

RULES OF CRIMINAL PROCEDURE

CHAPTER 1269

RULES OF CRIMINAL PROCEDURE

IN THE MATTER OF THE
RULES OF CRIMINAL 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 813.4 and 684.19, The Code, the Supreme Court of Iowa has prescribed and hereby reports to the General Assembly changes in existing Rules of Criminal Procedure as shown on exhibit A attached hereto and made a part hereof.

Respectfully submitted,
THE SUPREME COURT OF IOWA

/s/ W. W. Reynoldson

W. W. REYNOLDSON, CHIEF JUSTICE

Des Moines, Iowa
January 27, 1982

EXHIBIT A**CHANGES IN RULES OF CRIMINAL PROCEDURE**

Rule 5(4).

That rule 5(4) be amended as follows:

"4. Approval by Judge. Prior to the filing of the information a district judge, or a district associate judge or magistrate having jurisdiction of the offense must approve the information by a finding that the evidence contained in the information and the minutes of evidence, if unexplained, would warrant a conviction by the trial jury. 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 ~~said~~ the information set aside and ~~said~~ the case submitted to the grand jury."

Rule 6(4)(b).

That rule 6(4)(b) be amended as follows:

"b. Prosecution and Judgment. When an indictment or information jointly charges a defendant with a felony, and the same indictment charges two or more defendants, those defendants jointly charged may be tried jointly, if in the discretion of the court a joint trial will not result in prejudice to one or more of the parties. Otherwise, otherwise the defendants shall be tried separately. ~~Where~~ When jointly tried, each defendant defendants shall be adjudged separately on each count."

Rule 8(1).

That rule 8(1) be amended by adding the following new unnumbered third paragraph:

"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 form that substantially complies with form 10.1 included in the appendix to 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."

Rule 8.1

That the following new rule 8.1 be added:

"Rule 8.1. Trial Assignments.

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. 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."

Rule 10(4).

That rule 10(4) be amended as follows:

"4. Time of Filing. Motions hereunder, except a motions for a bill of particulars in

limine, shall be filed within when the grounds therefor reasonably appear but no later than forty days after arraignment, unless the period for filing is extended by the court for good cause shown. Motions in limine shall be filed when grounds therefor reasonably appear but no later than nine days before the trial date."

Rule 12.

That rule 12 be amended as follows:

"Rule 12. Depositions.

1. By Defendant. A defendant in a criminal case, may examine depose all witnesses listed by the state on the indictment or information or notice of additional witnesses, conditionally or on notice and commission, 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 had 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 is (a) is a foundation witness or (b) has been adequately examined on preliminary hearing. The court shall immediately determine whether discovery of said the witness or witnesses is necessary in the interest of justice and shall allow or disallow said the deposition.

2. Special Circumstances. Whenever due to the interests of justice and the special circumstances of the a case it is in the interest of justice that make necessary the taking of the testimony of a prospective witness not included in subsection 1 or 3 of this rule, be taken and preserved for use at trial, the court may upon motion of a party and notice to the other parties order that the testimony of such 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 the a showing of necessity arising from either of the following circumstances:

a. The information sought by way of deposition cannot adequately be disclosed obtained by a bill of particulars, or by voluntary statements.

b. Other just cause necessitating discovery by the taking of the deposition.

3. By State. At or before the time of the taking of a deposition by a defendant under subsection 1 or 2 of this rule, the defendant shall file a written list of the names and addresses of all witnesses expected to be called for the defense. There shall be (except the defendant and surrebuttal witnesses), and the defendant shall have a continuing duty before and throughout trial to promptly to disclose additional defense witnesses, and such. Such witnesses shall be subject to being deposed by the state.

4. Failure to Comply. If the defendant has taken depositions under subsection 1 of this rule 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.

5. Perpetuating Testimony. A person apprehensive of expecting to be a party to a criminal prosecution may perpetuate testimony in his or her favor in the same manner and with like effect, as may be done in apprehension expectation of any a civil action.

5 6. Time of Taking. Depositions taken hereunder shall be taken within thirty days after arraignment, unless the period for taking is extended by the court for good cause shown."

Rule 17(1).

That rule 17(1) be amended as follows:

"1. 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 18.

That rule 18 be amended as follows:

That subsections "1" and "2" be stricken; that subsection "5" be stricken and the following new subsection "5" be substituted in lieu thereof:

"5. 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."

That subsections "3", "4", "5", "6", "7", "8", "9" and "10" be renumbered as subsections "1", "2", "3", "4", "5", "6", "7" and "8", respectively.

Rule 21(1).

That rule 21(1) be amended as follows:

"1. Form of Verdicts. ~~In open court the~~ The jury must render a verdict of 'guilty', which imports a conviction, or 'not guilty' or, 'not guilty by reason of insanity', or 'not guilty by reason of diminished responsibility', which imports acquittal, on the material allegations in the charge. The jury shall return a verdict determining the degree of guilt in cases submitted to determine the grade of the offense."

Rule 21(5).

That rule 21(5) be amended as follows:

"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 his or her 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 ~~may~~ 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 bailiff to the clerk of court, who shall enter it upon the record and disclose it to the court as soon as practicable."

Rule 27(2)(c).

That rule 27(2)(c) be amended as follows:

"c. All criminal cases must be brought to trial within one year after the defendant's initial arraignment pursuant to R.Cr.P. 8 unless an extension is granted by the court, upon a showing of good cause."

Rule 30. Appendix of Forms.

That the appendix of forms be amended by adding the following new form 10.1:

"FORM 10.1

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 section(s) of the Iowa Criminal Code, I have read it, and I have familiarized myself with its contents.

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 rule 27(2)(b) of the Iowa Rules of Criminal Procedure to a trial within ninety days after indictment/filing of the trial information and [check either "a" or "b"]:

[]a. I demand a speedy trial pursuant to rule 27(2)(b).

[]b. I waive my right to a speedy trial pursuant to rule 27(2)(b).

11. I request that a trial date be promptly set pursuant to rule 8.1 of the Iowa Rules of Criminal Procedure. 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, 19.....

[SEAL]

.....
Notary public or other officer
authorized to take and certify
acknowledgements and administer
oaths."

Rule 52.

That rule 52 be stricken and the following new rule 52 be substituted in lieu thereof:

"Rule 52. 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."

Rule 54.

That rule 54 be amended as follows:

"Rule 54. Appeals.

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 the filing with the clerk of the district court an appeal bond with surety approved by the clerk, in the sum specified in the judgment. The defendant may A party takes an appeal, by giving notice orally to the magistrate at the time judgment is rendered that he or she the party appeals, or by delivering to the magistrate not later than ten days thereafter, a written notice of the defendant's appeal, and in either case the magistrate must make an entry on its 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. Record. When an appeal is taken, the magistrate shall forward to the appropriate district court clerk a copy of the magistrate's docket entries in the magistrate's court, together with copies of the complaint, warrant, motions, pleadings, the magistrate's minutes of the witnesses' testimony and, the exhibits or copies the originals thereof, and all 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.

3. Procedure if Appeal From Lawyer Magistrate. A district judge shall promptly hear the appeal upon the record thus filed without further evidence if If the original action was tried by a district judge or, district associate judge, or judicial magistrate who is admitted to practice law in Iowa, unless the district judge hearing the appeal either upon application of any party or on the district judge's own motion orders the appeal tried anew on the grounds the record is inadequate the appellant shall file and serve, within fourteen 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 thirty 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.

4. Procedure if Appeal From Nonlawyer Magistrate. If the original action was tried by a judicial magistrate who is not admitted to practice law in Iowa, the a district judge or district associate judge shall promptly try the case anew without a jury unless the appellant demands an appeal only on the record already made and briefs thereon. Within fourteen days after the taking of the appeal, the court or its designee shall set the date and time for trial. Within ten days after an appeal is taken, unless extended by order of a district judge or by stipulation of the parties, 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. If the original action was tried before a district judge acting as a judicial magistrate, the appeal shall be to a different district judge.

The judge shall decide the appeal without regard to technicalities or defects. Judgment shall be rendered as though the case were being originally tried. The right to further appeal is governed by section 814.6, The Code. If, within seven days after taking an appeal, the appellant files with the clerk of the district court and serves on the appellee a demand for an appeal on the record and briefs only, the appeal shall proceed and judgment shall be entered in the manner prescribed in subsection 3 of this rule.

2 5. Bail.

a. Admission to Bail. Admission to bail shall be as provided for in chapter 811, The Code. 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 in the county of the district court of that county. The magistrate taking bail shall remit it to the clerk of the district court who shall give receipt therefor.

3 6. Counsel. In appropriate cases, the magistrate shall appoint counsel on appeal.

7. Review by Supreme Court. After the decision on appeal the defendant may apply for discretionary review pursuant to sections 814.4 and 814.6(2)(d), The Code, and the plaintiff may apply for discretionary review pursuant to sections 814.4 and 814.5(2)(d), The Code. Procedure on discretionary review shall be as prescribed in rules 201-203 of the rules of appellate procedure."

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 Criminal 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 Criminal 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

IN THE MATTER OF THE
RULES OF CRIMINAL PROCEDURE

} CORRECTION OF REPORT OF
THE SUPREME COURT

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

Pursuant to sections 813.4 and 684.19, The Code, the Supreme Court of Iowa on January 27, 1982, reported to the General Assembly changes in the Rules of Criminal Procedure. It has come to the attention of the court that there is a technical mistake on page 6 of exhibit A of the report which relates to the renumbering of the subsections of rule 18.

Lines 15 through 17 on page 6 of exhibit A of the January 27, 1982, report regarding the Rules of Criminal Procedure should be, and hereby are, corrected to read as follows:

That subsections "3", "4", "5", "6", "7", "8", "9", "10" and "11" be renumbered as subsections "1", "2", "3", "4", "5", "6", "7", "8", and "9", respectively.

Respectfully submitted,
THE SUPREME COURT OF IOWA

/s/ W. W. Reynoldson

W. W. REYNOLDSON, CHIEF JUSTICE

Des Moines, Iowa
March 1, 1982

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Senate of the State of Iowa, hereby acknowledge delivery to me on the first day of March, 1982, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Criminal 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 first day of March, 1982, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Criminal 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 the Senate, and filed with it, the attached and foregoing Rules of Criminal 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 on the first day of March, 1982, the Supreme Court of the State of Iowa submitted to the Senate and filed with it, the attached and foregoing correction of the report of the Supreme Court regarding the attached and foregoing Rules of Criminal Procedure;

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

THAT no changes, modifications, amendments, revisions or additions to the Rules of Criminal 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 Criminal 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 on the first day of March, 1982, the Supreme Court of the State of Iowa submitted to the Senate and filed with it, the attached and foregoing correction of the report of the Supreme Court regarding the attached and foregoing Rules of Criminal Procedure;

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

THAT no changes, modifications, amendments, revisions or additions to the Rules of Criminal 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