

CHAPTER 236
SPECIAL APPEARANCE – ELIMINATION
IN THE SUPREME COURT OF IOWA

IN THE MATTER OF A CHANGE
IN THE IOWA RULES OF CIVIL
PROCEDURE



REPORT OF THE
SUPREME COURT

**TO: MR. DONOVAN PEETERS, SECRETARY OF THE LEGISLATIVE COUNCIL OF
THE STATE OF IOWA:**

Pursuant to Iowa Code sections 602.4201 and 602.4202 (1987), the Supreme Court of Iowa has prescribed and hereby reports to the Secretary of the Legislative Council the attached exhibits reflecting the amendments to the corresponding Iowa Rules of Civil Procedure, which are issued this date:

- | | |
|-------------|-------------|
| Exhibit "A" | Rule 49(a) |
| Exhibit "B" | Rule 53 |
| Exhibit "C" | Rule 54 |
| Exhibit "D" | Rule 58 |
| Exhibit "E" | Rule 66 |
| Exhibit "F" | Rule 85(c) |
| Exhibit "G" | Rule 87 |
| Exhibit "H" | Rule 104(a) |
| Exhibit "I" | Rule 111 |
| Exhibit "J" | Rule 117(d) |
| Exhibit "K" | Rule 230 |
| Exhibit "L" | Rule 332 |
| Exhibit "M" | Form 1 |
| Exhibit "N" | Form 2 |
| Exhibit "O" | Form 3 |
| Exhibit "P" | Form 4. |

These amendments are being made to eliminate the special appearance.

Pursuant to Iowa Code section 602.4202(2) (1987), these changes are to take effect July 1, 1987.

Respectfully submitted,
THE SUPREME COURT OF IOWA

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

Des Moines, Iowa
April 30, 1987

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Legislative Council hereby acknowledge delivery to me on the thirtieth day of April, 1987, the Report of the Supreme Court pertaining to the Iowa Rules of Civil Procedure.

/s/ Donovan Peeters
Secretary of the Legislative Council

EXHIBIT "A"

49. Original notice — issuance and form.

(a) Written directions for the service of the original notice and copy of petition shall be delivered to the clerk with the petition. There shall also be delivered to the clerk with the petition the original notice to be served and sufficient copies of both. The original notice shall contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to serve, and within a reasonable time thereafter file, a ~~written special appearance~~, motion, or answer, and shall notify the defendant that in case of the defendant's failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the petition. Except in small claims and cases involving only liquidated damages, the original notice shall not state the amount of any money damages claimed.

* * * *

EXHIBIT "B"

53. Time for ~~special appearance~~, motion or answer. A defendant served as provided in these rules by publication or by publication and mailing must serve, and within a reasonable time thereafter file, a ~~written special appearance~~, motion or answer on or before the date fixed in the notice as published, which date shall not be less than twenty days after the date of last publication.

A defendant served in a manner prescribed by a statute or order of court shall serve, and within a reasonable time thereafter file, a ~~written special appearance~~, motion or answer on or before the date fixed as provided by said statute or order of court.

In the event service of process is made by mail under R.C.P. 56.2 the date for such action shall be on the date fixed in the original notice which shall not be less than sixty days following the date of mailing.

In all other cases the defendant shall serve, and within a reasonable time thereafter file, a ~~written special appearance~~, motion or answer within twenty days after the service of the original notice and petition upon such defendant.

EXHIBIT "C"

54. Special cases — response of garnishee.

(a) Any statute of Iowa which specially requires response by a particular defendant, or in a particular action, within a specified time, shall govern the time for serving, and within a reasonable time thereafter filing, a ~~written special appearance~~, motion or answer in such cases, rather than R.C.P. 53.

(b) The officer serving a writ of attachment or execution shall garnish such persons as the plaintiff may direct as supposed debtors, or having in possession property of the principal defendant, which shall be effected by a notice served in the manner and as an original notice in civil actions, ~~forbidding his the garnishee from paying any debt owing such defendant, due or to become due, and requiring him the garnishee to retain possession of all property of the defendant in his the garnishee's hands or under his the garnishee's control, to the end that the same may be dealt with according to law, and, unless answers are required to be taken as provided by statute, it shall cite the garnishee to appear in not less than ten days after service of the notice and at a time specified when court will be in session and a judge will be present, and answer such interrogatories as may be propounded, or he the garnishee will be liable to pay any judgment which the plaintiff may obtain against the defendant.~~

EXHIBIT "D"

58. Member of general assembly. No member of the general assembly shall be held to ~~special~~ appear, move or answer in any civil action in any court in this state while such general assembly is in session.

EXHIBIT "E"

66. ~~Special appearance. A defendant may appear specially for the sole purpose of attacking the jurisdiction of the court, but only before taking any part in a hearing or trial of the case, personally or by attorney, or filing a motion, written appearance, or pleading. The special appearance shall be in writing, filed with the clerk and shall state the grounds thereof. If the special appearance is erroneously overruled, defendant may plead to the merits or proceed to trial without waiving such error.~~

66. Objections to jurisdiction. The special appearance is abolished. A defendant may not appear specially for the sole purpose of attacking the jurisdiction of the court. Subject to R.C.P. 111, the defenses of lack of jurisdiction over the person may be asserted by pre-answer motion under R.C.P. 104(a), in the answer, or in an amendment to the answer made within twenty days after service of the answer.

EXHIBIT "F"

85. Time to move or plead.

* * * *

(c) ~~Time after filing motions or special appearances. The service of a motion or special appearance permitted under these rules alters these periods of time as follows, unless a different time is fixed by order of the court.~~

~~If the motion or special appearance is so disposed of as to require further pleading, such pleading shall be served within ten days after notice of the court's action.~~

* * * *

EXHIBIT "G"

87. ~~Appearance alone. An appearance without motion or pleading shall have the effect only of submitting to the jurisdiction. The court shall have no power to treat such an appearance as sufficient to delay or prevent a default or any other order which would be made in absence thereof, or of timely pleading. Notice and opportunity to respond to any motion for judgment under R.C.P. 232("b") shall be given to any party who has appeared.~~

EXHIBIT "H"

104. Exceptions Defenses which must or may be asserted by pre-answer motion. Every defense in law or fact to any pleading must be asserted in the pleading responsive thereto, if one is required, or if none is required, then at the trial, except that:

(a) Want of jurisdiction of the person, or insufficiency of the original notice, or its service must be raised by special appearance before any other appearance, motion or pleading is filed; and want of jurisdiction of the subject matter may be so raised; If a motion under R.C.P. 111(a) is filed before a responsive pleading, the defenses of want of jurisdiction over the person, or insufficiency of the original notice or its service, must be raised in the motion or are waived. Want of jurisdiction of the subject matter may be raised by pre-answer motion; but the court shall dismiss the action at any time it finds, by suggestion of the parties or otherwise, that the court lacks jurisdiction of the subject matter.

* * * *

EXHIBIT "I"

111. Motions combined; waiver regarding jurisdiction and venue.

(a) Motions challenging personal jurisdiction under R.C.P. 104(a), motions to recast or strike, for a more specific statement, and to dismiss for failure to state a claim upon which any relief may be granted, shall be contained in a single motion and only one such motion assailing the same pleading shall be permitted, unless the pleading is amended thereafter.

(b) At the same time that a party makes a motion as described in subdivision "a" of this rule, the party, if the grounds therefor exist, shall move to dismiss under R.C.P. 104(a) or for a change of venue to the proper county under R.C.P. 175. Failure to do so shall constitute a waiver of the defenses of lack of personal jurisdiction and improper venue.

EXHIBIT "J"

117. Motion days—disposition of motions.

* * * *

(d) A "motion" within this rule is any paper denominated as such, or any other matter requiring attention or order of court before the trial of the issues on their merits, including a special appearance.

* * * *

EXHIBIT "K"

230. Default defined. A party shall be in default whenever he that party: (a) fails to serve, and within a reasonable time thereafter file, a written special appearance, motion or answer as required in R.C.P. 53 or 54, or, has appeared, without thereafter serving any motion or pleading as stated in R.C.P. 87; or (b) fails to move or plead further as required in R.C.P. 86, unless judgment has already resulted under R.C.P. 87; or (c) withdraws his a pleading without permission to replead, or withdraws his an appearance or fails to be present himself for trial; or (d) fails to comply with any order of court or do any act which permits entry of default against him, under any rule or statute.

EXHIBIT "L"

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.

EXHIBIT "M"

1. FORM OF ORIGINAL NOTICE FOR PERSONAL SERVICE.

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, within 20 days after service of this original notice upon you, 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 county courthouse in , Iowa, judgment by default will be rendered against you for the relief demanded in the petition.

(SEAL)

CLERK OF THE ABOVE COURT
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.

EXHIBIT "N"

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, 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.

(SEAL)

CLERK OF THE ABOVE COURT

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.

EXHIBIT "O"

3. FORM OF ORIGINAL NOTICE AGAINST FOREIGN CORPORATION OR NON-RESIDENT UNDER §617.3, THE IOWA CODE SECTION 617.3.

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, within 60 days following the filing of this notice with the secretary of state of the State of Iowa, 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.

(SEAL)

CLERK OF THE ABOVE COURT
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.

EXHIBIT "P"

4. FORM OF ORIGINAL NOTICE FOR PUBLICATION.

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, which petition prays⁽¹⁾ The plaintiff's attorney is _____, whose address is _____, Iowa _____.

You are further notified that unless, on or before the⁽²⁾ day of _____, 19____, 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, judgment by default will be rendered against you for the relief demanded in the petition.

(SEAL)

CLERK OF THE ABOVE COURT
County Courthouse
, Iowa

NOTE:

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

⁽¹⁾Here make a general statement of the claim or claims and, subject to the limitation in R.C.P. 69(a), the relief demanded (R.C.P. 50).

⁽²⁾Date inserted here must not be less than 20 days after the day of the last publication of the original notice (R.C.P. 53).]