

RULES OF CIVIL PROCEDURE

**CHAPTER 1325
RULES OF CIVIL PROCEDURE**

IN THE MATTER OF CHANGES IN
RULES OF CIVIL PROCEDURE



REPORT OF THE
SUPREME COURT

TO: SERGE H. GARRISON, SECRETARY OF THE LEGISLATIVE COUNCIL OF THE
STATE OF IOWA:

Pursuant to Iowa Code sections 602.4201 and 602.4202 (Supp. 1983), the Supreme Court of Iowa has prescribed and hereby reports to the Legislative Council the attached Exhibit A, constituting changes in Rules of Civil Procedure, which have been issued on this date. Pursuant to Iowa Code section 602.4202(3) (Supp. 1983), these rules and forms are to take effect on July 1, 1984.

Respectfully submitted,
THE SUPREME COURT OF IOWA

/s/ W. W. Reynoldson
W. W. REYNOLDSON, Chief Justice

Des Moines, Iowa
March 27, 1984

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Legislative Council of the State of Iowa, hereby acknowledge delivery to me on the twenty-seventh day of March, 1984, of the Report of the Supreme Court pertaining to Rules of Civil Procedure.

/s/ Serge H. Garrison
Secretary of the Legislative Council

EXHIBIT "A"
RULES OF CIVIL PROCEDURE

Amend Rule 91 as follows:

91. Contract. Every pleading referring to a contract must state whether it is written or oral. ~~If the contract is the basis of the action or defense, it must be set forth in full.~~

Strike existing Rule 106 and substitute the following:

106. Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice that party in maintaining the action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

Amend Rule 126(a) as follows:

126(a) Availability—procedures for use. Except in small claims, any party may serve written interrogatories to be answered by another party or, if the other party is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Copies of interrogatories and answers shall be served on each adverse party. Interrogatories may, without leave of court, be directed to the plaintiff after commencement of the action and upon any other party with or after service of the original notice upon that party.

Each interrogatory shall be followed by a reasonable space for insertion of the answer. An interrogatory which does not comply with this requirement shall be subject to objection.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer.

A party answering interrogatories must answer in the space provided or must set out each interrogatory immediately preceding the answer to it. A failure to comply with this rule shall be deemed a failure to answer and shall be subject to sanctions as provided in R.C.P. 134. The answers are to be signed by the person making them. The party to whom the interrogatories are directed shall file the answers, and objections if any, within thirty days after they are served, except that a defendant may file answers or objections within ~~forty-five days~~ sixty days after service of the original notice upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under R.C.P. 134 "a" with respect to any objection to or other failure to answer an interrogatory. Copies of answers shall be delivered as provided in R.C.P. 82.

A party shall not serve more than thirty interrogatories on any other party except upon agreement of the parties or leave of court granted upon a showing of good cause. A motion for leave of court to serve more than thirty interrogatories must be in writing and shall set forth the proposed interrogatories and the reasons establishing good cause for their use.

Amend the second paragraph of Rule 127 as follows:

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may on motion allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of ~~forty-five days~~ sixty days after service of the original notice upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the request admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of R.C.P. 134 "c", deny the matter or set forth reasons why he cannot admit or deny it.

Amend the second paragraph of Rule 130 as follows:

The party upon whom the request is served shall serve a written response within thirty days after the service of the request, except that a defendant may serve a response within ~~forty-five days~~ sixty days after service of the original notice upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under R.C.P. 134 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Amend Rule 181(a) as follows:

181. Trial certificate, response.

(a) When a trial certificate is filed in any action, the action shall be entered on the Trial Certificate List. The certificate shall be in the following form:

IN THE IOWA DISTRICT COURT
FOR _____ COUNTY

(Caption)	Law	}	TRIAL CERTIFICATE
	Equity		
	Probate		
			Filed by _____ (Party)

1. The above party believes the issues are joined and states that such party (a) is ready for trial, or (b) will be ready for trial by _____ (date)
2. Discovery has been completed except as follows:
3. Pretrial conference (a) is, or (b) is not requested.
4. Assignment for trial (a) by jury, or (b) by the court, is requested.
A jury demand (a) has, or (b) has not been filed and assignment for trial is requested.
5. Names, addresses and telephone numbers of other attorneys and parties appearing pro se:

Dated this _____ day of _____, 19_____.

Attorney for _____
P.O. Address _____

Telephone No. _____

Strike existing Rule 138.1 and add a new Rule 181.4:

181.4 Fee for Late Settlement of Jury Trial. In the event notice of settlement is given later than two full working days before a civil action is scheduled to be tried to a jury or is reached for jury trial, whichever is later, a fee of \$500 shall be assessed as court costs. Fees so collected shall be remitted by the clerk to the treasurer of state to be deposited in the general fund of the state.

Strike existing Rule 225 and substitute the following:

225. On Claim and Counterclaim. A claim and counterclaim shall not be set off against each other, except by agreement of both parties or unless required by statute. On motion, however, the court, if it finds that the obligation of either party is likely to be uncollectible, may order that both parties make payment into court for distribution. If there are multiple parties and separate set-off issues, each set-off issue should be determined independently of the others. The court shall distribute the funds received and declare obligations discharged as if the payment into court by either party had been a payment to the other party and any distribution of those funds back to the party making payment had been a payment to him by the other party.

Amend Rule 328 as follows:

328. Dissolution. Hearing to Dissolve Temporary Injunction. A party against whom a temporary injunction is issued without notice may, at any time, move the court where the action is

pending to dissolve, vacate or modify it. Such motion shall be submitted to that court. But if the injunction was granted by a justice or court of a different district under R.C.P. 324, the court or justice that ordered it shall hear the motion, if it be shown by affidavit, that prompt hearing cannot be obtained in the court where the action is pending.

Amend Rule 332 as follows:

332. Time for Special Appearance, Motion or Answer. Respondent shall, within twenty days from the date of personal service or mailing of a petition for judicial review under Iowa Code section 17A.19(2), serve upon petitioner and all others upon whom the petition is required to be served, and within a reasonable time thereafter file, a written special appearance, motion, or answer.

In addition, the court recommends the following change in an official form which should not be adopted until a corresponding change is made in Iowa Code section 321.500:

2. FORM OF ORIGINAL NOTICE AGAINST A NONRESIDENT MOTOR VEHICLE OWNER OR OPERATOR UNDER IOWA CODE SECTION 321.500

IN THE IOWA DISTRICT COURT
FOR _____ COUNTY

Plaintiff(s),

No. _____

(INSERT "LAW"
OR "EQUITY")

vs.

Defendant(s).

ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified that there is now on file in the office of the clerk of the above court, a petition in the above-entitled action, a copy of which petition is attached hereto. The plaintiff's attorney is _____, whose address is _____, Iowa _____.

You are further notified that unless, ~~before noon of the sixtieth day~~ within sixty days following the filing of this notice with the director of transportation of this state, you serve, and within a reasonable time thereafter file, a written special appearance, motion or answer, in the Iowa District Court for _____ County, at the courthouse in _____, Iowa, default will be entered and judgment rendered against you by the court.

CLERK OF THE ABOVE COURT

(SEAL)

_____ County Courthouse

_____ Iowa _____

NOTE:

The attorney who is expected to represent the defendant should be promptly advised by defendant of the service of this notice.