(14) Any other matter which may aid, expedite or simplify the trial of any issue.

The pretrial judge may direct the parties to the action to be present or immediately available at the time of conference."

Rule 138.1.

That the following new rule 138.1 be added:

"138.1. Sanction for Late Settlement. If an action is settled without prior approval of the court after a deadline established in an order entered pursuant to rule 138, the court may, after giving the parties and their counsel an opportunity to be heard, assess costs incurred by the failure to settle the action prior to the deadline, including the expense of assembling the jury panel and compensating jurors, or impose other appropriate sanction against one or more of the parties for violation of the settlement deadline."

Rule 187(a).

That rule 187(a) be amended as follows:

"(a) Selection. The clerk shall prepare and deposit in a box separate ballots containing the names of all persons returned or added as jurors. At each jury trial ~~he~~ the clerk shall select sixteen jurors by closing and shaking the box to intermingle the ballots, and drawing them from the box without seeing the names. ~~He~~ 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."

Rule 215.

That rule 215 be amended as follows:

"215. Voluntary Dismissal. A party may, without order of court, dismiss his own petition, counterclaim, cross-petition or petition for intervention, at any time before the trial has begun, subject to the provisions of rule 138.1. Thereafter a party may dismiss his action or his 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 him on the merits, unless otherwise ordered by the court, in the interests of justice."

Rule 309.

That rule 309 be amended as follows:

"309. The Writ. The writ may be granted only by the district court acting through a district judge unless it is directed to that court, a district judge, or a district associate judge, ~~or a full-time magistrate appointed pursuant to §602.51 or §602.50, The Code;~~ and then by the supreme court or a justice thereof. Only the district court acting through a district judge may grant the writ directed at a ~~part-time~~ judicial magistrate appointed pursuant to §602.50 or §602.58, The Code. 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 defendant's records and proceedings as are complained of in the petition or as may be pertinent thereto, together with the facts of the case, describing or referring to them or any of them with convenient certainty; and also to have then and there the writ."

Rule 371.

That the following new rule 371 be added:

"371. Form of Papers. Effective July 1, 1983, all notices, pleadings, motions, orders, and other papers filed in the district court shall be typewritten in black on plain, opaque, unglazed, white paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Typewriting shall be standard pica size with ten characters per inch. Typed matter shall be 6 inches wide by 8 1/2 inches long. The margin on each side shall be not less than 1 1/8 inches. Consecutive sheets shall be attached at the upper left corner.

Before July 1, 1983, paper 8 1/2 by 11 inches, 8 1/2 by 13 inches, or 8 1/2 by 14 inches in size may be used. The margin on each side shall be not less than 1 1/8 inches."

Respectfully submitted,
THE SUPREME COURT OF IOWA

/s/ W. W. Reynoldson

W. W. REYNOLDSON, CHIEF JUSTICE

Des Moines, Iowa
January 27, 1982

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Senate of the State of Iowa, hereby acknowledge delivery to me on the twenty-seventh day of January, 1982, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Civil Procedure.

/s/ K. Marie Thayer

Secretary of the Senate, 1982 Regular
Session of the Sixty-ninth General Assembly
of the State of Iowa

ACKNOWLEDGMENT

I, the undersigned, Chief Clerk of the House of Representatives of the State of Iowa, hereby acknowledge delivery to me on the twenty-seventh day of January, 1982, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Civil Procedure.

/s/ Elizabeth A. Isaacson

Chief Clerk of the House of Representatives,
1982 Regular Session of the Sixty-ninth
General Assembly of the State of Iowa

CERTIFICATE

I, Terry E. Branstad, do hereby certify that I am the President of the Senate of the 1982 Regular Session of the Sixty-ninth General Assembly of the State of Iowa; and I, K. Marie Thayer, do hereby certify that I am the Secretary of the Senate of the 1982 Regular Session of the Sixty-ninth General Assembly of the State of Iowa, and we do hereby jointly certify as President and Secretary that on the twenty-seventh day of January, 1982, the Supreme Court of the State of Iowa reported to Senate, and filed with it, the attached and foregoing Rules of Civil Procedure;

THAT the date of making that report to the 1982 Regular Session of the Sixty-ninth General Assembly was within twenty days subsequent to the convening of the 1982 Regular Session of the Sixty-ninth General Assembly;

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

THAT there was enacted at the 1982 Regular Session of the Sixty-ninth General Assembly an Act known as Senate File 2270, wherein the proposed new Rule 371 was stricken;

THAT no other changes, modifications, amendments, revisions or additions to the Rules of Civil Procedure as reported by the Supreme Court were made or enacted at the 1982 Regular Session of the Sixty-ninth General Assembly.

Signed this 24th day of April, 1982, being the sine die adjournment of the 1982 Regular Session of the Sixty-ninth General Assembly.

/s/ Terry E. Branstad

TERRY E. BRANSTAD
President of the Senate

/s/ K. Marie Thayer

K. MARIE THAYER
Secretary of the Senate, 1982 Regular
Session of the Sixty-ninth General Assembly
of the State of Iowa

CERTIFICATE

I, Delwyn Stromer, do hereby certify that I am the Speaker of the House of Representatives of the 1982 Regular Session of the Sixty-ninth General Assembly of the State of Iowa; and I, Elizabeth A. Isaacson, do hereby certify that I am the Chief Clerk of the House of Representatives of the 1982 Regular Session of the Sixty-ninth General Assembly of the State of Iowa, and we do hereby jointly certify as Speaker and Chief Clerk that on the twenty-seventh day of January, 1982, the Supreme Court of the State of Iowa reported to the House of Representatives, and filed with it, the attached and foregoing Rules of Civil Procedure;

THAT the date of making that report to the 1982 Regular Session of the Sixty-ninth General Assembly was within twenty days subsequent to the convening of the 1982 Regular Session of the Sixty-ninth General Assembly;

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

THAT there was enacted at the 1982 Regular Session of the Sixty-ninth General Assembly an Act known as Senate File 2270, wherein the proposed new Rule 371 was stricken;

THAT no other changes, modifications, amendments, revisions or additions to the Rules of Civil Procedure as reported by the Supreme Court were made or enacted at the 1982 Regular Session of the Sixty-ninth General Assembly.

Signed this 24th day of April, 1982, being the sine die adjournment of the 1982 Regular Session of the Sixty-ninth General Assembly.

/s/ Delwyn Stromer

DELWYN STROMER
Speaker of the House

/s/ Elizabeth A. Isaacson

ELIZABETH A. ISAACSON
Chief Clerk of the House of Representatives,
1982 Regular Session of the Sixty-ninth
General Assembly of the State of Iowa