

CHAPTER 272
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 60 days after the date of this report.

Respectfully submitted,
 THE SUPREME COURT OF IOWA

/s/ W. W. Reynoldson

W. W. REYNOLDSON, Chief Justice

Des Moines, Iowa
 October 9, 1984

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Legislative Council of the State of Iowa, hereby acknowledge delivery to me on the ninth day of October, 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"

Amend Rule 140, Iowa Rules of Civil Procedure, as follows:

140. Depositions upon oral examination.

(a) When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of ten days after the date for special appearance, motion or answer for any defendant, except that leave is not required:

(1) If a defendant has served a notice of taking deposition or otherwise sought discovery, or

(2) If special notice is given as provided in subdivision "b"(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in R.C.P. 155. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of examination--general requirements--special notice--nonstenographic recording--production of documents and things--deposition of organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify ~~him~~ the person or the particular class or group to which ~~he~~ the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice

(A) States that the person to be examined is about to go out of the state and will be unavailable for examination unless ~~his~~ the person's deposition is taken before expiration of the thirty-day period, and

(B) Sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and ~~his~~ the attorney's signature constitutes a certification by ~~him~~ the attorney that to the best of ~~his~~ the attorney's knowledge, information, and belief the statement and supporting facts are true.

If a party shows that ~~when he was upon~~ being served with notice under this subdivision "b"(2) ~~he~~ the party was unable through the exercise of diligence to obtain counsel to represent him or her at the taking of the deposition, the deposition may not be used against ~~him~~ that party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at ~~his~~ that party's own expense. Leave of court is not required to record testimony by nonstenographic means if the deposition is also to be recorded stenographically.

(5) The notice to a party deponent may be accompanied by a request made in compliance with R.C.P. 129 and 130 for the production of documents and tangible things at the taking of the deposition. The procedure of R.C.P. 130 shall apply to the request.

(c) Failure to attend or to serve subpoena—expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by ~~him~~ the other party and ~~his~~ the other party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon ~~him~~ the witness and the witness does not attend because of such failure, and if another party attends in person or by attorney because ~~he~~ such other party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by ~~him~~ the other party and ~~his~~ the other party's attorney attending, including reasonable attorney's fees.

Amend Rule 215, Iowa Rules of Civil Procedure, as follows:

215. Voluntary dismissal. A party may, without order of court, dismiss ~~his~~ that party's own petition, counterclaim, cross-petition or petition of intervention, at any time before the trial has begun, subject to the provisions of R.C.P. ~~138.1~~ 181.4. Thereafter a party may dismiss ~~his~~ an action or his that party's 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~~ that party on the merits, unless otherwise ordered by the court, in the interests of justice.

Amend Rule 326, Iowa Rules of Civil Procedure, as follows:

326. Notice. Before granting a temporary injunction, the court may require reasonable notice of the time and place of hearing therefor to be given the party to be enjoined. Such notice and hearing must be had for a temporary injunction or stay of agency action pursuant to Iowa Code section 17A.19(5), to stop the general and ordinary business of a corporation, or action of an agency of the state of Iowa, or the operations of a railway or of a municipal corporation, or the erection of a building or other work, or the board of supervisors of a county, or to restrain a nuisance.