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November 24, 1997

MEMORANDUM

TO: **CHAIRPERSON IVERSON, VICE CHAIRPERSON CORBETT, AND MEMBERS OF THE LEGISLATIVE COUNCIL**

FROM: **DIANE BOLENDER** DB

RE: **PRICING FOR 1997 IOWA CODE SUPPLEMENT**

Attached is a memorandum from Bill Bruce, Administrator, Printing and Records Team, Department of General Services, in which he recommends an increase in the pricing of the 1997 Code Supplement from $36.75 to $40.75, which is approximately a 10% increase from the 1995 Iowa Code Supplement.

STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF GENERAL SERVICES
JANET E. PHIPPS, DIRECTOR

NOV 26 1997

November 18, 1997

Diane Bolender
Legislative Service Bureau
LOCAL

RE: 1997 Iowa Code Supplement

Dear Diane,

We have reviewed the information sent to us by your office relative to the cost of printing the 1997 Iowa Code Supplement.

Based on the costs of postage and printing and the total pages of this publication, I would recommend a slight increase for a selling cost of $40.75 per supplement. This price does not include Iowa sales tax.

If you have any questions, please do not hesitate to contract me. Please advise if the Legislative Council agrees.

Sincerely,

Bill Bruce

Bill Bruce, Administrator
Printing and Records Team
Department of General Services

cc-LoAnne Dodge
Tim Ryburn

REPORT OF THE FISCAL COMMITTEE TO THE LEGISLATIVE COUNCIL

July 22, 1997
August 27, 1997
September 22, 1997
October 29, 1997
November 18, 1997

The Fiscal Committee has met five times since the June 25, 1997, Legislative Council meeting. The meeting on September 22 was a joint meeting with the Oversight Committee.

The Committee makes no recommendations to the Council.

At each meeting the Committee received revenue updates from Dennis Prouty, Director of the Legislative Fiscal Bureau, and also received notices of appropriations transfers or lease purchases. **The following FY 1997 appropriations transfers were discussed:**

- FY 1997 Year-to-date summary of Section 8.39 Appropriations Transfers (July)
- $40,000 to the Department of Public Health, Iowa Board of Medical Examiners from the Department of Human Services, Medical Assistance (July)
- Department of Inspections and Appeals (July)
    - $126,000 transfer to the Health Facilities Division from the Appeals and Fair Hearings Division.
    - $26,000 transfer to the Investigations Division from the Finance and Services Division.
    - $260,000 transfer to the State Public Defender from the Indigent Defense Fund.
- Department of Human Services (DHS) - $3,383,095 transfer to various line items from Medical Assistance, Cherokee Mental Health Institute and the Mt. Pleasant Institute. (July)
- $75,000 to County Confinement from Newton Prison. (August)
- Up to, but not exceeding $310,000 to the Department of Natural Resources (DNR) Forestry Division, Energy & Geology Division, and Environmental Division from the Administration Division and the Parks Division. (August)

The following lease-purchase acquisitions were discussed:

- $240,500 for the lease-purchase of a Mosaix Series 4000 predictive dialer for the Department of Revenue and Finance, Centralized Collections Unit. (October)
- $227,000 for the lease-purchase of a Swine Finishing Building at Iowa State University. (November & will follow up at January meeting)
- $1.1 million for construction of a 20,000 square foot pre-engineered agricultural products facility at Iowa State University. (November & will follow up at January meeting)

The Committee also heard periodic updates on the ICN status, financial projections, and meetings of the Iowa Telecommunications and Technology Commission (ITTC).

The following topics/issues were addressed at the meetings. More information on any of these topics is available from the Legislative Fiscal Bureau.

July 22 Meeting:

- Background on Section 8.39, Code of Iowa, appropriations transfer process
- Tobacco Settlement and Potential Impact on Iowa
- Tax Increment Financing *Issue Review*
- Auditor's Office - Warren Jenkins, Deputy Auditor, discussed auditing procedures, and specifically what safeguards are in place to assure that a situation similar to the recent Blue Cross/Blue Shield overpayment error doesn't exist somewhere else in State government.
- Iowa Housing Corporation *Issue Review* and heard from Charles Wasker, Board Member, Iowa Housing Corporation Board; Ted Chapler, Iowa Finance Authority; and Anna Smith, Department of Economic Development on a number of issues related to the topic.

August 29 Meeting:

- Site visit to the University of Iowa, Iowa City
- Professor Charles Whiteman and Beth Ingram discussed the Revenue Estimating process and accuracy.
- Deferred Maintenance and Fire Safety Needs - Tours led by Pam Morris, Fire Prevention Inspector, and representatives of the University
  - Chemistry Building - deferred maintenance needs (windows)
  - Trowbridge Hall - Fire safety concerns and deferred maintenance needs (building envelope)
  - Macbride Hall - Fire safety concerns and deferred maintenance needs (windows, etc.)
  - MacLean Hall - deferred maintenance needs (windows)
  - Seashore Hall - deferred maintenance needs (roof and windows)
  - Eckstein Building - roof
- *Issue Review* - SUI Health Sciences Complex
- Robert Kelch, MD, Dean of the College of Medicine, and Richard Nelson, MD, Executive Assistant to the Dean of the College of Medicine, presented an update on the proposed medical complex.
- Treasurer's Temporary Investment (TTI) Funds - review of FY 1993 - FY 1998 Expenditures for Deferred Maintenance
- *Issue Review* - University of Iowa Biology Building and Renovation Update
- Update on the Engineering Building Modernization/Addition Project
- R. Wayne Richey, Executive Director, Board of Regents, responded to concerns about the Board request for Year 2000 computer conversion costs.
- *Issue Review* - Taxpayer Relief Act of 1997

September 22 Joint Meeting with Oversight Committee:

- Area Education Agencies
  - *Issue Review* - Area Education Agencies
  - AEA Accreditation Process - Judy Jeffrey, Department of Education
  - Ron Fielder, Administrator of the Grant Wood AEA
- New Iowa Schools Development Corporation (NISDC) *Issue Review* and Gerald Ott, Executive Director of NISDC responded to questions.
- Fiscal Impact of Education Provisions in the Federal Tax Bill - *Issue Review*
- Commission on Educational Excellence in the 21st Century
  - *Issue Review*
  - Marvin Pomerantz, Chairperson of the Commission, and Ted Stilwill, Director of the Department of Education made remarks and responded to questions.

October 29 Meeting:

- Discussion of "built-in increases" - Gretchen Tegeler
- *Issue Review* - Educational Excellence (Phase I - minimum teacher salary of $18,000; Phase II - supplemental teacher pay; and Phase III - staff development for teachers).
- Discussion of allowable growth - procedures and timeline, enrollment count, and school aid payments - the timing of payments
- Courts - judicial reorganization, administrative functions, fine collection
  - *Issue Review* - Judicial Branch: A Brief Description
  - Information received by the Supreme Court Administrator from the Courts - David Boyd, Deputy State Court Administrator
- ICN FY 1998 Supplemental Appropriation request of $1.1 million
- *Issue Review* - Update on the Rebuild Iowa Infrastructure Fund
- Department of General Services - update on renovation of Capitol Complex - David Ancell and Tom Johnson (to be followed up at the January meeting)
- Professor James Rowings, Iowa State University, on state infrastructure
- Roy Marshall, State Fire Marshal, on fire safety hazards and other infrastructure issues in the K-12 schools
- How other states "earmark" lottery funds
- Site visit to the Iowa State Fair to view infrastructure

November 18 Meeting:

- Value-added agricultural processes:
  - Dermot Hayes, Leader for Trade and Agricultural Policy Development, Iowa State University Center for Agriculture and Rural Development.

- *Issue Review* - Value-Added Agricultural Products and Processes (VAAPP) Program administered by the Department of Economic Development
- *Issue Review* - Renewable Fuels and Co-Products Program, administered by the Department of Agriculture and Land Stewardship.
- Kim Statler, Department of Economic Development - Update on Department assistance programs for value-added agriculture.
- Stanley R. Johnson, Iowa State University Vice-Provost for Extension - Extension's role in promoting value-added agriculture and the competitive position of Iowa's communities and economy.
- Joseph A. Borgen, President and CEO of Des Moines Area Community College - Workforce training issues related to value-added agriculture.
- Iowa Farm Bureau Federation - Jon Muller, Research Director - Economics of value-added agriculture in Iowa.
- Des Moines Chamber of Commerce - Chris Nelson, Kemin Industries and Steve Daugherty, Pioneer Hybrids
  - *The Role of Agribusiness in the Central Iowa Economy - August 1997*
  - *Concept Plan - Agribusiness Park - City of Des Moines*
- Commodity Groups - Adding value to Iowa's agricultural output
  - Iowa Cattlemen's Association - Reg Clause
  - Iowa Soybean Association - Chad Kleppe
  - Iowa Corn Growers Association - Don Mason
  - Iowa Pork Producers Association - Jim Koch

The Fiscal Committee is tentatively scheduled to meet on January 7, 1998, in the State Capitol. The agenda topics will include:

- State Indebtedness and Callable Debt
  - Summary Report on State Indebtedness
  - Early Retirement of State Bonds - Karl Koch, Treasurer's Office
- Department of General Services - follow up from the October meeting discussion on renovation of the Capitol Complex - specifically the Lucas Building and the Capitol Building
- Various Human Services topics

Respectfully submitted,

Senator Derryl McLaren
Co-chairperson

Representative Dave Millage
Co-chairperson

REPORT OF THE SERVICE COMMITTEE TO THE LEGISLATIVE COUNCIL

November 25, 1997
(Corrected Copy)

The Service Committee of the Legislative Council met on November 25, 1997, and makes the following report and recommendations to the Legislative Council:

1. The Service Committee received and filed a personnel report from the Legislative Fiscal Bureau and recommends that the following employees be promoted:
   - Mr. Dave Kair, from Computer Systems Analyst III, grade 32, step 4, to Senior Computer Systems Analyst, grade 35, step 3, effective January 1998.
   - Ms. Valerie Thacker, from Legislative Analyst I, grade 29, step 3, to Legislative Analyst II, grade 32, step 2, effective December 1997.
   - Mr. Paige Piper/Bach, from Legislative Analyst, grade 27, step 3, to Legislative Analyst I, grade 29, step 2, effective December 1997.

2. The Service Committee received and filed a personnel report from the Legislative Service Bureau and recommends the following:
   a) That the following employee be promoted:
      - Ms. Cathy Kelly, from Assistant Editor I, grade 24, step 3, to Assistant Editor II, grade 27, step 1, effective December 1997.
   b) That the Capitol Tour Guide job series be reclassified by creating a new position, Senior Capitol Tour Guide at pay grade 14, and by increasing the pay grade for Capitol Tour Guide Supervisor to grade 22, and that the following employees be assigned as follows:
      - Ms. Joan Arnett, from Capitol Tour Guide Supervisor, grade 14, step 6, to Capitol Tour Guide Supervisor, grade 22, step 1, effective June 1997.
      - Ms. Karen Nichols, from Capitol Tour Guide, grade 12, step 6, to Senior Capitol Tour Guide, grade 14, step 5, effective June 1997.

3. The Service Committee received and filed a personnel report from the Legislative Computer Support Bureau and recommends that the following employees be promoted:
   - Mr. John Rafdal, from Computer Systems Analyst I, grade 27, step 3, to Computer Systems Engineer I*, grade 29, step 2, effective March 1998.
   - Ms. Virginia Rowen, from Computer Systems Analyst II, grade 29, step 6, to Computer Systems Analyst III, grade 32, step 5, effective November 1997.
   - Mr. Joe Kroes, from Computer Systems Engineer I, grade 29, step 3, to Computer Systems Engineer II, grade 32, step 2, effective November 1997.

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* Corrected based upon original submission of Legislative Computer Support Bureau

4. The Service Committee received and filed a personnel report from the Office of Citizens' Aide/Ombudsman and recommends the following:
    - That Ms. Ruth Cooperrider, Senior Legal Counsel, grade 38, step 3, be hired as Deputy Citizens' Aide, grade 38, step 4, effective November 1997.

5. The Service Committee recommends the adoption of the following budgetary proposals:
    a) That the Legislative Council approve the proposed budget and budget allocation for the fiscal year beginning July 1, 1998, pursuant to section 2.12 of the Code, for the following agencies:
        - Legislative Fiscal Bureau.
        - Legislative Service Bureau.
        - Legislative Computer Support Bureau.
        - Office of Citizens' Aide/Ombudsman.
    b) That the Legislative Council approve the proposed supplemental budget allocation for the fiscal year beginning July 1, 1997, for the Legislative Fiscal Bureau.

6. The Service Committee recommends that the Computer Support Bureau shall continue to store home pages for each of the four legislative caucuses on the Iowa General Assembly's Internet home page for an additional six-month trial period or until the next Legislative Council meeting following the additional six-month period, whichever is later.

7. The Service Committee recommends that the Personnel Guidelines for the Central Legislative Staff Agencies be amended as provided in the attached document.

Respectfully submitted,

Representative Brent Siegrist
Chairperson

PROPOSED AMENDMENTS SUBMITTED BY SENATOR MICHAEL GRONSTAL

Personnel Guidelines for the Central Legislative Staff Agencies (last updated with June 14, 1995 Legislative Council changes), Chapter 3, Parts II, IV, XII, and XVI, are amended to read as follows:

1. Chapter 3, Part II, paragraph C, is amended to read as follows:

C. Guidelines Subject to Change -- Copies Provided to Employees

These guidelines are subject to change at any time by the Legislative Council, are informational in nature only, and describe and outline some of the policies, procedures, employment benefits, and other matters of interest to employees of the central legislative staff agencies. These guidelines in no way alter the nature of the employment relationship. All central legislative staff agency employees are employed at will. Nothing in these guidelines is intended to create any contractual rights in favor of an employee or a central legislative staff agency. Each director shall provide copies of these guidelines to each employee of the director's agency. Each employee shall acknowledge receipt of the guidelines. The acknowledgment shall identify major substantive changes, if any, to the guidelines and shall state that the employee has been given a reasonable opportunity to review the guidelines and to address in writing any questions concerning the guidelines to the director. The director shall respond to the questions in writing within ten days after receipt of the questions.

2. Chapter 3, Part IV, paragraph D, subparagraph 3, is amended to read as follows:

3. Each director shall file an annual report with the Service Committee listing all employees under their supervision with their current grade and step and the effective date of a merit increase for which they are eligible. Notification of ~~the successful completion of probationary employment and~~ merit increases granted and increases for exceptional job performance shall be made by the director at the next following Service Committee meeting. The effective date for a merit increase is normally the employee's anniversary date at the end of an employee's ~~probationary period~~ first six months of employment, but a director may specify one or more standard eligibility dates for merit increases other than the anniversary date. However, a director shall not set an eligibility date different from the employee's anniversary date or a standard date. Granting of merit increases may be delayed or denied for performance shortcomings. The annual report filed with the Service Committee under this provision

indicates eligibility for a merit increase but does not necessarily indicate that a merit increase will be granted.

3. Chapter 3, Part XII, is amended to read as follows:

XII. GRIEVANCE PROCEDURES

A. Grievance Procedures - Authority

Pursuant to section 2.42, subsection ~~14~~16, and section 2C.3, Code ~~1989~~ 1997, the following rules for hearing and acting upon appeals of aggrieved employees of the Legislative Service Bureau, Legislative Fiscal Bureau, Computer Support Bureau, and the Office of Citizens' Aide are established by the Legislative Council.

B. Definitions

Unless otherwise provided:

1. "Director" means the director of the Legislative Service Bureau, Legislative Fiscal Bureau, Computer Support Bureau, or the Office of Citizens' Aide.

2. "Employee" means a person employed by the Legislative Service Bureau, Legislative Fiscal Bureau, Computer Support Bureau, or the Office of Citizens' Aide. "Employee" does not include the director of the Legislative Service Bureau, the director of the Legislative Fiscal Bureau, the director of the Computer Support Bureau, or the Citizens' Aide.

3. "Committee" means the Service Committee of the Legislative Council.

4. "Council" means the Legislative Council.

5. "Grievance" means a complaint filed by an employee against a director for agency action affecting the employee and relating to any of the following:

a. Employment requirements which are alleged to be contrary to these personnel guidelines for the central legislative staff agencies.

b. Employment conditions alleged to violate any applicable federal or state constitutional or statutory provisions relating to civil rights or other protected status or fundamental rights, employment discrimination, occupational safety and health, wage payment, withholding, wage assignments, and hours of work.

c. A lawful disclosure of information pursuant to federal or state law regarding the agency or an abuse of authority.

C. Grievance Procedures - Rules

These rules shall constitute the procedures for resolving grievances ~~or complaints~~ of employees. Time limits specified within these rules begin the working day following the day an action takes place or is required. Time limits provided in these rules may be altered by mutual agreement. The Council shall require all directors to adhere to protocols relating to grievance communications, hearings, recordkeeping, and confidentiality of grievance proceedings and records. The Committee and Council shall adopt rules of procedures at the time of the consideration of a grievance. The rules shall meet all requirements of this Part.

D. Filing of Grievance ~~or Complaint~~ - Right of Employee

An employee ~~may file or submit~~ who has a grievance ~~or complaint with a director, the Committee, or the Council~~ may file that grievance as provided in these rules without fear of jeopardizing the employee's position or opportunities for advancement or salary increase. The employee involved in the proceeding shall cooperate with the ~~employing authority~~ director of the employee's agency so that there will be a minimum of interference with normal operation of the agency's work. ~~Time limits provided in these rules may be altered by mutual agreement.~~ However, an employee filing a grievance may use work time to complete the tasks relating to the grievance procedures. Grievances shall be in writing and shall contain such specific information as will inform the director, the Committee, or the Council of the incident from which the grievance arose.

E. Initiation of ~~Complaint or~~ Grievance

~~An employee shall file a~~ The grievance ~~or complaint~~ resolution process commences when an employee files a grievance in writing with the director of the agency in which the employee is employed within five working days of the incident ~~of~~ from which the alleged grievance ~~or complaint~~ arose. The director may request additional information and may request that the information be presented in a specific form or letter to the director. If additional information is requested, the employee shall be granted five days to provide the additional information to the director. The director shall review and investigate the grievance and transmit a written decision to the employee within five working days of receipt of the grievance ~~or complaint~~. If the director fails to comply with the time limitations specified in these rules and does not obtain an extension by

mutual agreement of the parties, the grievance shall be sustained in favor of the employee.

F. Appeal to Committee - Submission in Writing

If the employee is not satisfied with the decision of the director, the employee may within five working days of receipt of the decision of the director file ~~a~~ the grievance ~~or complaint~~ in writing with the chairperson of the Committee. A copy of the written grievance ~~or complaint~~ shall be filed with the director at the same time as the filing with the chairperson of the Committee. ~~The~~Upon notification of the director of the filing of the grievance with the Committee, the director shall file a copy of the director's decision ~~upon notification of the filing of the grievance or complaint~~ with the Committee.

G. Consideration of the Written Grievance ~~or Complaint~~ by the Committee

The Committee shall consider the ~~written complaint or~~ grievance either within 30 days of its receipt, at its next regularly scheduled meeting, at a meeting specially called for such purpose, or at a subsequent meeting as determined by the Committee. ~~The Committee shall make a written decision in regard to the grievance or complaint on the day the complaint or grievance is considered. However, if~~ Any information which is relevant to the grievance may be presented at the hearing of the grievance and shall become a part of any appeal from the Committee's decision. All hearings on grievances shall be held in an informal manner. Any party, a director, or the Committee may call witnesses and consider documents and written statements. Presentation of witnesses and other evidence shall not be limited by legal rules of evidence. Witnesses may decline to participate in the hearing. An employee may request that a third person designated by the employee be present to represent the employee; however, the third person may decline to represent the employee. The third person is not required to be an employee of the state or the legislative branch. If the Committee desires additional information from any person ~~it~~ or desires additional time to consider the grievance, the Committee may continue the hearing and notify the employee and the director of its decision to continue the hearing. The Committee may then request the additional information from the director or the employee affected. The Committee shall make a written decision in regard to the grievance on the day the hearing on the grievance is concluded. A copy of the written decision shall be filed with the director and employee.

H. Appeal to Council

If the employee or director is not satisfied with the decision of the Committee, the employee or director may appeal the Committee's decision to the Council by filing a written appeal with the chairperson and vice chairperson of the Council within five days of the decision of the Committee. The written appeal shall contain such specific information as will adequately inform the Council of the incident from which the appeal arose. The Council may request additional information and may request the information be presented in a specific form or letter and provided to all parties involved. A copy of the appeal shall be filed with the ~~director~~ other party to the grievance at the same time. The chairperson shall set a time for hearing the written appeal of the grievance ~~or complaint~~. The hearing may be part of a regular meeting of the Council or may be held during a special meeting called for ~~such~~ that purpose. ~~The appeal to the Council must be filed within five working days of the decision of the Committee.~~ The hearing shall be held in an informal manner. Any party or the Council may call witnesses and consider any documents and written statements which are relevant to the grievance. Receipt of evidence by the Council shall not be limited by the legal rules of evidence. Witnesses may decline to participate in the hearing. An employee may request that a third person designated by the employee be present to represent the employee; however, the third person may decline to represent the employee. The third person is not required to be an employee of the state or the legislative branch. All information presented at any hearing before the director or the Committee shall be part of the appeal and shall be provided by the director and the Committee to the Council. If the Council desires additional information from any person or desires additional time to consider the grievance, the Council may continue the hearing and notify the employee and the director of its decision to continue the hearing. The decision of the Council in regard to the grievance ~~or complaint~~ is final. A copy of the written decision shall be filed with the director and employee.

I. Effect of Failure to Proceed

If the employee fails to proceed with the grievance ~~or complaint~~ within the time limits set forth in these rules or special time limits agreed upon, it shall be assumed the grievance ~~or complaint~~ has been settled on the basis of the last decision reached or that the employee does not desire to pursue the matter further. If a director fails to comply with the time limitations specified in these rules and does not obtain an extension by mutual agreement of the parties, ~~the employee may proceed immediately to the next step as if a decision had been reached with which the employee was not satisfied~~ the grievance shall be sustained in favor of the employee.

J. ~~Form and Content of Written Appeals~~ Amendments

~~The written appeal shall contain such specific information as will adequately inform a director, the Committee, or the Council of the incident from which the appeal arose. A director, the Committee, or the Council may request additional information and may request the information be presented in a specific form or letter and provided to all parties involved. An employee may request that a third person be present to give evidence or represent the employee, however, the third person may decline to present evidence or represent the employee. All germane information presented at any hearing may be added to and shall become a part of an appeal. All hearings shall be held in an informal manner. Any party, a director, the Committee, or the Council may call witnesses and consider documents and written statements which shall not be limited by legal rules of evidence. Witnesses may decline to participate in the hearing.~~ A grievance and any appeal of a grievance may, subject to the approval of the Committee or Council, be amended at any time prior to a decision by the Committee or Council. The amendment must relate directly to the original grievance. The Committee or the Council may impose terms or grant a continuance with or without terms as a condition of such allowance. A request for an amendment shall be submitted in writing either to the chairperson of the Committee or the Council, as the case may be, and a copy shall be filed with the affected director or the employee.

K. Notification of Hearing

An aggrieved employee or any person affected shall be given reasonable notice of any hearing so that proper arrangements to attend the hearing can be made. An aggrieved employee shall be allowed time off with pay to attend the hearing.

L. Coercion of Employees

A director or another supervisor shall not coerce an employee into not proceeding with a grievance ~~or a complaint~~ or appearing as a witness at a hearing. An act of coercion shall be considered as a reason for a grievance ~~or complaint~~ which may be combined with the original grievance ~~or complaint~~.

M. ~~Amendments~~ Settlement

~~A complaint or a grievance may be amended at any time prior to a decision. The amendment must relate directly to the original complaint or grievance and allowance of such amendments shall be within the discretion of the chairperson of the Committee or Council. The Committee or the Council may impose terms or grant a continuance with or without~~

~~terms as a condition of such allowance. A request for an amendment shall be submitted in writing either to the chairperson of the Committee or the Council, as the case may be, and a copy shall be filed with the affected director.~~An employee and a director, the Committee, or the Council may resolve a grievance by settlement at any time during the grievance procedure. The settlement shall be reduced to writing and shall be affirmed by the director or by the Committee if the grievance has been filed with the Committee or by the Council if the grievance has been appealed to the Council.

10. Chapter 3, Part XVI, is amended to read as follows:

XVI. PERSONNEL RECORDS

The director or the director's designee shall maintain and be ~~custodians~~ the custodian of all personnel files on each employee of that agency. These files shall also include but not be limited to performance evaluation records and any disciplinary proceedings against the employee. An employee who is no longer employed by the agency, whether by resignation or termination, shall have the employee's file kept in the agency for a period ~~not to exceed two~~ of at least three years~~, then transmitted to the General Services Records Center~~. Employees shall have the right to inspect and have copies made free of charge of their personnel files during regular business hours. All records shall be held as confidential in accordance with Code Section ~~19A.15~~ 22.7(11).

EXPLANATION

1. The Policy Making and Oversight Authority provisions are revised. The guidelines specify that an employee may address questions concerning the guidelines in writing to the director. Senator Gronstal's proposal states that the employees be given a "reasonable" opportunity to review the guidelines and to submit written questions and that the director shall respond to the questions within ten days after receiving them.

2. The Compensation - Benefits provisions in part IV of the Personnel Guidelines are revised. Senator Gronstal's proposal states that a director cannot set an eligibility date for a merit increase that is different from the employee's anniversary date or a standard date.

3. The Grievance Procedures in part XII of the Personnel Guidelines are revised. Senator Gronstal's proposal provides that the employee filing a grievance may use work time to complete grievance procedure tasks. It also provides that if a director requests additional information, the employee's response to that request will go to the director only and not to all parties involved. It also provides that if additional information is requested, the employee will have five additional days to provide the

requested, the employee will have five additional days to provide the additional information. The proposal requires that if the director fails to meet the timelines and ahs not received an extension by mutual agreement, the grievance shall be sustained in favor of the employee. Any third party requested to be present to represent the employee shall be selected by the employee, and need not be an employee of the state or the legislative branch. Copies of requests for an amendment to a grievance shall be filed with the affected director or with the employee.

4. The Personnel Records provisions in part XVI are revised. Senator Gronstal's proposal provides that employees may request copies of their personnel records free of charge to the employees.

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Personnel Guidelines for the Central Legislative Staff Agencies (last updated with June 14, 1995 Legislative Council changes), Chapter 3, Parts II, IV, V, VI, VII, VIII, X, XI, XII, XIV, XVI, and XX, are amended to read as follows:

1. Chapter 3, Part II, paragraph C, is amended to read as follows:

C. Guidelines Subject to Change -- Copies Provided to Employees

These guidelines are subject to change at any time by the Legislative Council, are informational in nature only, and describe and outline some of the policies, procedures, employment benefits, and other matters of interest to employees of the central legislative staff agencies. These guidelines in no way alter the nature of the employment relationship. All central legislative staff agency employees are employed at will. Nothing in these guidelines is intended to create any contractual rights in favor of an employee or a central legislative staff agency. Each director shall provide copies of these guidelines to each employee of the director's agency. Each employee shall acknowledge receipt of the guidelines. The acknowledgment shall identify major substantive changes, if any, to the guidelines and shall state that the employee has been given a reasonable opportunity to review the guidelines and to address in writing any questions concerning the guidelines to the director. The director shall respond to the questions in writing within thirty days after receipt of the questions.

2. Chapter 3, Part IV, paragraph D, subparagraph 3, is amended to read as follows:

3. Each director shall file an annual report with the Service Committee listing all employees under their supervision with their current grade and step and the effective date of a merit increase for which they are eligible. Notification of ~~the successful completion of probationary employment and~~ merit increases granted and increases for exceptional job performance shall be made by the director at the next following Service Committee meeting. The effective date for a merit increase is normally the employee's anniversary date at the end of an employee's ~~probationary period~~ first six months of employment, but a director may specify one or more standard eligibility dates for merit increases other than the anniversary date. However, a director shall not set an eligibility date different from the employee's anniversary date or a standard date. Granting of merit increases may be delayed or denied for performance shortcomings. The annual report filed with the Service Committee under this provision indicates eligibility for a merit increase but does not necessarily indicate that a merit increase will be granted.

3. Chapter 3, Part IV, paragraph E, subparagraphs 1 and 2, are amended to read as follows:

1. ~~Permanent part-time~~ Part-time employees who are employed continually year round are eligible for merit increases as if they were ~~permanent~~ full-time employees employed year round.

2. Temporary full-time employees who work intermittently shall have their eligibility for ~~probationary and annual~~ merit increases determined by their cumulative length of service.

4. Chapter 3, Part V, paragraph A, is amended to read as follows:

A. Benefits in General

~~Employees~~ Unless otherwise provided by law or these guidelines, employees in the central legislative staff agencies are eligible for employee benefits under the same terms and conditions as provided by law for employees in the ~~legislative~~ executive branch. This includes, but is not limited to, health, dental, life, and long-term disability insurance programs ~~for permanent employees~~.

5. Chapter 3, Part V, paragraph D, is amended to read as follows:

D. Educational Benefits

~~Permanent employees~~ Employees are eligible for educational leave and educational assistance as provided in Code Section 70A.25 and Part VI of these guidelines. Such benefits are to be granted on a case-by-case basis for each semester-long course based on its relevance to the employee's job duties and the agency's needs. A particular course may or may not be part of a program leading to a degree or a certificate. The granting of such leave and assistance shall be reported to the Service Committee, including the specification of any college courses taken.

6. Chapter 3, Part VI, paragraph A, is amended to read as follows:

A. Attendance

The director shall establish a written work attendance policy which shall be provided to all employees and which shall be filed with the Legislative Council. The director or the supervisor shall establish the work schedule, work stations, and required hours of work for employees under the director's or supervisor's supervision. All regulations and schedules shall be made known to the affected employees. Such regulations and schedules may include "flextime" arrangements at the discretion of the director. All absences of employees~~, whether permanent, temporary, or probationary,~~ from the established work schedule shall be charged to one of the leave or leave without pay categories.

7. Chapter 3, Part VI, paragraph C, subparagraph 1, subparagraph subdivision a, subparagraph subdivision part i, is amended to read as follows:

i. ~~All permanent and probationary employees~~ Employees shall accrue vacation leave according to the rules adopted by the Department of Personnel.

8. Chapter 3, Part VI, paragraph C, subparagraph 1, subparagraph subdivision b, subparagraph subdivision part iii, is amended to read as follows:

iii. Accrued sick leave, not exceeding forty hours per year, may also be used for leaves for temporary care of immediate family members~~,~~ or for child care~~, or for bereavement leave~~.

9. Chapter 3, Part VI, paragraph C, subparagraph 1, subparagraph subdivisions d and e, are amended to read as follows:

d. Holiday Leave

Holiday leave is granted to all ~~permanent~~ employees who work or receive leave with pay for the regular workday before the holiday and for the regular workday after the holiday. Holidays are observed as specified by statute. (See Code Section 1C.2.) A holiday shall not exceed eight hours for full-time employees. If an employee is required to work on a holiday, the employee may take holiday leave for the hours worked, not exceeding eight, at a future date. Hours worked on a holiday in excess of eight hours shall accrue as overtime hours in the manner overtime hours accrue for that employee.

e. Military Leave

All ~~permanent or probationary~~ full-time and part-time employees employed year round who are members of the national guard, organized reserve, or any component of the military of the state of Iowa, when ordered by the proper authority to active military service, may serve for 30 days without loss of pay. Leave for inducted employees will be granted up to five years.

10. Chapter 3, Part VI, paragraph C, subparagraph 1, subparagraph subdivision i, unnumbered paragraph 2, is amended to read as follows:

Family death leave is in addition to other leaves available to an employee. ~~An employee is not required to exhaust other leaves available to the employee before taking family death leave.~~

11. Chapter 3, Part VI, paragraph C, subparagraph 2, subparagraph subdivision b, is amended to read as follows:

b. Sick Leave Without Pay

~~After all sick leave with pay has been exhausted, the director may, upon written request, grant sick leave without pay to an employee for a length of time the director determines is appropriate. If an employee requests to use sick leave without pay in excess of 30~~

~~days, the director shall consult the employee's attending physician or other licensed practitioner. The employee may be terminated or must return to work immediately if the director determines that any of the following are true:~~

~~i. The employee fails or refuses to supply requested information about the illness within a stated time.~~

~~ii. The employee does not show sufficient continued reason to prevent the performance of duties.~~

~~iii. The employee is performing work or activity incompatible with the purpose for which sick leave was granted.~~

After all sick leave with pay has been exhausted, the director may, upon an employee's written request, grant sick leave without pay for not more than six months. The request, which shall be submitted in advance of the leave if circumstances permit, shall include proof of illness or disability in the form of a physician's certificate. Upon the employee's written request, the director may grant an extension of up to an additional three months of leave without pay provided that the employee provides proof of continuing illness or disability in the form of a physician's certificate which shall state a prognosis and expected date of return. Upon certification from the employee's physician that the employee is able to return to work, the employee shall be offered the employee's same or a similar position if the same or a similar position is available. If the same or similar position is not available, the employee shall be offered another vacant position for which the employee is qualified if one exists. If the employee refuses an offer of the same or a similar or another vacant position, or a vacant position for which the employee is qualified is not available, the employee shall be separated from employment. If the employee accepts another vacant position, the employee's pay rate shall be for that position and not for any other position previously held.

12. Chapter 3, Part VI, paragraph C, subparagraph 3, subparagraph subdivision d, subparagraph subdivision part i, is amended to read as follows:

i. Eligibility and Request for Leave. All ~~permanent,~~ full-time and part-time employees employed year round are eligible for parental and family leave benefits regardless of their length of service at the Legislature. A request for parental or family leave shall be made in writing by the employee reasonably in advance of the beginning of the leave, unless a planned leave is precluded by an unforeseen circumstance. The request for leave shall state the purpose of the leave, the expected duration of absence, and the intention of the employee to return to work following completion of the leave. An employee's supervisor may agree to an arrangement for reduced working hours in lieu of granting parental or family leave.

13. Chapter 3, Part VI, paragraph C, subparagraph 3, subparagraph subdivision d, subparagraph subdivision part iii, unnumbered paragraph 1, is amended to read as follows:

> An employee's supervisor may grant to the employee family leave, not to exceed 160 hours per year, to care for a family member who is seriously ill ~~or upon the death of a family member~~. Family leave is in addition to the 40 hours per year of accrued sick leave provided for the temporary care of immediate family members~~,~~ or for child care~~, or for bereavement leave~~. See Part VI.C.1.b.iii. of these guidelines.

14. Chapter 3, Part VI, paragraph D, subparagraph 1, unnumbered paragraph 1, is amended to read as follows:

> The director shall permit a ~~permanent~~ full-time or part-time employee employed year round to transfer any vacation leave accrued by the employee in excess of eighty hours to another ~~permanent~~ full-time or part-time employee employed year round of the same or another agency, and the director of that same or other agency shall permit the other ~~permanent~~ employee to receive and use such transferred vacation leave, if all of the following conditions relating to the employee receiving and using the transferred vacation leave are met:

15. Chapter 3, Part VI, paragraph D, subparagraph 6, is amended to read as follows:

6. Vacation Leave Sharing Policy - Transfer Procedure. ~~(Not approved by Legislative Council but agreed to by all four central legislative staff agency directors on May 1, 1991.)~~

   a. Confidential Requests for Transfer. ~~Pursuant to the vacation leave sharing policy adopted by the Legislative Council, a permanent~~ A full-time or part-time employee of a central legislative staff agency employed year round (referred to as the transferring employee or transferring agency) may confidentially request the transfer of a specific number of vacation leave hours accrued by the transferring employee in excess of 80 hours to a specified, named ~~permanent~~ full-time or part-time employee of the same or another central legislative staff agency employed year round (referred to as the receiving employee or receiving agency) by filing a written request with the director of the transferring agency.

   b. Notification and Inquiry -- Confidentiality. The director of the transferring agency shall immediately notify the director of the receiving agency, inquiring if the receiving employee is or will be eligible to receive transferred vacation leave and whether the employee would be able to immediately use the vacation leave requested to be transferred. The transferring agency shall not

subtract any vacation leave hours from the transferring employee's accrued vacation leave until all or a portion of the vacation leave hours requested to be transferred have been accepted by the receiving agency for actual transfer to the receiving employee. The request for transfer and any action regarding the request or the use of transferred vacation leave shall be maintained by the directors and finance officers of the transferring and receiving agencies as a confidential personnel record. In administering the transfer procedure, if the transferring and receiving agencies are not one and the same, the director and finance officer of a transferring agency shall not disclose the name of a transferring employee to the director or finance officer of the receiving agency.

c. Eligibility Determination and Acceptance or Abeyance of Transfer. Upon a determination by the director of the receiving agency that the specified, named employee is eligible to receive transferred vacation leave ~~under the vacation leave sharing policy adopted by the Legislative Council~~, the receiving agency shall determine the time period or periods during which the receiving employee would be able to use transferred vacation leave, and the number of hours which could be transferred to the receiving employee without the receiving employee exceeding the receiving employee's vacation ceiling. At any point in time the directors and finance officers of the transferring and receiving agencies may hold requests for transfer in abeyance if the receiving employee is currently not able to use all of the hours requested to be transferred. The directors and finance officers may periodically transfer such hours when the receiving employee is able to use the hours. If such hours are still being held in abeyance at the end of the calendar year in which the hours were requested to be transferred, the transferring agency's director shall notify the transferring employee that a transfer has not been made and that the request for transfer will be automatically terminated at the end of the calendar year unless the transferring employee files a written request for transfer for the next calendar year.

d. Actual Transfer. The receiving agency's finance officer shall notify the transferring agency's finance officer of the number of hours which can be transferred and, upon approval of the request for transfer by the director of the transferring agency, the transferring agency's finance officer shall subtract that number of hours from the transferring employee's accrued vacation hours and the receiving agency's finance officer shall add that number of hours to the receiving employee's accrued vacation hours, if any.

e. Multiple Requests for Transfer. If the receiving agency has been notified of more than one approved request for the transfer of vacation leave to the receiving employee, the finance officer of each transferring agency shall separate the requests by date of approval.

The transferring and receiving agencies' finance officers shall transfer vacation hours, beginning with the requests for transfer approved at the earliest date.

f. Pro Rata Return of Unused Hours. If all or a portion of the vacation leave hours which were actually transferred cannot be used by the receiving employee, the transferring and receiving agencies' finance officers shall arrange the return of the unused vacation leave hours to the transferring employee, or if more than one transferring employee is involved, to the transferring employees on a pro rata basis.

16. Chapter 3, Part VII, paragraph C, is amended to read as follows:

~~C. Probationary Period~~

~~For the purposes of evaluating the performance of new employees (original appointment or reappointment of a returning employee to a permanent or temporary position), a probationary period will be implemented. The probationary period is, at the discretion of the director, the first six months of employment or the completion of a legislative session. During this period, the employee shall be ineligible for promotion or demotion. After the probationary period, either the director or the employee's supervisor will recommend to continue or terminate the employee. During the probationary period, employees may be terminated at will and the grievance procedure is not applicable to them.~~

17. Chapter 3, Part VIII, paragraph B, subparagraph 1, is amended to read as follows:

1. Each director shall establish and maintain a recall list used for filling vacant positions. Recall lists will be established by job classification and seniority. These lists shall consist of the names of ~~permanent~~ full-time and part-time employees employed year round who were separated by layoffs. Employees shall be placed on the list in order of seniority (years-months-days of continuous service prior to layoff).

18. Chapter 3, Part X, paragraphs B, C, and D, are amended to read as follows:

B. ~~Probationary~~ New Employees

~~Probationary~~ During the first six months of employment or, at the discretion of the director, until the completion of a legislative session if longer than six months, employees shall be ineligible for a promotion ~~during their probationary period~~.

C. Authority and Requirements for a Promotion

Each director shall have the discretion to promote an employee to either a vacant position or a new position when an employee meets the requirements of that position, with the prior approval of the Service Committee. A director may promote

an employee to a higher classification and grade level within a job series of position classifications with the prior approval of the Service Committee for such reclassification. To be eligible for a promotion, the employee must at least receive satisfactory ratings on their current job assignment, and the employee must meet the minimum qualifications for the new position. A salary increase due to a promotion is in addition to any salary increase that an employee may receive under Part IV of these guidelines. However, during any twelve-month period, an employee shall not receive more than a two-step increase in pay due to a combination of a promotion and a merit step increase. A promotion is a change in positions by an employee to a position that has been assigned a higher pay grade level.

D. Post Promotion

~~For current employees a new probationary period may be required~~. For pay purposes, when an employee is promoted, the employee's salary shall be adjusted to step one of the grade level of the new position. If that does not result in at least a one-step increase, then the employee's salary shall be adjusted to the ~~paystep~~pay step at the new grade level that results in a one-step increase. ~~However~~ Except as provided in paragraph C, for promotions between classes with a three or more pay grade difference, the employee shall be given a two-step increase in pay or the employee's salary shall be adjusted to step one of the grade level of the new position, whichever is greater.

19. Chapter 3, Part XI, paragraphs C, D, and E, are amended to read as follows:

C. Suspension

A director has ~~discretionary~~ authority to suspend an employee with or without pay.

D. Demotion

A director has ~~discretionary~~ authority to demote an employee. Demotion may be in step or in grade. Demotion in step shall be a one-step reduction within the employee's current grade. Demotion in grade shall be to step 6 in the grade of the next lower classification in the employee's job series or career ladder. If that does not result in at least a one-step decrease in salary, then the employee's salary shall be adjusted to the pay step at the new grade level that results in a one-step decrease in salary. Demotions shall be reported to the Service Committee.

E. Termination

The director has ~~discretionary~~ authority to terminate an employee. All documentation regarding the termination shall be kept for at least two calendar years.

20. Chapter 3, Part XII, is amended to read as follows:

XII. GRIEVANCE PROCEDURES

A. Grievance Procedures - Authority

Pursuant to section 2.42, subsection ~~14~~16, and section 2C.3, Code ~~1989~~ 1997, the following rules for hearing and acting upon appeals of aggrieved employees of the Legislative Service Bureau, Legislative Fiscal Bureau, Computer Support Bureau, and the Office of Citizens' Aide are established by the Legislative Council.

B. Definitions

Unless otherwise provided:

1. "Director" means the director of the Legislative Service Bureau, Legislative Fiscal Bureau, Computer Support Bureau, or the Office of Citizens' Aide.
2. "Employee" means a person employed by the Legislative Service Bureau, Legislative Fiscal Bureau, Computer Support Bureau, or the Office of Citizens' Aide. "Employee" does not include the director of the Legislative Service Bureau, the director of the Legislative Fiscal Bureau, the director of the Computer Support Bureau, or the Citizens' Aide.
3. "Committee" means the Service Committee of the Legislative Council.
4. "Council" means the Legislative Council.
5. "Grievance" means a complaint filed by an employee against a director for agency action affecting the employee and relating to any of the following:
   a. Employment requirements which are alleged to be contrary to these personnel guidelines for the central legislative staff agencies.
   b. Employment conditions alleged to violate any applicable federal or state constitutional or statutory provisions relating to civil rights or other protected status or fundamental rights, employment discrimination, occupational safety and health, wage payment, withholding, wage assignments, and hours of work.
   c. A lawful disclosure of information pursuant to federal or state law regarding the agency or an abuse of authority.

C. Grievance Procedures - Rules

These rules shall constitute the procedures for resolving grievances ~~or complaints~~ of employees. Time limits specified within these rules begin the working day following the day an action takes place or is required. Time limits provided in these rules may be altered by mutual agreement. The Council shall require all directors to adhere to protocols relating to grievance communications, hearings, recordkeeping, and confidentiality of grievance proceedings and records. The grievance hearing shall be closed at the request of either the employee or the affected director. The Committee and Council shall adopt rules of procedures at the time of the consideration of a grievance. The rules shall meet all requirements of this Part.

D. Filing of Grievance ~~or Complaint~~ - Right of Employee

An employee ~~may file or submit~~ who has a grievance ~~or complaint with a director, the Committee, or the Council~~ may file that grievance as provided in these rules without fear of jeopardizing the employee's position or opportunities for advancement or salary increase. The employee involved in the proceeding shall cooperate with the ~~employing authority~~ director of the employee's agency so that there will be a minimum of interference with normal operation of the agency's work. ~~Time limits provided in these rules may be altered by mutual agreement.~~ Grievances shall be in writing and shall contain such specific information as will inform the director, the Committee, or the Council of the incident from which the grievance arose.

E. Initiation of ~~Complaint or~~ Grievance

~~An employee shall file a~~ The grievance ~~or complaint~~ resolution process commences when an employee files a grievance in writing with the director of the agency in which the employee is employed within five working days of the incident ~~of~~ from which the alleged grievance ~~or complaint~~ arose. The director may request additional information and may request that the information be presented in a specific form or letter and provided to all parties involved in the incident. If additional information is requested, the employee shall be granted five working days to provide the additional information to the director. The director shall review and investigate the grievance and transmit a written decision to the employee within five working days of receipt of the grievance ~~or complaint~~. However, if the director needs additional time to issue a written decision, the director shall notify the employee and the committee in writing of the additional time required, not to exceed 30 days. A director's failure to comply with the time limitations or any extensions may be a basis for disciplinary action against the director.

F. Appeal to Committee - Submission in Writing

If the employee is not satisfied with the decision of the director, the employee may within five working days of receipt of the decision of the director file ~~a~~ the grievance ~~or complaint~~ in writing with the chairperson of the Committee. A copy of the written grievance ~~or complaint~~ shall be filed with the director at the same time as the filing with the chairperson of the Committee. ~~The~~ Upon notification of the director of the filing of the grievance with the Committee, the director shall file a copy of the director's decision ~~upon notification of the filing of the grievance or complaint~~ with the Committee.

G. Consideration of the Written Grievance ~~or Complaint~~ by the Committee

The Committee shall consider the ~~written complaint or~~ grievance either within 30 days of its receipt, at its next regularly scheduled meeting, at a meeting specially called for such purpose, or at a subsequent meeting as determined by the Committee. ~~The Committee shall make a written decision in regard to the~~

~~grievance or complaint on the day the complaint or grievance is considered. However, if~~ Any information which is relevant to the grievance may be presented at the hearing of the grievance and shall become a part of any appeal from the Committee's decision. All hearings on grievances shall be held in an informal manner. Any party, a director, or the Committee may call witnesses and consider documents and written statements. Presentation of witnesses and other evidence shall not be limited by legal rules of evidence. Witnesses may decline to participate in the hearing. An employee may request that a third person designated by the employee be present to represent the employee; however, the third person may decline to represent the employee. If the Committee desires additional information from any person ~~it~~ or desires additional time to consider the grievance, the Committee may continue the hearing and notify the employee and the director of its decision to continue the hearing. The Committee may then request the additional information from the director or the employee affected. The Committee shall make a written decision in regard to the grievance on the day the hearing on the grievance is concluded. A copy of the written decision shall be filed with the director and employee.

H. Appeal to Council

If the employee or director is not satisfied with the decision of the Committee, the employee or director may appeal the Committee's decision to the Council by filing a written appeal with the chairperson and vice chairperson of the Council within five working days of the decision of the Committee. The written appeal shall contain such specific information as will adequately inform the Council of the incident from which the appeal arose. The Council may request additional information and may request the information be presented in a specific form or letter and provided to all parties involved. A copy of the appeal shall be filed with the ~~director~~ other party to the grievance at the same time. The chairperson shall set a time for hearing the written appeal of the grievance ~~or complaint~~. The hearing may be part of a regular meeting of the Council or may be held during a special meeting called for ~~such~~ that purpose. ~~The appeal to the Council must be filed within five working days of the decision of the Committee.~~ The hearing shall be held in an informal manner. Any party or the Council may call witnesses and consider any documents and written statements which are relevant to the grievance. Receipt of evidence by the Council shall not be limited by the legal rules of evidence. Witnesses may decline to participate in the hearing. An employee may request that a third person designated by the employee be present to represent the employee; however, the third person may decline to represent the employee. All information presented at any hearing before the director or the Committee shall be part of the appeal and shall be provided by the director and the Committee to the Council. If the Council desires additional information from any person or desires additional time to consider the grievance, the Council may continue the hearing and notify the employee and the director of its decision to continue the hearing. The decision of the Council in regard to the grievance ~~or complaint~~ is final. A copy of the written decision shall be filed with the director and employee.

I. Effect of Failure to Proceed

If the employee fails to proceed with the grievance ~~or complaint~~ within the time limits set forth in these rules or special time limits agreed upon, it shall be assumed the grievance ~~or complaint~~ has been settled on the basis of the last decision reached or that the employee does not desire to pursue the matter further. If a director fails to comply with the time limitations, the employee may proceed immediately to the next step as if a decision had been reached with which the employee was not satisfied.

J. ~~Form and Content of Written Appeals~~ Amendments

~~The written appeal shall contain such specific information as will adequately inform a director, the Committee, or the Council of the incident from which the appeal arose. A director, the Committee, or the Council may request additional information and may request the information be presented in a specific form or letter and provided to all parties involved. An employee may request that a third person be present to give evidence or represent the employee, however, the third person may decline to present evidence or represent the employee. All germane information presented at any hearing may be added to and shall become a part of an appeal. All hearings shall be held in an informal manner. Any party, a director, the Committee, or the Council may call witnesses and consider documents and written statements which shall not be limited by legal rules of evidence. Witnesses may decline to participate in the hearing.~~ A grievance and any appeal of a grievance may, subject to the approval of the Committee or Council, be amended at any time prior to a decision by the Committee or Council. The amendment must relate directly to the original grievance. The Committee or the Council may impose terms or grant a continuance with or without terms as a condition of such allowance. A request for an amendment shall be submitted in writing either to the chairperson of the Committee or the Council, as the case may be, and a copy shall be filed with the affected director and the employee.

K. Notification of Hearing

An aggrieved employee or any person affected shall be given reasonable notice of any hearing so that proper arrangements to attend the hearing can be made. An aggrieved employee shall be allowed time off with pay to attend the hearing.

L. Coercion of Employees

A director or another supervisor shall not coerce an employee into not proceeding with a grievance ~~or a complaint~~ or appearing as a witness at a hearing. An act of coercion shall be considered as a reason for a grievance ~~or complaint~~ which may be combined with the original grievance ~~or complaint~~.

M. ~~Amendments~~ Settlement

~~A complaint or a grievance may be amended at any time prior to a decision. The amendment must relate directly to the original complaint or grievance and allowance of such amendments shall be within the discretion of the chairperson of the Committee or Council. The Committee or the Council may impose terms or grant a continuance with or without terms as a condition of such allowance. A request for an amendment shall be submitted in writing either to the chairperson of the Committee or the Council, as the case may be, and a copy shall be filed with the affected director.~~ An employee and a director, the Committee, or the Council may resolve a grievance by settlement at any time during the grievance procedure. The settlement shall be reduced to writing and shall be affirmed by the director or by the Committee if the grievance has been filed with the Committee or by the Council if the grievance has been appealed to the Council.

21. Chapter 3, Part XIV, paragraph B, subparagraph 3, unnumbered paragraph 1, is amended to read as follows:

> Except as provided in this subparagraph, a ~~permanent~~ full-time legislative employee employed year round shall not sell, directly or indirectly, any goods or services to individuals, associations, or corporations which employ persons who are registered lobbyists before the general assembly.

22. Chapter 3, Part XVI, is amended to read as follows:

XVI. PERSONNEL RECORDS

The director or the director's designee shall maintain and be ~~custodians~~ the custodian of all personnel files on each employee of that agency. These files shall also include but not be limited to performance evaluation records and any disciplinary proceedings against the employee. An employee who is no longer employed by the agency, whether by resignation or termination, shall have the employee's file kept in the agency for a period ~~not to exceed two~~ of at least three years~~, then transmitted to the General Services Records Center~~. Employees shall have the right to inspect and have copies made free of charge of their personnel files during regular business hours. All records shall be held as confidential in accordance with Code section ~~19A.15~~ 22.7(11).

23. Chapter 3, Part XX, paragraph B, is amended to read as follows:

B. Applicability

This policy applies to ~~full-time, part-time, and temporary~~ all central legislative staff agency employees as perpetrators or as victims of fellow central legislative staff agency employees. For purposes of this policy, the word "employee" also applies to central legislative staff agency volunteers, interns, and consultants. This policy shall be distributed to all employees at the time of hiring or orientation.

Members, employees, interns, and consultants of the Senate and House of Representatives and lobbyists are subject to the jurisdiction of the Senate and House respectively regarding sexual harassment complaints.

EXPLANATION

This revision of the Grievance Procedures and related policies from the Personnel Guidelines for the Central Legislative Staff Agencies is both substantive and nonsubstantive in nature. The nonsubstantive revisions generally rearrange provisions of the Grievance Procedures in a more systematic manner. The more substantive revisions are as follows:

1. The Policy Making and Oversight Authority provisions are revised to state that the Personnel Guidelines are informational in nature only and do not in any way alter the employment relationship or create contractual employment rights, to state that all employees of the central legislative staff agencies are employees at will, and to require that employees receive and acknowledge receipt of copies of the Guidelines and are given a reasonable opportunity to address in writing any questions to the appropriate director. The director is required to respond to the questions within 30 days. References to "permanent" employees throughout the Guidelines are revised to refer to full-time or part-time employees employed year round, as appropriate.

2. The Compensation - Benefits provisions in part IV of the Personnel Guidelines are revised to delete references to probationary employment and to the requirement of reporting completion of probationary employment since part VII of the Personnel Guidelines eliminates a probationary period of employment. Merit increase eligibility dates are required to be set on an employee's anniversary date or on a standard date.

3. The Sick Leave Without Pay provisions in part VI are revised to comply with the federal Americans with Disabilities Act.

4. Part VI is revised to eliminate the use of up to 40 hours of accrued sick leave (enforced sick leave) for bereavement leave and to eliminate the use of family leave upon the death of a family member. Parental and family leave is made available to full-time and part-time employees employed year round. Part VI is also revised to provide at least pro rata holiday pay to any employee working regular hours the day before and the day after a holiday.

5. The Hiring provisions in part VII of the Personnel Guidelines are revised to delete references to a probationary period of employment and to allow demotion during the first six months of employment.

6. The Promotions provisions in part X of the Personnel Guidelines are revised to delete references to probationary employment. Language is added that an employee may receive only two step increases during a twelve-month period.

7. The Suspension, Demotion, and Termination provisions in part XI are revised to delete the word "discretionary."

8. The Grievance Procedures in part XII of the Personnel Guidelines are revised to delete the references to complaints and to refer only to grievances and to define grievances as relating to any of the following:

   a. Employment requirements contrary to the Personnel Guidelines.

   b. Employment conditions violating any applicable federal or state constitutional or statutory provisions such as civil rights, employment discrimination, and worker safety laws.

   c. Lawful disclosures of information pursuant to federal or state law.

   d. Abuses of authority.

Part XII revisions also require the Service Committee and the Legislative Council to adopt rules of procedure at the time a grievance is considered and require all directors of the central legislative staff agencies to adhere to protocols relating to grievance communications, hearings, recordkeeping, and confidentiality of grievance proceedings and records. A grievance hearing shall be closed at the request of either the employee or the affected director. The term "relevant" is substituted for "germane" when referring to the type of information which may be presented at a grievance hearing. Relevance is the more common term used in the law of evidence. A provision is added to allow a grievance to be settled at any time during the grievance procedure. The settlement must be in writing and affirmed by the director or the Service Committee or Legislative Council. All references to smaller number of days are changed to working days. Five working days are provided for employees to provide additional information requested by a director. An employee is allowed to designate a third person to represent the employee. A director may have up to 30 days additional time to issue an initial written decision upon notice to the employee and the Service Committee. A director is subject to disciplinary action for failure to comply with time limitations.

The remaining revisions of the Grievance Procedures in part XII of the Personnel Guidelines are all nonsubstantive and are as follows:

   a. Paragraph A is amended to refer to the latest Code of Iowa which retains the same language regarding the statutory authority for the Legislative Council establishing grievance procedures.

   b. Language in paragraph C is taken from paragraph D.

   c. Language in paragraph D is taken from paragraphs E and J.

   d. Language in paragraph E is taken from paragraph J, applying the language to the original grievance as well as to appeals.

e. Paragraph F is revised to use the definite rather than the indefinite article when referring to the appeal of a grievance already filed with the director.

f. Language in paragraph G is taken from paragraph J and the language regarding the written decision is moved within the paragraph and changed from the day the grievance is considered to the day the grievance is concluded.

g. Language in paragraph H is taken from paragraph J and the five-day appeal period language is moved within the paragraph.

h. Language in paragraph J is stricken and moved to other paragraphs as described above. Language from paragraph M is moved to paragraph J.

i. Language in paragraph M is stricken and moved to paragraph J.

9. The Personnel Records provisions in part XVI are revised to allow employees to obtain copies of their personnel records free of charge and to refer to the confidentiality provisions of the public records law, Code chapter 22, rather than to the personnel records provision of the law applicable to the Department of Personnel and the executive branch, Code chapter 19A. The retention period for employee records is extended to comply with federal immigration law. Language requiring transmittal of such records to the Department of General Services is deleted.

9757RR
11/25/97

REPORT OF THE STUDIES COMMITTEE TO THE LEGISLATIVE COUNCIL

November 25, 1997
(Corrected Copy)

The Studies Committee of the Legislative Council met on November 25, 1997, and makes the following report and recommendations:

1) That not more than $50,000 be authorized for the Commission on Urban Planning, Growth Management of Cities, and Protection of Farmland to be used for surveys, research, and other expenses necessary to carry out the purposes of HCR 21. Expenditure of the authorized funding shall be subject to match funding from private sources.

2) That an extension of the November 28, 1997, deadline be authorized for the following interim studies to complete their deliberations:
   - Human Services Restructuring Task Force.
   - Task Force to Study Iowa's System of State and Local Taxation.
   - Privatizing Management of the Iowa Communications Network Study Committee.
   - Public Retirement Systems Committee.

3) That the Legislative Council approve creating* the Medicaid Managed Care Work Groups in accordance with the attached description and authorizing, as a joint expense under section 2.12, reimbursement of actual expenses for those work group members who are not eligible for reimbursement by an organization they represent and payment for staffing and administrative costs to the extent not paid by outside funding.

Respectfully submitted,
Representative Chuck Gipp
Chairperson

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* See page 4 Legislative Council Minutes, November 25, 1997, Report corrected to reflect Chairperson Iverson's clarification of Report.

Medicaid Managed Care Work Groups

The purpose of these work groups is to develop recommendations to address concerns raised regarding a draft request for proposals issued by the Department of Human Services which contemplates selection of a managed care entity to administer the following services paid for under the state's Medicaid program: mental health, substance abuse, and child welfare. Members shall be subject to the approval of the bipartisan legislative leadership. The work groups shall seek outside funding for staffing and other administrative expenses of the work groups, to the extent possible. Expenses paid by the General Assembly shall be charged as a joint expense from moneys appropriated under section 2.12. Persons serving as public members of these work groups are eligible to receive reimbursement for actual expenses, including lodging, only if they are not eligible for expense reimbursement by an organization that they represent. Minutes, materials, mailings, reports, and other papers of the work groups shall be filed with the Legislative Service Bureau.

- **Child Welfare Services Work Group.** The focus of this work group is child welfare services. The work group shall recommend a strategy, or strategy options, regarding the manner by which the state can develop a more flexible and holistic, capitated system for child welfare and make a recommendation on whether or not to link the child welfare services with the proposed managed care contract for mental health and substance abuse. The membership shall consist of not more than 30 public members representing the Department of Human Services, federal government, local governments, juvenile courts, service providers, child advocates, and other persons knowledgeable concerning children's services, federal program requirements, or public funding. A report containing recommendations regarding linking of child welfare shall be submitted by the work group on or before January 12, 1998, and a final report shall be submitted on or before February 1, 1998. Both reports shall be distributed to the General Assembly. The work group may begin meeting in early November. The bipartisan legislative leadership may request this work group to meet additional days if deemed necessary to develop other information and options for legislative decisionmaking. Six meeting days.
- **Mental Health & Substance Abuse Services Work Group.** The focus of this work group is the mental health and substance abuse provisions of the managed care proposal. The work group shall include county representatives, department representatives, and others concerned with these services. To the extent possible, the work group shall seek to achieve consensus on means to address areas of concern. The work group shall develop a report of its activities, which may include action recommendations, for submission to the General Assembly on or before January 12, 1998. Not more than 17 members. One meeting day.

REPORT OF THE ADMINISTRATION COMMITTEE TO THE LEGISLATIVE COUNCIL

November 25, 1997

The Administration Committee met on November 25, 1997, and makes the following report:

The Administration Committee received a report regarding an Outreach Program proposal developed by State Capitol Tour Guides. The program involves soliciting grant funding for developing an Outreach Program for schools that would include a 45-minute, one-act play, entitled "Capitol Spirit," which would feature Alfred Piquenard, the primary architect and visionary force behind the State Capitol's design, in a dialogue with a variety of individuals who made contributions to the Capitol. Capitol tour Guides and Des Moines playwright, Ms. Cynthia Mercati, will write the play and the Tour Guides will develop curriculum materials for teachers that will supplement the performance. The tour guides are seeking the endorsement of this concept by the General Assembly to use in soliciting grant funding for this program. Grant funding would pay costs of play performances and travel for the actors.

Recommendation: The Administration Committee recommends that the Legislative Council endorse this Outreach Program and provide a letter indicating such endorsement to the Capitol Tour Guides to be used for the purpose of soliciting grant funding for the program.

Respectfully Submitted,

John Jensen
Chairperson

REPORT OF THE CAPITAL PROJECTS COMMITTEE TO THE LEGISLATIVE COUNCIL

November 25, 1997

The Capital Projects Committee of the Legislative Council met on November 25, 1997, and makes the following report:

The Capital Projects Committee received a report from the Capital Projects Work Group regarding the selection of a consultant associated with the Space Evaluation and Planning Services Request For Proposals dated September 28, 1997, and issued on behalf of the Legislative Council by the Work Group. Upon receipt and review of several presentations, the Capital Projects Work Group is recommending that the project be awarded to Herbert Lewis Kruse Blunck Architecture.

Respectfully submitted,

Senator John Jensen

Chairperson

Background: The Legislative Council established the Capital Projects Work Group at the Council's May 21, 1997, meeting. The Capital Projects Work Group is authorized to negotiate and administer any contract entered into on behalf of the Legislative Council regarding this RFP. The Capital Projects Work Group is to exclusively provide any necessary direction to the vendor regarding this RFP, and make any necessary report or recommendation as a result of the completion of work under this RFP to the Capital Projects Committee of the Legislative Council. The Capital Projects Work Group consists of four legislators (one from each caucus) and, pursuant to the resolution adopted by the Legislative Council, is authorized to negotiate the retention of a vendor to assist in the planning for Capitol space usage. Final approval of any vendor contract is to be given by the Chairperson and Vice Chairperson of the Legislative Council.

LEGISLATIVE COUNCIL RESOLUTION

A Legislative Council Resolution relating to the expenses of the gubernatorial transition.

WHEREAS, a need has arisen to provide additional funds for the expenses of the gubernatorial transition to assure that the Governor-elect can adequately prepare before inauguration day for the performance of his gubernatorial duties relating to the development of the state budget and related legislative proposals for submission to the General Assembly; NOW THEREFORE,

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL, That the Legislative Council strongly urges the Governor to provide, pursuant to Code section 8.39, either an intradepartmental or interdepartmental transfer of sufficient moneys to accomplish the gubernatorial transition; and

BE IT FURTHER RESOLVED, That this Resolution, upon adoption by the Legislative Council, be immediately transmitted to the Governor.

GENERAL ASSEMBLY OF IOWA

LEGAL COUNSELS
Douglas L. Adkisson
Irwin G. Cook
Susan E. Crowley
Patricia A. Funaro
Michael J. Goedert
Nicole R. Haatvedt
Leslie E. W. Hickey
Mark W. Johnson
Michael A. Kuehn
Timothy C. McDermott
Richard S. Nelson
Janet L. Simmons

RESEARCH ANALYSTS
Kathleen B. Hanlon
Thane R. Johnson

LEGISLATIVE SERVICE BUREAU

STATE CAPITOL
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DIANE E. BOLENDER
DIRECTOR

RICHARD L. JOHNSON
DEPUTY DIRECTOR

JOHN C. POLLAK
COMMITTEE SERVICES ADMINISTRATOR

LOANNE M. DODGE
IOWA CODE EDITOR

KATHLEEN K. BATES
ADMINISTRATIVE CODE EDITOR

JULIE E. LIVERS
LEGISLATIVE INFORMATION OFFICE DIRECTOR

November 4, 1997

MEMORANDUM

TO: **CHAIRPERSON STEWART IVERSON, VICE CHAIRPERSON RON CORBETT AND MEMBERS OF THE LEGISLATIVE COUNCIL**

FROM: **DIANE BOLENDER** DB

RE: **NOVEMBER COUNCIL MEETING**

The Legislative Council and its committees will meet as follows on Tuesday, November 25, 1997. All meetings will be held in Committee Room 22.

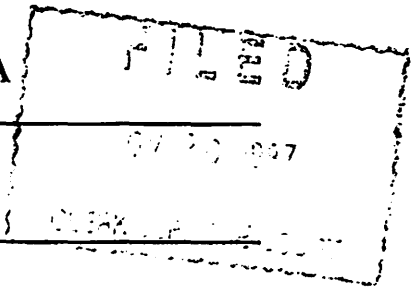
9:30 a.m.	Service Committee
1:00 p.m.	Studies Committee
1:30 p.m.	Administration Committee
2:00 p.m.	Capital Projects Committee
2:30 p.m.	Legislative Council

Enclosed with this memorandum are tentative agendas for each of the committee meetings. Service Committee members and Administration Committee members will receive packets of information for their meetings prior to the scheduled meeting date.

Pursuant to action taken by the Legislative Council at its May 1997, meeting, I am also including in this mailing a copy of a revision of the Rules of Civil Procedure and amendments to the Iowa Rule of Appellate Procedure 1. As you are aware, the Iowa Supreme Court is required to submit rules or forms prescribed by the Supreme Court to the Legislative Council, and the Legislative Council may by majority vote delay the effective date of the rules changes. Both changes are scheduled to take effect January 2, 1998. The Supreme Court also sends copies of any of its rules changes to the Chairpersons and Ranking Members of the Senate and House of Representatives Committees on Judiciary.

Also enclosed are copies of the Minutes from the June 25 meetings of the Service Committee, Studies Committee, Capital Projects Committee, and the Legislative Council, and the September 18 meeting of the Capital Projects Work Group.

IN THE SUPREME COURT OF IOWA



IN THE MATTER OF A CHANGE IN IOWA RULE OF CRIMINAL PROCEDURE 30	REPORT OF THE SUPREME COURT

TO: DIANE BOLENDER, SECRETARY OF THE LEGISLATIVE COUNCIL OF THE STATE OF IOWA.

Pursuant to Iowa Code sections 602.4201 and 602.4202, the Supreme Court of Iowa has prescribed and hereby reports on this date to the Secretary of the Legislative Council concerning amendments to Iowa Rule of Criminal Procedure 30 as shown in the attached Exhibit "A".

Pursuant to Iowa Code section 602.4202(2), the changes to this rule are to take effect January 21, 1998.

Respectfully submitted,

THE SUPREME COURT OF IOWA

By _____
Arthur A. McGiverin, Chief Justice

Des Moines, Iowa

Nov. 20, 1997

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Legislative Council, hereby acknowledge delivery to me on 24th day of November, 1997, the Report of the Supreme Court pertaining to the Iowa Rules of Criminal Procedure.

_____
Secretary of the Legislative Council

Please return to: Iowa Supreme Court Clerk's Office, State Capitol, Des Moines, IA 50319.

EXHIBIT "A"

RULES OF CRIMINAL PROCEDURE

Rule 30. Forms for warrants.

***

ENDORSEMENT ON SEARCH WARRANT APPLICATION

***

4. The information appears credible because (select):

_____A. Sworn testimony indicates this informant has given reliable information on previous occasions; or,

_____B. Sworn testimony indicates ~~this informant has not been used before but~~ that either the informant appears credible or the information appears credible for the following reasons **(if credibility is based on this ground, the magistrate MUST set out reasons here)**:

_____

_____

_____

GENERAL ASSEMBLY OF IOWA

LEGAL COUNSELS
Douglas L. Adkisson
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Patricia A. Funaro
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IOWA CODE EDITOR

KATHLEEN K. BATES
ADMINISTRATIVE CODE EDITOR

JULIE E. LIVERS
LEGISLATIVE INFORMATION OFFICE DIRECTOR

November 24, 1997

MEMORANDUM

TO: CHAIRPERSON IVERSON, VICE CHAIRPERSON CORBETT, AND MEMBERS OF THE LEGISLATIVE COUNCIL

FROM: DIANE BOLENDER DB

RE: EDUCATIONAL LEAVE REPORTS

Pursuant to Iowa Code section 70A.25, enclosed are copies of educational leave reports required to be filed annually with the Iowa Legislative Council and the Department of Personnel by each state agency, department, or commission. The reports filed are for the fiscal year ending June 30, 1997. The report must include the direct and indirect costs to the agency of educational leave and educational assistance.

Educational leave includes full or partial absence from an employee's ordinary job responsibilities either with full or partial pay or without pay, to attend a course of study at an educational institution or a course of study conducted by a reputable sponsor on behalf of an educational institution. Educational assistance is reimbursement for tuition, fees, books or other expenses incurred by a state employee in taking coursework at an educational institution or attending a workshop, seminar or conference.

EDUCATIONAL LEAVE REPORTS

Attached are the Educational Leave Reports for 1997

as Required Under Section 70A.25 of the Code

STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF PERSONNEL
LINDA G. HANSON, DIRECTOR

November 20, 1997

MEMORANDUM

TO: Legislative Council

FR: Linda G. Hanson, Director

RE: **Amended Report of Educational Leave/Educational Assistance**

The Educational Leave/Educational Assistance Report was submitted to you October 13 and October 20, 1997. After this report was submitted to you, we received additional reports from the Department of Economic Development, Legislative Service Bureau, General Services, College Aid, and Iowa Workforce Development. As per your telephone request, I am submitting an amended annual report.

c: Sandy Briggs

M-LH-322.pc

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT 1997

DEPARTMENT		HRS MISSED		DIRECT COSTS		TOTAL DIREGT COSTS	INDIRECT COSTS	COST SAVINGS
		w/pay	w/o pay	Tuition	Other			
Executive Branch								
Agriculture	009-013-014	No Expenditures						
Auditor	126	No Expenditures						
Blind	131	No Expenditures						
Civil Rights	167	No Submissions						
Commerce	211-219	-0-	-0-	$ 2,242.60	-0-	$ 2,242.60	-0-	-0-
Commission of Veterans' Affairs	671	28	-0-	$ 172.00	-0-	$ 172.00	$ 309.40	-0-
Corrections	238-251	No Expenditures						
Cultural Affairs	259	No Expenditures						
Economic Development	269-270	-0-	-0-	$ 5,200.00	$ 654.00	$ 5,854.00	-0-	-0-
Education	282-283	16	-0-	$ 7,607.00	-0-	$ 7,607.00	-0-	$ 4,300.00
College Aid	284	-0-	-0-	$ 3,825.00	$ 187.64	$ 4,012.64	-0-	-0-
Public Television	285	128	-0-	$ 2,386.40	-0-	$ 2,386.40	-0-	-0-
Elder Affairs	297	No Expenditures						
Information Technology Services	000	-0-	-0-	$ 221.60	$ 73.35	$ 294.95	-0-	-0-
Fair Authority	011	No Submission						
General Services	337-339	No Expenditures						
Governor	350-351	No Submission						
Human Rights	379	No Expenditures						
Human Services	401-413	-0-	-0-	$ 903.60	$ 388.35	$ 1,291.95	-0-	-0-
Iowa Communications Network		-0-	-0-	$ 332.40	-0-	$ 332.40	-0-	-0-
IA Ethics & Campaign Disclosure Brd.	140	No Expenditures						
Inspections & Appeals	427-429	No Expenditures						
Justice	112-114	No Submission						
Law Enforcement	467	No Submission						
Management	532	No Expenditures						
Natural Resources	542	-0-	-0-	$ 27,959.20	$ 2,742.63	$ 30,701.83	-0-	$ 45,750.00
Parole	547	No Expenditures						
Personnel	552	-0-	-0-	$ 2,029.00	$ 239.90	$ 2,268.90	-0-	-0-
Public Employment Relations	572	No Expenditures						
Public Defense	582-583	-0-	-0-	$ 166.20	-0-	$ 166.20	-0-	-0-
Public Health	588	-0-	-0-	$ 460.00	$ 52.50	$ 512.50	-0-	-0-
Public Safety	595	No Expenditures						
Regents	615	No Submission						
Revenue & Finance	625-627	-0-	-0-	$ 1,781.25	-0-	$ 1,781.25	-0-	-0-
Secretary of State	635	No Expenditures						
Transportation	645	116.50	42.25	$ 20,195.40	$ 3,221.40	$ 23,416.80	N/A	N/A
Treasurer	655	-0-	-0-	$ 1,945.80	$ 160.00	$ 2,106.40	-0-	-0-
IA Workforce Development	309-311	-0-	-0-	$ 1,666.80	$ 89.45	$ 1,756.25	-0-	$ 2,263.46
Judicial Branch	444-445							
Court Administrator		No Submission						
Legislative Branch	500-509							
Senate		-0-	-0-	$ 3,188.13	$ 301.13	$ 3,489.26	-0-	-0-
House		-0-	-0-	$ 1,927.00	-0-	$ 1,927.00	-0-	-0-
Service Bureau		No Expenditures						
Fiscal Bureau		No Expenditures						
Code Editor		No Submission						
Citizens' Aide		-0-	-0-	$ 180.00	-0-	$ 180.00	-0-	$ 155.00
Administrative Rules Review Commission		No Submission						
Totals		288.50	42.25	$ 84,389.38	$ 8,110.35	$ 92,500.33	$ 309.40	$ 52,468.46

9/10/97 prepared by:
Polly Andersen

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LEGISLATIVE SERVICE BUREAU

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

Commerce and Consumer Advocate
(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
X. (David) Huang	Bank Exam 3	Info. Systems in Organization	0	0	765.00	0	0	0
Glenadine Daugherty	Bank Exam 2	Unix-TCP/IP Network	0	0	111.40	0	0	0
Karen Faust	Secretary I	Accounting Fundamentals	0	0	166.20	0	0	0
Phyllis Conklu	Sr Utility Analyst	Quantitative Analytical methods	0	0	600.00	0	0	0
Dawn Geiger	Utility Analyst 2	Public Budgeting & Financial Mgt.	0	0	600.00	0	0	0
TOTALS			0	0	2242.60	0	0	0

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

OCT 0 3 1997

Commission of Veterans Affairs /Iowa Veterans Home
(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Toney McDaniel	Resident Treatment Worker	Medication Aide	28	0	$172.00	0	$309.40	0
TOTALS			28	0	$172.00	0	$309.40	0

CFN 552-0264 R 10/95

REVISED
10/20/97

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

Economic Development
(Department)

Employee Name	Classification	Course Title	Hrs Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
* ~~Lisa Mason~~	~~Secretary 2~~	~~Basic Composition~~	0	0	~~405~~	~~35~~		
Deb Townsend	Admin Asst 2	Computer Appl	0	0	405	74		
Miriam Ubben	Admin Asst 4	Quant Methods	0	0	510	0		
Miriam Ubben	Admin Asst 4	Cultural Anthro	0	0	510	0		
Miriam Ubben	Admin Asst 5	Cultural Heritage	0	0	340	0		
Miriam Ubben	Admin Asst 5	Religion Human Exp	0	0	510	0		
Deb Townsend	Admin Asst 2	Business Ethics	0	0	405	44		
Sue Lambertz	Admin Asst 4	Discussion/Debate	0	0	570	375		
Sue Lambertz	Admin Asst 4	Principle Comm	0	0	570			
Sue Lambertz	Admin Asst 4	Contempory Busin	0	0	570			
Deb Townsend	Admin Asst 2	Labor Relations	0	0	405	161		
Deb Townsend	Admin Asst 2	Mgmt Cases	0	0	405			
* - Course was submitted for approval but was never actually taken.								
TOTALS			0	0	5,700 ~~5605.00~~	654 CC ~~689.00~~		

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Education

(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Janice A. Henson	Library Aide	Lotus Level 1 Course	8	0	150	0	0	0
Janice A. Henson	Library Aide	WordPerfect for Windows	8	0	100	0	0	0
Charles Stark	Library Consultant	Microsoft Certified System Engineer	0	0	4,000	0	0	0
Angelo Cordero	Rehab. Technology Specialist	Biomedical Engineer	0	0	489	0	0	1,000
Lori Campbell	Rehab. Counselor	Career Guidance & Job Placement	0	0	973	0	0	1,000
Lori Campbell	Rehab. Counselor	Intro to Group Counseling &	0	0	1,516	0	0	750
		Psychological & Social Aspects of Disability						
Ellen Hellman	Food Serv Dir	Needs Analysis	0	0	260	0	0	500
Gary Widdell	Rehab. Counselor	Access for Windows Modiules I & II	0	0	119	0	0	300
		TOTALS	16	0	7,607	0	0	4,300

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

College Aid

(Department)

Employee Name	Classification	Course Title	[illegible]		Direct Costs		[illegible]	Cost Savings
			Work	[illegible]	Tuition	Other		
Keith Greiner	management analyst IV	Law of Higher Education	0	0	765	78.75	0	0
Keith Greiner		History and Philosophy of american Higher Ed.	0	0	765	0	0	0
Keith Greiner		Principles of Higher Education	0	0	765	0	0	0
Keith Greiner		The College Student	0	0	765	68.20	0	0
Keith Greiner		Administration of Adult and Higher Ed	0	0	765	40.69	0	0
		TOTALS	0	0	$3825	187.64	0	0

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EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

Iowa Public Television
(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Fiscus, Debra I.	Admin. Asst. 1	Exceptional Assistant	8		99.00			
Fredrickson, Anne M.	Producer/Director	Self-Discipline and Emotional Control	8		79.00			
Houston, Kristine K.	Public Serv. Exec. 4	Preparing & Delivering Message-Based Financial Presntations	8		140.00			
Miller, Michael J.	Video Prod. Coor.	Self-Discipline and Emotional Control	8		79.00			
Ohlhaber, Kristen	Graphic Artist	Microsoft Power Point	8		158.40			
Smith, Lori J.	Public Serv. Exec. 3	Preparing & Delivering Message-Based Financial Presntations	8		140.00			
Mahin, Jerry L.	Info. Tech. Spec. 4	MRC Install and Configuration	16		600.00			
Waterman Jr., Allen	Info. Tech. Spec. 4	Novell Netware 3x to 4x Training	24		716.00			
Tundel, Nicole A.	Production Asst.	Summer Writing Festival	40		375.00			
		TOTALS	128		2,386.40			

9-29-97
CFN 552-0264 R 10/95

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

Elder Affairs
(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
	No educational leave/educational assistance granted fiscal year 1997							
		TOTALS						

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Information Technology Services

(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Sharon Putney	Info. Tech. Spec. 3	Beginning Cobol	0	0	221.60	73.35	0	see note
Note: cost savings not readily defined. This was for an increase in employee productivity.								
		TOTALS						

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

General Services

(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
		TOTALS						

None

CFN 552-0264 R 10/95

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

Human Rights
(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
None	None	None	-0-	-0-	-0-	-0-	-0-	-0-
TOTALS								

IUOM

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

Human Services
(Department)

Employee Name	Classification	Course Title	Hrs Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Roxane Marie Moller	PSS 3	Anatomy & Physiology	0	0	228.00	214.95	0	0
Roxane Marie Moller	PSS 3	Anatomy & Physiology II	0	0	228.00	57.00	0	0
Juanita Sierra	Clerk 2	Elementary Spanish	0	0	226.00	41.40	0	0
Heather Crawford	Secretary 1	Principles of Acct. 2	0	0	221.60	75.00	0	0
TOTALS			0	0	903.60	388.35	0	0

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

HCD
(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Diane Wilcox	HR. Associate	Human Relations in Business	0	0	$166.20	—		
"	"	Introduction to Business	0	0	$166.20			
		TOTALS	0	0	332.40			

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Ethics + Campaign Disclosure Board

(Department)

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SEP 17 1997
I.D.O.P.

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
None								
		TOTALS						

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

Inspections and Appeals
(Department)

Employee Name	Classification	Course Title	Hrs Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
		TOTALS	0	0	0	0	0	0

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NATURAL RESOURCES
(Department)

Employee Name	Classification	Course Title	Hrs. Missed W/Pay	Hrs. Missed W/O Pay	Direct Costs Tuition	Direct Costs Other	Indirect Costs	Cost Savings
GALE GORANSON	PARK RANGER	STATE & LOCAL GOVT	0	0	405.00	44.52	0	750
CAROLINE FINCH	DATA PROC SPEC	DEV & MGT OF HRM ORG & MGT THEORIES	0	0	1800.00	192.95	0	2000
WILLIE SUCHY	WILDLIFE BIOLOGIST	~~CULTURAL AWARE~~ MANAGING ENV RES	0	0	480.00	0	0	2000
MARY KAY ROGGE	ENV SPECIALIST	SOIL & GROUNDWATER REMEDIATION	0	0	500.00	94.00	0	2000
JERRY REISINGER	PARK RANGER	DEV & MGMT OF HUMAN RESOURCES	0	0	600.00	52.25	0	750
GALE GORANSON	PARK RANGER	PUBLIC BUDGET PROC	0	0	405.00	56.00	0	750
GALE GORANSON	PARK RANGER	MGMT CASES	0	0	405.00	71.50	0	750
JERRY REISINGER	PARK RANGER	IMPLEMENTING QUALITY SYSTEMS	0	0	600.00	64.50	0	750
SUSAN DIXON	ENV SPECIALIST	PUBLIC ORG MGMT; INF SYS; MGT OF COMM & ECON DEV	0	0	2340.00	175.00	0	2000
TODD WALROD	NAT RES TECH	INTRO TO COMP INTRO TO WINDOWS	0	0	103.00	0	0	500
SCOTT VANDERHART	ENV SPECIALIST	COMM & ECON DEV	0	0	780.00	0	0	1000
JERRY REISINGER	PARK RANGER	RES & STAT ANALYST	0	0	600.00	59.00	0	750
		TOTALS						

32-0264

Fiscal Year 19 97

NATURAL RESOURCES
(Department)

Employee Name	Classification	Course Title	Hrs. Missed W/Pay	Hrs. Missed W/O Pay	Direct Costs Tuition	Direct Costs Other	Indirect Costs	Cost Savings
GALE GORANSON	PARK RANGER	PUBLIC ADMIN	0	0	405.00	41.34	0	750
JEFFREY GEERTS	ENV SPECIALIST	PUBLIC PERS MGMT	0	0	765.00	0	0	1000
HUAIBAO LIU	GEOLOGIST	INTRO TO PROGRAMMING	0	0	489.00	248.15	0	1000
SUSAN DIXON	ENV SPECIALIST	MANAGEMENT ETHICS HUMAN RESOURCES APP	0	0	1530.00	100.00	0	2000
JERRY REISINGER	PARK RANGER	ORGANIZATIONAL BEHAVIOR	0	0	600.00	77.14	0	750
LISA HEMESATH	WILDLIFE BIOLOGIST	MULTIVARIATE ANALYSIS	0	0	206.00	0	0	1000
JEFFREY GEERTS	ENV SPECIALIST	HUMAN RES APPS	0	0	765.00	0	0	1000
RODNEY SLINGS	CONSERVATION OFFICER	SOCIOLOGY	0	0	166.20	51.25	0	750
DAVID PERRY	ENV SPECIALIST	ORGANIZATION & BEHAVIOR	0	0	525.00	48.95	0	750
WILLIE SUCHY	WILDLIFE BIOLOGIST	LANDSCAPE ECOLOGY	0	0	474.00	110.00	0	2000
JERRY REISINGER	PARK RANGER	FINANCIAL MGMT	0	0	600.00	86.42	0	750
MONICA WNUK	ENV SPECIALIST	PHY & CHEM TREATMENT GROUNDWATER Hyd	0	0	978.00	332.00	0	2000
		TOTALS						

32-0264

Fiscal Year 19 97

NATURAL RESOURCES
(Department)

Employee Name	Classification	Course Title	Hrs. Missed W/Pay	Hrs. Missed W/O Pay	Direct Costs Tuition	Direct Costs Other	Indirect Costs	Cost Savings
JERRY REISINGER	PARK RANGER	ORGANIZATIONAL & MGMT THEORIES	0	0	600.00	71.50	0	750
GALE GORANSON	PARK RANGER	SUPERVISION BA362	0	0	405.00	67.07	0	750
GALE GORANSON	PARK RANGER	HUMAN RESOURCE BA361	0	0	405.00	68.64	0	750
SCOTT VANDERHART	ENV SPECIALIST	CITY & COUNTY ADMIN PUBLIC ORG MGMT	0	0	1500.00	0	0	2000
SUSAN DIXON	ENV SPECIALIST	ENV POLICY & MGMT PUB POLICY FORMULA	0	0	1530.00	100.00	0	2000
JEFFREY GEERTS	ENV SPECIALIST	PUB ORG MGMT PUB POLICY FORMULA	0	0	795.00	0	0	1000
GALE GORANSON	PARK RANGER	COMPLEX ORGAN	0	0	405.00	65.50	0	750
JERRY REISINGER	PARK RANGER	CULTURAL & SOC AWARE	0	0	600.00	82.95	0	750
MONICA WNUK	ENV SPECIALIST	SOIL & WATER HAZARDOUS WASTE MGT	0	0	978.00	382.00	0	2000
WARD LENZ	PROG PLANNER	PUBLIC LAW & BUSINESS REGULATION	0	0	1005.00	0	0	1500
LISA HEMESATH	WILDLIFE BIOLOGIST	INTRO TO GIS	0	0	309.00	0	0	2000
ANDREA MEKUS	PARK ATTENDANT	FORM WELDING & ELEC SMALL ENGINE REPAIR	0	0	211.00	0	0	750
		TOTALS						

2-026.4

Fiscal Year 19 97

NATURAL RESOURCES
(Department)

Employee Name	Classification	Course Title	Hrs. Missed W/Pay	Hrs. Missed W/O Pay	Direct Costs Tuition	Direct Costs Other	Indirect Costs	Cost Savings
ROYA STANLEY	PUB SERV EXEC	BA 341 & 495	0	0	1915.00	0	0	2000
SCOTT VANDERHART	ENV SPECIALIST	HUMAN RES APPS	0	0	780.00	0	0	1000
TOTALS			-0-	-0-	27,959.20	2,742.63	-0-	45,750

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

BOARD of PAROLE

(Department)

Employee Name	Classification	Course Title	Hrs Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
No costs incurred.								
		J. McKeane						
		4-10-97						
TOTALS								

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

Personnel
(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Linda Savage	RBS 3	English 101	0	0	$510.00	–	–	–
Linda Savage	RBS 3	Psych 101	0	0	$510.00	–	–	–
Jason Harrington	Adv PMS	Legal & Reg Aspects of Health Care	0	0	$460.00	–	–	–
Mike Finnegan	Ret Inv. Off 3	CFA Level III	0	0	–	Books $239.90	–	–
Jane Rouse	Ret Sales Tech	Principals of Acctg. I	0	0	$304.85 DPIB. fee	Books	–	–
Jane Rouse	" "	" " " II	0	0	$244.85	Books		
TOTALS				Dept Total:	$2029.70	$239.90		

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

Public Employment Relations Board
(Department)

NO COSTS INCURRED.

Employee Name	Classification	Course Title	Hrs Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
		TOTALS						

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Public Defense - Military

(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Richard Vogt	Air Conditioning Mech	Introduction to Computers	Ø	Ø	166.20	Ø	Ø	Ø
		TOTALS	Ø	Ø	166.20	Ø	Ø	Ø

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Public Health

(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Casey A. Smith	IT Spec 4	Java Prg cc73	0	0	460.00	52.50		
TOTALS					460.00	52.50		

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EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Public Safety

(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
					0	0	0	0
			0	0	0	0	0	0

TOTALS

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Revenue Financial

(Department)

Employee Name	Classification	Course Title	Hrs Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Kim Biddle	Admin Asst I	Personnel Supervision	—	—	124.65			
Betty Robb		Business English	—	—	240.75			
Delicth Johnson	Secretary II	Principals of Acctg	—	—	166.20			
Katharine Dowell-Finden	Rev Agent II	Financial Management	—	—	296.25			
Delicth Johnson	Sec II	Acctg Fundamentals	—	—	124.65			
Bertrand Freese	Revenue Aud II	Financial Acctg	—	—	303.75			
Michael Flaherty	PSE4	Fundamentals of Computing	—	—	525.00			
		TOTALS			1781.25			

HB 9/1

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Secretary of State

(Department)

#635

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
No Costs	incurred							
TOTALS								

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997
Iowa Department of Transportation

Employee Name	Classification	Course Title	Hours Missed W/Pay	Hours Missed W/O Pay	Direct Costs Tuition	Direct Costs Other
Audino, Michael	PSE 4	Development & Management of Human Resources	none	none	$600.00	
Audino, Michael	PSE 4	Organizational and Management Theories	none	none	$600.00	
Baer, Steve	TEA	Adv. Highway Design			$489.00	$16.00 (CF)
Bates, Doug	ROW Supervisor	Geology 101	none	none	$412.00	$16.00 (CF)
Bates, Doug	ROW Supervisor	Pol. Sc. 306	none	none	$309.00	
Bates, Doug	ROW Supervisor	Speech Com. 305	none	none	$309.00	
Brakke, Chris	TE 1	CE566 Applied Concrete	.75	.75	$489.00	$53.00 (CF) $35.00 (lab)
Cowles, Eric	Materials Tech 3	Calculus 165	none	none	$412.00	$115.75 (book) $53.00 (CF)
Curtis, Tom	Revenue Aud.II	CPA Review Course	none	none	$1,120.00	
Doeden, James	Exec. Officer 2	Public Speaking	none	none	$405.00	$33.42 (book)
Durbin, Gregg	Design Tech 4	Bridge Design CE446 Inter. Mech of Matl Contract Documents	3	3	$309.00 $309.00 $309.00	$62.59 (book) $135.00 (CF) **He received grant for $682.00. We reimbursed him $442.59.**
Gray, Dale Allen	Equip Oper 2	Using Windows 3.1	none	none	$75.00	
Hamilton, Daryn	Row Aid 4	Coll. Alg & Trig	none	none	$680.00	
Kaller, Williams	Const Tech	Intro to Windows 95	none	none	$83.00	
Larsen, Roger	Trans. Eng. Assoc.	CE553-Traffic Engineering CE558-Trans. Sys. Development	1hr 15	1hr 15	$489.00 $489.00	$107.00 (CF)

7888.00

1069.35

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997
Iowa Department of Transportation

Employee Name	Classification	Course Title	Hours Missed W/Pay	Hours Missed W/O Pay	Direct Costs Tuition	Other	
Larsen, Roger	Trans. Eng. Assoc.	CE550 Adv Highway Design	2 hr 15	2 hr 15	$115.00		**NOTE: We reimbursed him $115.00 so he wouldn't go over his $1200 limit.**
		CRP522 Adv Planning					
Lee, Pam	Trans. Planner 2	Math 115 Finite Math	none	none	$221.60	$66.25 (book)	
		Intro to Comp. Litera	none	none	$166.20	$23.75 (book)	
Lee, Pam	Trans. Planner 2	Econ 101	3	3	$300.00		**NOTE: We reimbursed her $722.20 so she wouldn't go over her $1200 limit.**
		Political Science 241			$300.00		
		Psychology 101			$300.00		
Leonard, Wendy	Executive Officer 2	Promotion and Public	45 min	45 min	$165.00	$65.90 (book)	
Magie, Karen	Planning Aide 2	Intro to Office Comp	3	3	$163.20	$84.90 (book)	**NOTE: Pell Grant paid all but $59.15**
		Principles of Accounting			$217.60	$146.15 (book)	
Martindale, Roxanne	Equip Operator 3	Applied Mathematics	none	none	$330.00	$58.25 (book)	**NOTE: Received Grant and used it for class that was denied. She had $40.00 left over from grant to put on this class. We paid $348.25.**
Muniandy, Murugu	Trans. Engineer I	Creative Component	none	none	$642.00	$72.00 (CF)	
Nagen, Brent	Trans Engineer Assoc	Intro to Trans Engineering	1.5	1.5	$309.00	$83.21 (book) $40.00 (CF)	
Nielsen, Stuart	Trans Engineer Assoc	Design of Industrial Eng.	3	3	$489.00	$80.30 (book)	
Powell, Kim	Systems Analyst	Network Technologies	none	none	$110.80	$74.95 (book)	
Ridnour, Kathy	Transp. Planner	CPR 475 Urban Planning	1hr 10	1hr 10	$618.00	$111.39 (book) $24.00 (CF)	
		Soc 345 (Population)	none	none			
Ridnour, Kathy	Transp. Planner	Community and Regional Planning 355	none	none	$309.00	$50.88 (book) $12.00 (CF)	
Russo, Francesco	TEA	Plate and Slab Structures	3	3	$489.00	$107.00 (CF)	
		Fracture and Fatigue			$489.00		
Russo, Francesco	TEA	Reinforced Concrete Design II	1 hr 45	1 hr 45	$489.00	$53.00 (CF)	**NOTE: We reimbursed him $115.00 so he wouldn't go over his $1200 limit.**

~~$6109.40~~ 6223.40

1153.93

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997
Iowa Department of Transportation

Employee Name	Classification	Course Title	Hours Missed W/Pay	Hours Missed W/O Pay	Direct Costs Tuition	Direct Costs Other
Stein, William	TEA	English 415	none	none	$309.00	$69.70 (book) $12.00 (CF)
Strawn, Diane	Design Tech 3	Engineering 160	3	3	$353.00	$50.95 (book)
Tebben, Donald	TE 2	Environmental Law	2.25	2.25	$489.00	$80.82 (book) $16.00 (CF)
Tebben, Donald	Trans. Engineer 2	Intro to Meth Plan CRP519A Intro Meth Cmptr. APP CRP519c	2.25	2.25	$326.00	$11.00 (CF)
Tymkowicz, Shane	Transp. Eng. Assoc.	Appl Stat Indust II	none	none	$489.00	$68.00 (book) $53.00 (CF)
Tymkowicz, Shane	Transp. Eng. Assoc.	Applied Conc. & Pavement	1.5 hrs	1.5 hours	$489.00	$53.00 (CF)
Walker, Shirley	Executive Officer 1	Computer Tools for Business	none	none	$562.00	
Watson, Cheryl	Right of Way Agent 2	Prin. of Macro Economics	none	none	$196.20	$78.50 (book)
Watson, Cheryl	Right of Way Agent 2	Prin. of Micro Economics	none	none	$177.00	
Weinman, Ross	Field Auditor 2	Becker CPA Review	none	none	$1200.00	
Wells, Don	Equip. Oper 1	Intro to Comp. Science	none	none	$186.00	$76.51 (book)
				TOTAL	~~$17,547.99~~ ~~$1,810.28~~	(19,358.27)

2379.76

33.25

4,776.20

569.48

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997
Iowa Department of Transportation

Employee Name	Classification	Course Title	Hours Missed W/Pay	Hours Missed W/O Pay	Direct Costs Tuition	Direct Costs Other	
Grant Covered Classes							
Durbin, Gregg	Design Tech 4	Highway Design CE452 Highway Design CE486 Mechanics of Mat Lab					
Durbin, Gregg	Design Tech 4	Bridge Design CE446 Inter. Mech of Matl Contract Documents	3	3	$309.00 $309.00 $309.00	$62.59 (book) $135.00 (CF)	**He received grant for $682.00. We reimbursed him $442.59.**
Magie, Karen	Planning Aide 2	Prin. of Acct. 2 Business/Financial	none	none			
Magie, Karen	Planning Aide 2	Intro to Office Comp Principles of Accounting	3	3	$163.20 $217.60	$84.90 (book) $146.15 (book)	**NOTE: Pell Grant paid all but $59.15**
Classes Denied							
Davis, Melissa	Sec 1	Principles of Macro Economics					
Davis, Melissa	Sec 1	Principles of Micro Economics					
Durbin, Gregg	Design Tech 4	Philosophy of Technolgy					
Martindale, Roxanne	Equip Operator 3	Substance Abuse Mgmt					
Walker, Shirley	Executive Officer 1	STAT 72 Statistics II					
Courses Cancelled							
Lee, Pam	Trans. Planner 2	Accounting 215	none	none			
Zavaregh, Shahin	Trans. Eng. Assoc	Dynamic Analysis of					
Dropped Course							
Davis, Melissa	Sec 1	Principles of Accounting					
Stein, William	TEA	English 583					
Zavaregh, Shahin	Trans. Eng. Assoc.	Reinforced Concrete Design					
Didn't Pass Course							
Stohr, Ronnie	Material Tech 2	Gen Chem Gen Chem Lab	3	3			**DIDN'T WANT REIMBURSED**

1307.80 20,195.40 428.64 3221.40 42.25

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Treasurer
(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Sindi Rose	Accounting Tech	Microsoft Office			280.00	52.70	ϕ	
Brad Miller	Investment Officer	Fixed Income Securities			536.20	62.20	ϕ	
Bret Mills	Deputy Assistant	Financial accounting I			593.40		ϕ	
Brad Miller	Investment Officer	Int'l Econ Environment			536.20	45.70	ϕ	
		TOTALS			1945.80	160.60	ϕ	

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

IOWA WORKFORCE DEVELOPMENT

(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
JOAN LEHNER	JOB SERVICE INT. 2	HUMAN SERVICE POLICY & PROGRAMS	0	0	$165.00	57.45	0	$1396.72
ANTHONY BALDUS	LABOR MARKET RESEARCH ECON. 1	MANAGEMENT OPERATIONS	0	0	675.00	0.00	0	866.74
TOTALS					1666.80	89.45		2263.46

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EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

SENATE
(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Linda Santi	Research Analyst	~~Personnel 220~~			~~675.00~~			
		PubAd 139			750.00	124.75		
		PubAd 200			750.00			
		~~PubAd 241~~			~~750.00~~			
		PolSci 510			474.00	176.38		
Greg Nichols	Sr.AA to Leader	Hg ED 615E			163.00			
		TOTALS			3188.13	301.13		

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LEGISLATIVE SERVICE BUREAU

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

House of Representatives

(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
STATLER, KIMBERLY	Leg Research Analyst	Federalism & Intrgmntl Relations	0.00	0.00	489.00	0.00	0.00	0.00
" "	" " "	Gov't Business & Society	0.00	0.00	489.00	0.00	0.00	0.00
" "	" " "	Organizational Theory in the Public Sector	0.00	0.00	489.00	0.00	0.00	0.00
" "	" " "	Issues In Medical Group Mgmt	0.00	0.00	460.00	0.00	0.00	0.00
		TOTALS	0.00	0.00	1,927.00	0.00	0.00	0.00

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EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Legislative Service Bureau

(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
	None							
TOTALS								

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SEP 18 1997

LEGISLATIVE SERVICE BUREAU

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT
Fiscal Year 1997

Legislative Fiscal Bureau
(Department)

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
NONE -	None	None	None	None	None	None	None	None
TOTALS								

CFN 552-0264 R 10/95

EDUCATIONAL LEAVE/EDUCATIONAL ASSISTANCE REPORT

Fiscal Year 1997

Citizens' Aide/Ombudsman
(Department)

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LEGISLATIVE SERVICE BUREAU

Employee Name	Classification	Course Title	Hrs. Missed		Direct Costs		Indirect Costs	Cost Savings
			W/Pay	W/O Pay	Tuition	Other		
Michael J. Ferjak	43037-001	Power point computer applications Course Completed - June 1997	0	0	$180.00	0	0	$155.00 *
		TOTALS	0	0	$180.00	0	0	$155.00

*This amount of the tuition was paid by the U.S. Army.

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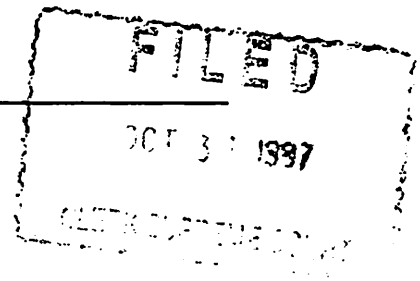
IN THE SUPREME COURT OF IOWA



IN THE MATTER OF AMENDMENTS TO THE IOWA RULES OF CIVIL PROCEDURE	REPORT OF THE SUPREME COURT

TO: DIANE BOLENDER, SECRETARY OF THE LEGISLATIVE COUNCIL OF THE STATE OF IOWA.

Pursuant to Iowa Code sections 602.4201 and 602.4202, the Supreme Court of Iowa has prescribed and hereby reports on this date to the Secretary of the Legislative Council concerning amendments to the Iowa Rules of Civil Procedure as shown in the attached Exhibit "A".

Pursuant to Iowa Code section 602.4202(2), the amendments to these rules will take effect January 2, 1998.

Respectfully submitted,

THE SUPREME COURT OF IOWA

By Arthur A. McGiverin
Arthur A. McGiverin, Chief Justice

Des Moines, Iowa

Oct 31, 1997

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Legislative Council, hereby acknowledge delivery to me on the 31 day of October, 1997, the Report of the Supreme Court pertaining to the Iowa Rules of Civil Procedure.

Diane E Bolender
Secretary of the Legislative Council

Please return to: Iowa Supreme Court Clerk's Office, State Capitol, Des Moines, IA 50319.

DIVISION I

OPERATION OF RULES

Rule 1. Applicability; effective date; statutes affected. These rules shall govern the practice and procedure in all courts of the state, except where they expressly provide otherwise, or statutes not affected hereby provide different procedure in particular courts or cases.

DIVISION II

ACTIONS, JOINDER OF ACTIONS AND PARTIES

(A) Parties generally; capacity

Rule 2. Real party in interest. Every action must be prosecuted in the name of the real party in interest. But an executor, administrator, conservator, guardian, trustee of an express trust, or a party with whom or in whose name a contract is made for another's benefit, or a party specially authorized by statute, may sue in ~~his~~that person's own name without joining the party for whose benefit the action is prosecuted. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

COMMENT: At the time the rule was written, there was by statute a guardian of the property and a guardian of the person. Since both roles were filled by a person called a guardian, only the word "guardian" appeared in the rule. Under the current statute the person who cares for the property is called a conservator, the person who cares for the body is called a guardian; thus, the word "conservator" has been added. The additional language, which is identical to a portion of Rule 17(a), Federal Rules of Civil Procedure, provides an opportunity short of dismissal to cure a defect regarding upon whose behalf an action is brought.

Rule 3. Public bond. When a bond or other instrument given to the state, county, school or other municipal corporation, or to any officer or person, is intended for the security of the public generally, or of particular individuals, action may be brought thereon, in the name of any person intended to be thus secured, who has sustained an injury in consequence of a breach thereof, except when otherwise provided.

Rule 4. Partnerships. Actions may be brought by or against partnerships as such; or, where permitted by law, against any or all partners with or without joining the firm. Judgment against a partnership may be enforced against partnership property and that of any partner served or appearing in the suit. A new action will lie on the original cause against any partner not so served or appearing. The court may order absent partners brought in.

Rule 5. Foreign corporations. Foreign corporations may sue and be sued in their corporate name, except as prohibited by statute.

Rule 6. ~~Seduction.~~ Stricken. ~~An unmarried female may sue for her own seduction.~~

COMMENT: The rule is no longer needed.

Rule 7. Assignees; exception. In cases not governed by the ~~Uniform~~uniform ~~Commercial~~commercial ~~Code~~code the assignment of a thing in action shall be without prejudice to any defense, counterclaim or ~~cause of action~~claim matured or not, if matured when pleaded, existing against the assignor in favor of the party pleading it.

Rule 8. Injury or death of a minor. A parent, or the parents, may sue for the expense and actual loss of services, companionship and society resulting from injury to or death of a minor child.

Rule 9. Actions by and against state. The state may sue in the same way as an individual. No security shall be required of it.

Rule 10. Married ~~women husband and wife~~**persons.** A married ~~woman~~person may sue or be sued without joining ~~her husband~~the person's spouse. If both are sued, ~~she~~each may defend; ~~in her own~~

~~right;~~ and if ~~either~~one fails to defend, the other may defend for both.

Rule 11. Desertion of family. When a husband or wife ~~has deserted~~ deserts ~~his~~the family, the ~~wife~~other may prosecute or defend ~~in his name~~ any action which ~~he~~either might have prosecuted or defended, and shall have the same powers and rights therein as ~~he~~either might have had.~~; under like circumstances the husband shall have the same right.~~

Rule 12. Minors; incompetents. An action of a minor or any person ~~judicially~~ adjudged incompetent shall be brought by the person's conservator~~his guardian~~ if ~~he have one~~there is one or, if not, by the person's guardian if there is one; otherwise the minor may sue by a next friend, and the incompetent by a ~~guardian~~conservator or guardian appointed by the court for that purpose. If it is in the person's best interest, the~~The~~ court may dismiss such action or substitute another conservator, guardian or next friend.~~ for the ward's benefit.~~

COMMENT: In the past there has been a concern about who was included in the category "judicially adjudged incompetent." The purpose of the change in the rule is to make it clear that that category includes a ward for whom a conservator or guardian has been appointed. The word "judicially" is not necessary. See also Comment to R.C.P. 2.

Rule 13. Defense by incompetent, prisoner, etc. No judgment without a defense shall be entered against a party then a minor, or confined in a penitentiary, reformatory or any state hospital for the mentally ill, or one ~~judicially~~ adjudged incompetent, or whose physician certifies to the court that the party ~~he~~ appears to be mentally incapable of conducting a ~~his~~ defense. Such defense shall be by guardian ad litem; but the conservator (and if there is no conservator, the guardian) of a ward~~regular guardian~~ or the attorney appearing for a competent party may defend unless the proceeding was brought by or on behalf of such fiduciary or unless the court supersedes such fiduciary~~him~~ by a guardian ad litem appointed in the ward's interest.

COMMENT: See Comment to R.C.P. 12 and 2. The rule now makes it clear that if an action is brought against a ward by the ward's fiduciary, the defense shall not be made by that fiduciary.

Rule 14. Guardian ad litem. If a party, served with original notice, appears to be subject to R.C.P. 13, the court may appoint a guardian ad litem for the party~~him~~, or substitute another, in the ward's interest. Application for such appointment or substitution may be by the ward, if competent, or a minor over fourteen years old; otherwise by the party's~~his regular~~ conservator or guardian or if ~~there be~~ none by any friend, or any party to the action.

(B) Substitution of parties

Rule 15. Substitution at death; limitation. Any substitution of legal representatives or successors in interest of a deceased party, permitted by statute, must be ordered within two years after the death of the original party. If the decedent's~~his~~ right survives entirely to those already parties, the action shall continue among the surviving parties without substitution.

Rule 16. Transfer of interest. Transfer of an interest in a pending action shall not abate it, but may be the occasion for bringing in new parties.

Rule 17. Incapacity pending action. If, during pendency of an action, a party is ~~judicially~~ adjudged incompetent, or confined in any state hospital for the mentally ill, or if the party's~~his~~ physician certifies to the court that the party~~he~~ appears to be mentally incapable of acting in the party's~~his~~ own behalf, the conservator or~~his~~ guardian shall be joined ~~with him,~~ or, if there is~~be~~ none the court shall appoint a guardian ad litem for the party. ~~any party thus adjudged, confined or certified.~~

COMMENT: See Comment to R.C.P. 12 and 2.

Rule 18. Nonabatement in case of guardianship. When a conservatorship or guardianship ~~shall~~ ceases for any reason, ~~by the death of the guardian, his removal, or otherwise, or by the decease of his ward,~~ any action or proceeding then pending shall not abate. ~~,~~ The conservator's guardian's ~~but his~~ successor, the former ward, or the ~~person for whom he was guardian, or the executor or administrator of such person, as the case may require,~~ personal representative of the ward's estate shall be substituted or joined as a party. ~~thereto; or, if~~ If no application is made for substitution, the court ~~may,~~ on its own motion~~,~~ may appoint a personal representative ~~special guardian or administrator~~ to represent the deceased party in the action.

COMMENT: See Comment to R.C.P. 2.

Rule 19. Majority of minor. ~~If a minor party attains legal majority, he shall continue as a party in his own right.~~ A minor party who attains legal majority shall continue as a party in that person's own right.

Rule 20. Officers; representatives. When any public official~~, or any administrator, express trustee~~ or other person in a representative capacity~~,~~ ceases to be such while a party to a suit, the court may order that party's ~~his~~ successor brought in and substituted ~~for him~~.

Rule 21. Notice to substituted party. The order for substitution shall fix the time for ~~when~~ the substituted party to ~~shall~~ appear, and the notice to be given. ~~him.~~ In case of substitution of a legal representative of a deceased party, ~~the~~ notice shall be given in the same manner as an original notice. ~~served as in case of original notices. In all other cases a shorter time may be prescribed.~~

(C) Joinder; misjoinder and nonjoinder

Rule 22. Actions joined. A single plaintiff may join in the same petition as many causes of action, legal or equitable, independent

or alternative, as there areas he may have against a single defendant.

Rule 23. Multiple plaintiffs. Any number of persons who claim any relief, jointly, severally or alternatively, arising out of or respecting the same transaction, occurrence or series of transactions or occurrences, may join as plaintiffs in a single action, when it presents or involves any question of law or fact common to all of them. They may join any causes of action, legal or equitable, independent or alternative, held by any one or more of them which arise out of such transaction, occurrence or series, and which present or involve any common question of law or fact.

Rule 24. Permissive joinder of defendants. Any number of defendants may be joined in one action which asserts against them, jointly, severally or in the alternative, any right to relief in respect of, or arising out of the same transaction, occurrence, or series of transactions or occurrences, when any question of law or fact common to all of them is presented or involved.

Rule 25. Necessary parties; Nonjjoinder.

a. Remedy for nonjoinder as plaintiff. Except as provided in this rule, all persons having a joint interest in any action shall be joined on the same side, but such persons failing to join as plaintiffs may be made defendants. This rule does not apply to class actions under R.C.P. 42.1 to 42.20, 43 and 44, nor affect the options permitted by Iowa Code sections 613.1 and 613.2.

b. Definition of indispensable party. A party is indispensable if the party'shis interest is not severable, and the party'shis absence will prevent the court from rendering any judgment between the parties before it; or if notwithstanding the party'shis absence the party'shis interest would necessarily be inequitably affected by a judgment rendered between those before the court.

c. Indispensable party not before court. If an indispensable party is not before the court, it shall order the

partyhim brought in. When persons are not before the court who, although not indispensable, ought to be parties if complete relief is to be accorded between those already parties, and when necessary jurisdiction can be obtained by service of original notice in any manner provided by these rules or by statute, the court shall order their names added as parties and original notice served upon them. If such jurisdiction cannot be had except by their consent or voluntary appearance, the court may proceed with the hearing and determination of the cause, but the judgment rendered therein shall not affect their rights or liabilities.

Rule 26. Parties partly interested. A party need not be interested in obtaining or defending against all the relief demanded. Judgment may be given respecting one or more parties according to their respective rights or liabilities.

Rule 27. Remedy for misjoinder.

a. Parties. Misjoinder of parties is no ground for dismissal of the action, but parties may be dropped, or aligned according to their true interests in the action, by order of the court on its own motion or that of any party at any stage of the action, on such terms as are just, or any claim against a party improperly joined may be severed and proceeded with separately.

COMMENT: R.C.P. 27(a) is very similar to Fed. R. Civ. P. 21. While neither rule provides expressly for realignment of parties, and no case law exists in Iowa on the authority of a court to realign parties, federal courts have interpreted Fed. R. Civ. P. 21 to allow realignment of parties according to their true interests. *See First National Bank of Shawnee Mission v. Roland Park State Bank*, 357 F. Supp. 708, 711 (D. Kan. 1973); Wright, Miller & Kain, *Federal Practice and Procedure*, Civil 2d, § 1683, at 448 (1986); 3A *Moore's Federal Practice*, ¶ 21.02, at 21-23 (1993).

b. Actions. The only remedy for improper joinder of actions shall be by motion. On such motion the court shall either order the causes docketed separately or strike those causes which should be stricken, always retaining at least one cause docketed in the original case. Before ruling on such motion, the party whose

pleading is attacked may withdraw any of the causes claimed to be misjoined.

Rule 28. Dependent remedies joined. An action heretofore cognizable only after another has been prosecuted to conclusion may be joined with the latter; and the court shall grant relief according to the substantive rights of the parties. But there shall be no joinder of an action against an indemnitor or insurer with one against the indemnified party, unless a statute so provides.

(D) Counterclaims and cross-claims

Rule 29. Compulsory counterclaims. A pleading must contain a counterclaim for every ~~cause of action~~claim then matured, and not the subject of a pending action, held by the pleader against any opposing party and arising out of the transaction or occurrence that is the basis of such opposing party's claim, unless its adjudication would require the presence of indispensable parties of whom jurisdiction cannot be acquired. A final judgment on the merits shall bar such a counterclaim, although not pleaded.

Rule 30. Permissive counterclaims. Unless prohibited by rule or statute, a party may counterclaim against an opposing party on any ~~cause of action~~claim held by the party~~him~~ when the action was originally commenced, and matured when pleaded.

Rule 31. Joinder of counterclaims. A party pleading a counterclaim shall have the same right to join more than one ~~cause of action~~claim as a plaintiff is granted under R.C.P. 22 and 23.

Rule 32. Counterclaim not limited. A counterclaim may, but need not, diminish or defeat recovery sought by the opposing party. It may claim relief in excess of, or different from, that sought in the opponent's pleadings.

Rule 33. Cross-claim against coparty. A pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of

the original action or a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

Rule 34. Third-party practice.

a. When defendant may bring in third party. At any time after commencement of the action a defending party, as a third-party plaintiff, may file a cross-petition and cause an original notice to be served upon a person not a party to the action who is or may be liable for all or part of the plaintiff's claim. The third-party plaintiff need not obtain leave to file ~~make the service if~~ the cross-petition if it is filed not later than ten days after the filing of the original answer. Otherwise leave may be obtained by motion upon notice to all parties to the action.

~~The person served with the original notice, the~~The third-party defendant~~,~~ shall assert defenses to the third-party plaintiff's claim as provided in R.C.P. ~~05~~105 and counterclaims against the third-party plaintiff as provided in R.C.P. 29 and cross-claims against other third-party defendants as provided in R.C.P. 33.

The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the plaintiff shall assert defenses as provided in R.C.P. ~~05~~105 and counterclaims under R.C.P. 29.

The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon

shall assert defenses as provided in R.C.P. ~~85~~105, counterclaims as provided in R.C.P. 29, and cross-claims as provided in R.C.P. 33. Any party may move to strike the third-party claim or for its severance or for separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable for all or part of the claim made in the action against the third-party defendant.

b. When plaintiff may bring in third party. When a counterclaim is asserted against a plaintiff, that plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

COMMENT: The change in (a) is made to reflect the practice of obtaining leave to file a cross-petition rather than obtaining leave to serve it.

(E) Interpleader

Rule 35. Right of interpleader. A person who is or may be exposed to multiple liability or vexatious litigation because of several claims against the person~~him~~ for the same thing, may bring an equitable action of interpleader against all such claimants. Their claims or titles need not have a common origin, nor be identical, and may be adverse to, or independent of each other. Such person may dispute ~~his~~ liability, wholly or in part.

Rule 36. By defendants. A defendant to an action ~~which~~ exposed~~s~~ ~~him~~ to similar liability or litigation may obtain ~~such~~ interpleader by counterclaim or cross-petition. Any claimant not already before the court may be brought in to maintain or relinquish that~~his~~ claim to the subject of the action, and on ~~his~~ default after due service, the court may decree such claim barred.~~him barred of such claim.~~

Rule 37. Deposit; discharge. If a party initiating interpleader admits liability for, or nonownership of, any property or amount involved, the court may order it deposited in court or otherwise preserved, or secured by bond. After such deposit the court, on

hearing all parties, may absolve the depositor from obligation to such parties as to the property or amount deposited, before determining the rights of the adverse claimants.

Rule 38. Substitution of claimant. If a defendant seeks an interpleader involving a third person, the latter may appear and be substituted for the original~~make himself a defendant in lieu of the original~~ defendant, who may then be discharged upon~~on~~ complying with R.C.P. 37.

Rule 39. Injunction. After petition and returns of the original notices are filed in an interpleader, the court may enjoin all parties before it from beginning or prosecuting any other suit as to the subject of the interpleader until its further order.

Rule 40. Costs. Costs may be taxed against the unsuccessful claimant in favor of the successful claimant and the party initiating the interpleader.

Rule 41. Sheriff or officer; creditor. When a sheriff or other officer is sued for taking personal property under a writ, or for the property so taken, ~~he may exhibit~~ such writ may be filed with ~~to~~ the court, with an attached~~his~~ affidavit from the sheriff or other officer that the property involved was taken under ~~it~~the writ. The plaintiff shall then join ~~The~~the attaching or execution creditor as a defendant, or such creditor may join on application. ~~shall then be joined with the officer as a defendant; or may join on his own application.~~ Any judgment against the officer and creditor shall provide that the ~~latter's~~creditor's property be first exhausted to ~~discharge it~~satisfy the judgment.

(F) Class actions

Rule 42. Stricken by amendment in 1980.

Rule 42.1 Commencement of a class action. One or more members of a class may sue or be sued as representative parties on behalf of all in a class action if:

1. the class is so numerous or so constituted that joinder of all members, whether or not otherwise required or permitted, is impracticable; and

2. there is a question of law or fact common to the class.

Rule 42.2. Certification of class action.

a. Unless deferred by the court, as soon as practicable after the commencement of a class action the court shall hold a hearing and determine whether or not the action is to be maintained as a class action and by order certify or refuse to certify it as a class action.

b. The court may certify an action as a class action, if it finds that (1) the requirements of R.C.P. 42.1 have been satisfied, (2) a class action should be permitted for the fair and efficient adjudication of the controversy, and (3) the representative parties fairly and adequately will protect the interests of the class.

c. If appropriate, the court may (1) certify an action as a class action with respect to a particular claim or issue, (2) certify an action as a class action to obtain one or more forms of relief, equitable, declaratory, or monetary, or (3) divide a class into subclasses and treat each subclass as a class.

Rule 42.3. Criteria considered.

a. In determining whether the class action should be permitted for the fair and efficient adjudication of the controversy, as appropriately limited under R.C.P. 42.2(c), the court shall consider, and give appropriate weight to, the following and other relevant factors:

(1) whether a joint or common interest exists among members of the class;

(2) whether the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for a party opposing the class;

(3) whether adjudications with respect to individual members of the class as a practical matter would be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

(4) whether a party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole;

(5) whether common questions of law or fact predominate over any questions affecting only individual members;

(6) whether other means of adjudicating the claims and defenses are impracticable or inefficient;

(7) whether a class action offers the most appropriate means of adjudicating the claims and defenses;

(8) whether members not representative parties have a substantial interest in individually controlling the prosecution or defense of separate actions;

(9) whether the class action involves a claim that is or has been the subject of a class action, a government action, or other proceeding;

(10) whether it is desirable to bring the class action in another forum;

(11) whether management of the class action poses unusual difficulties;

(12) whether any conflict of laws issues involved pose unusual difficulties; and

(13) whether the claims of individual class members are insufficient in the amounts or interests involved, in view of the complexities of the issues and the expenses of the litigation, to afford significant relief to the members of the class.

b. In determining under R.C.P. 42.2~~"b"~~(b) that the representative parties fairly and adequately will protect the interests of the class, the court must find that:

(1) the attorney for the representative parties will adequately represent the interests of the class;

(2) the representative parties do not have a conflict of interest in the maintenance of the class action; and

(3) the representative parties have or can acquire adequate financial resources, considering R.C.P. 42.17, to assure that the interests of the class will not be harmed.

Rule 42.4. Order on certification.

a. The order of certification shall describe the class and state: (1) the relief sought, (2) whether the action is maintained with respect to particular claims or issues, and (3) whether subclasses have been created.

b. The order certifying or refusing to certify a class action shall state the reasons for the court's ruling and its findings on the facts listed in R.C.P. 42.3(a).

c. An order certifying or refusing to certify an action as a class action is appealable.

d. Refusal of certification does not terminate the action, but does preclude it from being maintained as a class action.

Rule 42.5. Amendment of certification order.

a. The court may amend the certification order at any time before entry of judgment on the merits. The amendment may (1) establish subclasses, (2) eliminate from the class any class member who was included in the class as certified, (3) provide for an adjudication limited to certain claims or issues, (4) change the relief sought, or (5) make any other appropriate change in the order.

b. If notice of certification has been given pursuant to R.C.P. 42.7, the court may order notice of the amendment of the certification order to be given in terms and to any members of the class the court directs.

c. The reasons for the court's ruling shall be set forth in the amendment of the certification order.

d. An order amending the certification order is appealable. An order denying the motion of a member of a defendant class, not a representative party, to amend the certification order is appealable if the court certifies it for immediate appeal.

Rule 42.6. Stricken. ~~**Jurisdiction over multistate classes.**~~

~~*a.* A court of this state may exercise jurisdiction over any person who is a member of the class suing or being sued if:~~

~~(1) a basis for jurisdiction exists or would exist in a suit against the person under the law of this state; or~~

~~(2) the state of residence of the class member, by class action law similar to subdivision (b), has made its residents subject to the jurisdiction of the courts of this state.~~

~~*b.* A resident of this state who is a member of a class suing or being sued in another state is subject to the jurisdiction of that state if by similar class action law it extends reciprocal jurisdiction to this state.~~

Rule 42.7. Notice of action.

a. Following certification, the court by order, after hearing, shall direct the giving of notice to the class.

b. The notice, based on the certification order and any amendment of the order, shall include:

(1) a general description of the action, including the relief sought, and the names and addresses of the representative parties;

(2) a statement of the right of a member of the class under R.C.P. 42.8 to be excluded from the action by filing an election to be excluded, in the manner specified, by a certain date;

(3) a description of possible financial consequences on the class;

(4) a general description of any counterclaim being asserted by or against the class, including the relief sought;

(5) a statement that the judgment, whether favorable or not, will bind all members of the class who are not excluded from the action;

(6) a statement that any member of the class may enter an appearance either personally or through counsel;

(7) an address to which inquiries may be directed; and

(8) other information the court deems appropriate.

c. The order shall prescribe the manner of notification to be used and specify the members of the class to be notified. In determining the manner and form of the notice to be given, the court shall consider the interests of the class, the relief requested, the cost of notifying the members of the class, and the possible prejudice to members who do not receive notice.

d. Each member of the class, not a representative party, whose potential monetary recovery or liability is estimated to exceed one hundred dollars shall be given personal or mailed notice if ~~his~~that member's identity and whereabouts can be ascertained by the exercise of reasonable diligence.

e. For members of the class not given personal or mailed notice under subdivision (d), the court shall provide, as a minimum, a means of notice reasonably calculated to apprise the members of the class of the pendency of the action. Techniques calculated to assure effective communication of information concerning commencement of the action shall be used. The techniques may include personal or mailed notice, notification by means of newspaper, television, radio, posting in public or other places, and distribution through trade, union, public interest, or other appropriate groups.

f. The plaintiff shall advance the expense of notice under this rule if there is no counterclaim asserted. If a counterclaim is asserted the expense of notice shall be allocated as the court orders in the interest of justice.

g. The court may order that steps be taken to minimize the expense of notice.

Rule 42.8. Exclusion.

a. A member of a plaintiff class may elect to be excluded from the action unless (1) ~~he~~that member is a representative party, (2) the certification order contains an affirmative finding under paragraph (1), (2), or (3) of R.C.P. 42.3(a), or (3) a counterclaim under R.C.P. 42.11 is pending against the member or ~~his~~that member's class or subclass.

b. Any member of a plaintiff class entitled to be excluded under subdivision (a) who files an election to be excluded, in the manner and in the time specified in the notice, is excluded from and not bound by the judgment in the class action.

c. The elections shall be made a part of the record in the action.

d. A member of a defendant class may not elect to be excluded.

Rule 42.9. Conduct of action.

a. The court on motion of a party or its own motion may make or amend any appropriate order dealing with the conduct of the action including, but not limited to, the following: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given as the court directs, of (i) any step in the action, (ii) the proposed extent of the judgment, or (iii) the opportunity of members to signify whether they consider the representation fair and adequate, to enter an appearance and present claims or defenses, or otherwise participate in the action; (3) imposing conditions on the representative parties or on intervenors; (4) inviting the attorney general to participate with respect to the question of adequacy of class representation; (5) making any other order to assure that the class action proceeds only with adequate class representation; and (6) making any order

to assure that the class action proceeds only with competent representation by the attorney for the class.

b. A class member not a representative party may appear and be represented by separate counsel.

Rule 42.10. Discovery by or against class members.

a. Discovery may be used only on order of the court against a member of the class who is not a representative party or who has not appeared. In deciding whether discovery should be allowed the court shall consider, among other relevant factors, the timing of the request, the subject matter to be covered, whether representatives of the class are seeking discovery on the subject to be covered, and whether the discovery will result in annoyance, oppression, or undue burden or expense for the member of the class.

b. Discovery by or against representative parties or those appearing is governed by the rules dealing with discovery by or against a party to a civil action.

Rule 42.11. Counterclaims.

a. A defendant in an action brought by a class may plead as a counterclaim any claim the court certifies as a class action against the plaintiff class. On leave of court, the defendant may plead as a counterclaim a claim against a member of the class or a claim the court certifies as a class action against a subclass.

b. Any counterclaim in an action brought by a plaintiff class must be asserted before notice is given under R.C.P. 42.7.

c. If a judgment for money is recovered against a party on behalf of a class, the court rendering judgment may stay distribution of any award or execution of any portion of a judgment allocated to a member of the class against whom the losing party has pending an action in or out of state for a judgment for money, and continue the stay so long as the losing party in the class action pursues the pending action with reasonable diligence.

d. A defendant class may plead as a counterclaim any claim on behalf of the class that the court certifies as a class action

against the plaintiff. The court may certify as a class action a counterclaim against the plaintiff on behalf of a subclass or permit a counterclaim by a member of the class. The court shall order that notice of the counterclaim by the class, subclass, or member of the class be given to the members of the class as the court directs, in the interest of justice.

e. A member of a class or subclass asserting a counterclaim shall be treated as a member of a plaintiff class for the purpose of exclusion under R.C.P. 42.8.

f. The court's refusal to allow, or the defendant's failure to plead, a claim as a counterclaim in a class action does not bar the defendant from asserting the claim in a subsequent action.

Rule 42.12. Dismissal or compromise.

a. Unless certification has been refused under R.C.P. 42.2, a class action, without the approval of the court after hearing, may not be (1) dismissed voluntarily, (2) dismissed involuntarily without an adjudication on the merits, or (3) compromised.

b. If the court has certified the action under R.C.P. 42.2, notice of hearing on the proposed dismissal or compromise shall be given to all members of the class in a manner the court directs. If the court has not ruled on certification, notice of hearing on the proposed dismissal or compromise may be ordered by the court which shall specify the persons to be notified and the manner in which notice is to be given.

c. Notice given under subdivision (b) shall include a full disclosure of the reasons for the dismissal or compromise including, but not limited to~~:~~ (1) any payments made or to be made in connection with the dismissal or compromise~~;~~ (2) the anticipated effect of the dismissal or compromise on the class members~~;~~ (3) any agreement made in connection with the dismissal or compromise~~;~~ (4) a description and evaluation of alternatives considered by the representative parties~~;~~ and (5) an explanation of any other circumstances giving rise to the proposal. The notice

also shall include a description of the procedure available for modification of the dismissal or compromise.

d. On the hearing of the dismissal or compromise, the court may:

(1) as to the representative parties or a class certified under R.C.P. 42.2, permit dismissal with or without prejudice or approve the compromise;

(2) as to a class not certified, permit dismissal without prejudice;

(3) deny the dismissal;

(4) disapprove the compromise; or

(5) take other appropriate action for the protection of the class and in the interest of justice.

e. The cost of notice given under subdivision (b) shall be paid by the party seeking dismissal, or as agreed in case of a compromise, unless the court after hearing orders otherwise.

Rule 42.13. Effect of judgment on class. In a class action certified under R.C.P. 42.2 in which notice has been given under R.C.P. 42.7 or 42.12, a judgment as to the claim or particular claim or issue certified is binding, according to its terms, on any member of the class who has not filed an election of exclusion under R.C.P. 42.8. The judgment shall name or describe the members of the class who are bound by its terms.

Rule 42.14. Costs.

a. Only the representative parties and those members of the class who have appeared individually are liable for costs assessed against a plaintiff class.

b. The court shall apportion the liability for costs assessed against a defendant class.

c. Expenses of notice advanced under R.C.P. 42.7 are taxable as costs in favor of the prevailing party.

Rule 42.15. Relief afforded.

a. The court may award any form of relief consistent with the certification order to which the party in whose favor it is rendered is entitled including equitable, declaratory, monetary, or other relief to individual members of the class or the class in a lump sum or installments.

b. Damages fixed by a minimum measure of recovery provided by any statute may not be recovered in a class action.

c. If a class is awarded a judgment for money, the distribution shall be determined as follows:

(1) The parties shall list as expeditiously as possible all members of the class whose identity can be determined without expending a disproportionate share of the recovery.

(2) The reasonable expense of identification and distribution shall be paid, with the court's approval, from the funds to be distributed.

(3) The court may order steps taken to minimize the expense of identification.

(4) The court shall supervise, and may grant or stay the whole or any portion of, the execution of the judgment and the collection and distribution of funds to the members of the class as their interests warrant.

(5) The court shall determine what amount of the funds available for the payment of the judgment cannot be distributed to members of the class individually because they could not be identified or located or because they did not claim or prove the right to money apportioned to them. The court after hearing shall distribute that amount, in whole or in part, to one or more states as unclaimed property or to the defendant.

(6) In determining the amount, if any, to be distributed to a state or to the defendant, the court shall consider the following criteria: (i) any unjust enrichment of the defendant; (ii) the willfulness or lack of willfulness on the part of the defendant;

(iii) the impact on the defendant of the relief granted; (iv) the pendency of other claims against the defendant; (v) any criminal sanction imposed on the defendant; and (vi) the loss suffered by the plaintiff class.

(7) The court, in order to remedy or alleviate any harm done, may impose conditions ~~on the defendant~~ respecting the use of the money distributed to ~~him~~the defendant.

(8) Any amount to be distributed to a state shall be distributed as unclaimed property to any state in which are located the last known addresses of the members of the class to whom distribution could not be made. If the last known addresses cannot be ascertained with reasonable diligence, the court may determine by other means what portion of the unidentified or unlocated members of the class were residents of a state. A state shall receive that portion of the distribution that its residents would have received had they been identified and located. Before entering an order distributing any part of the amount to a state, the court shall give written notice of its intention to make distribution to the attorney general of the state of the residence of any person given notice under R.C.P. 42.7 or 42.12 and shall afford the attorney general an opportunity to move for an order requiring payment to the state.

Rule 42.16. Attorney's fees.

a. Attorney's fees for representing a class are subject to control of the court.

b. If under an applicable provision of law a defendant or defendant class is entitled to attorney's fees from a plaintiff class, only representative parties and those members of the class who have appeared individually are liable for those fees. If a plaintiff is entitled to attorney's fees from a defendant class, the court may apportion the fees among the members of the class.

c. If a prevailing class recovers a judgment for money or other award that can be divided for the purpose, the court may

order reasonable attorney's fees and litigation expenses of the class to be paid from the recovery.

d. If the prevailing class is entitled to declaratory or equitable relief, the court may order the adverse party to pay to the class its reasonable attorney's fees and litigation expenses if permitted by law in similar cases not involving a class or the court finds that the judgment has vindicated an important public interest. However, if any monetary award is also recovered, the court may allow reasonable attorney's fees and litigation expenses only to the extent that a reasonable proportion of that award is insufficient to defray the fees and expenses.

e. In determining the amount of attorney's fees for a prevailing class the court shall consider the following factors:

(1) the time and effort expended by the attorney in the litigation, including the nature, extent, and quality of the services rendered;

(2) results achieved and benefits conferred upon the class;

(3) the magnitude, complexity, and uniqueness of the litigation;

(4) the contingent nature of success;

(5) in cases awarding attorney's fees and litigation expenses under subdivision (d) because of the vindication of an important public interest, the economic impact on the party against whom the award is made; and

(6) appropriate criteria in the Iowa Code of Professional Responsibility for Lawyers.

Rule 42.17. Arrangements for attorney's fees and expenses.

a. Before a hearing under R.C.P. 42.2(a) or at any other time the court directs, the representative parties and the attorney for the representative parties shall file with the court, jointly or separately: (1) a statement showing any amount paid or promised them by any person for the services rendered or to be rendered in connection with the action or for the costs and expenses of the

litigation and the source of all of the amounts; (2) a copy of any written agreement, or a summary of any oral agreement, between the representative parties and their attorney concerning financial arrangements or fees; and (3) a copy of any written agreement, or a summary of any oral agreement, by the representative parties or the attorney to share these amounts with any person other than a member, regular associate, or an attorney regularly of counsel with ~~his~~that law firm. This statement shall be supplemented promptly if additional arrangements are made.

b. Upon a determination that the costs and litigation expenses of the action cannot reasonably and fairly be defrayed by the representative parties or by other available sources, the court by order may authorize and control the solicitation and expenditure of voluntary contributions for this purpose from members of the class, advances by the attorneys or others, or both, subject to reimbursement from any recovery obtained for the class. The court may order any available funds so contributed or advanced to be applied to the payment of any costs taxed in favor of a party opposing the class.

Rule 42.18. Statute of limitations. The statute of limitations is tolled for all class members upon the commencement of an action asserting a class action. The statute of limitations resumes running against a member of a class:

(1) upon ~~his~~ filing an election of exclusion by that member;

(2) upon entry of an order of certification, or of an amendment thereof, eliminating ~~him~~that member from the class;

(3) except as to representative parties, upon entry of an order under R.C.P. 42.2 refusing to certify an action as a class action; and

(4) upon dismissal of the action without an adjudication on the merits.

Rule 42.19. Stricken. ~~**Uniformity of application and construction.** Rules of Civil Procedure 42.1 to 42.20 shall be construed and applied to effectuate their general purpose to make uniform the law~~

~~with respect to the subject of these rules among states enacting them.~~

Rule 42.20. Stricken. ~~**Short title.** Rules of Civil Procedure 42.1 to 42.20 may be cited as the Uniform Class Actions Rules.~~

COMMENT: When adopted in 1980, R.C.P. 42.1 through R.C.P. 42.20 were taken from the Uniform Class Actions Act approved in 1976 by the National Conference of Commissioners of Uniform State Laws. To date the Uniform Act has been adopted only in Iowa and North Dakota. R.C.P. 42.6 relating to personal jurisdiction over class members, which was taken from section 6 of the Model Act, provided for jurisdiction over a nonresident class member if (a) a basis for jurisdiction existed against the person under the law of Iowa (*i.e.*, minimum contacts with the State of Iowa) or (b) the state in which the class member resided had adopted similar class action jurisdiction over nonresidents. Thus, if all states had adopted the Model Act, there would have been nationwide jurisdiction over multistate classes. However, since only Iowa and North Dakota adopted the Model Act, under Iowa law multistate classes have been limited to classes of members having minimum contacts with Iowa and residents of North Dakota. *Kramersmeier v. R.G. Dickinson & Co.*, 440 N.W.2d 873 (Iowa 1989). In 1985 the U.S. Supreme Court determined that a state court may constitutionally assert jurisdiction over nonresident class members who do not have minimum contacts with the state, as long as the nonresidents are given notice of the action, an opportunity to appear, an opportunity to opt out of the class, and adequate representation. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985). In 1987 the Commissioners of Uniform State Laws amended the Model Act by deleting section 6 on the grounds that *Shutts* rendered the section obsolete. R.C.P. 42.6 is stricken in order to eliminate its restriction on personal jurisdiction over nonresident class members, and to permit exercise of jurisdiction over nonresident class members to the extent permitted by the U.S. and state constitutions as interpreted by the courts. R.C.P. 42.19 and R.C.P. 42.20 are stricken because the Model Act has been adopted in only two states.

Rule 43. Virtual representation. Where persons composing a class which may be increased by others later born, do or may make a claim affecting specific property involved in an action to which all living members of the class are parties, any others later born shall also be deemed to have been parties to the action and bound by any decree rendered therein.

Rule 44. Shareholders' actions. Shareholders in an incorporated or unincorporated association, who sue to enforce its rights because of its failure to do so, shall support their petition by affidavit, and allege their efforts to have the directors, trustees or other shareholders bring the action or enforce the right, or a sufficient reason for not making such effort.

Rule 45 to 47. Stricken by amendment 1980.

DIVISION III

COMMENCEMENT OF ACTIONS

Rule 48. Commencement of actions; tolling. For all purposes, a~~A~~ civil action is commenced by filing a petition with the court. The date of filing shall determine whether an action has been commenced within the time allowed by statutes for limitation of actions, even though the limitation may inhere in the statute creating the remedy.

COMMENT: The added language is from current R.C.P. 55. No substantive change is intended.

Rule 49. Original notice; ~~issuance and form~~, issuance and service.

A notice informing the defendant, respondent, or other party against whom an action has been filed shall be served in the form and manner provided by this rule. This notice shall be called the original notice.

~~*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 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.~~

a. The original notice, directed to the defendant, respondent, or other party shall contain: (1) the name of the court and the names of the parties; (2) the name, address, telephone number, and if available, the facsimile transmission number of the plaintiff's or petitioner's attorney, if any, otherwise the plaintiff's or petitioner's address; (3) the date of the filing of the petition; and (4) the time within which these rules or statutes require the defendant, respondent, or other party to serve, and within a reasonable time thereafter file, a motion or answer. The original notice shall also notify the defendant, respondent or other party to be served that in case of the failure to do so by defendant, respondent or other party to be served, judgment by default may be rendered against the defendant, respondent or other party to be served for the relief demanded in the petition. The original notice shall also include the compliance notice required by the Americans with Disabilities Act (ADA). A copy of the petition shall be attached to the original notice except when service is by publication. If service is by publication, the original notice alone shall be published and shall also contain a general statement of the claim or claims, and subject to the limitation in R.C.P. 70(a), the relief demanded.

~~b. Upon the filing of the petition the clerk shall forthwith deliver for service the original notice and copies, copies of the petition, and the directions for service to the sheriff, to a person specially appointed to serve it, or other appropriate person. Upon request of the plaintiff, separate or additional original notices shall issue against any defendants.~~

b. If the papers are to be served by the sheriff, sufficient copies of the original notice, petition, and other papers to be

served together with written directions for service shall be delivered to the clerk.

c. The original notice shall be signed by the clerk and be under the seal of the court. The clerk may require the party delivering the original notice to the clerk to advance reasonable costs of service.

d. The clerk shall forthwith deliver the service copies of the original notice, petition and other papers to be served with written directions for service to the sheriff, to a person specially appointed to serve them, or other appropriate person.

e. Original notices may be served by any person who is neither a party nor the attorney for a party to the action. A party or party's agent or attorney may take an acknowledgment of service and deliver a copy of the original notice in connection therewith, and may mail a copy of the original notice when mailing is required or permitted under any rule or statute.

f. If service of the original notice is not made upon the defendant, respondent, or other party to be served within 90 days after filing the petition, the court, upon motion or its own initiative after notice to the party filing the petition, shall dismiss the action without prejudice as to that defendant, respondent, or other party to be served or direct an alternate time or manner of service. If the party filing the papers shows good cause for the failure of service, the court shall extend the time for service for an appropriate period.

COMMENT: New R.C.P. 49 is a combination of former R.C.P. 49, 50 and 52 to present the information in a more logical sequence. This rule was changed to reflect the present practice. Original notices should now include the telephone number and facsimile transmission number of the party's attorney requesting the issuance of an original notice. It also requires the original notice to have the proper ADA notice. The language is changed stating a default "may be rendered" rather than "will be rendered." This change reflects the actual practice and the 10-day notice before a default judgment can be entered. The rule also has a 90-day requirement for service. Ninety days was chosen in order that service would be perfected prior to the issuance of scheduling

orders by most courts. The form of the original notices contained in the appendix are changed accordingly.

Rule 50. ~~**Serving copies of original notice and petition**~~ **[Moved to 49(a)].** ~~The original notice and copy of petition shall be served together except when service is by publication. If service is by publication the original notice alone shall be published and shall also contain a general statement of the claim or claims and, subject to the limitation in R.C.P. 69(a), the relief demanded.~~

COMMENT: Former R.C.P. 50 is now part of new R.C.P. 49(a).

Rule 51. ~~**Notice of no personal claim**~~ **Stricken.** ~~A defendant who unreasonably defends when the original notice states that no personal judgment is asked against him, shall pay the costs occasioned thereby.~~

COMMENT: This rule is no longer necessary. R.C.P. 80 governs this conduct.

Rule 52. ~~**By whom served**~~ **[Moved to 49(e)].** ~~Original notices may be served by any person who is neither a party nor the attorney for a party to the action. A party, his agent or attorney may take an acknowledgment of service and deliver copy of notice in connection therewith, and may mail copy of original notice when mailing is required or permitted under any rule or statute.~~

COMMENT: Former R.C.P. 52 is now R.C.P. 49(e).

Rule 53. Time for motion or answer to petition. ~~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 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 motion or answer on or before the date fixed as provided by said statute or order of court.~~

~~In the event service or 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 motion or answer within twenty days after the service of the original notice and petition upon such defendant.~~

a. Unless otherwise provided, the defendant, respondent, or other party shall serve, and within a reasonable time thereafter file, a motion or answer within twenty days after the service of the original notice and petition upon such party.

b. Any statute of Iowa which specifically requires response by a particular party, or in a particular action, within a specified time, shall govern the time for serving, and within a reasonable time thereafter filing, a motion or answer in such cases.

c. A defendant, respondent, or other party served in a manner prescribed by an order of court shall serve, and within a reasonable time thereafter file, a motion or answer on or before the date fixed.

d. A defendant, respondent, or other party served by publication or by publication and mailing shall serve, and within a reasonable time thereafter file, a 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.

e. A defendant, respondent, or other party served by mail under R.C.P. 56.2 shall serve, and within a reasonable time thereafter file, a motion or answer on or before the date fixed in the notice as mailed, which date shall not be less than sixty days following the date of mailing.

COMMENT: New R.C.P. 53 is a combination of former R.C.P. 53 and R.C.P. 54(a). The rules have been reorganized to present the

information in a more logical sequence. No substantive change is intended.

Rule 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 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~~who are supposed debtors, or ~~having in possession~~who possess property of the principal defendant~~,~~. Garnishment ~~which~~ shall be effected by a notice served in the manner and as an original notice in civil actions~~,~~. The notice shall forbid ~~forbidding~~ the garnishee from paying any debt owing such defendant, due or to become due, and require~~ing~~ the garnishee to retain possession of all property of the defendant in the garnishee's hands or under 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~~the notice shall cite the garnishee to appear before the court at a time specified ~~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 the garnishee will be liable to pay any judgment which the plaintiff may obtain against the defendant.

COMMENT: Former R.C.P. 54(a) is now R.C.P. 53(b). Changes in former R.C.P. 54(b) are for purposes of clarity.

Rule 55. ~~Tolling limitations~~ [Moved to 48]. ~~For the purpose of determining whether an action has been commenced within the time allowed by statutes for limitation of actions, whether the limitation inheres in the statutes creating the remedy or not, the filing of a petition shall be deemed a commencement of the action.~~

COMMENT: Former R.C.P. 55 is now part of R.C.P. 48.

Rule 56.1. Personal service. Original notices are "served" by delivering a copy to the proper person. Personal service may be made as follows:

a. Upon any individual who has attained majority who has not been adjudged incompetent ~~aged eighteen years or more who has not been adjudged incompetent,~~ either by taking the individual's signed, dated acknowledgment of service endorsed on the notice; or by serving the individual personally; or by serving, at the individual's dwelling house or usual place of abode, any person residing therein who is at least eighteen years old, but if such place is a rooming house, hotel, club or apartment building, the copy shall there be delivered to such a person who is either a member of the individual's family or the manager, clerk, proprietor or custodian of such place; or upon the individual's spouse at a place other than the individual's dwelling house or usual place of abode if probable cause exists to believe that the spouse lives at the individual's dwelling house or usual place or abode.

b. Upon a minor ~~under eighteen years old,~~ by serving ~~either~~ the minor's conservator or guardian ~~of his person or property~~, unless the notice is served on behalf of such conservator or guardian, or ~~his~~ the minor's parent, or some person aged eighteen years or more who has ~~his~~ the minor's care and custody, or with whom ~~he~~ the minor resides, or in whose service ~~he~~ the minor is employed. Where the notice ~~upon a minor~~ is served on behalf of one who is the conservator or guardian ~~or other fiduciary~~ and the conservator or guardian ~~or other fiduciary~~ is the only person who would be available upon whom service could be made, the court ~~or a judge~~ shall appoint, without prior notice ~~on~~ to the ward, a guardian ad litem ~~upon whom service~~ who shall be served and ~~made and who shall~~ defend for the minor.

c. Upon any person ~~judicially~~ adjudged incompetent but not confined in a state hospital for the mentally ill, by serving the conservator or guardian ~~of his person or property~~, unless the

notice is served on behalf of such conservator or guardian, or ~~his~~that person's spouse, or some person aged eighteen years or more who has ~~his~~that person's care and custody, or with whom ~~he~~that person resides. When the notice ~~upon an incompetent~~ is served on behalf of one who is the conservator or guardian ~~or other fiduciary~~ and the conservator or guardian ~~or other fiduciary~~ is the only person who would be available upon whom service could be made, the court ~~or a judge~~ shall appoint~~,~~ without prior notice to the ward~~,~~ a guardian ad litem ~~upon whom service~~who shall be served and~~be made and who shall~~ defend for the incompetent.

d. Any person~~, whether competent or not,~~ confined in a county care facility, or in any state hospital for the mentally ill, or any patient in the State University of Iowa hospital or its psychopathic ward, or any patient or inmate of any institution in the control of a director of a division of the department of human services or department of corrections or of the United States, may be served by the official in charge of such institution or ~~his~~that person's assistant. Proof of such service may be made by the certificate of such official, if the institution is in Iowa, or ~~his~~ that person's affidavit if it is out of Iowa.

e. If any defendant, respondent, or other party is a patient in any state or federal hospital for the mentally ill, in or out of Iowa, or has been adjudged incompetent and is confined to a county care facility, the official in charge of such institution or ~~his~~the official's assistant shall accept service on ~~his~~the party's behalf, if in ~~his~~the official's or assistant's opinion direct service on the ~~defendant~~party would cause injury ~~injuriously affect him~~, which shall be stated in ~~such~~the acceptance.

f. Upon a partnership, or an association suable under a common name, or a ~~domestic or foreign~~ corporation, by serving any present or acting or last known officer thereof, or any general or managing agent, or any agent or person now authorized by appointment or by law to receive service of original notice, or on the general partner of a partnership.

g. If the action, whether against an individual, corporation, partnership or other association suable under a common name, arises out of or is connected with the business of any office or agency maintained by the defendant in a county other than where the principal resides, by serving any agent or clerk employed in such office or agency.

h. Upon any city by serving its mayor or clerk.

i. Upon any county by serving its auditor or the ~~chairman~~ chairperson of its board of supervisors.

j. Upon any school district, school township or school corporation by serving its president or secretary.

k. Upon the state, where made a party pursuant to statutory consent or authorization for suit in the manner provided by ~~such~~ any applicable statute ~~or any statute applicable thereto~~.

l. Upon any individual, corporation, partnership or association suable under a common name, ~~which shall have filed in this state a consent to service, or shall be subject to service, in any special manner provided by the statutes of this state,~~ either as provided in these rules, ~~or~~ as provided ~~in~~by any ~~such~~ consent to service, or in accordance with any ~~such statute relating thereto~~ applicable statute.

m. Upon a governmental board, commission or agency, by serving its presiding officer, clerk or secretary.

n. If service cannot be made by any of the methods provided by this rule, any defendant may be served as provided by court order, consistent with due process of law.

COMMENT: Proposed changes relating to wards conform to those recommended in R.C.P. 12, 13 and 17. Other changes are for brevity and clarity.

Rule 56.2. Alternate method of service. Every corporation, individual, personal representative, partnership or association that shall have the necessary minimum contact with the state of Iowa shall be subject to the jurisdiction of the courts of this state, and the courts of this state shall hold such corporation,

individual, personal representative, partnership or association amenable to suit in Iowa in every case not contrary to the provisions of the Constitution of the United States.

Service may be made on any such corporation, individual, personal representative, partnership or association (a) as provided in R.C.P. 56.1 within or without the state, or (b) if such service cannot be so made, in any manner consistent with due process of law prescribed by order of the court in which the action is brought.

Nothing herein shall limit or affect the right to serve an original notice upon any corporation, individual, personal representative, partnership or association within or without this state in any manner now or hereafter permitted by statute or rule.

Rule 57. Service on Sunday. Stricken by Report of November 20, 1991, effective July 1, 1992.

Rule 58. Member of General Assembly. No member of the general assembly shall be held to move or answer in any civil action in any court in this state while such general assembly is in session.

Rule 59. Returns of service.

a. Signature; fees. Iowa officers may make unsworn returns of original notices served by them, as follows: Any sheriff or deputy sheriff, as to service in their ~~sheriff's or deputy sheriff's~~ own or a contiguous county; any other peace officer, bailiff, or marshal, as to service in ~~his or her~~their own territorial jurisdiction. The court shall take judicial notice of such signatures. All other returns, except those specified in R.C.P. 56.1~~"d"~~(d) and 56.1~~"e"~~(e), shall be proved by the affidavit of the person making the service. If served in the state of Iowa by a person other than such peace officer acting within the territories above defined or in another state by a person other than a sheriff or other peace officer, reasonable fees or mileage, not to exceed those allowed to a sheriff under Iowa Code section 331.655, shall be taxed as costs.

b. Contents. A return of personal service shall state the time, manner, and place thereof and name the person to whom copy was delivered; and if delivered under R.C.P. 56.1~~"a"~~(a) to a person other than defendant, respondent, or other party, it must also state the facts showing compliance with said rule.

c. Endorsement and filing. If a sheriff receives the notice for service, ~~he~~the sheriff shall note thereon the date when received, and serve it without delay in ~~his~~the sheriff's own or a contiguous county, and upon receiving the appropriate~~his~~ fees, the sheriff shall either file it and ~~his~~the return with the clerk, or deliver it by mail or otherwise to the person from whom ~~he~~the sheriff received it.

d. Proof of service. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service does not affect the validity of the service.

e. By mail. Where service includes notice by mail, proof of such mailing shall be by affidavit. The affidavit, with a duplicate copy of the papers referred to in the affidavit attached thereto, shall be forthwith filed with the court.

Rule 59.1. Amendment of process or proof of service. ~~At any time in its discretion and upon such terms as it deems just, t~~The court may allow any process or proof of service thereof to be amended at any time in its discretion and upon such terms as it deems just, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Rule 60. Service by publication; what cases. After filing an affidavit that personal service cannot be had on an adverse party in Iowa, the original notice may be served by publication, in any action brought:

a. For recovery of real property or any estate or interest therein;

b. For the partition of real or personal property in Iowa;

c. to foreclose a mortgage, lien, encumbrance or charge on real or personal property;

d. For specific performance of a contract for sale of real estate;

e. To establish, set aside or construe a will, if defendant, respondent, or other party resides out of Iowa, or if the ~~his~~ residence is unknown;

f. Against a nonresident of Iowa or a foreign corporation which has property, or debts owing to it in Iowa, sought to be taken by any provisional remedy, or appropriated in any way;

g. Against any defendant, respondent, or other party who, being a nonresident of Iowa, or a foreign corporation, has or claims any actual or contingent interest in or lien on real or personal property in Iowa which is the subject of such action, or to which it relates; or where the action seeks to exclude such defendant, respondent, or other party from any lien, interest or claim therein;

h. Against any resident of the state who has departed therefrom, or from the county of ~~his~~defendant's, respondent's or other party's residence, with intent to delay or defraud ~~his~~ creditors, or to avoid service, or a defendant, respondent or other party who keeps ~~himself~~ concealed with like intent;

i. For dissolution of marriage or separate maintenance or to modify a decree in such action, or to annul an illegal marriage, against a ~~defendant~~party who is a nonresident of Iowa or whose residence is unknown;

j. To quiet title to real estate, against a ~~defendant~~party who is a nonresident of Iowa, or whose residence is unknown;

k. Against a partnership, corporation or association suable under a common name, when no person can be found on whom personal service can be made;

l. To vacate or modify a judgment or for a new trial under R.C.P. 252 and 253.

Rule 60.1. Known defendants.

a. In every case where service of original notice is made upon a known defendant, respondent, or other party by publication, copy of the notice shall also be sent by ordinary mail addressed to such ~~defendant~~party at ~~his~~the party's last known mailing address, unless an affidavit of a party or ~~his~~that party's attorney is filed stating that no mailing address is known and that diligent inquiry has been made to ascertain it.

b. Such copy of notice shall be mailed by the party, ~~his~~the party's agent or attorney not less than twenty days before the date ~~set~~ for ~~written special appearance,~~ motion or answer.

c. Proof of such mailing shall be by affidavit, and such affidavit or the affidavit referred to in subdivision (a) of this rule shall be filed before the entry of judgment or decree. The court, in its judgment or decree, or prior thereto, shall make a finding that the address to which such copy was directed is the last known mailing address, or that no such address is known, after diligent inquiry.

COMMENT: Written special appearances have been abolished.

Rule 61. Unknown defendants, respondents, or other parties. The original notice against unknown ~~defendants~~parties shall be directed to the unknown claimants of the property involved, describing it. It shall otherwise comply with R.C.P. ~~50~~49.

COMMENT: Former R.C.P. 50 is now contained in R.C.P. 49.

Rule 62. How published. ~~Publication of original notice shall be made a~~After the filing of ~~the~~a petition, publication of the original notice shall be made once each week for three consecutive weeks in a newspaper of general circulation~~,~~ published in the

county where the petition is filed~~;~~. ~~such~~The newspaper ~~to~~ shall be selected by the plaintiff ~~or his attorney~~.

Rule 63. Proof of publication. Before default is taken, proof of such publication shall be filed, sworn to by the publisher or an employee of the newspaper.

Rule 64. Actual service. Service of original notice in or out of Iowa according to R.C.P. 56.1 supersedes the need of its publication.

Rule 65. ~~Appearances~~ [Moved to R.C.P. 71(a)]. ~~An attorney making an appearance shall, either by filing written appearance or by signature to the first pleading or motion filed by the attorney, clearly indicate the attorney or attorneys in charge of the case and shall not sign in the name of the firm only. Such appearance shall entitle the attorney to service as provided in R.C.P. 82.~~

COMMENT: This rule has been renumbered and is now R.C.P. 71(a). Both rules relate to appearances, and are combined for ease of reference.

Rule 66. ~~Objections to jurisdiction~~ Stricken. ~~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.~~

COMMENT: This rule is unnecessary; it is covered in current R.C.P. 88.

DIVISION IV

(A) Pleadings ~~And Motions~~generally

Rule 67. ~~Technical forms abolished.~~ [Moved to R.C.P. 69(a)]. ~~All common counts, general issues, demurrers, fictions and technical forms of action or pleading, are abolished. The form and sufficiency of all motions and pleadings shall be determined by~~

~~these rules, construed and enforced to secure a just, speedy and inexpensive determination of all controversies on their merits.~~

Rule 68. Allowable pleadings. There shall be a petition and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a cross-petition, if a person who was not an original party is summoned under the provisions of R.C.P. 34; and an answer to cross-petition, if a cross-petition is served.

Rule 69. General rules of pleading.

a. Form and sufficiency. The form and sufficiency of all pleadings shall be determined by these rules, construed and enforced to secure a just, speedy and inexpensive determination of all controversies on their merits.

~~*a. Claims for Relief.*~~ **[Moved to R.C.P. 70(a)].** ~~A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or cross-petition, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the type of relief to which one deems one's self entitled. Relief in the alternative or of several different types may be demanded. Except in small claims and cases involving only liquidated damages, a pleading shall not state the specific amount of money damages sought but shall state whether the amount of damages is more or less than the jurisdictional amount. The specific amount and elements of monetary damages sought may be discovered by the use of interrogatories.~~

b. Pleading to be concise and direct; consistency. (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings ~~or motions~~ are required. (2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be

sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as ~~he~~the party has regardless of consistency and whether based on legal or equitable grounds. "Pleadings" as used in these rules do not include motions.

c. Correcting or recasting pleadings. On its own motion or that of any party, the court may order any prolix, confused or multiple pleading to be recast in a concise single document within such time as the order may fix. In like manner, it may order any pleading not complying with these rules to be corrected on such terms as it may impose.

d. Amendments. A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty days after it is served. Otherwise, a party may amend a pleading only by leave of court or by written consent of the adverse party. Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires.

e. Making and construing amendments. All amendments must be on a separate paper, duly filed, without interlining or expunging prior pleadings. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against ~~him~~the party, the party to be brought in by amendment (1) has received such notice of the institution of the action that ~~he~~the party will not be prejudiced in maintaining ~~his~~a defense on the merits, and (2) knew or should have known that, but for a mistake

concerning the identity of the proper party, the action would have been brought against ~~him~~the party.

COMMENT: Former R.C.P. 67, 81, 88, and 89, all of which relate to general pleading, appear together as R.C.P. 69(a), (c), (d), and (e), respectively.

Rule 70. ~~**Petition.**~~ **[Moved to R.C.P. 70(b)].** ~~The petition shall state whether it is at law or in equity.~~**Claims for relief.**

a. Generally. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or cross-petition, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the type of relief ~~to which one deems one's self entitled~~sought. Relief in the alternative or of several different types may be demanded. Except in small claims and cases involving only liquidated damages, a pleading shall not state the specific amount of money damages sought but shall state whether the amount of damages ~~is more or less than the~~meets applicable jurisdictional ~~amount~~requirements for amount in controversy. The specific amount and elements of monetary damages sought may be ~~discovered by the use of interrogatories~~obtained through discovery.

COMMENT: This new R.C.P. 70(a) is former R.C.P. 69(a). The change in the last sentence broadens the means by which information about damages may be discovered.

b. Petition. The petition shall state whether it is at law or in equity.

Rule 71. ~~**Answers for ward.**~~ **[Moved to R.C.P. 72(b)].** ~~All answers by guardians or guardians ad litem, or filed under R.C.P. 14, shall state whether there is a return on file, showing that proper service has been had on the ward; and they shall deny all material allegations prejudicial to the ward.~~**Appearances.**

a. Appearance. An attorney making an appearance shall, either by filing written appearance or by signature to the first pleading or motion filed by the attorney, clearly indicate the attorney or attorneys in charge of the case and shall not sign in

the name of the firm only. Such appearance shall entitle the attorney to service as provided in R.C.P. 106.

b. Appearance alone. The court shall have no power to treat 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.

COMMENT: Former R.C.P. 65 is relocated to R.C.P. 71(a) and former R.C.P. 87 is relocated to R.C.P. 71(b) so that both of these rules relating to appearances are together.

Rule 72. Answer.

a. Generally. The answer shall show on whose behalf it is filed, and specifically admit or deny each allegation or paragraph of the pleading to which it respond~~spetition~~, which denial may be for lack of information. It must state any additional facts deemed to show a defense. It may raise points of law appearing on the face of the pleading~~petition~~ to which it responds. ~~It may contain as many defenses, legal or equitable, as the pleader may claim, which may be inconsistent.~~ It may contain a counterclaim which must be in a separate division.

COMMENT: Changes in the first two sentences make it clear that answers to all pleadings are governed by this rule. The fourth sentence is stricken as redundant in view of the third sentence of R.C.P. 69(b)(2).

b. Answers for ward. All answers by conservators, guardians or guardians ad litem, or filed under R.C.P. 14, shall state whether ~~there is a return on file, showing that~~proper service has been had on the ward; and they shall deny all material allegations prejudicial to the ward.

c. What admitted. Every fact pleaded and not denied in a subsequent pleading as permitted by these rules shall be deemed admitted except (1) allegations of value or amount of damage, (2) averments in a pleading to which no responsive pleading is required

or permitted, and (3) facts not previously pleaded that are set forth in pleadings filed subsequent to the seventh day preceding the trial, all of which shall be deemed denied by operation of law.

d. Denying signature.

(1) *By party.* If a pleading copies a writing purporting to be signed by an adverse party, such signature shall be deemed genuine for all purposes in the case, unless such party ~~shall not only deny, but~~denies it and supports ~~his~~the denial by ~~his~~the party's ~~own~~affidavit that it is not ~~his~~a genuine or authorized signature. ~~He~~The party may, on application made during ~~his~~the time to plead, procure an inspection of the original writing.

(2) *By nonparty.* If a pleading copies a nonnegotiable writing purporting to be signed by a nonparty to the action, such signature shall be deemed genuine, unless a party denies it, and supports ~~his~~the denial by affidavit, which denial~~,~~ may be for lack of information.

COMMENT: Former R.C.P. 71, 102, and 100, relating to answers, appear together as R.C.P. 72(b), (c), and (d), respectively.

Rule 73. Reply. The court may order a reply to an answer or to an answer to a cross-petition.

Rule 74. ~~Cross-claim, cross-petition-judgment.~~ [Moved to R.C.P. 118]. ~~Any cross-claim under R.C.P. 33 or cross-petition under R.C.P. 34, and the answer and reply to it, shall be governed by these rules. Where judgment in the original case can be entered without prejudice to the rights in issue under a cross-petition, cross-claim or counterclaim, it shall not be delayed thereby.~~

Rule 75. Interventions. ~~Any person interested in the subject matter of the litigation, or the success of either party to the action, or against both parties, may intervene at any time before trial begins, by joining with plaintiff or defendant or claiming adversely to both.~~

a. *Intervention of right.* Upon timely application, anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

b. *Permissive intervention.* Upon timely application, anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

c. *Manner*Procedure. ~~Every intervenor shall file a petition, and a separate copy for each party against whom he asserts a right. The clerk shall transmit such copy to the attorney for the adversary party, who shall, without further notice, move or plead thereto within seven days from the date of filing unless the court fixes a shorter time and notice thereof is given.~~ A person desiring to intervene shall serve a motion to intervene upon the parties. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

d. Disposition. The court shall grant interventions of right unless the applicant's interest is adequately represented by existing parties. The court shall consider applications for permissive intervention and grant or deny the application as the circumstances require. The intervenor shall have no right to delay, and shall pay the costs of the intervention unless ~~he~~the intervenor prevails.

COMMENT: The amendments to R.C.P. 75 adopt provisions substantially similar to Rule 24, Federal Rules of Civil Procedure, and allow the trial court more discretion in determining whether to allow intervention.

Rule 76. ~~**Manner.**~~ **[Moved to R.C.P. 75(c)].** ~~Every intervenor shall file a petition, and a separate copy for each party against whom he asserts a right. The clerk shall transmit such copy to the attorney for the adversary party, who shall, without further notice, move or plead thereto within seven days from the date of filing unless the court fixes a shorter time and notice thereof is given.~~

Rule 77. ~~**Disposition.**~~ **[Moved to R.C.P. 75(d)].** ~~The intervenor shall have no right to delay, and shall pay the costs of the intervention unless he prevails.~~

(B) Pleadings; format and content

Rule 78. Caption and signature. Each appearance, notice, motion, or pleading shall be captioned with the title of the case, naming the court, parties, and instrument, and shall bear the signature, personal identification number, ~~and~~ address, telephone number, and, if available, facsimile transmission number of the party or attorney filing it. The caption of the first papers filed or served by or on behalf of any named party shall include the personal identification number of each named party if available or as soon as is available. The caption of a petition shall state whether the action is at law or equity. In all subsequent papers filed or served~~After the petition~~, the caption need name only the first of several coparties.

COMMENT: This change requires personal identification numbers to be used on all initial papers filed or served by a party.

Rule 79. Paragraphs; separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

Rule 80. Verification abolished; affidavits; certification.

a. Pleadings need not be verified unless special statutes so require and, where a pleading is verified, it is not necessary that subsequent pleadings be verified unless special statutes so require. Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: ~~Counsel~~counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation. If a motion, pleading, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney

fee. The signature of a party ~~who is not represented by Counsel~~ shall impose a similar obligation on such party.

b. If a party commencing an action has in the preceding five-year period unsuccessfully prosecuted three or more actions, the court may, if it deems the actions to have been frivolous, stay the proceedings until that party furnishes an undertaking secured by cash or approved sureties to pay all costs resulting to opposing parties to the action including a reasonable attorney fee.

c. Any motion asserting facts as the basis of the order it seeks, and any pleading seeking interlocutory relief, shall contain or be accompanied by an affidavit of the person or persons knowing the facts requisite to such relief. A similar affidavit shall be appended to all petitions which special statutes require to be verified.

d. Any pleading, motion, affidavit, or other document required to be verified under Iowa law may, alternatively, be certified pursuant to Iowa Code section 622.1, using substantially the following form:

"I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

_____ _____

Date Signature"

COMMENT: The amendment incorporates the right under Iowa Code section 622.1 to certification under the penalty of perjury when pleadings, motions, affidavits or other documents would otherwise have to be verified.

Rule 81. ~~**Correcting or recasting pleadings.**~~ **[Moved to R.C.P. 69(c)].** ~~On its own motion or that of any party, the court may order any prolix, confused or multiple pleading, to be recast in a concise single document within such time as the order may fix. In like manner, it may order any pleading not complying with these rules to be corrected on such terms as it may impose.~~ **Supplemental pleadings.** By leave of court, upon reasonable notice and upon such

terms as are just, or by written consent of the adverse party, a party may serve and file a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Leave may be granted even though the original pleading is defective in its statement of a claim for relief or defense. No responsive pleading to the supplemental pleading is required unless the court, upon its own motion or the motion of a party, so orders, specifying the time therefor.

COMMENT: This new R.C.P. 81 is former R.C.P. 90.

Rule 82. ~~Service and filing of pleadings and other papers.~~ [Moved to R.C.P. 106].

~~*a. When service required.* Everything required by these rules to be filed, every order required by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on any party against whom a default has been entered except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of original notice in R.C.P. 56.1. In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.~~

~~*b. Same: how made.* Service upon a party represented by an attorney shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by~~

~~mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.~~

~~c. *Same: numerous defendants.* In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.~~

~~d. *Filing.* All papers after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter; however, no party shall file legal briefs or memoranda, except in support of or resistance to a motion for summary judgment, unless expressly ordered by the court. Such briefs and memoranda shall be served upon the parties with an original copy delivered to the presiding judge. The party submitting the legal brief or memoranda shall file a statement certifying compliance with this rule. Whenever these rules or the rules of appellate procedure require a filing with the district court or its clerk within a certain time, the time requirement shall be tolled when service is made, provided the actual filing is done within a reasonable time thereafter.~~

~~e. *Filing with the court defined.* The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.~~

~~f. *Notice of orders or judgments.* Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in this rule upon each party except a party against whom a default has been entered and shall make a note in the docket of the mailing. In the event a case involves an appeal or review relating to an administrative agency, officer, commissioner, board, administrator, or judge, the clerk shall mail without cost to the applicable administrative agency, officer, commissioner, board, administrator, or judge a copy of any remand order, final judgment or decision in the case and a copy of any procedendo from the supreme court.~~

~~Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in this rule for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the district court to relieve a party for failure to appeal within the time allowed.~~

~~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 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 the person who served the papers, or by any other proof satisfactory to the court.~~**Judicial notice; statutes.** Matters of which judicial notice is taken, including statutes of Iowa, need

not be stated in any pleading. A pleading asserting any statute of another state, territory or jurisdiction of the United States, or a right derived therefrom, shall refer to such statute by plain designation and if such reference is made the court shall judicially notice such statute.

COMMENT: This new R.C.P. 82 is former R.C.P. 94.

Rule 83. ~~**Enlargement; additional time after service by mail.**~~ **[Moved to R.C.P. 107].**

~~*a. Enlargement.* When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under R.C.P. 241, 243 and 244, except to the extent and under the conditions stated in them.~~

~~*b. Additional Time After Service by Mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper and the notice or paper is served upon that person by mail, three days shall be added to the prescribed period. Such additional time shall not be applicable where a court has prescribed the method of service of notice and the number of days to be given, or where the deadline runs from entry or filing of a judgment, order or decree.~~**Negligence; mitigation.** In an action by an employee against an employer, or by a passenger against a common carrier to recover for negligence, plaintiff need not plead or prove ~~his~~freedom from contributory negligence, but defendant may plead and prove contributory negligence in mitigation of damages.

COMMENT: This new R.C.P. 83 is former R.C.P. 97.

Rule 84. ~~Stricken by amendment 1980.~~ **Permissible conclusions; denials.** Partnership, corporate or representative capacity; or corporate authority to sue or do business in Iowa; or performance of conditions precedent; or judgments of a court, board or officer of special jurisdiction, may be pleaded as legal conclusions, without averring the facts comprising them. It shall not be sufficient to deny such averment in terms contradicting it, but the facts relied on must be stated.

COMMENT: Former R.C.P. 84 was stricken by amendment in 1980. This new R.C.P. 84 is former R.C.P. 98.

Rule 85. ~~Time to move or plead.~~ **[Moved to R.C.P. 105].**

~~*a. Motions.* Motions attacking a pleading must be served before responding to a pleading or, if no responsive pleading is required by these rules, upon motion made by a party within 20 days after the service of the pleading on such party.~~

~~*b. Pleading.* Answer to a petition must be served on or before the date prescribed in accordance with R.C.P. 53. A party served with a pleading stating a cross-claim against the party shall serve an answer thereto within 20 days after the service of the pleading upon the party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.~~

~~*c. Time after filing motions.* The service of a motion 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 is so disposed of as to require further pleading, such pleading shall be served within ten days after notice of the court's action.~~

~~*d. Response to amendments.* A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the~~

~~amended pleading, whichever period may be the longer, unless the court otherwise orders.~~

~~*e. Shortening time.* The court may order any motion or pleading to be filed within a shorter time than specified above.~~

~~*f. Extending time.* For good cause, but not ex parte, the court may extend the time to answer or reply for not more than 30 days beyond the times above specified. For good cause but not ex parte, and upon such terms as the court prescribes, the court may grant a party the right to file a motion, answer or reply where the time to file same has expired.~~

~~*g. Petition for removal to federal court.* The filing of a petition for removal to the federal court, accompanied by the bond required by the Removal Act, shall suspend the time for filing any motions or pleadings until an order of the federal court is filed in the state court, remanding the cause, or until it is made to appear the removal has not been perfected, whereupon the times hereinabove fixed for motions or pleadings shall begin anew.~~ Contract. Every pleading referring to a contract must state whether it is written or oral.

COMMENT: This new R.C.P. 85 is former R.C.P. 91.

Rule 86. ~~Pleading over election to stand.~~ **[Moved to R.C.P. 108].** ~~If a party is required or permitted to plead further by an order or ruling, the clerk shall forthwith mail or deliver notice of such order or ruling to the attorneys of record. Presence of counsel when the court announces such ruling or order shall be the equivalent of such mailing or delivery. Unless otherwise provided by order or ruling, such party shall file such further pleading within seven days after such mailing or delivery; and if such party fails to do so within such time, he thereby elects to stand on the record theretofore made. On such election, the ruling shall be deemed a final adjudication in the trial court without further judgment or order; reserving only such issues, if any, which remain undisposed of by such ruling and election.~~ **Defenses to be specially**

pleaded. Any defense that a contract or writing sued on is void or voidable, or was delivered in escrow, or which alleges any matter in justification, excuse, release or discharge, or which admits the facts of the adverse pleading but seeks to avoid their legal effect, must be specially pleaded.

COMMENT: This new R.C.P. 86 is former R.C.P. 101.

Rule 87. ~~**Appearance alone.**~~ **[Moved to R.C.P. 71(b)].** ~~The court shall have no power to treat 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.~~ **Account; bill of particulars; denial.** A pleading founded on an account shall contain a bill of particulars thereof, by consecutively numbered items, which shall define and limit the proof, and may be amended as other pleadings. A pleading controverting such account, must specify the items denied, and any items not thus specified shall be deemed admitted.

COMMENT: This new R.C.P. 87 is former R.C.P. 99.

Rule 88. ~~**Amendments.**~~ **[Moved to R.C.P. 69(d)].** ~~A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty days after it is served. Otherwise, a party may amend a pleading only by leave of court or by written consent of the adverse party. Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires.~~ **Defenses** ~~**which must or may be asserted by pre-answer motion**~~**; how raised; consolidation; waiver.**

a. Every defense to a claim for relief in any pleading must be asserted in the pleading responsive thereto, or in an amendment to the answer made within 20 days after service of the answer, or if no responsive pleading is required, then at trial. The

following defenses or matters may be raised by pre-answer motion: (1) lack of jurisdiction of the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of the original notice or its service; (4) to recast or strike; (5) for more specific statement; (6) failure to state a claim upon which any relief may be granted.

b. Improper venue under R.C.P. 175 must be raised by pre-answer motion filed prior to or in a motion under subparagraph (c) of this rule.

c. If the grounds therefor exist at the time a pre-answer motion is made, motions under subparagraph (a)(2) through (a)(6) of this rule 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.

d. If a pre-answer motion is made under subparagraph (c) of this rule any matter specified in subparagraphs (a) or (b) which is not included in the motion is waived, except lack of jurisdiction of the subject matter or failure to state a claim upon which relief may be granted.

e. Sufficiency of any defense may be raised by a motion to strike it, filed before pleading to it.

f. Motions under this rule must specify how the pleading they attack is claimed to be insufficient.

COMMENT: This revised rule is a consolidation of former R.C.P. 66, 104 and 111, all of which related to raising defenses, and consolidation and waiver of defenses. Revised R.C.P. 88 contains all of the substance of former R.C.P. 66, 104 and 111, except that the recitation in R.C.P. 66 that the special appearance is abolished is deleted, and revised R.C.P. 88 does not change the substance of those rules. The phrase "by the suggestion of the parties or otherwise" in former R.C.P. 104(a) is deleted as superfluous.

Rule 89. ~~**Making and construing amendments.**~~ **[Moved to R.C.P. 69(e)].** ~~All amendments must be on a separate paper, duly filed, without interlining or expunging prior pleadings. Whenever the claim or defense asserted in the amended pleading arose out of the~~

~~conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.~~

Rule 90. ~~**Supplemental pleadings.**~~ **[Moved to R.C.P. 81].** ~~By leave of court, upon reasonable notice and upon such terms as are just, or by written consent of the adverse party, a party may serve and file a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Leave may be granted even though the original pleading is defective in its statement of a claim for relief or defense. No responsive pleading to the supplemental pleading is required unless the court, upon its own motion or the motion of a party, so orders, specifying the time therefor.~~

Rule 91. ~~**Contract.**~~ **[Moved to R.C.P. 85].** ~~Every pleading referring to a contract must state whether it is written or oral.~~

Rule 92. ~~**Allegation of time or place.** When time is not material, it need not be averred, and if averred, need not be proved. When it is material, the date or duration of a continuous act, must be alleged. The place need be alleged only when it is part of the substance of the issue.~~ **Stricken.**

COMMENT: R.C.P. 92 is deleted as unnecessary in view of notice pleading.

Rule 93. ~~**Exception.** A claim in derogation of general law, or founded on any kind of exception, shall be so pleaded as to set forth such claim or exception.~~**Stricken.**

COMMENT: R.C.P. 93 is deleted as unnecessary and archaic in view of notice pleading.

Rule 94. ~~**Judicial notice statutes.**~~ **[Moved to R.C.P. 82].** ~~Matters of which judicial notice is taken, including statutes of Iowa, need not be stated in any pleading. A pleading asserting any statute of another state, territory or jurisdiction of the United States, or a right derived therefrom, shall refer to such statute by plain designation and if such reference is made the court shall judicially notice such statute.~~

Rule 95. ~~**Unliquidated damages.** No order shall require any pleading to itemize or apportion unliquidated damages claimed therein, nor to attribute any part thereof to any portion of the claim asserted.~~**Stricken.**

COMMENT: R.C.P. 95 is deleted as unnecessary in view of notice pleading.

Rule 96. ~~**Malice.** A party intending to prove malice to affect damages must aver the same~~**Stricken.**

COMMENT: R.C.P. 96 is deleted as archaic and unnecessary under the existing system of notice pleading. R.C.P. 96 was at one time a statute and was transferred into the Rules of Civil Procedure in 1943. 1943 Iowa Acts ch. 278, at 300-08; Alan Loth, *Pleadings and Motions*, 29 Iowa L. Rev. 23 (1943). R.C.P. 70(a) requires a statement of the claim entitling the pleader to the relief sought; and this requirement, as it relates to punitive relief, accomplishes the same end as R.C.P. 96. Therefore, R.C.P. 96 is deleted without effecting any change in the rules of pleading.

Rule 97. ~~**Negligence mitigation.**~~ **[Moved to R.C.P. 83].** ~~In an action by an employee against an employer, or by a passenger against a common carrier to recover for negligence, plaintiff need not plead or prove his freedom from contributory negligence, but defendant may plead and prove contributory negligence in mitigation of damages.~~

Rule 98. ~~Permissible conclusions denials thereof.~~ [Moved to R.C.P. 84]. ~~Partnership, corporate or representative capacity; or corporate authority to sue or do business in Iowa; or performance of conditions precedent; or judgments of a court, board or officer of special jurisdiction, may be pleaded as legal conclusions, without averring the facts comprising them. It shall not be sufficient to deny such averment in terms contradicting it, but the facts relied on must be stated.~~

Rule 99. ~~Account bill of particulars denial.~~ [Moved to R.C.P. 87]. ~~A pleading founded on an account shall contain a bill of particulars thereof, by consecutively numbered items, which shall define and limit the proof, and may be amended as other pleadings. A pleading controverting such account, must specify the items denied, and any items not thus specified shall be deemed admitted.~~

(C) Motions

Rule 100. ~~Denying signature.~~ [Moved to R.C.P. 72(d)].

~~*a. By party.* If a pleading copies a writing purporting to be signed by an adverse party, such signature shall be deemed genuine for all purposes in the case, unless such party shall not only deny it, but support his denial by his own affidavit that it is not his genuine or authorized signature. He may, on application made during his time to plead, procure an inspection of the original writing.~~

~~*b. By nonparty.* If a pleading copies a nonnegotiable writing purporting to be signed by a nonparty to the action, such signature shall be deemed genuine, unless a party denies it, and supports his denial by affidavit, which denial, may be for lack of information.~~ Motion practice; generally.

a. A motion is an application made by any party or interested person for an order. ~~It may contain several objects which grow out of, or are connected with,~~ related to the action. It is not a "pleading" but is subject to the certification requirements of Rule 80(a).

b. Each motion filed shall be captioned and signed in accordance with Rule 78 and shall set out the specific points upon which it is based.

c. A concise memorandum brief ~~may be appended if it is desired to cite~~citing supporting ~~rules, statutes or other~~authorities may be served in accordance with R.C.P. 106(d).

d. Unless otherwise ordered by the court or provided by rule or statute, each party opposing the motion shall file within ten days after a copy of the motion has been served a written resistance to the motion. A concise brief citing supporting authorities may be served in accordance with R.C.P. 106(d).

e. Within seven days after service of the resistance or before any hearing on the motion, whichever is earlier, the movant may file a reply and serve a concise reply brief in accordance with R.C.P. 106(d) to assert newly decided authority or to respond to new and unanticipated matters. The reply brief should not reargue points made in the opening brief.

f. Evidence to sustain or resist a motion may be made by affidavit or in any other form to which the parties agree or the court directs. The court may require any affiant to appear for cross-examination.

g. The trial court shall rule on all motions within thirty days after their submission, unless it extends the time for reasons stated of record.

h. The clerk of each court shall maintain a motion calendar on which every ~~"motion" within the purview of (d), above,~~ motion filed shall be entered. It shall be arranged to show: (1) docket, page and cause number of action in which filed; (2) abbreviated title of the case with surname of the first named party on each side; (3) counsel of record for parties; (4) denomination of the ~~"motion"~~motion; (5) date filed; (6) party by whom filed; (7) date entered on calendar; and (8) date of disposition by ruling, order

or otherwise. Separate motion calendars for law, equity or other divisions may be maintained.

i. The court may arrange for the submission of motions under these rules by telephone conference call unless oral testimony may be offered.

COMMENT: This revised R.C.P. 100 is a consolidation of former R.C.P. 109, 116, 117(c), 117(e), 117(f), and portions of 117(a), all of which pertained to motions, filing of motions, evidence to sustain or resist them, placing them on the motion calendar, and the time within which they should be ruled upon. They are all now combined within one rule. Subparagraph (d) is added requiring that a written resistance to a motion be filed within ten days after the motion has been served, unless otherwise ordered by the court or controlled by statute or rule. Subparagraph (e) is added to allow the movant seven days to file a concise reply brief addressing only new and unanticipated matters.

Rule 101. ~~**Defenses to be specially pleaded.**~~ **[Moved to R.C.P. 86].** ~~Any defense that a contract or writing sued on is void or voidable, or was delivered in escrow, or which alleges any matter in justification, excuse, release or discharge, or which admits the facts of the adverse pleading but seeks to avoid their legal effect, must be specially pleaded.~~ **Failure to move; effect of overruling motion.** No pleading shall be held sufficient for failure to move to strike or dismiss it. If such motion is filed and overruled, error in such ruling is not waived by pleading over or proceeding further; and the moving party may always question the sufficiency of the pleading during subsequent proceedings.

COMMENT: This new R.C.P. 101 is former R.C.P. 110.

Rule 102. ~~**What admitted.**~~ **[Moved to R.C.P. 72(c)].** ~~Every fact pleaded and not denied in a subsequent pleading as permitted by these rules shall be deemed admitted except (1) allegations of value or amount of damage, (2) averments in a pleading to which no responsive pleading is required or permitted, and (3) facts not previously pleaded that are set forth in pleadings filed subsequent to the seventh day preceding the trial, all of which shall be deemed denied by operation of law.~~ **Motion for more specific**

statement. A party may move for a more specific statement of any matter not pleaded with sufficient definiteness to enable ~~him~~the party to plead to it and for no other purpose. It shall point out the insufficiency claimed and particulars desired.

COMMENT: This new R.C.P. 102 is former R.C.P. 112.

Rule 103. ~~Preliminary hearings.~~ [Moved to R.C.P. 117]. ~~On application of any party, the motion for judgment on the pleadings under R.C.P. 222, and the defenses of (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, and (7) failure to join a party under R.C.P. 25, whether made in a pleading or by motion, shall be heard and determined before trial, unless the court orders that the hearing and determination thereof be deferred until the trial.~~ **~~Striking improper matter~~Motion to strike.** Improper or unnecessary matter in a pleading may be stricken out on motion of the adverse party.

COMMENT: This new R.C.P. 103 is former R.C.P. 113.

Rule 104. ~~Defenses which must or may be asserted by pre-answer motion.~~ [Moved to R.C.P. 88]. ~~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. 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.~~

~~*b.* Failure to state a claim on which any relief can be granted, may be raised by motion to dismiss such claim, filed before answer.~~

~~*c.* Sufficiency of any defense may be raised by motion to strike it, filed before pleading to it.~~

~~*d.* Such motions must specify wherein the pleading they attack is claimed to be insufficient.~~**Motion days; submission of pretrial motions.**

a. The chief judge of each judicial district shall provide by order for ~~at least one motion day~~motion days to be held each month in each county, when all pretrial motions ~~made prior to trial on issues of fact~~on file ~~ten~~14 days or more shall be deemed submitted unless ~~by other~~(1) a hearing has been set, or (2) another time for submission is fixed by rule, statute, or order of court entered for good cause shown. A party who has been served with original notice or has appeared, shall take notice of the regular motion day on which motions will be heard.

b. The court may hear and rule on any motion prior to motion day so as not to delay completing the issues or trial of the case.

c. The court may require counsel to be apprised, in any manner it directs, of the time and place at which it will hear or act on any motion, application or other matter other than at the regular motion day ~~or pursuant to general assignment~~. This subparagraph ~~rule~~shall be applied to expedite, but not ~~to~~delay, hearings and submissions.

COMMENT: This revised R.C.P. 104 is a consolidation of former R.C.P. 114, 115, and the portions of former R.C.P. 117 that were not moved to R.C.P. 100. Revised R.C.P. 104 relates to the submission of pretrial motions and motion days. The requirement that to avoid submission on motion day motions must have been set for argument within the judicial district not more than ten days thereafter, and the prohibition against further postponement of their submission are eliminated.

(D) Time, filing, and notice requirements

Rule 105. ~~Separate adjudication of law points.~~ **[Moved to R.C.P. 116].** ~~The court may in its discretion, and must on application of either party, made after issues joined and before trial, separately hear and determine any point of law raised in any pleading which goes to the whole or any material part of the case. It shall enter an appropriate final order before trial of the remaining issues, adjudicating the point so determined, which shall not be questioned on the trial of any part of the case of which it does not dispose. If such ruling does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal.~~**Time to move or plead.**

a. *Motions.* Motions attacking a pleading must be served before responding to ~~a~~the pleading or, if no responsive pleading is required by these rules, ~~upon motion made by a party~~within 20 days after the service of the pleading on such party.

b. *Pleading.* Answer to a petition must be served on or before the date prescribed in accordance with R.C.P. 53. A party served with a pleading stating a cross-claim against the party shall serve an answer thereto within 20 days after the service of the pleading upon the party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

c. *Time after filing motions.* The service of a motion 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 is so disposed of as to require further pleading, such pleading shall be served within ten days after notice of the court's action.

d. *Response to amendments.* A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the

amended pleading, whichever ~~period may be the~~is longer, unless the court otherwise orders.

e. Shortening time. The court may order any motion or pleading to be filed within a shorter time than specified above.

f. Extending time. For good cause, but not ex parte, the court may extend the time to answer or reply for not more than ~~30~~thirty days beyond the times above specified. For good cause but not ex parte, and upon such terms as the court prescribes, the court may grant a party the right to file ~~a motion,~~an answer or reply where the time to file same has expired.

g. ~~*Petition for*~~*Notice of removal to federal court.* The filing of a ~~petition for~~notice of removal to the federal court~~, accompanied by the bond required by the Removal Act,~~ shall suspend the ~~time for filing any motions or pleadings~~jurisdiction of the state court until an order of the federal court, remanding the cause, or determining that the removal has not been perfected, is filed in the state court. Thereupon, the times fixed for motions or pleadings shall begin anew.

COMMENT: This new R.C.P. 105 is former R.C.P. 85. The change in subparagraph (a) deletes the requirement of a motion for leave to file a motion attacking a pleading to which no responsive pleading is required and thus allows service of such a motion without leave within 20 days after the pleading is served. The reference in subparagraph (f) to extending the time to file a motion after the time to file has expired is deleted because extending the time for filing motions is covered in R.C.P. 107(a) and was inconsistent with this rule. The reference to removal bond in subparagraph (g) is deleted because the federal Removal Act no longer requires a bond.

Rule 106. ~~**Amendments to conform to the evidence.**~~ **[Moved to R.C.P. 119].** ~~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 b 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.~~ **Service and filing of pleadings and other papers.**

a. When service required. Unless the court otherwise orders, everything required by these rules to be filed, every order required by its terms to be served, every pleading subsequent to the original petition ~~unless the court otherwise orders because of numerous defendants~~, every paper relating to discovery, ~~required to be served upon a party unless the court otherwise orders~~every written motion ~~other than~~including one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on any party against whom a default has been entered except that pleadings asserting new or additional claims for relief against ~~them~~the party shall be served upon ~~them~~the party in the manner provided for service of original notice in R.C.P. 56.1. In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

b. Same: how made. Service upon a party represented by an attorney shall be made upon the attorney unless service upon the party ~~himself~~is ordered by the court. Service ~~upon the attorney or upon a party~~ shall be made by delivering ~~a copy to him or by~~, mailing~~it~~, or transmitting by fax (facsimile) a copy to ~~him~~the attorney or to the party at ~~his~~the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of

court. Delivery ~~of a copy~~within this rule means: handing it to the attorney or to the party; or leaving it at ~~his~~the attorney's or party's office ~~with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein~~; or, if the office is closed or the person to be served has no office, leaving it at ~~his~~the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion ~~then~~residing therein. Service by mail is complete upon mailing.

c. Same: numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

d. Filing. Except as provided in R.C.P. 121.1, ~~All~~all papers after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter; however, no party shall file legal briefs or memoranda, except in support of or resistance to a motion for summary judgment, unless expressly ordered by the court. Such briefs and memoranda shall be served upon the parties with an original copy delivered to the presiding judge. The party submitting the legal brief or memoranda shall file a statement certifying compliance with this rule. Whenever these rules or the rules of appellate procedure require a filing with the district court or its clerk within a certain time, the time requirement shall be tolled when service is made, provided the actual filing is done within a reasonable time thereafter.

e. *Filing with the court defined.* The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that ~~the~~ a judge may permit ~~the papers~~them to be filed with ~~him~~the judge, ~~in which event he~~who shall note thereon the filing date and forthwith transmit them to the office of the clerk.

f. *Notice of orders or judgments.* Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in this rule upon each party except a party against whom a default has been entered and shall make a note in the docket of the mailing. In the event a case involves an appeal or review relating to an administrative agency, officer, commissioner, board, administrator, or judge, the clerk shall mail without cost to the applicable administrative agency, officer, commissioner, board, administrator, or judge a copy of any remand order, final judgment or decision in the case and a copy of any procedendo from the supreme court.

Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in this rule for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the district court to relieve a party for failure to appeal within the time allowed.

g. ~~*Proof*~~*Certificate of service.* ~~Proof of service of all~~All papers required or permitted to be served or filed shall include a certificate of service ~~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~~. Action shall not be taken on any paper until a certificate of service is filed in the clerk's office. The ~~proof~~certificate shall ~~show the time and~~identify the document served and include the date, manner of service, ~~and the~~names and addresses of the persons served. The ~~proof may be by written acknowledgment of service, by certification of the person who~~

~~served the papers, or by any other proof satisfactory to the court~~certificate shall be signed by the person making service. Unless ordered by the court, no other proof of service shall be filed.

COMMENT: This new R.C.P. 106 is former R.C.P. 82. The changes in subparagraph (b) authorize service by facsimile transmission, and delete archaic and unnecessary language regarding service by delivery to a clerk or person in charge of an office which is not closed. The changes in subparagraph (g) clarify that all documents served or filed shall include a certificate of service, that proof of service shall not be filed regarding documents that are not to be filed, set forth the requirements of a certificate of service, and prohibit filing of other proofs of service unless ordered by the Court.

Rule 107. ~~**Special action proper remedy awarded.**~~ **[Moved to R.C.P. 120].** ~~In any case of mandamus, certiorari, appeal to the district court, or for specific equitable relief, where the facts pleaded and proved do not entitle the petitioner to the specific remedy asked, but do show him entitled to another remedy, the court shall permit him on such terms, if any, as it may prescribe, to amend by asking for such latter remedy, which may be awarded.~~ **Enlargement; additional time after service by mail.**

a. Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under R.C.P. 241, 243 and 244, except to the extent and under the conditions stated in them.

b. Additional time after service by mail. When~~ever~~ by these rules a party has the right or is required to do some act ~~or take some proceedings~~within a prescribed period after the service of a

notice or other paper upon the party and the notice or paper is served upon ~~that person~~the party by mail, three days shall be added to the prescribed period. Such additional time shall not be applicable where a court has prescribed the method of service of notice and the number of days to be given or where the deadline runs from entry or filing of a judgment, order or decree.

COMMENT: This new R.C.P. 107 is former R.C.P. 83.

Rule 108. ~~**Lost pleading substitution. Stricken.** If an original pleading is lost or withheld, the court may order a copy substituted, or a substituted pleading filed.~~ **Pleading over; election to stand.** If a party is required or permitted to plead further by an order or ruling, the clerk shall forthwith mail or deliver notice of such order or ruling to the attorneys of record. ~~Presence of counsel when the court announced such ruling or order shall be the equivalent of such mailing or delivery.~~Unless otherwise provided by order or ruling, such party shall file such further pleading within ~~seven~~ten days after such mailing or delivery; and if such party fails to do so within such time, ~~he~~the party thereby elects to stand on the record theretofore made. On such election, the ruling shall be deemed a final adjudication in the trial court without further judgment or order; reserving only such issues, if any, which remain undisposed of by such ruling and election.

COMMENT: Former R.C.P. 108 is deleted as unnecessary in view of the inherent power of the court. This new R.C.P. 108 is former R.C.P. 86. The time to plead over is extended from seven to ten days, and presence of counsel when the court announces a ruling or order as the equivalent of mailing or delivery of an order by the clerk of court is deleted.

Rule 109. ~~**Motion Defined.**~~ **[Moved to R.C.P. 100(a)].**

~~A motion is an application made by any party or interested person for an order. It may contain several objects which grow out of, or are connected with, the action. It is not a "pleading".~~

Rule 110. ~~**Failure to move effect of overruling motion.**~~ **[Moved to R.C.P. 101].** ~~No pleading shall be held sufficient for failure to~~

~~move to strike or dismiss it. If such motion is filed and overruled, error in such ruling is not waived by pleading over or proceeding further, and the moving party may always question the sufficiency of the pleading during subsequent proceedings.~~

Rule 111. ~~Motions combined; waiver regarding jurisdiction and venue.~~ [Moved to R.C.P. 88].

~~*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.~~

Rule 112. ~~Motion for more specific statement.~~ [Moved to R.C.P. 102]. ~~A party may move for a more specific statement of any matter not pleaded with sufficient definiteness to enable him to plead to it and for no other purpose. It shall point out the insufficiency claimed and particulars desired.~~

(E) Court action

Rule 113. ~~Striking improper matter.~~ [Moved to R.C.P. 103]. ~~Improper or unnecessary matter in a pleading may be stricken out on motion of the adverse party.~~ Specific rulings required. A motion, or other matter involving separate grounds or parts, shall be disposed of by separate ruling on each and not sustained generally.

COMMENT: This new R.C.P. 113 is former R.C.P. 118.

Rule 114. ~~Notice of motion days unnecessary.~~ [Moved to R.C.P. 104(a)]. ~~A party who has been served with original notice or has~~

~~appeared, shall take notice of the regular motion day on which motions will be heard.~~ **Order defined.** Every direction of the court, made in writing and not included in the judgment or decree, is an order.

COMMENT: This new R.C.P. 114 is former R.C.P. 119.

Rule 115. ~~**Discretionary notice.**~~ **[Moved to R.C.P. 104(c)].** ~~The court may require counsel to be apprised, in any manner it directs, of the time and place at which it will hear or act on any motion, application or other matter other than at the regular motion day or pursuant to general assignment. This rule shall be applied to expedite, not to delay, hearings and submissions.~~ **When and how entered.** A judge may enter judgments, orders or decrees at any time after the matter has been submitted, effective when filed with the clerk, or as provided by R.C.P. ~~82~~106~~"e"~~(e). The clerk shall promptly mail or deliver notice of such entry, or copy thereof, to each party appearing, or to one of the party's attorneys.

COMMENT: This new R.C.P. 115 is former R.C.P. 120.

Rule 116. ~~**Proof of facts in motions.**~~ **[Moved to R.C.P. 100(f)].** ~~Evidence to sustain or resist a motion may be by affidavit or in any other form to which the parties agree or the court directs. The court may require any affiant to appear for cross-examination.~~ **Separate adjudication of law points.** The court may in its discretion, and must on application of ~~either~~a party, made after issues are joined and before trial, separately hear and determine any point of law raised in any pleading which goes to the whole or any material part of the case. It shall enter an appropriate final order before trial of the remaining issues, adjudicating the point so determined, which shall not be questioned on the trial of any part of the case of which it does not dispose. If such ruling does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal.

COMMENT: This new R.C.P. 116 is former R.C.P. 105.

Rule 117. ~~Motion days disposition of motions.~~

~~*a.* [Moved to R.C.P. 104(a) and 100(b) and (c)]. The chief judge of each judicial district shall provide by order for at least one motion day to be held each month in each county, when all motions made prior to trial on issues of fact on file ten days or more shall be deemed submitted unless by other rule, statute or order of court entered for good cause shown another time for submission is fixed. Such motions not orally or telephonically argued for any reason shall be deemed submitted without argument unless they are then, or have previously been, set down for argument at some time somewhere in the judicial district not more than ten days thereafter, when they must be submitted without further postponement. Each motion filed shall set out the specific points upon which it is based. A concise memorandum brief may be appended if it is desired to cite supporting rules, statutes or other authorities.~~

~~*b.* [Moved to 104(b)]. The court may hear and rule on any motion prior to motion day so as not to delay completing the issues or trial of the case.~~

~~*c.* [Moved to R.C.P. 100(g)]. The trial court shall rule on all motions within thirty days after their submission, unless it extends the time for reasons stated of record.~~

~~*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.~~

~~*e.* [Moved to R.C.P. 100(h)]. The clerk of each court shall maintain a motion calendar on which every "motion" within the purview of "d", above, shall be entered. It shall be arranged to show (1) docket, page and cause number of action in which filed, (2) abbreviated title of the case with surname of the first-named party on each side, (3) counsel of record for parties, (4) denomination of the "motion," (5) date filed, (6) party by whom filed, (7) date entered on calendar, and (8) date of disposition by~~

~~ruling, order or otherwise. Separate motion calendars for law, equity or other divisions may be maintained.~~

~~f.~~ **[Moved to R.C.P. 100(i)].** ~~The court may arrange for the submission of motions under these rules by telephone conference call unless oral testimony may be offered.~~ **Preliminary ~~hearings~~ determination.** On application of any party, the motion for judgment on the pleadings under R.C.P. 222, and the defenses of (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, and (7) failure to join a party under R.C.P. 25, whether made in a pleading or by motion, shall be ~~heard and~~determined before trial, unless the court orders that ~~the hearing and~~determination thereof be deferred until the trial.

COMMENT: This new R.C.P. 117 is former R.C.P. 103. The third sentence of former R.C.P. 117(a) is relocated to R.C.P. 100(b) and the fourth sentence is relocated to R.C.P. 100(c). Former subparagraph 117(c) is relocated to R.C.P. 100(g), former subparagraph 117(e) is relocated to R.C.P. 100(h), and former subparagraph 117(f) is relocated to R.C.P. 100(i). Former subparagraph 117(d) is eliminated as superfluous since R.C.P. 104 relates to pretrial motions that are filed and R.C.P. 100(a) defines motions. No other substantive changes are made.

Rule 118. ~~**Specific rulings required.**~~ **[Moved to R.C.P. 113].** ~~A motion, or other matter involving separate grounds or parts, shall be disposed of by separate ruling on each and not sustained generally.~~ **Cross-petition, cross-claim, counterclaim; judgment.** ~~Any cross-claim under R.C.P. 33 or cross-petition under R.C.P. 34, and the answer and reply to it, shall be governed by these rules.~~ Where judgment in the original case can be entered without prejudice to the rights in issue under a cross-petition, cross-claim or counterclaim, it shall not be delayed thereby.

COMMENT: This new R.C.P. 118 is former R.C.P. 74. The first sentence of this rule is stricken as unnecessary.

Rule 119. ~~**Order Defined.**~~ **[Moved to R.C.P. 114].** ~~Every direction of the court, made in writing and not included in the judgment or decree, is an order.~~ ~~**Amendments**~~**Amending 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 ~~sub~~served 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.

COMMENT: This new R.C.P. 119 is former R.C.P. 106.

Rule 120. ~~**When and how entered.**~~ **[Moved to R.C.P. 115].** ~~A judge may enter judgments, orders or decrees at any time after the matter has been submitted, effective when filed with the clerk or as provided by R.C.P. 82"e." The clerk shall promptly mail or deliver notice of such entry, or copy thereof, to each party appearing, or to one of the party's attorneys.~~**Special action; proper remedy awarded.** In any case of mandamus, certiorari, appeal to the district court, or for specific equitable relief, where the facts pleaded and proved do not entitle the petitioner to the specific remedy asked, but do show ~~him~~the petitioner entitled to another remedy, the court shall permit ~~him~~the petitioner on such terms, if any, as it may prescribe, to amend by asking for such latter remedy, which may be awarded.

COMMENT: This new R.C.P. 120 is former R.C.P. 107.

DIVISION V

DISCOVERY AND INSPECTION

Rule 121. Discovery methods.

a. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

b. The rules providing for discovery and inspection shall be liberally construed and shall be enforced to provide the parties with access to all relevant facts. Discovery shall be conducted in good faith, and responses to discovery requests, however made, shall fairly address and meet the substance of the request.

c. Unless the court orders otherwise under R.C.P. 123, the frequency of use of these methods is not limited. ~~The court shall order otherwise if it determines that: (1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (3) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.~~

d. A rule requiring a matter to be under oath may be satisfied by an unsworn written statement in substantially the following form: "I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

_____ _____

Date Signature"

COMMENT: The provisions removed from paragraph (c) have been transferred to R.C.P. 123 to consolidate provisions regarding protective orders and the standards applicable to them.

Rule 121.1 Discovery materials not filed. Unless otherwise ordered by the court, no deposition, notice of deposition, interrogatory, request for production of documents, request for admission, or response, document or thing produced, or objection thereto shall be filed with the clerk. Any motion under R.C.P. 134 attacking the sufficiency of a response to a discovery request must have a copy of the request and response attached or the motion may be denied. This rule does not apply to depositions to perpetuate testimony under R.C.P. 159-66.

COMMENT: New R.C.P. 121.1 lists in one place the documents not to be filed and expands the list. It provides that any motion attacking sufficiency of a response must attach a copy of the request and response.

Rule 122. Scope of discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

a. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

b. Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the

action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

c. Trial preparation materials. Subject to the provisions of ~~subdivision "d" of this rule~~ R.C.P. 125, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision ~~"a"~~(a) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including ~~his~~the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of ~~his~~the case and that ~~he~~the party seeking discovery is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of R.C.P. 134~~"a"~~(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is

(1) A written statement signed or otherwise adopted or approved by the person making it, or

(2) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially

verbatim recital of an oral statement by the person making it and contemporaneously recorded.

d. Supplementation of responses. A party who has responded to a request for discovery ~~with a response that was complete when made~~ is under ~~no~~a duty to supplement or amend the response to include information thereafter acquired~~, except~~ as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

(A) The identity and location of persons having knowledge of discoverable matters; and

(B) The identity of each person expected to be called as a witness at trial; and

(C) Any matter that bears materially upon a claim or defense asserted by any party to the action.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:

(A) The party knows that the response was incorrect when made; or

(B) The party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment;

(3) As provided in R.C.P. 125(c), a party shall supplement discovery as to experts and the substance of their testimony.

(4) An additional ~~(3) A~~ duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

e. **Stricken.** ~~*Motions relating to discovery.* No motion relating to depositions or discovery shall be filed by the clerk or considered by the court unless the motion alleges that counsel for the moving party has made a good faith but unsuccessful attempt to resolve the issues raised by the motion with opposing counsel without intervention of the court. If said motion relates to an~~

~~interrogatory, a request for admission, or a request for production, the disputed interrogatory or request with the answer or response, if any, shall be attached to the motion.~~

COMMENT: The change in (c) corrects the reference to the rule on discovery of experts. The change in (d) states the duty to supplement in the affirmative and expands that duty to require supplementation as to material matters and as to experts. The first sentence of R.C.P. 122(e) is moved to become R.C.P. 134(e). The second sentence of R.C.P. 122(e) is deleted as duplicative of new R.C.P. 121.1.

Rule 123. Protective orders.

a. Upon motion by a party or by the person from whom discovery is sought or by any person who may be affected thereby, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken~~,~~:

(1) may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

~~a.~~(A) That the discovery not be had;

~~b.~~(B) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

~~c.~~(C) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

~~d.~~(D) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

~~e.~~(E) That discovery be conducted with no one present except persons designated by the court;

~~f.~~(F) That a deposition after being sealed be opened only by order of the court;

~~g.~~(G) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

~~h.~~ (H) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(2) shall limit the frequency of use of the methods described in R.C.P. 121(a) if it determines that:

~~a.~~ (A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

~~b.~~ (B) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

~~c.~~ (C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

b. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of R.C.P. 134~~"a"~~(a)(4) apply to the award of expenses incurred in relation to the motion.

COMMENT: The rule has been divided into subparagraphs (a) and (b) with appropriate renumbering or relettering of subparagraphs. The language removed from current R.C.P. 121(c) is now found at R.C.P. 123(a)(2)(A)-(C).

Rule 124. Sequence and timing of discovery. Unless the court upon motion orders otherwise for the convenience of parties and witnesses and in the interests of justice, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

Rule 124.1. Stipulations regarding discovery procedure. Unless the court orders otherwise, the parties may by written stipulation:

~~"a"~~*a.* provide that depositions may be taken before any qualified person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions~~;, and~~

~~"b"~~*b.* modify the procedures provided by these rules for other methods of discovery~~, except that stipulations extending the time provided in R.C.P. 126, 127 and 130 for responses to discovery must be filed with the court and may be superseded by court order, in which event the time shall be extended to twenty days after notice of the court's action.~~

COMMENT: As parties rarely enter into formal stipulations extending the times to answer interrogatories or respond to production requests, the requirement for formal stipulations is removed. Formal stipulations remain required for extensions of time for responding to requests for admissions. The final phrase of the rule has been changed to clarify the time within which a response is required in the event the court supersedes a stipulation. Consistent with new R.C.P. 121.1, the requirement that discovery stipulations be filed, including those regarding responses to requests for admissions, is deleted.

Rule 124.2. Discovery conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

a. A statement of the issues as they then appear;

b. A proposed plan and schedule of discovery;

c. Any limitations proposed to be placed on discovery;

d. Any other proposed orders with respect to discovery;

e. A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and that party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the

motion shall be served not later than ten days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by R.C.P. 136.

Rule 125. Discovery of experts.

a. Expert who is expected to be called as a witness. In addition to discovery provided pursuant to R.C.P. 133, discovery of facts known, mental impressions, and opinions held by an expert whom the other party expects to call as a witness at trial, otherwise discoverable under the provisions of R.C.P. 122~~"a"~~(a) and acquired or developed in anticipation of litigation or for trial may be obtained as follows:

(1) A party may through interrogatories require any other party to state the name and address of each person whom the other party expects to call as an expert witness at trial and to state, with reasonable particularity:

(A) The subject matter on which the expert is expected to testify;

(B) The designated person's qualifications to testify as an expert on such subject; and

(C) The mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which relate to, or form the basis of, the mental impressions and opinions held by the expert.

Nothing in this rule shall be construed to preclude a witness from testifying as to (1) knowledge of the facts obtained by the

witness prior to being retained as an expert or (2) mental impressions or opinions formed by the witness which are based on such knowledge.

In the case of an expert retained in anticipation of litigation or for trial, answers to interrogatories asking for the qualifications of the person expected to testify as an expert, the mental impressions and opinions held by the expert, and the facts known to the expert shall be separately signed by the designated expert witness. If the party serving such interrogatories believes that the answers were required to be signed by the expert and they were not so signed, the party may object on that basis and move for an order compelling discovery. An objection based on the failure of such answers to be signed by the designated expert shall be asserted within thirty days of service of such answers, ~~,~~ otherwise the objection is waived.

(2) Discovery by other means is available without leave of court in lieu of or in addition to interrogatories:

(A) A party may take the deposition of any person identified by any other party as a person expected to be called as an expert witness at trial;

(B) A party may also obtain discovery of documents and tangible things including all tangible reports, physical models, compilations of data, and other material prepared by an expert or for an expert in anticipation of the expert's trial and deposition testimony. The disclosure of material prepared by an expert used for consultation is required even if it was prepared in anticipation of litigation or for trial when it forms a basis, either in whole or in part, of the opinions of an expert who is expected to be called as a witness.

(C) If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert who will be called as a witness have not been recorded and reduced to tangible form, the court may order these matters be

reduced to tangible form and produced within a reasonable time before the date of trial.

b. Expert who is not expected to be called as a witness. The disclosure of the same information concerning an expert used for consultation and who is not expected to be called as a witness at trial is required if the expert's work product forms a basis, either in whole or in part, of the opinions of an expert who is expected to be called as a witness. Otherwise, a party may discover the identity of and facts known, or mental impressions and opinions held, by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in R.C.P. 133 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

c. Duty to supplement discovery as to experts. If a party expects to call an expert witness when the identity or the ~~subject~~ substance of such expert witness' testimony has not been previously disclosed in response to an appropriate inquiry directly addressed to these matters, or when the substance of an expert's testimony has been updated, revised or changed since the response, such response must be supplemented to include the information described in subdivisions ~~"a"~~(a)(1) (A)-(C) of this rule, as soon as practicable, but in no event less than thirty days prior to the beginning of trial except on leave of court. If the identity of an expert witness and the information described in subdivisions ~~"a"~~(a)(1) (A)-(C) are not disclosed or supplemented in compliance with this rule, the court in its discretion may exclude or limit the testimony of such expert, or make such orders in regard to the nondisclosure as are just.

d. Expert testimony at trial. To the extent that the facts known, or mental impressions and opinions held, by an expert have been developed in discovery proceedings under subdivisions

~~"a"~~(a)(1) or (2) of this rule, the expert's direct testimony at trial may not be inconsistent with or go beyond the fair scope of the expert's testimony in the discovery proceedings as set forth in the expert's deposition, answer to interrogatories, separate report, or supplement thereto. However, the expert shall not be prevented from testifying as to facts or mental impressions and opinions on matters with respect to which the expert has not been interrogated in the discovery proceedings.

e. Court's discretion to compel disclosure of experts. The court has discretion to compel a party to make the determination and disclosure of whether an expert is expected to be called as a witness and shall do so to ensure that determination and the disclosures required by this rule within a reasonable and specific time before the date of trial. Upon motion, or at a discovery conference held pursuant to R.C.P. 124.2, or on its own initiative, the court may prescribe the sequence in which the parties make the determination and disclosures provided for under this rule.

f. Expert fees during discovery. Unless manifest injustice would result, the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions ~~"a"~~(a)(2) and ~~"b"~~(b) of this rule. With respect to discovery obtained under subdivision ~~"a"~~(a)(2) of this rule the court may require, and with respect to discovery obtained under subdivision ~~"b"~~(b) of this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert. Any fee which the court requires to be paid shall not exceed the expert's customary hourly or daily fee; and, in connection with a party's deposition of another party's expert, shall include the time reasonably and necessarily spent in connection with such deposition, including time spent in travel to and from the deposition, but excluding time spent in preparation.

COMMENT: The duty to supplement set forth in (c) has been expanded to require disclosure of updated, revised or changed opinions.

Rule 126. Interrogatories to parties.

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. Answers are to be signed by the person making them. Answers shall not be filed; however, they shall be served upon all adverse parties within thirty days after the interrogatories are served. Objections, if any, shall be ~~filed~~served within thirty days after the interrogatories are served. Defendants, however, may ~~file~~serve their objections or ~~serve their~~ answers within sixty days after they have been served original notice. 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"~~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.

b. Scope; use at trial. Interrogatories may relate to any matters which can be inquired into under R.C.P. 122, including a statement of the specific dollar amount of money damages claimed, the amounts claimed for separate items of damage, and the names and addresses of witnesses the party expects to call to testify at the trial. Interrogatory answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

c. Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification

shall be in sufficient detail to permit the party serving the interrogatory to locate and identify as readily as can the party served, the records from which the answer may be ascertained.

d. **Stricken.** ~~Notwithstanding the provisions of R.C.P. 82 "d," copies of the interrogatories which are served shall not be filed with the clerk unless approved by the court for good cause. Parties who serve interrogatories shall serve and file a notice of serving interrogatories stating the parties upon whom interrogatories were served, the numbers of the interrogatories, and the date of service.~~

COMMENT: The requirement to file answers or objections, absent court order, is eliminated from the rule. Notices of serving interrogatories are abolished. Subparagraph (b) adds to the permissible scope of interrogatories the amounts claimed for items of damages approved by the court in Gordon v. Noel, 356 N.W.2d 559 (Iowa 1984), and the addresses of trial witnesses. Subparagraph (d) is deleted as duplicative of new R.C.P. 121.1 and the fourth unnumbered paragraph of R.C.P. 126(a).

Rule 127. Requests for admission.

a. Availability; procedures for requests. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of R.C.P. 122 set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original notice upon that party.

Each matter of which an admission is requested shall be separately set forth.

A party shall not serve more than 30 requests for admission 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 30 requests for admission must be in writing and shall set forth the proposed requests and the reasons establishing good cause for their use.

b. Time for and content of responses. 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 by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of sixty days after service of the original notice upon defendant.

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 requested admission, and when good faith requires that a party qualify the party's answer or deny only a part of the matter of which an admission is requested, the party 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 the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party 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; the party may, subject to the provisions of R.C.P. 134~~"c,"~~ (c), deny the matter or set forth reasons why the party cannot admit or deny it.

c. Determining sufficiency of responses. The party who has requested the admission may move to determine the sufficiency of the answers or objections. Unless the court determines that an

objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of R.C.P. 134~~"a"~~(a)(4) apply to the award of expenses incurred in relation to the motion.

~~A party shall not serve more than thirty requests for admission 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 requests for admission must be in writing and shall set forth the proposed requests and the reasons establishing good cause for their use.~~

COMMENT: The rule has been divided into subparagraphs. The final paragraph of the current rule has been moved verbatim into (a).

Rule 128. Effect of admission. Any matter admitted under R.C.P. 127 is conclusively established in the pending action unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of R.C.P. 138 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining that party's action or defense on the merits. Any admission made by a party under R.C.P. 127 may be used as an evidentiary admission only in any other proceeding.

Rule 129. Production of documents and things and entry upon land for inspection and other purposes. Any party may serve on any other party a request:

a. To produce and permit the party making the request, or someone acting on ~~his~~that party's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts,

photographs, ~~phonorecords,~~ and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of R.C.P. 122 and which are in the possession, custody or control of the party upon whom the request is served; or

b. Except as otherwise provided by statute, to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of R.C.P. 122.

Rule 130. Procedure under R.C.P. 129. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original notice upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

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 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. ~~Notwithstanding the provisions of R.C.P. 82"d," copies of the documents produced shall not be filed with the clerk.~~

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.

COMMENT: The rule has been revised to eliminate filing the request and the response. The prohibition against filing requests, responses, objections or documents produced is deleted as duplicative of new R.C.P. 121.1.

Rule 131. Action for production or entry against persons not parties. R.C.P. 129 and 130 do not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Rule 132. Physical and mental examination of persons. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a ~~physician~~health care practitioner or to produce for examination the person in ~~his~~the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

COMMENT: The proposed revision to R.C.P. 132 expands the category of those who can conduct a court-ordered physical or mental examination from only physicians to all health care practitioners.

Rule 133. Report of health care~~examining physician~~ practitioner.

a. If requested by the party against whom an order is made under R.C.P. 132 or the person examined, the party causing the examination ~~to be made~~ shall deliver ~~to him~~ a copy ~~of a detailed written report~~ of the ~~examining physician~~ examiner's detailed written report setting out ~~his~~ the findings, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. After

delivery, if requested by the party causing the examination, ~~shall be entitled upon request to receive from~~ the party against whom the order is made shall deliver a like report of any examination of the same condition, previously or thereafter made, ~~of the same condition,~~ unless~~,~~ ~~in the case of a report of examination of a person not a party,~~ the party shows ~~that he is unable~~ an inability to obtain ~~it~~ a report of examination of a nonparty. The court on motion may ~~make an~~ order ~~against~~ a party ~~requiring delivery of~~ to deliver a report on such terms as are just~~,~~. ~~and if~~If ~~a physician~~ an examiner fails or refuses to make a report the court may exclude ~~his~~the examiner's testimony if offered at the trial.

b. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege ~~he~~the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine ~~him~~the party in respect of the same mental or physical condition.

c. This rule applies to examination made by agreement of the parties, unless the agreement expressly provides otherwise. This rule does not preclude discovery of a report of an ~~examining physician~~ examiner or the taking of a deposition of the ~~physician~~ examiner in accordance with the provisions of any other rule or statute.

COMMENT: The substitution of "examiner" for "physician" and "examining physician" makes the rule consistent with the change proposed for R.C.P. 132.

Rule 134. Consequences of failure to make discovery ~~—consequences.~~

a. Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby~~,~~ may ~~apply~~ move for an order compelling discovery as follows:

(1) *Appropriate court.* ~~An application~~ A motion for an order to a party may be made to the court in which the action is pending,

or, on matters relating to a deposition, to the court in the district where the deposition is being taken. ~~An application~~ A motion for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under R.C.P. 140 or 150, or a corporation or other entity fails to make a designation under R.C.P. 147~~"e"~~(e), or a party fails to answer an interrogatory submitted under R.C.P. 126, or if a party, in response to a request for inspection submitted under R.C.P. 129, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the ~~discovering~~ party seeking discovery may move for an order compelling an answer, ~~or~~ a designation, or an ~~order compelling~~ inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before ~~he applies~~ moving for an order.

Any order granting a motion made under this rule shall include a statement that a failure to comply with the order may result in the imposition of sanctions pursuant to R.C.P. 134.

In ruling on such motion, the court may make such protective order as it would have been empowered to make on a motion pursuant to R.C.P. 123(a).

(3) *Evasive or incomplete answer.* For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) *Award of expenses of motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(5) *Notice to litigants.* If the motion is granted, the court shall direct the clerk to mail a copy of the order to counsel and to the party or parties whose conduct, individually or by counsel, necessitated the motion.

b. Failure to comply with order.

(1) *Sanctions by court in district where deposition is taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by court in which action is pending.* If a party or an officer, director, or managing agent of a party or a person designated under R.C.P. 147~~"e"~~(e) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision ~~"a"~~(a) of this rule or under R.C.P. 132, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting ~~him~~such party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination~~.~~;

(E) In lieu of any of the foregoing orders or in addition thereto, the court shall require the disobedient party ~~failing to obey the order~~ or the attorney advising ~~him~~ such party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

c. *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under R.C.P. 127, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, ~~he~~the requesting party may ~~apply to the court~~ move for an order requiring the other party to pay ~~him~~ the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that

(1) The request was held objectionable pursuant to R.C.P. 127, or

(2) The admission sought was of no substantial importance, or

(3) The party failing to admit had reasonable ground to believe that ~~he~~the party might prevail on the matter, or

(4) There was other good reason for the failure to admit.

d. Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under R.C.P. 147~~"e"~~(e) to testify on behalf of a party fails

(1) To appear before the officer who is to take ~~his~~the person's deposition, after being served with a proper notice, or

(2) To serve answers or objections to interrogatories submitted under R.C.P. 126, after proper service of the interrogatories, or

(3) To serve a written response to a request for inspection submitted under R.C.P. 129, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), ~~and~~ (C), and (E) of subdivision ~~"b"~~(b)(2) of this rule. ~~In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.~~

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by R.C.P. 123.

e. Motions relating to discovery. No motion relating to depositions or discovery shall be filed with the clerk or considered by the court unless the motion alleges that counsel for the moving party has made a good faith but unsuccessful attempt to resolve the issues raised by the motion with opposing counsel without intervention of the court.

COMMENT: The last paragraph of (b)(2), previously unnumbered, has been designated subparagraph (E). That provision is now

incorporated by reference in (d)(3) rather than restating the provisions concerning payment of expenses in full as a separate sentence. New R.C.P. 134(e) is the first sentence of former R.C.P. 122(e). It is more appropriately located in R.C.P. 134 as it relates to motions regarding discovery.

DIVISION VI

PRETRIAL PROCEDURE

Rule 135. Pretrial calendar. The court may provide for a pretrial calendar in any county, which may extend to all actions, or be limited either to jury or nonjury actions.

Rule 136. Pretrial conferences; scheduling; management.

a. Pretrial conferences; objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

(1) Expediting the disposition of the action;

(2) Establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) Discouraging wasteful pretrial activities;

(4) Improving the quality of the trial through more thorough preparation; and

(5) Facilitating the settlement of the case.

b. Scheduling and planning. Upon application of any party or on the court's own motion, except in categories of cases exempted by supreme court rule as inappropriate, the court or its designee shall enter a scheduling order setting time limits for:

(1) Joining other parties;

(2) Designating experts;

(3) Completing discovery;

(4) Amending the pleadings; and

(5) Filing and hearing motions.

After consulting with the attorneys for the parties and any unrepresented parties, the court may also order:

(6) Special procedures, including assignment to a single judge, for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(7) The date or dates for conferences before trial, a final pretrial conference and trial; and

(8) Any other matters appropriate in the circumstances of the case including extension of those deadlines which are then justified.

A schedule shall not be modified except by leave of the court upon a showing of good cause.

c. Subjects to be discussed at pretrial conferences. The court at any conference under this rule may consider and take action with respect to:

(1) The formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) The avoidance of unnecessary proof including limitation of the number of expert witnesses and of cumulative evidence;

(5) The identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) The advisability of referring matters to a master;

(7) The possibility of settlement and imposition of a settlement deadline or the use of extrajudicial procedures to resolve the dispute;

(8) The ~~form and~~ substance of the pretrial order;

(9) The disposition of pending motions;

(10) Settling any facts of which the court is to be asked to take judicial notice;

(11) Specifying all damage claims in detail as of the date of conference;

(12) All proposed exhibits and mortality tables and proof thereof;

(13) Consolidation, separation for trial, and determination of points of law;

(14) Questions relating to voir dire examination of jurors;

(15) Filing of advance briefs when required; and

(16) Such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

d. Final pretrial conference. A final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

e. Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the court, upon motion or the court's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in R.C.P. 134~~"b"~~(b)(2)(B)-(D). In lieu of or in addition to any other sanction, the court shall require the party or the attorney representing that party or both to pay the reasonable expenses

incurred because of any noncompliance with this rule, including attorney's fees, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

COMMENT: R.C.P. 138 now prescribes the form for the order so the words "form and" in (c)(8) are no longer necessary.

Rule 137. Pretrial conference; record. On the request of any interested counsel or the court, the reporter must record the entire conference, or any designated part thereof.

Rule 138. Pretrial orders. After any conference held pursuant to R.C.P. 136, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be in accordance with the final pretrial order form found in the Appendix of Forms and shall be modified only to prevent manifest injustice.

Rule 138.1. Sanction for late settlement. Stricken by amendment 1984; see R.C.P. 181.4.

Rule 139. Restriction on orders. Stricken by amendment 1983.

DIVISION VII

DEPOSITION AND PERPETUATION OF TESTIMONY

(A) Depositions

Rule 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 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)~~ (b) 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 the person or the particular class or group to which 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)~~*b. Special notice for taking of deposition by plaintiff*. Leave of court is not required for the taking of a deposition by plaintiff if the notice, in addition to those things required by R.C.P. 147(a):

(1) ~~(A)~~States that the person to be examined is about to go out of the state and will be unavailable for examination unless the person's deposition is taken before the expiration of ten days after the date for motion or answer for any defendant, and

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

If a party shows that upon being served with notice under this subdivision ~~"b"(2)~~ the party was unable through the exercise of

diligence to obtain counsel to represent the party~~him or her~~ at the taking of the deposition, the deposition may not be used against that party.

c. ~~(3)~~ *Enlarging and shortening time.* The court may for cause shown enlarge or shorten the time for taking the deposition.

d. ~~(4)~~ *Recording.* 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 the 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.

e. Place of deposition.

(1) Oral depositions may be taken only within this state or within 100 miles from the nearest Iowa point. But, upon motion of the party desiring the deposition, and after hearing on notice to the other parties, the court may order it orally taken at any other specified place, if the issue is sufficiently important and the testimony cannot reasonably be obtained by written interrogatories or by deposition by telephone.

(2) If the deponent is a party or the officer, partner or managing agent of a party which is not a natural person, the deponent shall be required to submit to examination in the county where the action is pending, unless otherwise ordered by the court.

~~(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 deposition. The procedure of R.C.P. 130 shall apply to the request.~~

f. ~~c.~~ *Failure to attend or 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 the other party and 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 the witness and the witness does not attend because of such failure, and if another party attends in person or by attorney because 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 the other party and the other party's attorney in attending, including reasonable attorney's fees.

g.~~d.~~ Depositions by telephone. Any deposition permitted by these rules may be taken by telephonic means.

A party desiring to take the deposition of any person upon oral examination by telephonic means shall give reasonable notice thereof in writing to every other party to the action. Such notice shall contain all other information required by ~~paragraph "b"(1)~~R.C.P. 147(a) ~~herein~~ and shall state that the telephone conference will be arranged and paid for by the initiating party. No part of the expense for telephone service shall be taxed as costs.

The person reporting the testimony shall be in the presence of the witness unless otherwise agreed by all parties.

If any examining party desires to present exhibits to the witness during the deposition, copies shall be sent to the deponent and the parties prior to the taking of the deposition.

Nothing in this rule shall prohibit a party or counsel from being in the presence of the deponent when the deposition is taken.

COMMENT: All general notice requirements have been consolidated in R.C.P. 147 and the general rules on oral depositions have been consolidated in this rule. Former (b)(1) and former (b)(5) have been moved to R.C.P. 147 (a) and (b) and R.C.P. 147(c), respectively. Revised (e)(1) and (e)(2) have been moved from 147(a) and (d), respectively. The subparagraphs of the rule and the references to other rules have been revised and renumbered accordingly.

Rule 141. Depositions in small claims.~~Restrictions.~~ In small claims, depositions ~~for discovery~~ may not be taken unless leave of court is first obtained on notice and showing of just cause therefor and upon such terms as justice may require.

COMMENT: The revised rule requires leave of court before any depositions may be taken in a small claims case. The prior rule required leave of court for discovery depositions and did not address depositions for evidentiary purposes. The distinction between discovery and evidence depositions was previously abolished.

Rule 142. Deposition notice to parties in default.~~Defaults—Notice.~~ ~~If a~~A party ~~requires~~ requiring proof to obtain a judgment against a defaulted party ~~upon a default, he~~ may take depositions~~,~~ after serving notice on the attorney of record for the defaulted party, or on any defaulted party having no attorney of record~~, if none, on the clerk~~. Parties in default ~~need not be given~~ are not entitled to notice as to depositions taken under any other rule.

COMMENT: The changes eliminate the requirement that a copy of the deposition notice be served on the Clerk if the defaulted party has no attorney of record and add a requirement that notice be given to any defaulted party who has no attorney of record.

Rule 143. Witness lists. Stricken by amendment 1983.

Rule 144. Use of depositions. Any part of a deposition, so far as admissible under the rules of evidence, may be used upon the trial or at an interlocutory hearing or upon the hearing of a motion in the same action against any party who appeared when it was taken, or stipulated therefor, or had due notice thereof, either:

a. To impeach or contradict deponent's testimony as a witness; or

b. For any purpose if, when it was taken, deponent was a party adverse to the offeror, or was an officer, partner, or managing agent of any adverse party which is not a natural person; or

c. For any purpose, if the court finds that the offeror was unable to procure deponent's presence at the trial by subpoena; or that deponent is out of the state and such absence was not procured by the offeror; or that deponent is dead, or unable to testify because of age, illness, infirmity, or imprisonment; or

d. For any purpose, if it was taken of an expert witness specially retained for litigation; or the deponent was a health care practitioner offering opinions or facts concerning a party's physical or mental condition.

e. On application and notice, the court may also permit a deposition to be used for any purpose, under exceptional circumstances making it desirable in the interests of justice; having due regard for the importance of witnesses testifying in open court.

Rule 145. Effect of taking or using depositions.

a. If a party offers only part of a deposition, any other party ~~his adversary~~ may require an ~~him to~~ offer of all of it relevant to the portion offered, ~~,~~ and any other party may offer other relevant parts.

b. A party does not make a deponent the party's ~~his~~ own witness by taking a ~~his~~ deposition or using it solely under R.C.P. 144~~"a"~~(a) or 144~~"b"~~(b). A party introducing a deposition for any other purpose makes the deponent that party's ~~his~~ witness, but may contradict the witness' ~~his~~ testimony by relevant evidence.

Rule 146. Substituted parties; successive actions. Substitution of parties does not prevent use of depositions previously taken ~~and filed~~ in the action. If an action is dismissed, depositions legally taken therein may be used in any subsequent action

involving the same subject matter, between the same parties, their representatives or successors in interest.

COMMENT: As it is no longer necessary to file the deposition, this rule's reference to filing has been deleted.

Rule 147. Notice for oral deposition. ~~**Oral examination--notice.**~~

a. 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 the person or the particular class or group to which the person belongs.

~~*a.* Oral depositions may be taken only in this state, or outside it at a place within one hundred miles from the nearest Iowa point. But, on hearing, on notice, of a motion of a party desiring it, the court may order it orally taken at any other specified place, if the issue is sufficiently important and the testimony cannot reasonably be obtained by written interrogatories or deposition by telephone.~~

b. 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.

~~*b.* The party taking an oral deposition must first serve reasonable notice on all other parties except a party against whom a default has been entered, stating the time and place thereof and the name and address of the deponent, or if that is unknown, a description identifying him or the class or group to which he belongs. The court, on motion of any party so served, may for good cause enlarge or shorten the time.~~

c. 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

deposition. The procedure of R.C.P. 130 shall apply to the request.

d.c. No subpoena is necessary to require the appearance of a party for a deposition. Service on the party or ~~his~~ the party's attorney of record of notice of the taking of a deposition of the party or of an officer, partner or managing agent of any party who is not a natural person, as provided in ~~"b"~~(a) hereof, is sufficient to require the appearance of a deponent for the deposition.

~~*d.* If the deponent is a party or the officer, partner or managing agent of a party which is not a natural person, the deponent shall be required to submit to examination in the county where the action is pending, unless otherwise ordered by the court.~~

e. A notice or subpoena may ~~A party may in his notice and in a subpoena~~ name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the witness~~he~~ will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in these rules.

COMMENT: As noted in the comment to R.C.P. 140, all general notice requirements have been consolidated in this rule and the general rules regarding oral depositions have been consolidated in R.C.P. 140. Thus, former R.C.P. 147(a) is now found at R.C.P. 140(e) and proposed subparagraph (a) was R.C.P. 140(b)(1). Former R.C.P. 147(b) has been deleted and its contents are found in (a) and in R.C.P. 140(c). Subparagraphs (b) and (c) have been moved from R.C.P. 140(b)(1) and (b)(5) respectively. Subparagraph (d) has been renumbered from (c). Former R.C.P. 147(d) has been moved to R.C.P. 140(e)(2).

Rule 148. Conduct of oral deposition ~~examination.~~

a. Examination; ~~and~~ cross-examination; recording ~~of~~ examination; administering the oath; objections. Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness under~~on~~ oath and shall personally, or by someone acting under the officer's~~his~~ direction and in the officer's~~his~~ presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with R.C.P. 140 ~~"b"(4)~~(d). If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition who ~~and he~~ shall transmit them to the officer. The officer ~~, who~~ shall propound them to the witness and record the answers verbatim.

b. Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in R.C.P. 123. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the

taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of R.C.P. 134~~"a"~~(a)(4) apply to the award of expenses incurred in relation to the motion.

Rule 149. Reading and signing depositions.

a. Where reading or signing not required. No oral deposition reported and transcribed by an official court reporter or certified shorthand reporter of Iowa need be submitted to, read or signed by the deponent.

b. Submission to witness; changes; signing. In other cases, when the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness~~him~~, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The ~~If "a" is not applicable, the~~ deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or dead or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty days of its submission ~~to him~~, the officer shall sign it and state on the record the fact of the waiver or of the illness, death, or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor. The ~~; and the~~ deposition may then be used as fully as though signed unless on a motion to suppress under R.C.P. 158~~"f"~~(f) the court holds that the reason given for the refusal to sign requires rejection of the deposition in whole or in part.

Rule 150. Depositions on~~On~~ written interrogatories.

a. A party may take depositions on written interrogatories after first serving all other parties not in default for failure to appear ~~want of appearance~~ with copies thereof and with a notice

stating the name, ~~or~~title, and address of the officer to take them, and the name and address of the deponents.

b. Other~~The adversary~~ parties may thereafter serve successive interrogatories on each other, but only as follows: Cross-interrogatories within ten days after the notice; redirect interrogatories within five days after the latter service; and recross interrogatories within three days thereafter. On application of any party, the court may, for good cause shown, shorten or enlarge the time for serving any such succeeding interrogatories.

c. Within the time required for cross-interrogatories, a ~~the adverse~~ party may elect instead~~,~~ to appear and orally cross-examine, by serving notice thereof on the party taking the deposition and all other parties. The party taking the deposition ~~The latter~~ shall then within five days serve all parties~~the former~~ with notice of the date, hour, and place where the deposition will be taken, which shall allow a reasonable time to enable the ~~adverse~~ parties~~y~~ to attend. A party~~; and~~ may ~~also~~waive the~~his~~ original written interrogatories and examine the deponent orally.

COMMENT: Subparagraphs (b) and (c) have been revised to allow all parties, not just those who are adversaries to the party taking the deposition, to serve written interrogatories, elect to appear and orally cross-examine the witness, and receive notice.

Rule 151. Answers to interrogatories. The party taking a deposition on written interrogatories shall promptly transmit a copy of the notice and all interrogatories to the officer designated in the notice. The officer shall promptly take deponent's answers thereto and complete the deposition, all as provided in R.C.P. 148 and 149, except that answers need not be taken stenographically.

Rule 152. Certification and return; copies.

a. The officer shall certify on the deposition that the witness was duly sworn ~~by him~~ and that the deposition is a true record of the testimony given by the witness. ~~When the deposition~~

~~is transcribed the officer shall file in the action a certificate showing the name of the witness deposed, the cost of reporting and transcribing the deposition, and to whom the original and copies were delivered.~~ Documents and things produced for inspection during the deposition ~~examination of the witness~~ shall, upon the request of the party, be marked for identification and annexed to ~~and returned with~~ the deposition, and may be inspected and copied by any party, except that:

(1) The person producing the materials may substitute copies to be marked for identification, if ~~he affords to~~ all parties are provided fair opportunity to verify the copies by comparison with the originals~~;, and~~

(2) If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to ~~and returned with~~ the deposition. Any party may move for an order that the original materials be ~~annexed to and returned with the deposition to~~ filed with the court, pending final disposition of the case.

~~*b.*~~ **Stricken.** ~~Depositions shall be filed only with the approval of the court upon showing good cause or upon the court's own order.~~

~~*c.*~~*b.* Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

COMMENT: The changes eliminate the requirement that the court reporter file a certificate. R.C.P. 152(b) is deleted as duplicative of new R.C.P. 121.1.

Rule 153. Before whom taken.

a. The officer taking the deposition shall not be a party, a ~~No deposition shall be taken before any party, or any~~ person financially interested in the action, ~~or~~ an attorney or employee of any party, an employee of any such attorney, or any person related

~~by~~ within the fourth degree of consanguinity or affinity ~~within the fourth degree~~ to a ~~any~~ party, a party's ~~his~~ attorney, or an employee of either of them.

b. Depositions within the United States or a territory or insular possession thereof may be taken before any person authorized to administer oaths, by the laws of the United States, this state or any other state, or of the place where the examination is held.

c. Depositions in a foreign land may be taken before a secretary of embassy or legation, or a consul, vice-consul, consul-general or consular agent of the United States, or under R.C.P. 154.

d. The deposition of a ~~When the~~ witness who is in the military or naval service of the United States~~, his deposition~~ may be taken before any commissioned officer under whose command the witness ~~he~~ is serving, or any commissioned officer in the judge advocate general's department.

COMMENT: The amendment to R.C.P. 153(a) adds an employee of a party's attorney to the list of persons before whom depositions may not be taken.

Rule 154. Letters rogatory. A commission or letters rogatory to take depositions in a foreign land shall be issued only when convenient or necessary, on application and notice, and on such terms and with such directions as are just and appropriate. They shall specify the officer to take the deposition, by name or descriptive title, and may be addressed: "To the Appropriate Judicial Authority of (country)".

Rule 155. ~~Subpoena~~Deposition subpoena.

a. On application of any party, or proof of service of a notice to take depositions under R.C.P. 147 or R.C.P. 150, the clerk of court where the action is pending shall issue subpoenas for persons named in and described in said notice of application. Subpoenas may also be issued as provided by statute or by R.C.P. 365~~:~~.

b. No resident of Iowa shall be ~~thus~~ subpoenaed to attend out of the county where ~~he~~the deponent resides, or is employed, or transacts ~~his~~ business in person.

~~*c. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein; but the court, upon motion promptly made by the person to whom the subpoena is directed, or by any other person stating an interest in the documents affected, and in any event at or before the time specified in the subpoena for compliance therewith, may*~~

~~(1) Quash or modify the subpoena if it is unreasonable and oppressive or~~

~~(2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things.~~

COMMENT: The deletion of paragraph (c) and the new reference in paragraph (a) to R.C.P. 365 are intended to transfer to R.C.P. 365 the rules relating to form, content, and judicial control of subpoenas issued for depositions.

Rule 156. Notice Service. Stricken by amendment 1974.

Rule 157. Costs of taking deposition.

~~*a. Generally.*~~ Costs of taking and proceeding to procure a deposition shall be ~~advanced~~paid by the party taking it~~, and he~~ who cannot use it in evidence until such costs are paid. ~~The costs shall be noted in the return or certificate, and taxed by the clerk.~~ The judgment shall award against the losing party only such portion of these costs as were necessarily incurred for testimony offered and admitted upon the trial.

~~*b. Failure to attend.* The court may order the party taking a deposition to pay the adverse party his costs and expenses, including reasonable attorney fees, for attending at the specified time and place for oral cross-examination (being entitled thereto), if the deposition is not then taken for absence of the party, or of the witness due to the party's failure to subpoena him.~~

COMMENT: The reference to the return or certificate in subparagraph (a) has been deleted to make it consistent with the changes to R.C.P. 152 eliminating filing of certificates and depositions. The contents of (b) are found in R.C.P. 140(f).

Rule 158. Irregularities and objections.

a. Notice. All objections to any notice of taking any depositions are waived unless promptly served in writing upon the party giving the notice.

b. Officer. Objection to the officer's qualification to take a deposition is waived unless made before such taking begins, or as soon thereafter as objector knows it or could discover it with reasonable diligence.

c. Interrogatories. All objections to the form of any written interrogatory served under R.C.P. 150 are waived unless the objections are served~~objector serves them~~ on the interrogating party within~~in~~ the time allowed the objector~~him~~ for serving succeeding interrogatories and, as to the last interrogatories authorized, within three days after the service thereof.

d. Taking depositions. Errors or irregularities occurring during an oral deposition as to any conduct or manner of taking it, or the oath, or the form of any question or answer, ~~,~~ and any other errors which might thereupon have been cured, obviated or removed, are waived unless seasonably objected to during the deposition~~when it is taken~~.

e. Testimony. Except as above provided, testimony taken by deposition may be objected to at the trial on any ground which would require its exclusion if given by a witness in open court, and objections to testimony, or competency of a witness, need not be made prior to or during the deposition, unless the grounds thereof could then have been obviated or removed.

f. Motion to suppress. All objections to the manner of transcribing the testimony, or to preparing, signing, certifying, sealing, endorsing, transmitting~~, filing~~ the deposition, or the officer's dealing with it, are waived unless made by motion to

suppress the deposition ~~it,~~ or the part complained of~~,~~. Such motion shall be filed with reasonable promptness after the objector knows of, or could with reasonable diligence discover, the defect. No such motion shall be sustained unless the defect is substantial and materially affects the right of some party.

COMMENT: The reference in R.C.P. 158(f) to filing of depositions is deleted as under new R.C.P. 121.1 depositions are no longer to be filed.

(B) Perpetuating of testimony

Rule 159. Common law preserved. The following rules do not limit the court's common law powers to entertain actions to perpetuate testimony.

Rule 160. Application before action. ~~**Before action application.**~~ An application to take depositions to perpetuate testimony for use in an action not yet pending~~,~~ shall be filed in the court where the prospective action might be brought. The application shall be captioned~~entitled~~ in the name of the applicant, be supported by affidavit, and show:

a. That the applicant~~he~~ expects to be a party to an action cognizable in some court of record of Iowa, but which cannot currently be brought;~~which he is then unable to bring or cause to be brought;~~

b. The subject matter of such action, and the applicant's ~~his~~ interest therein;

c. The facts to be shown by the proposed testimony, and ~~his~~ reasons for desiring to perpetuate it;

d. The name or description of each expected adverse party, with address if known; and

e. The name and address of each deponent and the substance of the deponent's~~his~~ testimony. ~~It shall be filed in the court where the prospective action might be brought.~~

Rule 161. Notice of application. The applicant~~petitioner~~ shall thereafter serve a notice upon each person named in the application ~~petition~~ as an expected adverse party, together with a copy of the

applicationpetition, stating that the applicationpetitioner will come on for hearingapply to the court, at a time and place named therein. , for the order described in the petition. At least twenty days before the date of hearing, theThe notice shall be served as provided for the service of original notices other than by publication at least twenty days before the date of hearing. If ; but if such service cannot with due diligence be so made upon any expected adverse party named in the applicationpetition, the court may make such order as is just for service by publication or otherwise, or may, the court upon a showing of extraordinary circumstances, may prescribe a hearing upon less than twenty days' notice.

Rule 162. Guardian ad litem. Before hearing the application, the court shall appoint ansome attorney to act as guardian ad litem for any personparty under legal disability or not personally served with notice, who shall cross-examine for thehis ward if any deposition is ordered, and unless an attorney has been so appointed the deposition shall not be admissible against such personparty in any subsequent action.

Rule 163. Order allowing application.When ordered who not examined. If satisfied that the applicationpetition is not for the purpose of discovery, and that its allowance may prevent future delay or failure of justice, and that the applicant is unable to bring the contemplated action or cause it to be brought, the court shall order the testimony perpetuated. In its order, the court shall designate , designating the deponents, the subject matter of their examination, the time, location and officerwhen, where and before whom thetheir depositions shall be taken, and whether orally or on written interrogatories.

Rule 164. Taking and filing testimony. Depositions shall be taken as directed in the court'ssaid order; and shall be otherwise governed by R.C.P. 148 to 153 and 158. For the purpose of applying these rules to depositions for perpetuating testimony, each

reference therein to the court in which the ~~application~~petition was filed shall be deemed to refer to the court in which the ~~petition~~application for such deposition was filed. Unless the court enlarges the time, all such depositions must be filed therein within thirty days after the date fixed for taking them, and if not so filed cannot be later received in evidence.

Rule 165. Limitations on use.~~Use limitation.~~ Any party to any later action involving any expected adverse party who was named in the application~~,~~ and who was served with notice as ~~hereinbefore~~ required~~, or involving his~~ in R.C.P. 161 or the privies or successors in interest of such expected adverse party, may use such deposition, or a certified copy thereof, if the deponent is dead, ~~or~~ mentally ill or if the deponent's attendance cannot be obtained. ~~his attendance cannot be obtained.~~

Rule 166. Perpetuating testimony pending appeal. During the time allowed for taking an appeal from judgment of a court of record or during the pendency of such appeal, that court may, on motion, allow testimony to be perpetuated for use in the event of further proceedings before it. The motion shall state the name and address of each proposed deponent, the substance of the deponent's~~his~~ expected testimony, and the reason for perpetuating it. If the court finds such perpetuation is proper to avoid a failure or delay of justice, and the depositions are not sought for discovery, it may order them taken as in R.C.P. 163 and 164. When taken and filed as thus provided, they shall be used and treated as though they had been taken pending the trial of the action.

DIVISION VIII

CHANGE OF VENUE

Rule 167. Grounds for change. On motion, the place of trial may be changed ~~as follows~~in the following situations:

a. County. If the county where the case would be tried is a party, ~~and~~ the motion is by an adverse party, the issue ~~being~~is triable by a jury, and a jury ~~having~~has been demanded~~;~~.

b. Interest of judge. Where the trial judge is directly interested in the action, or related by consanguinity or affinity within the fourth degree to any party ~~so interested;~~.

c. Prejudice or influence. If the trial judge, or the inhabitants of the county, are so prejudiced against the moving party, or if an adverse party has such undue influence over ~~such~~ the county's inhabitants, that the movant cannot obtain a fair trial. The motion in such case shall be supported by affidavit of the movant and three disinterested persons, none being ~~his~~the agent, servant, employee or attorney of the movant, nor related to ~~him~~the movant by consanguinity or affinity within the fourth degree. The other party shall have a reasonable time to file counter affidavits. Affiants may be examined pursuant to R.C.P. 100(f)~~116;~~.

d. Agreement. Pursuant to written agreement of the parties~~;~~.

e. Fraud in contract. A defendant, respondent, or other party, sued in a county where ~~he~~the party does not reside, on a written contract expressly performable in ~~such~~that county, who has filed a sworn answer claiming fraud in the inception of said contract as a complete defense ~~thereto~~, may have the case transferred to the county of ~~his~~that party's residence. Within ten days after the transfer is ordered, ~~he~~the defendant, respondent, or other party must file a bond in an amount fixed by the court, with sureties approved by the clerk, for payment of all costs; and any judgment rendered against ~~him~~such party shall include ~~in such~~ costs in a reasonable amount fixed by the court for expenses incurred by plaintiff and ~~his~~plaintiff's attorney by reason of the change.

Rule 168. Limitations. Change of venue shall not be allowed:

a. In an appeal from a small claims case; or

b. Under R.C.P. 167~~"c"~~(c) where the issues are triable to the court alone, except for prejudice of the judge; or

c. Until the issues are made up, unless the objection is to the judge; or

d. After a continuance, except for a cause arising since such continuance or not known to movant prior thereto; or

e. After one change, for any cause then existing, and known or ascertainable with reasonable diligence.

In no event shall more than two changes be allowed to any party.

Rule 169. Subsequent change. Where the case is tried after a change of place of trial, and the jury disagrees or a new trial is granted, the court may in its discretion allow a subsequent change, under R.C.P. 167~~"a"~~(a), ~~"b"~~(b), ~~"c"~~(c), or ~~"d"~~(d)~~,~~ subject to R.C.P. 168.

Rule 170. Of whole case. A change may be granted on motion of one of several coparties; and the whole cause shall then be transferred, unless separate trials are granted under R.C.P. 186.

Rule 171. Where tried. Unless the change is under R.C.P. 167~~"e"~~(e), the court granting it shall order the trial held in a convenient county in the judicial district, or if the ground applies to all such counties, then ~~of~~in another judicial district. If the ground applies only to a judge, the court in its discretion may refuse a change and procure another judge to try the case where it was brought, or the supreme court may designate ~~such other~~another judge.

Rule 172. Costs. Unless the change is under R.C.P. 167~~"d"~~(d) or 167~~"e"~~(e), the order shall designate generally all costs occasioned by the change, which movant must pay before the change is perfected. Failure to make such payment within ten days from the order waives the change of venue.

Rule 173. Transferring cause. When a change is ordered and the required costs paid, the clerk shall forthwith transmit to the

proper court ~~his~~ a transcript of the proceedings, with any original papers~~, of which he~~and shall retain an authenticated copy. The case shall be docketed in the second court without fee and shall proceed.

Rule 174. Jury fees. Stricken by Report of October 4, 1991, effective January 2, 1992.

Rule 175. Action brought in wrong county.

a. An action brought in the wrong county may be prosecuted there until termination, unless a defendant, before answer, moves for ~~its~~ change to the proper county. Thereupon the court shall order the change at plaintiff's costs, which may include reasonable compensation for defendant's trouble and expense, including attorney's fees, in attending in the wrong county.

b. If all such costs are not paid within twenty days of the transfer order, the action shall be dismissed. Upon payment of the costs, the clerk shall forthwith transmit to the proper court the transcript of the proceedings, with any original papers, an authenticated copy of which shall be retained. The case shall be docketed in the second court without fee and shall proceed.

DIVISION IX

TRIAL AND JUDGMENT

(A) Trials

Rule 176. Trials and issues. A trial is a judicial examination of issues in an action, whether of law or fact. Issues arise where a pleading of one party maintains a claim controverted by an adverse party. Issues are either of law or fact. An issue of fact arises on a material allegation of fact in a pleading which is denied in an adversary's pleading or by operation of law. All other issues are issues of law which must be tried first.

Rule 177. Demand for jury trial.

a. Jury trial is waived if not demanded according to this rule; but a demand once filed may not be withdrawn without consent of all parties not in default.

b. A party desiring a jury trial of an issue must make written demand therefor ~~by filing a separate instrument clearly designating such demand~~ not later than ten days after the last pleading directed to that issue. A jury demand may be made in the pleading of a party and shall be noted in the caption. If filed separately with the petition, the jury demand shall be served with the original notice and petition. If filed after the petition, the jury demand shall be served and filed in accordance with R.C.P. ~~82~~106.

c. Unless limited to a specific issue, every ~~such~~ demand shall be deemed to include all issues triable to a jury. If a limited demand is filed, any other party may, within ten days thereafter or such shorter time as the court may order, file ~~his~~a demand for a jury trial of some or all other issues.

d. Notwithstanding the failure of a party to demand a jury in an action in which ~~such~~a demand might have been made of right, the court, in its discretion on motion and for good cause shown, but not ex parte, and upon such terms as the court prescribes, may order a trial by jury of any or all issues.

COMMENT: As in federal court practice, the requirement that jury demands must be made on a separate instrument has been eliminated.

Rule 178. To court or jury. All issues shall be tried to the court except those for which a jury is demanded. Issues for which a jury is demanded shall be tried to a jury unless the court finds that there is no right thereto or all parties appearing at the trial waive a jury in writing or orally in open court.

Rule 178.1. Reporter's fee—small cases. Stricken January 26, 1987, effective April 1, 1997. See Iowa Code § 631.11(3).

Rule 179. Findings by court.

a. The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law; and direct an appropriate judgment. No request for findings is necessary for purposes of review. Findings of a master shall be deemed those of the court to the extent it adopts them.

b. On motion joined with or filed within the time allowed for a motion for new trial, the findings and conclusions may be enlarged or amended and the judgment or decree modified accordingly or a different judgment or decree substituted. But a party, on appeal, may challenge the sufficiency of the evidence to sustain any finding without having objected to it by such motion or otherwise. Resistances to such motions and replies may be filed and supporting briefs may be served as provided in R.C.P. 100(d) and (e).

Rule 180. Exceptions unnecessary. Exceptions to rulings or orders of court are unnecessary whenever a matter has been called to the attention of the court, by objection, motion or otherwise and the court has ruled thereon.

Rule 181. ~~Trial certificate, response.~~ Civil trial setting conference.

~~*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. 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. _____~~

~~*b.* The opposing party shall be deemed to agree with the trial certificate in all respects, unless such party files a response within fourteen days after its service, stating the points of disagreement.~~

~~*c.* On each motion day, the clerk of court shall present to the court the file in each civil case in which a trial certificate and an objection to it have been on file for more than seven days or in which a trial certificate has been on file, without objection, for more than twenty days.~~

~~*d.* After a trial certificate is served and filed, a pretrial conference of the case will be held under R.C.P. 136, if requested by a party or ordered by the court.~~

No later than 120 days after a case has been commenced the clerk shall send a notice of civil trial setting conference to all parties not in default. A party may move for an earlier trial setting conference, giving notice to all parties.

~~**Rule 181.1 Trial certificate list.** The clerk shall maintain a current list of pending actions wherein a trial certificate has been filed. It shall be known as the Trial Certificate List and be available for public examination. It shall be arranged in columnar form to show: (1) Caption of cause, (2) docket, page and cause number, (3) date of filing of trial certificate, (4) jury or nonjury case, and (5) if removed from list, date of such removal. If removed by order of court the clerk may relist it only upon the~~

~~filing of a new trial certificate. If not so removed, actions will remain on list until final disposition.~~

COMMENT: R.C.P. 181, 181.1 - These rules are unnecessary in view of the Supreme Court's Administrative Directive Regarding Implementation of Time Standards for Case Processing. They have been replaced by a new R.C.P. 181.

Rule 181.2 Trial assignments.

a. Civil cases. The court, in the exercise of its discretion, may assign a case for trial by order upon any one of the following:

(1) The conclusion of a scheduling or pretrial conference;

(2) The ~~filing of a trial certificate and consultation with counsel for all parties~~ conclusion of a trial setting conference;

(3) The agreement of all parties or their counsel; or

(4) The court's own motion after consultation with counsel for all parties. Trial of a dissolution of marriage or a small claim may be set without consulting counsel subject to rescheduling by the court administrator upon the request of counsel in the event of a scheduling conflict.

The court may delegate its power and duty to assign cases for trial to the court administrator or other suitable person.

b. Small claims appeals. At least twice each month, the clerk of court shall present to a ~~district judge or district associate~~ judge authorized by statute to hear the appeal, the file and any transcript or exhibits in each small claims case in which appeal was taken more than twenty days previously. The ~~judge~~ appeal shall be decided ~~the appeal~~ upon the record without oral argument unless, within twenty days after the appeal was taken, a party filed with the clerk of court a written request for oral argument specifying the issues to be argued, in which event the judge ~~shall~~ may schedule oral argument. Additional evidence shall not be received except as authorized by statute.

COMMENT: The change in (a)(2) will make R.C.P. 181.2 consistent with deletion of R.C.P. 181 and 181.1. The change in (b) will make oral arguments discretionary. The court should have

discretion to decide that oral arguments are not necessary, even if requested by one of the parties.

Rule 181.3 Duty to notify court.

a. Of settlements. Whenever a case assigned for trial has been settled, it shall be the duty of the attorneys or parties appearing in person to so notify the court immediately.

b. Of conflicting engagements and termination thereof. When a case assigned for trial is reached and an attorney of record therein is then actually engaged in a trial in another court, it shall be ~~his~~the attorney's duty to so inform the court who may hold the trial of such case in abeyance until the engagement is concluded. As soon as the attorney is free from such engagement it shall be ~~his~~the attorney's duty to notify the court immediately and stand ready to proceed with trial of the case.

Rule 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, or the case is settled during trial, a fee of $500 shall be assessed as court costs. A late settlement fee shall not be waived by the court. Fees so collected shall be remitted by the clerk to the treasurer of state to be deposited in the general fund of the state.

Rule 182. Motions for continuance.

a. Motions for continuance shall be filed without delay after the grounds therefor become known to the party or the party's counsel. Such motion may be amended only to correct a clerical error.

b. No case assigned for trial shall be continued ex parte. All motions for continuance in a case set for trial shall be signed by counsel, if any, and approved in writing by the party represented, unless such approval is waived by court order.

Rule 183. Causes for continuance.

a. A continuance may be allowed for any cause not growing out of the fault or negligence of the ~~applicant~~movant, which satisfies the court that substantial justice will be more nearly obtained. It shall be allowed if all parties so agree and the court approves.

b. All such motions based on absence of evidence must be supported by affidavit of the party, ~~his~~the party's agent or attorney, and must show: (1) the name and residence of the absent witness, or, if unknown, that affiant has used diligence to ascertain them; (2) what efforts, constituting due diligence, have been made to obtain such witness or ~~his~~the witness' testimony, and facts showing reasonable grounds to believe the testimony will be procured by a certain, specified date; (3) what particular facts, distinct from legal conclusions, affiant believes the witness will prove, ~~and that he~~affiant believes ~~them~~the facts to be true, and affiant knows of no other witness by whom ~~they~~ facts can be fully proved. If the court finds such motion sufficient, the adverse party may avoid the continuance by admitting that the witness if present, would testify to the facts therein stated, as the evidence of such witness.

Rule 184. Objections; ruling; costs. The adverse party may at once, or within such reasonable time as the court allows, file specific written objections to the motion for continuance, which shall be part of the record. Where the defenses are distinct, the cause may be continued as to any one or more defendants. Every continuance shall be at the cost of the movant unless otherwise ordered by the court.

Rule 185. Consolidation. Unless some party shows ~~he~~the party will be prejudiced thereby the court may consolidate separate actions which involve common questions of law or fact or order a single trial of any or all issues therein. In such cases it may make such

orders concerning the proceedings as tend to avoid unnecessary costs or delay.

Rule 186. Separate trials. In any action the court may, for convenience or to avoid prejudice, order a separate trial of any claim, counterclaim, cross-claim, cross-petition, or of any separate issue, ~~of fact,~~ or any number of any of them. Any claim against a party may be thus severed and proceeded with separately.

COMMENT: The court should have discretion to order separate trials on cross-petitions where appropriate.

Rule 187. Impaneling jury.

a. Selection. At each jury trial ~~the clerk shall select~~a person designated by the court shall select sixteen jurors by drawing ~~them~~their names from a box without seeing the names. ~~The clerk shall list a~~All jurors so drawn shall be listed. 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.

b. Oath or examination. The prospective jurors shall be sworn. The parties ~~may then~~ shall have the right to examine those drawn. The court may conduct such examination as it deems proper. It may on its own motion exclude any juror.

c. Challenges. Challenges are objections to trial jurors for cause, and may be either to the panel or to an individual juror. The court shall determine the law and fact as to all challenges, and must either allow or deny them.

d. To panel. Before any juror is sworn, either party may challenge the panel, in writing, distinctly specifying the grounds, which can be founded only on a material departure from the statutory requirements for drawing or returning the jury. On trial thereof, any officer, judicial or ministerial, whose irregularity is complained of, and any other persons, may be examined concerning

the facts specified. If the court sustains the challenge it shall discharge the jury, no member of which can serve at that trial.

e. To juror. Challenge to an individual juror must be made before the jury is sworn to try the case. On demand of either party to a challenge, the juror shall answer every question pertinent to the inquiry, and other evidence may be taken.

f. For cause. A juror may be challenged by ~~either~~a party for any of the following causes: (1) Conviction of a felony; (2) want of any statutory qualification required to make ~~him~~that person a competent juror; (3) physical or mental defects rendering ~~him~~the person incapable of performing the duties of a juror; (4) consanguinity or affinity within the ninth degree to the adverse party; (5) being a conservator, guardian, ward, ~~master, servant,~~ employer, employee, agent, landlord, ~~or~~ tenant, family member, or member of the household of the adverse party~~;, or a member of his family or in his employ; or~~ (6) being a client of the firm of any attorney engaged in the cause; ~~(6)~~(7) being a party adverse to the challenging party in any civil action; or having complained of or been accused by ~~him~~the challenging party in a criminal prosecution; ~~(7)~~(8) having already sat upon a trial of the same issues; ~~(8)~~(9) having served as a grand or trial juror in a criminal case based on the same transaction; ~~(9)~~(10) when it appears the juror has formed or expressed an unqualified opinion on the merits of the controversy, or shows a state of mind which will prevent ~~him~~the juror from rendering a just verdict; ~~(10)~~(11) being interested in a question like the issue to be tried; ~~(11)~~(12) having requested, directly, or indirectly, that ~~his~~the person's name be returned as a juror. ~~for the regular biennial period; (12) having served in the district court as a grand or petit juror during the last preceding calendar year.~~

Exemption from jury service is not a ground of challenge, but the privilege of the person exempt.

g. Number; striking. Each side must strike four jurors. Where there are two or more parties represented by different

counsel, the court in its discretion may authorize and fix an additional number of jurors to be impaneled and strikes to be exercised. After all challenges are completed, plaintiff and defendant shall alternately exercise their strikes.

h. Vacancies. After a challenge is sustained, another juror shall be called and examined and shall be subject to being challenged or stricken as are other jurors.

i. Jury sworn. ~~The clerk shall read t~~The names of the eight jurors who remain on the list after all others have been stricken shall be read. These shall constitute the jury and shall be sworn substantially as follows:

"You and each of you do solemnly swear (or affirm) that you will well and truly try the issues wherein _____ is plaintiff and _____ is defendant, and a true verdict render; and that you will do so solely on the evidence introduced and in accordance with the instructions of the court~~; so help you God~~."

COMMENT: (a) The change will allow the court to designate someone other than the clerk to draw jurors' names.

(b) The rule now makes it clear that a party has a right to examine the jury panel.

(f) Being a conservator or member of the household of the adverse party are added to the grounds for challenge, and subpart (6) is changed to make it clear that being a client of the firm of any attorney constitutes a ground for challenge. Also, former (12) has been deleted in light of the fact that jurors may serve on a panel for several months, and prior service during that period should not be grounds for challenge for cause.

Rule 188. Saturday a religious day. ~~No juror whose religious faith requires him to keep the seventh day of the week can be compelled to attend on that day, prior to final submission of the case.~~Prior to final submission of the case, no juror whose faith requires observing Saturday as a religious day can be compelled to attend on that day.

COMMENT: No substantive change is intended; the change recommended is for clarity.

Rule 189. Juror incapacity; minimum number of jurors.

a. Juror incapacity. In the event any juror becomes unable to act, or is disqualified, before the jury retires the remaining jurors shall continue to try the case.

b. Minimum of six jurors required. In the event more than two jurors become unable to act, or are disqualified, before the jury retires and renders a verdict, the court shall declare a mistrial.

Rule 190. Returning ballots to box. When a jury is sworn, the ballots containing the names of those absent or excused from the trial shall be immediately returned to the box. Those containing the names of jurors sworn shall be set aside, and returned to the box immediately on the discharge of that jury.

Rule 191. Procedure after jury sworn. After the jury is sworn, the trial shall proceed in the following order:

a. The party having the burden of proof on the whole action may briefly state ~~his~~the party's claim, and by what evidence the party ~~he~~ expects to prove it;

b. The other party may similarly state that party's ~~his~~ defense and evidence;

c. The first above party must then produce that party's ~~his~~ evidence; to be followed by that of the adverse party;

d. The parties will be confined to rebutting evidence, unless the court in furtherance of justice, permits them to offer evidence in their original case;

e. Only ~~But~~ one counsel on each side shall examine the same witness, unless otherwise permitted by the court.

Rule 192. Further testimony for mistake. At any time before final submission, the court may allow any party to offer further testimony to correct an evident oversight or mistake, imposing such terms as it deems just.

Rule 193. Adjournments. After trial begins, the court may, in furtherance of justice, adjourn it for such time, and on such conditions as to costs or otherwise, as it deems just.

Rule 194. View. When the court deems proper, it may order an officer to conduct the jury in a body to view any real or personal property, or any place where a material fact occurred, and to show it to them. No other person shall speak to them during their absence on any subject connected with the trial.

Rule 195. Arguments. The parties may either submit the case or argue it. The party with the burden of the issue shall have the opening and closing arguments. In opening, ~~he~~the party shall disclose all points ~~he~~the party relies on, and if ~~his~~the party's closing argument refers to any new material point or fact not so disclosed, the adverse party may reply thereto, which shall close the argument. A party waiving opening argument is limited, in closing, to reply to the adverse argument; otherwise the adverse party shall have the closing argument. The court may limit the time for argument to itself, but not for arguments to the jury.

Rule 196. Instructions. The court shall instruct the jury as to the law applicable to all material issues in the case and such instructions shall be in writing, in consecutively numbered paragraphs, and shall be read to the jury without comment or explanation; provided, however, that ~~in actions triable to a jury where the amount in controversy as shown by the pleadings is less than two thousand dollars, and~~ in any action where the parties so agree, the instructions may be oral. At the close of the evidence, or such prior time as the court may reasonably fix, any party may file written requests that the jury be instructed as set forth in such requests. Before argument to the jury begins, the court shall furnish counsel with a preliminary draft of instructions which it expects to give on all controversial issues, which shall not be part of the record. Before jury arguments, the court shall give to each counsel a copy of its instructions in their final form, noting

this fact of record and granting reasonable time for counsel to make objections, which shall be made and ruled on before arguments to the jury. Within such time, all objections to giving or failing to give any instruction must be made in writing or dictated into the record, out of the jury's presence, specifying the matter objected to and on what grounds. No other grounds or objections shall be asserted thereafter, or considered on appeal. But if the court thereafter revises or adds to the instructions, similar specific objection to the revision or addition may be made in the motion for new trial, and if not so made shall be deemed waived. All instructions and objections, except as above provided, shall be part of the record. Nothing in these rules shall prohibit the court from reading to the jury one or more of the final instructions at any stage of the trial, provided that counsel for all parties has been given an opportunity to review the instructions being read and to make objections as provided in this rule. Any instructions read prior to conclusion of the evidence shall also be included in the instructions read to the jury following conclusion of the evidence.

COMMENT: The deletion is made because actions where the amount in controversy is less than two thousand dollars are now small claims actions.

Rule 197. Additional instructions. While the jury is deliberating, the court may in its discretion further instruct the jury, in the presence of or after notice to counsel. Such instruction shall be in writing, be filed as other instructions in the case, and be a part of the record and any objections thereto shall be made in a motion for a new trial.

Rule 198. ~~**What jury may take.** When retiring to deliberate, the jury shall take with them all exhibits in evidence except as otherwise ordered. Depositions shall not be so taken unless all the evidence is in writing and none has been stricken out.~~**Materials available to jurors.**

a. Notes. Jurors shall be permitted to take notes during the trial using materials to be provided by the court on the request of any juror. The court shall instruct the jury that the notes are not evidence and must be destroyed at the completion of the jury's deliberations.

b. What jury may take to jury room. When retiring to deliberate, jurors may take their notes with them and shall take with them all exhibits in evidence except as otherwise ordered. Depositions shall not be taken unless all of the evidence is in writing and none of it has been stricken.

COMMENT: This change makes it clear that jurors will be permitted to take notes during the trial and to take them to the jury room.

Rule 199. Separation and deliberation of jury.

a. A jury once sworn shall not separate unless so ordered by the court, who must then advise them that it is the duty of each juror not to converse with any other juror or person, nor ~~suffer himself to~~ be addressed on the subject of the trial; and that, during the trial it is the duty of each juror to avoid, as far as possible, forming any opinion thereon until the cause is finally submitted ~~to him~~.

b. On final submission, the jury shall retire for deliberation, and be kept together in charge of an officer until they agree on a verdict or are discharged by the court, unless the court permits the jurors to separate temporarily overnight, on weekends or holidays, or in emergencies. During their deliberations, the officer in charge must not ~~suffer~~allow any communication to be made to them, nor may the officer make any ~~himself~~, except to ask them if they have agreed on a verdict, unless by order of court; nor communicate to any person the state of their deliberations, or the verdict agreed upon before it is rendered.

Rule 200. Discharge; retrial. The court may discharge a jury because of any accident or calamity requiring it, or by consent of

all parties, or when on an amendment a continuance is ordered, or if they have deliberated until it satisfactorily appears that they cannot agree. The case shall be retried immediately or at a future time, as the court directs.

Rule 201. Court open for verdict. The court may adjourn as to other business while the jury is absent, but shall be open for every purpose connected with the cause submitted to the jury until it returns a verdict or is discharged.

Rule 202. Food and lodging. The court may order that food and lodging be provided at state expense for a jury being kept together to try or deliberate on a cause.

Rule 203. Rendering verdict and answering interrogatories.

a. Number. Before a general verdict, special verdicts, or answers to interrogatories are returned, the parties may stipulate that the finding may be rendered by a stated majority of the jurors. In the absence of such stipulation, a general verdict, special verdicts, or answers to interrogatories must be rendered unanimously. However, a general verdict, special verdict, or answers to interrogatories may be rendered by all jurors excepting one of the jurors if the jurors have deliberated for a period of not less than six hours after the issues to be decided have been submitted to them.

b. Return-poll. The jury agreeing on a general verdict, special verdicts, or answers to interrogatories shall bring the finding into court where it shall be read to the jury and inquiry made if it is the jury's finding. A party may then require a poll, whereupon the court or clerk shall ask each juror if it is ~~his or her~~the juror's finding. If the required number of jurors do not express agreement, the jury shall be sent out for further deliberation; otherwise, the finding is complete and, unless otherwise provided by law, the jury shall be discharged.

c. Sealed. When, by consent of the parties and the court, the jury has been permitted to seal its finding and separates

before it is rendered, such sealing is equivalent to a rendition and a recording thereof in open court, and such jury shall not be polled or permitted to disagree with respect thereto.

Rule 204. Form and entry of verdicts. General verdicts, special verdicts, and answers to interrogatories shall be in writing. When unanimous they shall be signed by the foreman chosen by the jury, and when they are not unanimous they shall be signed by all jurors concurring therein. They shall be sufficient in form if they express the intent of the jury. They shall be filed with the clerk and be entered of record after being put in form by the court if need be.

Rule 205. Special verdicts. The court may require that the verdict consist wholly of special written findings on each issue of fact. It shall then submit in writing questions susceptible of categorical or brief answers, or forms of several special findings that the jury might properly make under the issues and evidence, or submit the issues and require the findings in any other appropriate manner. It shall so instruct the jury as to enable it to find upon each issue submitted. If the submission omits any issue of fact, any party not demanding submission of such issue before the jury retires waives jury trial thereof, and the court may find upon it; failing which, it shall be deemed found in accord with the judgment on the special verdict. The court shall direct such judgment on the special verdict and answers as is appropriate thereto. Special interrogatories under Iowa Code chapter 668 shall be treated as special verdicts for purposes of these rules.

Rule 206. Interrogatories. The jury in any case in which it renders a general verdict may be required by the court, and must be so required on the request of any party to the action, to find specially upon any particular questions of fact, to be stated to it in writing, which questions of fact shall be submitted to the attorneys of the adverse party before argument to the jury is commenced. The instructions shall be such as will enable the jury to answer the interrogatories and return the verdict. If both are

harmonious, the court shall order the appropriate judgment. If the answers are consistent with each other, but any is inconsistent with the general verdict, the court may order judgment appropriate to the answers notwithstanding the verdict, or a new trial, or send the jury back for further deliberation. If the answers are inconsistent with each other, and any is inconsistent with the verdict, the court shall not order judgment, but either send the jury back or order a new trial.

Rule 207. Reference to master. A "master" includes a referee, auditor or examiner. On a showing of exceptional conditions requiring it, the court may appoint a master as to any issues not to be tried to a jury. The clerk shall ~~forthwith~~ furnish the master with a copy of the order of appointment.~~appointing him~~.

Rule 208. Compensation. The court shall fix the master's compensation and order it paid or advanced by such parties, or from such fund or property, as it may deem just. Execution may issue on such order at the master's demand. ~~He~~The master shall not retain ~~his~~ any reports as security for ~~his~~ compensation.

Rule 209. Powers. The order may specify or limit the master's powers or duties, ~~or~~ the issue on which ~~he is to~~ a report is to be made, or the time within which a hearing shall be held or a report filed, ~~he shall hold hearings or file his report;~~ or specify that ~~he~~the master merely take and report evidence. ~~But except~~Except as so limited ~~he~~the master shall have and exercise power to regulate all proceedings before ~~him~~the master; to administer oaths and to do all acts and take all measures appropriate for the efficient performance of ~~his~~the master's duties; to compel production before ~~him~~the master of any witness or party, whom ~~he~~the master may ~~himself~~ examine, or of any evidence on any matters embraced in the reference, and to rule on admissibility of evidence. ~~He~~The master shall, on request, make a record of evidence offered and excluded. ~~He~~The master may appoint a shorthand reporter whose fees shall be advanced by the requesting party.

Rule 210. Speedy hearing. Upon ~~his~~ appointment the master shall ~~forthwith~~ notify the parties of the time and place of their first meeting, ~~before him,~~ which shall be within twenty days or such other time as the court's order may fix. If a party so notified fails to appear, the master may proceed ex parte, or, in ~~his~~the master's discretion, adjourn to a future day, giving notice thereof to the absent party. It is the duty of the master to proceed with all reasonable diligence; and the court, after notice to the master and the parties, may order ~~him~~the master to expedite proceedings or make a ~~his~~ report.

Rule 211. Witnesses. Any party may subpoena witnesses before a master as for trial in open court; and a witness failing to appear or testify without good cause shall be subject to the same punishment and consequences.

Rule 212. Accounts. The master may prescribe the form for submission of accounts which are in issue ~~before him~~. In any proper case ~~he~~the master may require or receive in evidence the statement of a certified public accountant who testifies as a witness. If any item submitted or stated is objected to, or shown insufficient in form, the master may require that a different form be furnished, or that the accounts or any item thereof be proved by oral testimony or written interrogatories of the accounting parties, or in such other manner as ~~he~~the master directs.

Rule 213. Filing report. The master shall file with the clerk the original exhibits, and ~~a~~any transcript of the proceedings and evidence, ~~before him, if there be one,~~ otherwise a ~~his~~ summary thereof, with a ~~his~~ report on the matters submitted ~~to him~~ in the order of reference, including separate findings and conclusions if so ordered. The master~~He~~ may ~~previously~~ submit a draft of ~~his~~the report to counsel for their suggestions.

Rule 214. Disposition. The clerk shall ~~forthwith~~ mail notice of filing the report to all attorneys of record. ~~; and within~~Within ten days after mailing~~thereafter~~, unless the court enlarges the

time, any party may file written objections to it. Application for action on said report, or objections, shall ~~be by motion, to~~ be heard on such notice as the court prescribes. The report shall have the same effect whether or not the reference was by consent; but where parties stipulate that the master's findings shall be final, only questions of law arising upon the report shall thereafter be considered. The court shall accept the master's findings of fact unless clearly erroneous; and may adopt, reject or modify the report wholly or in any part, or recommit it with instructions.

Rule 215. Voluntary dismissal. A party may, without order of court, dismiss that party's own petition, counterclaim, cross-claim, cross-petition or petition of intervention, at any time up until ten days before the trial is scheduled to begin. Thereafter a party may dismiss an action or 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 that party on the merits, unless otherwise ordered by the court, in the interests of justice.

Rule 215.1. Uniform rule for dismissal for want of prosecution. It is the declared policy that in the exercise of reasonable diligence every civil and special action, except under unusual circumstances, shall be brought to issue and tried within one year from the date it is filed and docketed and in most instances within a shorter time.

All cases at law or in equity where the petition has been filed more than one year prior to July 15 of any year shall be for trial at any time prior to January 1 of the next succeeding year.

The clerk shall prior to August 15 of each year give notice to counsel of record as provided in R.C.P. ~~82~~106 of ~~a.~~ the docket number, ~~b.~~ the names of parties, ~~c.~~ counsel appearing, and ~~d.~~ date of filing petition~~,~~. ~~and the~~The notice shall state that such case will be for trial and subject to dismissal if not tried prior to January 1 of the next succeeding year pursuant to this rule. All such cases shall be assigned and tried or dismissed without prejudice at plaintiff's costs unless satisfactory reasons for want of prosecution or grounds for continuance be shown by application and ruling thereon after notice and not ex parte. This rule shall not apply to cases (*a*) pending on appeal from a court of record to a higher court or under order of submission to the court; (*b*) in which proceedings subsequent to judgment or decree are pending; (*c*) which have been stayed pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940 ~~[40 Stat. L. 440; now covered by~~ 50 U.S.C. app. § 501~~]~~; (*d*) where a party is paying a claim pursuant to written stipulation on file or court order; and (*e*) awaiting the action of a referee, master or other court appointed officer; provided, however, that a finding as to (*a*) through (*e*) is made and entered of record. The case shall not be dismissed if there is a timely showing that the original notice and petition have not been served and that the party resisting dismissal has used due diligence in attempting to cause process to be served.

No continuance under this rule shall be by stipulation of parties alone but must be by order of court. Where appropriate the order of continuance shall be to a date certain.

The trial court may, in its discretion, and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, reinstate the action or actions so dismissed. Application for such reinstatement, setting forth the grounds therefor, shall be filed within six months from the date of dismissal.

Rule 216. Involuntary dismissal. A party may move for dismissal of any action or claim against ~~him~~ the party or for any appropriate order of court, if the party asserting it fails to comply with these rules or any order of court. After a party ~~the plaintiff~~ has rested, ~~completed his evidence, a defendant~~ the adverse party may move for dismissal because ~~plaintiff has shown~~ no right to relief has been shown, under the law or facts, without waiving ~~his~~the right to offer evidence thereafter.

Rule 217. Effect of dismissal. All dismissals not governed by R.C.P. 215 or not for want of jurisdiction or improper venue, shall operate as adjudications on the merits unless they specify otherwise.

Rule 218. Costs of previously dismissed action. Where a plaintiff sues on a ~~cause of action~~claim that was previously dismissed against the same defendant in any court of any state or the United States the court may stay such suit until the costs of the prior action are paid.

(B) Judgments generally

Rule 219. Judgment defined. Every final adjudication of any of the rights of the parties in an action is a judgment.

Rule 220. ~~For part in abatement~~ Partial judgment. A party who succeeds in part only may have judgment expressly for the successful part ~~on which he succeeds,~~ and against ~~him~~that party as to the rest. ~~The findings and judgment must distinguish between matter in abatement and bar; and a judgment in abatement and not on the merits must so declare.~~

COMMENT: The second sentence of this rule is not necessary.

Rule 221. As to some parties only. Where the action involves two or more parties, the court may, in its discretion, and though it has jurisdiction of them all, render judgment for or against some of them only, whenever the prevailing party would have been entitled thereto had the action involved ~~him~~the prevailing party

alone, or whenever a several judgment is proper; leaving the action to proceed as to the other parties.

Rule 222. Judgment on the pleadings~~, etc~~. Any party may, at any time, on motion, have any judgment to which ~~he~~ that party is entitled under the uncontroverted facts stated in all the pleadings, or on any portion of ~~his~~that party's claim or defense which is not controverted, leaving the action to proceed as to any other matter of which such judgment does not dispose.

Rule 223. On verdict. The clerk must forthwith enter judgment upon a verdict when filed, unless it is special, or the court has ordered the case reserved for future argument or consideration.

Rule 224. Principal and surety; order of liability. A judgment against principal and surety shall recite the order of their liability upon it. A "surety" includes all persons whose liability on the claim is ~~posterior~~secondary to that of another.

Rule 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~~The court, on motion, may order that both parties make payment into court for distribution, 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~~that party by the other party.

Rule 226. By agreement. Except in actions for dissolution of marriage, separate maintenance and annulment of marriage, the clerk shall forthwith enter any judgment upon which all parties agree in

open court, or by writing filed with the clerk; and execution may issue forthwith unless otherwise agreed.

Rule 227. Entry. All judgments and orders must be entered on the record of the court and clearly specify the relief granted or the order made.

Rule 227.1. Taxation of costs. Where an action is disposed of without payment, or provision for assessment, of court costs the clerk shall at once enter judgment for costs against the plaintiff.

Rule 228. Notes surrendered. The clerk shall not, unless by special order of the court, enter or record any judgment based on a note or other written evidence of indebtedness until such note or writing is first filed with ~~him~~the clerk for cancellation.

Rule 229. Affidavit of identity. The clerk shall not enter a personal judgment until the creditor, ~~his~~creditor's agent or attorney, files an affidavit stating the full name, occupation and residence of the judgment debtor, to affiant's information and belief. If such residence is in an incorporated place of more than five thousand population, the affidavit shall include the street number of debtor's residence and business address, if any. But a judgment entered or recorded without such affidavit shall not be invalid.

(C) Defaults and judgments thereon

Rule 230. Default defined. A party shall be in default whenever that party: (*a*) fails to serve, and within a reasonable time thereafter file, a 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~~*b*) withdraws a pleading without permission to replead~~;~~; ~~or withdraws in appearance~~ or (*c*) fails to be present for trial; or (*d*) fails to comply with any order of court; or (*e*) ~~do~~does any act which permits entry of default under any rule or statute.

Rule 231. ~~How Entered~~Procedure for entry of default.

a. **Entry.** If a party not under legal disability or not a prisoner in a reformatory or penitentiary is in default under R.C.P. 230~~"a"~~(a) or (b), the clerk, ~~on demand of the adverse party, must forthwith enter such default of record~~shall enter that party's default in accordance with the procedures set forth below without any order of court. All other defaults shall be entered by the court.

b. **Application.** Requests for entry of default under rule 231(a) shall be by written application to the clerk of the court in which the matter is pending. No default shall be entered unless the application contains a certification that written notice of intention to file the written application for default was given after the default occurred and at least 10 days prior to the filing of the written application for default. A copy of the notice shall be attached to the written application for default. If the certification is filed, the clerk on request of the adverse party, must enter the default of record without any order of court.

c. **Notice.**

(1) **To the party.** A copy of the notice of intent to file written application for default shall be sent by ordinary mail to the last known address of the party claimed to be in default. No other notice to a party claimed to be in default is required.

(2) **Represented party.** When a party claimed to be in default is known by the party requesting the entry of default to be represented by an attorney, whether or not that attorney has formally appeared, a copy of notice of intent to file written application for default shall be sent by ordinary mail to the attorney for the party claimed to be in default. This rule shall not be construed to create any obligation to undertake any affirmative effort to determine the existence or identity of counsel representing the party claimed to be in default.

(3) **Computation of time.** The 10-day period specified in R.C.P. 231(b) shall begin from the date of mailing notice, not the receipt thereof.

(4) **Form of notice.** The notice required by R.C.P. 231(b) shall be substantially as set forth in Form 9 in the Appendix to Forms to the Iowa Rules of Civil Procedure.

d. **Applicability.** The notice provisions of this rule shall not apply to a default sought and entered in the following cases: (1) any case prosecuted under small claims procedure; (2) any forcible entry and detainer case, whether or not placed on the small claims docket; (3) any juvenile proceeding; and (4) against any party claimed to be in default when service of the original notice on that party was by publication.

COMMENT: The purpose of this rule is to implement the 10-day notice provisions as suggested by *Central National Insurance Co. v. INA*, 513 N.W.2d 750 (Iowa 1994).

Rule 232. Judgment on default. Judgment upon a default shall be rendered as follows:

a. Where the claim is for a sum certain, or which by computation, can be made certain, the clerk, upon request, shall make such computation as may be necessary, and upon affidavit that the amount is due shall enter judgment for that amount, and costs against the party in default.

b. In all cases the court on motion of the prevailing party, shall order the judgment to which the prevailing party is entitled, provided notice and opportunity to respond ~~has~~have been given to any party who has appeared, and the clerk shall enter the judgment so ordered. If no judge is holding court in the county, such order may be made by a judge anywhere in the judicial district as provided in R.C.P. ~~120~~115. The court may, and on demand of any party not in default shall, either hear any evidence or accounting required to warrant the judgment or refer it to a master; or submit it to a jury if proper demand has been made therefor under R.C.P. 177.

Rule 233. ~~Notice~~ Notice of default in certain cases. When any judgment other than one in rem has been taken by default against a party served with notice delivered to another person as provided in R.C.P. 56.1~~"a"~~(a), the clerk shall immediately give written notice thereof, by ordinary mail to such party at ~~his~~ that party's last known address, or the address where such service was had. The clerk shall make a record of such mailing. Failure to give such notice shall not invalidate the judgment.

Rule 234. On published service. No personal judgment shall be entered against a person served only by publication or by publication and mailing, as provided in R.C.P. 60.1, unless ~~he~~ that party has appeared.

Rule 235. Relief in other cases. The judgment may award any relief consistent with the petition and embraced in its issues; but unless the defaulting party has appeared, it cannot exceed what is demanded. ~~against him in the petition as limited by the original notice.~~

Rule 236. Setting aside default. On motion and for good cause shown, and upon such terms as the court prescribes, but not ex parte, the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. Such motion must be filed promptly after the discovery of the grounds thereof, but not more than sixty days after entry of the judgment. Its filing shall not affect the finality of the judgment or impair its operation.

(D) Summary judgments

Rule 237. On what claims. Summary judgment may be had under the following conditions and circumstances:

a. For claimant. A party seeking to recover upon a claim, counterclaim, cross-petition or cross-claim or to obtain a declaratory judgment may, at any time after the appearance day or after the filing of a motion for summary judgment by the adverse

party, move with or without supporting affidavits for a summary judgment in ~~his~~that party's favor upon all or any part thereof.

b. For defending party. A party against whom a claim, counterclaim, cross-petition or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment ~~his~~ in that party's favor as to all or any part thereof.

c. Motion and proceedings thereon. The motion shall be filed not less than ~~forty-five~~60 days prior to the date the case is set for trial, unless otherwise ordered by the court. Any party resisting the motion shall file a resistance within ~~ten~~15 days, unless otherwise ordered by the court, from the time when a copy of the motion has been served. ~~a resistance;~~ The resistance shall include a statement of disputed facts, if any~~,~~, and a memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. Notwithstanding the provisions of R.C.P. ~~117~~104 and 100, the time fixed for hearing or nonoral submission shall be not less than twenty days after the filing of the motion, unless a shorter time is ordered by the court. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. If summary judgment is rendered on the entire case, R.C.P. 179(b) shall apply.

d. Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what

material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

e. Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials ~~of his~~in the pleadings, but ~~his~~the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If ~~he~~the adverse party does not so respond, summary judgment, if appropriate, shall be entered ~~against him~~.

f. When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that ~~he cannot~~the party for reasons stated cannot present by affidavit facts essential to justify ~~his~~the opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

g. Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order

the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused ~~him~~that party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

h. Supporting statement and memorandum. Upon any motion for summary judgment pursuant to this rule, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file and affidavits which support such contentions and a memorandum of authorities.

COMMENT: Times specified in current subparagraph (c) are expanded to give sufficient time for counter-affidavits and other materials to be prepared in resistance to a summary judgment motion.

Rule 238. ~~**Procedure. Motions and affidavits relating to any claim under R.C.P. 237 shall be filed and copies delivered as provided in R.C.P. 82.**~~

COMMENT: This rule is unnecessary.

Rule 239. On motion in other cases.

a. Judgments may be obtained on motion by sureties against principals or cosureties for money due because paid by them as such; by clients against attorneys, by plaintiffs in execution against sheriffs~~, constables~~ or other officers for money or property collected by them; and in all other cases specially authorized by statute.

b. A judgment for contribution based on comparative fault may be obtained on motion (1) only where the basis for such judgment has been established by findings of fact previously made by the court or jury in the action in which the motion is filed, and (2) only by or against the persons who were parties to that action at the time said findings were made.

c. A motion for contribution permitted by this rule may be filed after final judgment has been entered in the action and the pendency of an appeal shall not deprive the court of jurisdiction to consider same.

d. A judgment for contribution on motion, where permitted under this rule, may be in the form of a declaratory judgment conditioned upon the future satisfaction by a party of one or more of the judgments entered in the action.

Rule 240. Procedure. If motion under R.C.P. 239 is filed in an action already pending, the procedure shall be as in R.C.P. 237. Otherwise, ~~notice~~the motion shall be served on the party against whom relief is sought, together with notice of the time and place of hearing. Service shall be made at least ten days before the date set for hearing. ~~thereof, stating when the motion will be filed and, in plain ordinary language, its nature and grounds, fixing the time and place of the hearing thereon. If the motion is not filed by the day specified it shall be deemed abandoned, if it is filed~~ ~~the~~The court shall hear ~~it~~ the motion at the time fixed in the notice without further pleadings~~,~~ and give judgment ~~according to the very right of the matter~~accordingly.

DIVISION X

PROCEEDINGS AFTER JUDGMENT

Rule 241. Bill of exceptions.

a. When necessary. A bill of exceptions shall be necessary only to ~~effect a showing of~~ show material portions of the record of the cause not shown by the court files, entries, or legally certified shorthand notes of the trial, if any.

b. Affidavits. Not more than five affidavits in support of any exception may be filed with the bill. Controverting affidavits, not exceeding five, may be filed within seven days thereafter~~,~~. The~~the~~ court, for good cause shown, may extend the time for filing such affidavits.

c. Certification; judge; bystanders. The proposed bill of exceptions shall be promptly presented to the trial judge, who shall sign it if it fairly presents the facts. If ~~he~~the judge refuses, and counsel so certifies, and at least two bystanders attest in writing that the exceptions are correctly stated, the bill thus certified and attested shall be filed and become part of the record.

d. Disability. Whenever the judge or master who tried the cause is for any reason unable to sign a bill of exceptions or certify the shorthand reporter's record, the same may be done by ~~his~~a successor, or by any judge of the court in which the proceeding was pending.

Rule 242. New trial defined. A new trial is the re-examination in the same court of any issue of fact or part thereof, after a verdict, or master's report, or a decision of the court.

Rule 243. Judgment notwithstanding verdict.~~, Etc. Any~~ On motion, any party may~~, on motion,~~ have judgment in ~~his~~ that party's favor despite an adverse verdict, or the jury's failure to return any verdict:

a. If the pleadings of the ~~opposing~~ adverse party ~~omit~~ fail to ~~aver~~ allege some material fact ~~or facts~~ necessary to constitute a complete ~~cause of action~~claim or defense and the motion clearly specifies such failure ~~or omission~~; or

b. If the movant was entitled to ~~have~~ a directed verdict ~~directed for him~~ at the close of all the evidence, and moved therefor, and the jury did not return such verdict, the court may then either grant a new trial or enter judgment as though it had directed a verdict for the movant.

Rule 244. New trial. ~~The~~On motion, the aggrieved party may~~, on motion,~~ have an adverse verdict, decision, or report or some portion thereof vacated and a new trial granted~~, for~~ if any of the following causes~~, but only if they~~ materially affected ~~his~~ movant's substantial rights:

a. Irregularity in the proceedings of the court, jury, master, or prevailing party; or any order of the court or master or abuse of discretion which prevented the movant from having a fair trial;

b. Misconduct of the jury or prevailing party;

c. Accident or surprise which ordinary prudence could not have guarded against;

d. Excessive or inadequate damages appearing to have been influenced by passion or prejudice;

e. Error in fixing the amount of the recovery, whether too large or too small, in an action upon contract or for injury to or detention of property;

f. That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law;

g. Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial;

h. Errors of law occurring in the proceedings, or mistakes of fact by the court;

i. On any ground stated in R.C.P. 243, the motion specifying the defect or cause giving rise thereto.

Rule 245. Motion; affidavits. Motions under R.C.P. 243 and 244 shall be in writing; and if based on grounds stated in R.C.P. 244~~"b"~~(b), 244~~"c"~~(c), or 244~~"g"~~(g) may be sustained and controverted by affidavits and heard pursuant to R.C.P. ~~116~~100(f).

Rule 246. Stay. If motions under R.C.P. 243 or 244 or petition under R.C.P. 252 are timely filed, the court may, in its discretion and on such terms, if any, as it deems proper order a stay of any or all further proceedings, executions or process to enforce the judgment, pending disposition of such motion or petition.

Rule 247. Time for motions and exceptions. Motions under R.C.P. 243 and 244 and bills of exception under R.C.P. 241 must be filed within ten days after filing of the verdict, report or decision ~~is~~

~~filed,~~ with the clerk or discharge of ~~the~~ a jury which failed to return a verdict~~is discharged, as the case may be,~~ unless the court, for good cause shown and not ex parte, grants an additional time not to exceed ~~thirty~~30 days. Resistances and replies may be filed and supporting briefs may be served as provided in R.C.P. 100(d) and (e).

COMMENT: The changes in this rule clarify that the times referred to do not begin to run until a verdict, report or decision is filed with the clerk of court, and that discharge of a jury that has returned a verdict does not begin the time until that jury's verdict is filed with the clerk.

Rule 248. Conditional rulings on grant of motion.

a. Any motion may be filed under R.C.P. 243 or 244 without waiving the right to file or rely on any other of such motions.

b. ~~The~~Not later than 10 days after entry of a judgment notwithstanding the verdict, the party whose verdict has been set aside ~~on motion for judgment notwithstanding the verdict~~ may file a motion for ~~a~~ new trial pursuant to R.C.P. 244~~, not later than ten days after the entry of the judgment notwithstanding the verdict~~.

~~a.~~*c.* If ~~the~~ a motion for judgment notwithstanding the verdict ~~provided for in R.C.P. 243~~ is granted, the court shall also rule on ~~the~~ any motion for ~~a~~ new trial~~, if any,~~ by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for ~~the~~ new trial. If ~~the~~ a motion for ~~a~~ new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. ~~In case the~~ If a motion for ~~a~~ new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless otherwise ordered by the ~~supreme~~appellate court. ~~In case the~~ If a motion for ~~a~~ new trial has been conditionally denied, the appellee ~~on appeal~~ may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the ~~supreme~~appellate court.

Rule 249. Issues tried by consent; amendment. In deciding motions under R.C.P. 243 or 244, the court shall treat issues not embraced in the pleadings but actually tried by express or implied consent of the parties ~~but not embraced in the pleadings,~~ as though they had been pleaded. Either party may then amend to conform ~~his~~ the party's pleadings to such issues and the evidence upon them; but failure so to amend shall not affect the result of the trial.

Rule 250. Conditional new trial.

a. The district court may permit a party to avoid a new trial under R.C.P. 243 or 244 by agreeing to such terms or conditions as it may impose, which shall then be shown of record and a judgment entered accordingly.

b. If the term or condition imposed is a choice between consenting to a reduced, modified or increased judgment amount or proceeding to a new trial, regardless of whether imposed by the district court or an appellate court, then the choice shall be made by filing a written consent to the reduced, modified or increased judgment with the clerk of the district court in which the case was tried within the following times: (i) If imposed by the district court, on or before 7 days before the date when an appeal must be taken pursuant to Iowa Rule of Appellate Procedure 5; (ii) If imposed by an appellate court, on or before 30 days after the date the procedendo is filed with the district court. If such a written consent is not filed within these time periods, then the new trial imposed as the other choice shall be deemed ordered automatically.

c. ~~Any~~In the event of an appeal any such term or condition or judgment entered pursuant ~~thereto~~to district court order shall be deemed of no force and effect and the original judgment entered pursuant to R.C.P. 223 shall be deemed reinstated ~~in the event of an appeal~~.

COMMENT: New subparagraph (b) specifies the manner and times within which a party may accept a modified judgment.

Rule 251. Retrial after published notice.

a. Retrial. Except in actions for dissolution of marriage and annulment of marriage, if judgment is entered against a defendant who did not appear and was served only by publication or by publication and mailing, as provided in R.C.P. 60.1, ~~he or any person legally representing him~~ the defendant may apply for retrial within six months after entry of judgment, and on giving security for costs is then entitled to ~~his~~ a defense and trial as though there ~~were~~was no judgment.

b. New judgment. After such retrial, the court may confirm the judgment, ~~or~~ modify or set it aside and order a party to restore any money or property remaining in ~~his~~ the party's possession under it, or to repay the value of any money or property ~~he~~ the party thus received.

Rule 252. ~~Judgment vacated or modified grounds.~~ Grounds for vacating or modifying judgment. Upon timely petition and notice under R.C.P. 253 the court may correct, vacate or modify a final judgment or order, or grant a new trial on any of the following grounds:

a. Mistake, neglect or omission of the clerk;

b. Irregularity or fraud practiced in obtaining ~~the same~~ it;

c. Erroneous proceedings against a minor or person of unsound mind, when such errors or condition of mind do not appear in the record;

d. Death of a party before entry of the judgment or order, and its entry without substitution of ~~his~~ a proper representative;

e. Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

f. Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the

trial, and was not discovered within the time for moving for new trial under R.C.P. 244.

Rule 253. ~~**Petition, notice, trial.**~~**Procedure for vacating or modifying judgment.**

a. Petition. A petition for relief under R.C.P. 252 must be filed and served in the original action within one year after the ~~rendition~~ entry of the judgment or order involved. It shall state the grounds for relief, and, if it seeks a new trial, show that they were not and could not have been, discovered in time to proceed under R.C.P. 236 or 244~~, and were discovered afterwards. Unless~~. If the pleadings in the original action ~~alleged~~ did not allege a meritorious action or defense the petition shall do so. It shall be supported by affidavit as provided in R.C.P. 80~~"c"~~(c).

b. Notice. ~~After filing the petition, and also within the year aforesaid,~~ The petitioner must serve the adverse party with an original notice and petition in the manner provided in division III of these rules.

c. Trial. The court shall promptly assign the petition for trial~~,~~ not less than twenty days after notice is served. The petition shall stand denied without answer; otherwise the issues and pleadings, and form and manner of the trial shall be the same, as nearly as may be, as in the trial of an ordinary action to the court, and with the same right of appeal. No new ~~cause of action~~ claim shall be introduced.

d. Preliminary determination. The court may try and determine the validity of the grounds to vacate or modify a judgment or order before trying the validity of the ~~cause of action~~ claim or defense ~~claimed~~.

e. Judgment. ~~After a stay under R.C.P. 246 if~~ If the original judgment or order is affirmed after a stay under R.C.P. 246, additional judgment shall be entered against the petitioner for the costs of the trial, and also, in the court's discretion, for damages not exceeding ten percent of the judgment affirmed.

Rule 253.1. Disposition of exhibits. One year after the final determination of a case, the clerk may destroy all exhibits filed ~~with the clerk~~ provided that ~~the clerk shall notify~~ counsel of record are notified in writing that the exhibits will be destroyed unless receipted for within sixty days thereafter. The clerk may destroy all trial exhibits without notice two years after final determination of the case.

Rule 254. Titles and liens protected.

a. The title of a good faith purchaser to property sold under the original judgment shall not be affected or impaired by any judgment, order or proceeding under R.C.P. 251 to 253, inclusive.

b. If the original judgment is merely modified pursuant to ~~either~~ any of said rules, all liens or securities obtained under it shall be preserved in the modified judgment.

Rule 255. ~~**Other proceedings not invoked.** Code sections 12255 to 12257, inclusive [Code 1939] shall not be invoked. R.C.P. 252, 253, and 254 shall apply in lieu thereof.~~ **Stricken.**

Rule 256. Judgment discharged on motion. Where matter in discharge of a judgment has arisen since its ~~rendition~~ entry, the defendant or any interested person may, on motion ~~in a summary way~~, have the same discharged in whole or in part, according to the circumstances.

Rule 257. Fraudulent assignment; motion. The court may, on motion, inquire into the assignment of a judgment, or its entry to the use of any party, and cancel the assignment or strike out such use, in whole or in part, whenever it determines the same to be inequitable, fraudulent or done in bad faith.

Rule 258. Execution; ~~Duty~~duty of officer. An officer receiving an execution must execute it with diligence. The officer shall levy on such property of the judgment debtor as is likely to bring the exact amount, as nearly as practicable. The officer may make successive levies if necessary. The officer shall collect the

things in action, by suit in the officer's own name if need be, or sell them. The officer shall sell sufficient property levied on and garnish sufficient funds, or property of sufficient value, to satisfy the execution, paying the proceeds, less the officer's own costs, to the clerk.

Rule 259. Endorsement. The officer shall endorse on the execution, the day and hour ~~he~~ the officer receives it; and the levy, sale, or other act done by virtue of it, with the date thereof; and the date and amount of any receipts or payments toward its satisfaction. Each endorsement shall be made at the time of the act or receipt; but no levy or sale under the execution shall be impaired by failure to make any such endorsement at the time here provided.

Rule 260. Levy on personalty. Levy on personalty may be made under an attachment or general execution by either of the following methods, but no lien is created until compliance with one of them.

a. By the officer taking possession of the property, and signing and appending to the execution its exact description at length, with the date of the levy~~, and affixing his signature~~; or

b. If the creditor or ~~his~~ the creditor's agent first so requests in writing, the officer may view the property, prepare a written inventory of its exact description at length, and append ~~such~~ the inventory to the execution, with ~~his~~ the officer's signed statement of the number and title of the case, the amount claimed under the execution, the exact location of the property and in whose possession, and the last known address of the judgment debtor~~; and~~. A certified transcript of the inventory and statement shall be filed with the secretary of state; but, if the property is consumer goods or if the judgment debtor is not a resident of this state, it shall be filed with the county recorder of ~~the~~ each county where the property is located~~ his certified transcript of such inventory and statement; and, in all other cases, file with the secretary of state his certified transcript of such inventory~~

~~and statement~~. Such filing shall be accepted by ~~the county recorder or~~ the secretary of state or county recorder as a financing statement and shall be marked, indexed and certified in the same manner, and shall be constructive notice of the levy to all persons. Whenever the writ is satisfied or the levy discharged the officer shall file a termination statement with the ~~county recorder or~~ secretary of state or county recorder. The fees normally charged by the ~~county recorder or~~ secretary of state or county recorder for the filing of a financing statement and the filing of a termination statement shall be paid by the officer and shall be taxed ~~by him~~ as a part of ~~his~~ the costs of the levy.

COMMENT: The changes in this rule clarify its requirements and make it gender neutral, but do not alter the substance of the rule.

DIVISION XI

DECLARATORY JUDGMENTS

Rule 261. Declaratory judgments permitted. Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The enumeration in the next three rules does not limit or restrict the exercise of ~~the~~ this general power ~~herein referred to~~.

Rule 262. Construing contracts, etc. Any person interested in an ~~contract,~~ oral or written contract, or a will, or whose rights, status or other legal relations are affected by ~~a~~ any statute, ~~or any~~ municipal ordinance, rule, regulation, contract or franchise, may have ~~determined~~ any question of the construction or validity

thereof or arising thereunder determined, and obtain a declaration of rights, status or legal relations thereunder.

Rule 263. Before or after breach. A contract may be construed either before or after ~~there has been~~ a breach ~~thereof~~.

Rule 264. Fiduciaries, beneficiaries and others. Any person interested as or through an executor, administrator, trustee, guardian, conservator or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust or the estate of a decedent, insolvent, an infant or other person for whom a guardian, or conservator has been appointed, may have a declaration of rights or legal relations ~~in respect thereto~~:

a. To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

b. To direct executors, administrators, guardians, conservators, trustees or other fiduciaries, to do or abstain from doing any particular act in their fiduciary capacity; or

c. To determine any question arising in the administration of the estate, guardianship, conservatorship or trust, including questions of construction of wills and other writings.

COMMENT: Conservators and conservatorships are added to the coverage of this rule.

Rule 265. Discretionary. The court may refuse to render a declaratory judgment or decree where it would not, if rendered, terminate the uncertainty or controversy giving rise to the proceeding.

Rule 266. Supplemental relief. Supplemental relief based on a declaratory judgment may be granted wherever necessary or proper. The application ~~therefor~~for relief shall be by petition in the original case. If the court deems the petition sufficient, it shall, on such reasonable notice as it prescribes, require any adverse party whose rights have been adjudicated to show cause why such relief should not be granted ~~forthwith~~.

Rule 267. Review. All orders, judgments or decrees under R.C.P. 261 to 266 inclusive, may be reviewed as other judgments, orders or decrees.

Rule 268. Jury trial. The right of trial by jury shall not be abridged or extended by R.C.P. 261 to 267.

Rule 269. "Person". The word "person", in R.C.P. 261 to 268, shall include any individual or entity capable of suing or being sued under the laws of Iowa.

DIVISION XII

PARTITION OF REAL AND PERSONAL PROPERTY

COMMENT TO DIVISION XII: The rules have been reorganized and rearranged for clarity. The provisions of Iowa Code section 651.1-651.6 have been incorporated into the rules. Comments to the individual rules identify the derivations of the proposed rules. A substantive change is made in R.C.P. 297 as explained in the comment to that rule. No other substantive changes are made.

Rule 270. The action ~~— pending probate~~.

a. Real or personal property may be partitioned by equitable proceedings. ~~Where the entire interest in real estate is owned by a decedent on whose estate administration or probate is pending, the action cannot be begun until four months after the second publication of the notice of the appointment of the personal representative, nor at any time while an application for authority to sell such real estate is pending in the probate proceeding.~~ **[Stricken portion moved to R.C.P. 270.1.]**

b. Property shall be partitioned by sale and division of the proceeds, unless a party prays for partition in kind by its division into parcels, and shows that such partition is equitable and practicable. But personalty which is subject to any lien on the whole or any part can be partitioned only by sale.

c. When partition can be conveniently made of part of the premises but not of all, one portion may be partitioned and the other sold, as provided in these rules.

d. Real and personal property owned by the same persons may be partitioned in the same action. The same referee may act as to both real and personal property.

COMMENT: Subparagraph (a) is from R.C.P. 270, the balance of which has been transferred to new R.C.P. 270.1. Subparagraph (b) contains what was formerly R.C.P. 278, which has been stricken. Subparagraph (c) contains Iowa Code section 651.3. Subparagraph (d) has been moved from R.C.P. 275. For circumstances under which an expectant estate can be subject to a partition-like proceeding, see Iowa Code section 557.9.

Rule 270.1. Pending probate. Where the entire interest in real estate is owned by a decedent on whose estate administration or probate is pending, the action cannot be brought until four months after the second publication of the notice of the appointment of the personal representative, or at any time while an application for authority to sell such real estate is pending in the probate proceeding.

COMMENT: The content of this rule was formerly found in R.C.P. 270.

Rule 271. Petition and answer.

a. The petition shall describe the property and plaintiff's interest ~~therein~~in it. It shall name ~~the other owners and~~ all indispensable ~~lienholders~~parties as defined in R.C.P. 273~~"a"~~(a), and state the nature and extent of each interest or lien, all so far as is known.

b. The answers of the defendants must state the amount and nature of their respective interests. They may deny the interest of any plaintiff, and by supplemental pleading, if necessary, may deny the interest of any other defendant.

COMMENT: Iowa Code section 651.2 is incorporated as (b).

Rule 272. Abstracts, plats, and surveys. The court may order the filing of a complete abstract ~~to be filed~~ covering any real estate involved~~, requiring that~~. The court may require any party to produce any abstract ~~he has~~in the party's possession or ~~controls~~control, and ~~that~~ plaintiff to complete the same~~,~~ or supply

the whole if no part is available. The expense ~~thereof~~ shall be taxed as costs. ~~Such~~The abstracts shall be available for use of the court or any party during the proceedings. A like order may be made as to plats and surveys.

Rule 273. Parties.

a. Indispensable parties. All owners of undivided interests, and all holders of liens against less than the entire property are indispensable parties to any partition. All holders of any liens on ~~personalty~~personal property are ~~also~~ indispensable to its partition.

b. Optional parties. Other persons having actual, apparent, claimed or contingent interests, and holders of liens on the entire real estate~~,~~ may ~~also~~ be made parties.

c. Interests of unborn persons. The court shall have jurisdiction over an unborn person's contingent or a prospective vested interest as a cotenant of real estate. The court shall appoint a suitable guardian ad litem to act for such person in the partition proceeding. R.C.P. 12 to 14 shall apply in such cases. The decree of partition and the division or sale thereunder shall have the same force and effect as to all such persons, or persons claiming by, through or under them, as though they were in being when the decree was entered, and the property or proceeds of the person's interest shall be subject to the order of the court until the right fully vests.

COMMENT: Subparagraph (c) has been moved from R.C.P. 298.

Rule 274. Early ~~appearance~~ hearing for partition of personal property. Upon application~~After~~after a petition for partition of personal property only is filed~~seeking partition of personalty only~~, the court may ~~order appearance and hearing~~ set the petition for hearing at any specified time and place in the judicial district on not less than five days' personal service of original notice on all defendants.

Rule 275. Joinder and counterclaim. Except as permitted by this rule there shall be no joinder of any other ~~cause of action~~claim and no counterclaim. ~~But any~~Any party may perfect or quiet title to the property, or have an adjudication of the rights of any or all parties as to any or all matters growing out of or connected with ~~it~~ the property, including liens between them. ~~Real and personal property owned by the same persons may be partitioned in the same action; and the same referee may act as to both.~~

COMMENT: The last sentence of former R.C.P. 275 has been moved to R.C.P. 270(d).

Rule 276. Jurisdiction of property or proceeds. The property or its proceeds shall be subject to the order of the court until the right becomes fully vested. ~~After a sale, each party, including holders of liens from which the property has been freed by the sale, shall have the same rights or interests in the proceeds as they had in the property sold, subject to a prior charge for costs.~~

COMMENT: The second sentence of R.C.P. 276 has been moved to R.C.P. 277.

Rule 277. ~~Estate less than fee.~~ Proceeds of sale. After a sale, all parties, including holders of liens from which the property has been freed by the sale, shall have the same rights or interests in the proceeds as they had in the property sold, subject to a prior charge for costs.

The court shall ~~make~~ appoint a trustee or make other suitable provision ~~as to~~for the proceeds of any share held for life or years or in remainder.~~, which may be done by appointing a trustee for the proceeds involved~~. The ascertained share of any absent owner shall be retained, or the proceeds invested for the owner's benefit, under like order.

COMMENT: The first paragraph was formerly found in R.C.P. 276. The last sentence of the second paragraph is from Iowa Code section 651.1. See Iowa Code section 557.17 for provisions concerning deduction of rental value from distributive shares on partition of real estate held as tenants in common.

Rule 278. [Moved to R.C.P. 270(b)] ~~**Division or sale.** Property shall be partitioned by sale and division of the proceeds, unless a party prays for partition in kind by its division into parcels, and shows that such partition is equitable and practicable. But personalty which is subject to any lien on the whole or any part can only be partitioned by sale.~~

COMMENT: The contents of R.C.P. 278 have been moved to R.C.P. 270(b).

Rule 279. Decree. The decree shall establish the shares and interests of the owners in the property. A decree for partition in kind shall appoint three referees unless the parties agree on a smaller number. A decree ordering a sale shall appoint one or more referees, and three disinterested freeholders to appraise the property, and may direct either a public or private sale. All other matters involved in the cause, including those relating to liens, may be determined by the same decree~~,~~ or by later supplemental decree or decrees.

Rule 280. Liens. The court shall ~~by supplemental decree,~~ decide ~~adjudge~~ the nature, extent, priority or validity of any party's lien ~~of any party~~, not previously determined, ~~after causing the referees to give such~~on notice to the interested parties by the referees as ~~it~~the court ~~may prescribe~~prescribes, and upon issues ~~made up~~ as the court directs. ~~No~~Such adjudication shall precede a partition in kind. ~~shall be had until after such adjudication; but a sale need not wait thereon, and the~~The pendency of any such controversy shall not delay a sale or distribution of the proceeds to any party not affected by the lien.

Rule 281. Sale free of liens. ~~Personalty must~~Personal property shall be sold free of all liens. Real property ~~must~~shall be sold free of all liens, except those ~~which are~~ held against the entire property sold.

Rule 282. Possession and preservation of property. The court may order the referee to lease or take possession of any property

involved in the action. ~~It may also~~The court may order the property preserved ~~the property either~~ by injunction or by ~~any~~ other appropriate provision for its care and custody. Expenses incurred under this rule~~, when~~ and allowed by the court~~,~~ shall be part of the costs.

Rule 283. Referees to divide; ~~oath inability~~. Referees authorized to make partition in kind shall qualify by taking an oath and need give no bond. ~~If they are unable to make such division, they shall so report to the court, which will then order a sale of personal property without further notice. As to real estate, such report will be heard under R.C.P. 286, whereupon any further decree of sale or otherwise, may be made which is proper under the exigencies of the case.~~

COMMENT: The last two sentences have been moved to R.C.P. 286 (b).

Rule 284. Partition in kind — marking parcels. ~~The referees~~Referees who partition real estate in kind shall mark out each parcel by visible monuments, and file a report thereof. ~~They~~ Referees may employ a surveyor or assistants to aid them, if necessary, whose fees and expenses, when allowed by the court, shall be part of the costs.

Rule 285. Specific allotment. For good reasons shown, ~~The~~the court may~~, for good reasons shown,~~ order referees making a partition in kind to allot a particular tract or article to a particular party.

Rule 286. Report of referees—notice and hearing.~~notice hearing.~~

a. Referees shall file a report of their proposed partition in kind, describing with reasonable particularity the respective shares and the specific property allotted to each owner, with a plat of any real estate involved. The court shall promptly fix a time and place ~~of~~for a hearing ~~thereon~~, and the referee shall give at least ten days' notice thereof in such manner as the court directs. On hearing, the court may approve, modify or disapprove

the report, and refer it to the same or different referees or order a sale.

b. Referees shall report their inability to make a division to the court. The court shall order a sale of personal property without further notice. As to real estate, the report shall be heard under paragraph (a) of this rule. On hearing, the court may make any further decree of sale or otherwise as may be proper under the exigencies of the case.

COMMENT: (b) has been moved from R.C.P. 283.

Rule 287. ~~Decree recording~~ Partition in kind; decree; apportioning costs; recording.

a. Decree; costs. On approving a partition in kind, the court shall enter a decree allotting ~~each party~~ the property or share set off to ~~him~~each party, apportioning the costs among the allottees and entering judgment against ~~each~~them for ~~his~~their individual shares thereof, which shall be ~~a~~ liens on the ~~property allotted to him~~ respective allotments, and for which special execution may issue on demand of anyone interested.

b. Recording. ~~If the decree involves real estate, the~~The clerk shall file with the recorder of ~~his own county and~~ each ~~other~~ county where any of the real estate lies, a certified transcript of so much of the decree as shows the book and page where it is recorded, the confirmation of the shares and interests in the property apportioned, the names of the parties found entitled to share therein, and an accurate description of each parcel allotted to each several owner. Such transcript shall be presented to the county auditor for transfer, ~~and~~ recorded in the deed records, and indexed as a conveyance of each parcel, with the name of the allottee as grantee and names of all other parties as grantors. The costs of making and recording such transcript shall be assessed as part of the costs in the case.

COMMENT: The last sentence of (b) is from Iowa Code section 651.4.

Rule 288. Referees to sell; oath; bond. ~~bond~~ A sale referee ~~to make sale~~ shall qualify by taking an oath. No bond shall be required before the referee conveys real estate unless ~~he~~ the referee is to sell ~~personalty or~~ personal property, take possession of real estate ~~or is to~~, or receive a payment on the sale before conveyance, in which case, ~~he~~ the referee shall give such bond as the court directs. Before conveying real estate, ~~he~~, the referee shall ~~also~~ give bond for one hundred twenty-five percent of the total sale price, payable to the parties entitled to the proceeds, conditioned for the faithful discharge of ~~his~~ the referee's duties in connection with the sale and its proceeds.

Rule 289. ~~Sales notice expense approval~~Notice and expense of sale.

~~*a. Approval. All sales shall be subject to the approval of the court, unless it dispenses with approval of a public sale of personalty, which may then be sold on full payment of the price bid.*~~

a. Notice of public sale. The referees shall give notice of the time and place of any public sale by two publications, at least six days apart, in some newspaper of general circulation in the county where the sale is to be held. The last publication shall be at least seven days prior to a sale of real estate and at least four days prior to a sale of personal property.

b. Expense. If authorized by the court, referees may advertise the sale beyond the required notice, or employ an auctioneer, clerk or assistant. ~~; and~~ When allowed by the court the expense thereof ~~when allowed by the court,~~ shall be part of the costs.

~~*c. Notice of public sale. The referees shall give notice of the time and place of any public sale, by two publications, at least six days apart, in some newspaper of general circulation in the county where the sale is to be held. The last publication shall be at least seven days prior to the sale in case of real estate, and at least four days prior thereto in case of personalty.*~~

COMMENT: Former (a) has been moved to R.C.P. 291 (a). What was (c) has been moved to paragraph (a).

Rule 290. Report of sale; notice.

a. Generally. The referees shall report all proposed sales to the court, which in its discretion, may require a hearing thereon at a specified time and place~~; in which event the referees shall give notice to the interested parties as the court then directs~~. The referee shall mail notice of the hearing as directed by the court to all parties requesting notice pursuant to paragraph (b) of this rule at the addresses shown in the requests within the time prescribed by the court and shall give such notice to other parties as the court may direct.

b. ~~Notice mandatory~~ *Request for notice.* ~~Such notice~~Notice and hearing must be accorded to any party who, before the report is approved, files with the clerk, a duplicate request therefor, bearing ~~his~~the party's name and the address to which notice is to be sent. The clerk shall docket the request, and transmit the copy to any referee forthwith, or if none has been appointed, then as soon as appointment is made. ~~The referee shall mail notice of the hearing to such party at his address shown in the request within a time prescribed by the court, which may direct that other parties be also notified.~~

COMMENT: The last sentence of proposed (a) was formerly the last sentence of subparagraph (b).

Rule 291. ~~Approving sale conveyance~~Approval or disapproval of sale; conveyance; security.

a. The court may dispense with approval of a public sale of personal property, which may then be sold on full payment of the price bid. All other sales shall be subject to the approval of the court. The court by express order may approve a private sale though it be for less than the appraised value.

b. No real estate shall be conveyed until the sale is approved by the court.~~; and no~~ No conveyance shall be made until the price is fully paid.

c. If the sale is disapproved, the money paid and the securities given must be returned to the persons entitled thereto.

d. The court in its discretion may require all or any of the parties, before they receive the monies arising from any sale, to give satisfactory security to refund the same, with interest, in case it afterward appears such parties were not entitled thereto.

COMMENT: The first two sentences in (a) have been moved from R.C.P. 289 (a). The contents of Iowa Code sections 651.5 and 651.6 are now found at paragraphs (c) and (d) of this rule.

Rule 292. ~~**Deed validity**~~**Validity of deed.** A referee's deed, recorded in the county where the land lies, shall be valid against all subsequent purchasers, and against all persons interested at the time, who were parties to the proceeding.

Rule 293. Costs. All costs shall be advanced by the plaintiff, but eventually paid by all parties proportionately to their interests. ~~; except costs~~Costs created by contests~~, which~~ shall be taxed against the losing contestant unless otherwise ordered. ~~No contest shall deprive plaintiff's attorney of the fee specified in R.C.P. 294.~~ If partition is in kind, costs shall be adjudged, and may be collected as provided in R.C.P. 287 ~~"a"~~(a). If partition is by sale, the costs shall be paid from the proceeds and deducted from the shares of the parties against whom they are taxed. These remedies for collecting costs shall be cumulative of other remedies.

COMMENT: The stricken sentence is covered by R.C.P. 294.

Rule 294. Attorney fees.

On partition of real estate, but not of ~~personalty~~personal property, the court shall fix, and tax as costs, a fee in favor of plaintiff's attorney, in a reasonable amount, to be determined by the court.~~which cannot exceed the following amount, computed on the sale price, or by appraisement if no sale is made:~~

~~1. On the first two hundred dollars or fraction thereof obtained, ten percent;~~

~~2. On the excess of two hundred to five hundred dollars, five percent;~~

~~3. On the excess of five hundred to one thousand dollars, three percent; and~~

~~4. On all sums in excess of one thousand dollars, two percent. Provided further that in contested partition cases, plaintiff's attorney shall receive such additional reasonable compensation as the court may allow, to be taxed as part of the costs.~~

Rule 295. Other fees. Appraisers and referees in all partition suits, ~~as well as~~and any attorney employed by a referee with approval of the court, shall receive such reasonable compensation as the court allows, which shall be part of the costs.

Rule 296. Final reports. Unless waived in writing by all interested parties ~~waive it in writing~~, the court shall fix a time and place of hearing the referee's final report, and prescribe the time and manner of notice which the referees shall give to all interested persons.

Rule 297. Paying small sums for minor. Whenever a minor~~, having no legal guardian,~~ for whom no conservator has been appointed is entitled to proceeds of a partition sale~~,~~ in an amount not ~~in excess of~~ exceeding ~~four~~ten thousand dollars, the court may order ~~the referee discharged of all liability therefor, by paying them~~the proceeds paid to the minor's parent or natural guardian, or the person with whom the minor resides, for the use of such minor~~, and taking a receipt therefor~~. The written receipt of such person, when filed with the court, shall discharge the referee of all liability for the proceeds.

COMMENT: Consistent with current terminology, the reference to "guardian" has been changed to "conservator." The revised rule provides a procedure similar to that contained in Iowa Code section 633.574.

Rule 298. ~~**Unborn parties.** When a person not in being may have a contingent or prospective vested interest as a cotenant of real estate, the court shall have jurisdiction over the interest of such person, and shall appoint a suitable guardian ad litem, to act for him in such proceeding, and R.C.P. 12-14 shall apply in such cases. The decree of partition and the division or sale thereunder shall be of the same force and effect as to all such persons, or persons claiming by, through or under them, as though they were in being when the decree was entered, and the property or proceeds of the interest of such person shall be subject to the order of the court until the right thereto becomes fully vested.~~

COMMENT: The contents of R.C.P. 298 have been moved to R.C.P. 273 (c).

DIVISION XIII

QUO WARRANTO

Rule 299. For what causes. A civil action in the nature of quo warranto, triable by equitable proceedings, may be brought in the name of the state against any defendant who is:

a. Unlawfully holding or exercising any public office or franchise in Iowa, or an office in any Iowa corporation; or

b. A public officer who has done or suffered to be done, an act which works a forfeiture of ~~his~~the office; or

c. Acting as a corporation in Iowa without being authorized by law so to act; or

d. A corporation exercising powers not conferred by law, or doing or omitting acts, which work a forfeiture of its corporate rights or privileges; or

e. A person or corporation claiming under a patent, permit, certificate of convenience and necessity or license of any nature which was granted by the state because of fraud, or mistake or ignorance of a material fact, or the terms of which have expired or been violated by the defendant, or which the defendant has in any

manner forfeited. The action in such cases shall be to annul or vacate the patent, permit, certificate or license in question.

Rule 300. By whom brought.

a. The county attorney of the county where the action lies ~~may~~ has discretion to bring ~~it in his discretion~~ the action, ~~and~~ but must do so when directed by the governor, general assembly or the supreme or district court, unless ~~he~~the county attorney may be a defendant, in which event the attorney general may, and shall when so directed, bring the action.

b. If on demand of any citizen of the state, the county attorney fails to bring the action, the attorney general may do so, or such citizen may apply to the court where the action lies for leave to bring it. On leave so granted, and after filing bond for costs in an amount fixed by the court, with sureties approved by the clerk, the citizen may bring the action and prosecute it to completion.

Rule 301. No joinder or counterclaim. In such action there shall be no joinder of any other ~~cause of action~~claim, and no counterclaim.

Rule 302. Petition. The petition shall state the grounds on which the action is brought, and if it involves an office, franchise or right claimed by others than the defendant, it shall name them; and they may be made parties.

Rule 303. Judgment.

a. The judgment shall determine all rights and claims of all parties respecting the matters involved, and shall include any provision necessary to enforce their rights as so determined, or to accomplish the objects of the decision.

b. The judgment shall also determine which party, if any, is entitled to hold any office in controversy.

c. If a party is unlawfully holding or exercising any office, franchise or privilege, or if a corporation has violated the law by which it exists or been guilty of any act or omission

which amounts to a surrender or forfeiture of its privileges, the judgment shall ~~oust such~~remove the party from ~~such~~ office or franchise, or forfeit ~~such~~the privilege, and forbid ~~such~~the party to exercise or use any such office, franchise or privilege.

d. If a party has merely exercised powers or privileges to which ~~he~~that party was not entitled, but which does not warrant forfeiture under the law, the judgment shall prohibit ~~him~~ that party from the further exercise thereof.

Rule 304. Costs.

a. Judgment against any defendant or intervenor shall include judgment for the costs of the action. Judgment against a pretended corporation shall ~~adjudge~~assess the costs against the person or persons acting as such.

b. If the action fails, the court may ~~adjudge~~assess the costs against any private individual who brought it; otherwise they shall be paid as provided by the statutes governing costs in criminal cases.

Rule 305. Corporation dissolved. If the judgment dissolves a corporation, the court shall make appropriate orders for the dissolution as provided by the statutes in force.

DIVISION XIV

CERTIORARI

Rule 306. When writ may issue. A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded ~~its, or his~~ proper jurisdiction or otherwise acted illegally.

Rule 307. ~~Title~~ Procedure.

a. Title. The petition shall be entitled in the name of the petitioner as plaintiff, against the inferior tribunal, board or officer as defendant.

b. Nature of proceeding. The action shall be by ordinary proceedings, so far as applicable.

c. Time for filing. The petition must be filed within thirty days from the time the tribunal, board or officer exceeded its jurisdiction or otherwise acted illegally. An extension of such time, however, may be allowed by the reviewing court upon a showing that failure to file the petition within the time provided was due to a failure of the tribunal, board or officer to notify the petitioner of the action complained of. Any motion for extension of time shall be filed with the clerk of the court in which the writ of certiorari is sought within 90 days of the action complained of. The motion and any resistance may be supported by copies of relevant portions of the record of the proceedings complained of, and by affidavits, and no other form of evidence will be received.

COMMENT: Subparagraph (b) is former R.C.P. 317; subparagraph (c) is former R.C.P. 319. There is no substantive change.

Rule 308. Other remedies. The writ shall not be denied or annulled because plaintiff has another plain, speedy or adequate remedy; but the relief by way of certiorari shall be strictly limited to questions of jurisdiction or illegality of the acts complained of, unless otherwise specially provided by statute.

Rule 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, 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 judicial magistrate appointed pursuant to Iowa Code section 602.6402 or 602.6403. 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~~reasonable certainty~~; and also to have then and there the writ~~.

Rule 310. Stay; bond. In the exercise of discretion, the~~The~~ court or justice granting the writ may~~, in its or his discretion,~~ stay the original proceedings, though no stay is ~~asked~~sought. ~~Such stay, w~~When sought by plaintiff, a stay can be granted only on ~~his~~ plaintiff's filing bond with penalty and conditions, including security for costs, prescribed by ~~such~~the court or justice, and with sureties approved by it or its clerk.

Rule 311. Notice of issuing writ. The writ may issue without notice on filing the petition, unless it is filed before a final order or decree in the original proceedings, or the plaintiff seeks a stay. Before issuing the writ in the latter cases~~,~~ the court or justice shall, and in any case may in ~~his~~the exercise of discretion, fix a time and place for hearing and prescribe reasonable notice to defendant~~ thereof~~. ~~Such~~The hearing shall be confined to the sufficiency of the petition, what records or proceedings shall be certified, and the terms of any bond to be given.

Rule 312. Service of writ. Unless the defendant accepts service of the writ, it shall be served by a sheriff or deputy sheriff. If directed to a court, service shall be on a judge or clerk thereof; if to a board or other tribunal on its secretary, clerk or any member. Service shall be by delivery of the original writ; and a copy, with return of service, shall be returned to the office of its issuance.

Rule 313. Return to writ; by whom. Where the writ is directed to a court, return thereto, if practicable, shall be made and signed by the judge whose action is complained of, otherwise by any judge of that court~~;~~. Where~~where~~ directed to an officer, ~~he~~the officer shall make and sign the return~~;~~. Where~~where~~ directed to a board or

tribunal, return thereto shall be made and signed by its presiding officer, or its clerk ~~of~~or secretary.

Rule 314. Defective return. If the return is defective, the court or justice who issued the writ, on ~~his~~the court's or justice's own motion or that of any party, may order a further return; or compel obedience to the writ or to such order, by attachment or citation for contempt.

Rule 315. Trial. When full return has been made, the court shall fix a time and place of hearing, and hear the parties upon the record made by the return. In its discretion, it may receive any transcript of the evidence taken in the original proceeding, and such other oral or written evidence as is explanatory of the matters contained in the return. Such transcript and additional evidence shall be considered for the sole purpose of determining the legality of the proceedings, and the sufficiency of the evidence before the original tribunal, board or officer to sustain its, or ~~his~~the officer's action, unless otherwise specially provided by statute.

Rule 316. Judgment limited. Unless otherwise specially provided by statute, the judgment on certiorari shall be limited to sustaining the proceedings below, or annulling the same wholly or in part, to the extent that they were illegal or in excess of jurisdiction, and prescribing the manner in which either party may proceed further, nor shall such judgment substitute a different or amended decree or order for that being reviewed.

Rule 317. ~~Nature of proceeding~~ [Moved to 307(b)]. ~~The action shall be by ordinary proceedings, so far as applicable.~~

Rule 318. Appeal. Appeal to the supreme court lies from a judgment of the district court in a certiorari proceeding, and will be governed by the rules applicable to appeals in ordinary actions. Appeal is discretionary when the order or judgment sought to be reviewed is itself a discretionary review of another tribunal, board, or officer.

Rule 319. ~~**Limitation**~~ [Moved to 307(c)]. ~~The petition must be filed within thirty days from the time the tribunal, board or officer exceeded its jurisdiction or otherwise acted illegally. An extension of such time, however, may be allowed by the reviewing court upon a showing that failure to file the petition within the time provided was due to a failure of the tribunal, board or officer to notify the petitioner of the action complained of. Any motion for extension of time shall, within ninety days of the action complained of, be filed with the clerk of the court in which the writ of certiorari is sought. The motion and any resistance may be supported by copies of relevant portions of the record of the proceedings complained of, and by affidavits, and no other form of evidence will be received.~~

DIVISION XV

INJUNCTIONS

Rule 320. Independent or auxiliary remedy. An injunction may be obtained as an independent remedy by an action in equity, or as an auxiliary remedy in any action. In either case, the party applying therefor may claim damages or other relief in the same action. An injunction may be granted as part of the judgment; or may be granted by order at any prior stage of the proceedings, and is then known as a temporary injunction.

Rule 321. Temporary; when allowed. A temporary injunction may be allowed:

a. When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure ~~him~~plaintiff, or,

b. Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's right respecting the

subject of the action and tending to make the judgment ineffectual, or,

c. In any case specially authorized by statute.

Rule 322. Endorsing refusal. A court, or justice of the supreme court, refusing a temporary injunction shall endorse the refusal on the petition therefor.

Rule 323. Statement re prior presentation. A petition seeking a temporary injunction shall state, or the attorney shall certify thereon, whether a petition for the same relief, or part thereof, has been previously presented to and refused by any court or justice, and if so, by whom and when.

Rule 324. ~~Outside district.~~ Place for filing. ~~No~~A request for a temporary injunction shall be ~~granted by a district court different from the one~~ filed in the county where the action is, or will be, pending~~, except upon affidavit that the application therefor cannot be promptly made to the latter court~~.

Rule 325. By whom granted. A temporary injunction may be granted by:

a. ~~The court~~A judge of the district in which the action is or will be pending;

b. The supreme court or a justice thereof~~;~~.

~~*c.* Any other district court, when permitted by R.C.P. 324.~~

Rule 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. When the applicant is requesting that a temporary injunction be issued without notice, applicant's attorney must certify to the court in writing either (a) the efforts which have been made to give notice to the adverse party or that party's attorney or (b) the reason supporting the claim that notice should not be required. 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.

Rule 327. Bond. The order directing a temporary injunction must require that before the writ issues, a bond be filed, with a penalty to be specified in the order, which shall be one hundred twenty-five percent of the probable liability to be incurred. Such bond with sureties to be approved by the clerk shall be conditioned to pay all damages which may be adjudged against the petitioner by reason of the injunction. But in actions for dissolution of marriage, separate maintenance, annulment of marriage, or domestic abuse, the court in its discretion may waive any bond, or fix its penalty in any amount deemed just and reasonable.

Rule 328. 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. A hearing shall be held within 10 days after the filing of the motion. ~~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.~~

COMMENT ON AMENDMENTS TO R.C.P. 324, 325, 326, AND 328: Concern has been raised regarding the issuance of temporary injunctions without a hearing or notice to the adverse party, and the subsequent difficulty in scheduling a hearing to dissolve, vacate or modify the injunction. The amendment to R.C.P. 326 puts the burden upon the applicant to certify that he or she has either made an attempt to provide notice or has legitimate reasons for not providing notice. The amendment to R.C.P. 328 provides once the temporary injunction has been issued, the adverse party may then file a motion to dissolve, vacate or modify the injunction, which shall be heard within ten days. This puts the burden upon the adverse party to request the hearing. Further amendments to R.C.P. 324, 325, and 328 delete the option of having a temporary injunction granted by a judge of a district other than the one in

which the action is or will be pending. This insures that proper jurisdiction for the injunction is obtained at the inception of the case.

Rule 329. Enjoining proceedings or judgment; venue; bond. An action seeking to enjoin proceedings in a civil action, or on a judgment or final order, must be brought in the county and court where such proceedings are pending or such judgment or order was obtained, unless that be the supreme court, in which case the action must be brought in the court from which appeal was taken. Any bond in such action must be further conditioned to pay or comply with such judgment or order, or to pay any judgment that may be recovered against the petitioner on the ~~cause of action~~claim enjoined.

Rule 330. Violation as contempt. Violation of any provision of any temporary or permanent injunction shall constitute contempt and be punished accordingly.

DIVISION XVI

PROCEEDINGS FOR JUDICIAL REVIEW OF AGENCY ACTION

Rule 331. Applicability of rules. Except to the extent that they are inconsistent with any provision of the Iowa Administrative Procedure Act, Iowa Code chapter 17A, or with the rules specifically set forth in this division, the rules of civil procedure shall be applicable to proceedings for judicial review of agency action brought under that Act.

Rule 332. Time for 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 motion or answer.

Rule 333. Contested case proceedings-intervention, schedule, applicability of R.C.P. 179"b"(b). In proceedings for judicial

review of agency action in a contested case pursuant to Iowa Code section 17A.19:

a. An intervenor may join with petitioner or respondent or claim adversely to both.

b. Upon request of any party the reviewing court shall, or upon its own motion may, establish a schedule for the conduct of the proceeding.

c. The provisions of R.C.P. 179~~"b"~~(b) shall apply.

DIVISIONS XVII ~~and XVIII~~

R.C.P. 354 to ~~365~~362

Abolished July 1, 1973.

DIVISION XVIII

R.C.P. 363 to 364. Abolished.

Rule 365. Subpoenas.

a. Form; issuance. Every subpoena shall

(1) state the name of the court from which it is issued and the title of the action, including its docket number;

(2) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified. A command to produce evidence or to permit inspection may be joined with a command to appear at trial, hearing or deposition, or may be issued separately;

(3) be issued by the clerk of court as provided by these Rules of Civil Procedure or by statute;

(4) set forth the text of subdivisions (b), (c) and (d) of this rule.

b. Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (c)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance, if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place outside of the county in which that person resides, is employed or regularly transacts business in person, except that, such a person may be ordered to attend trial

anywhere within the state in which the person is served with a subpoena;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

c. Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When the information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

d. Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a

nonparty to attend or produce at a place not within the limits provided by clause (ii) or subparagraph (b)(3)(A).

e. Service. Subpoenas shall be served as prescribed in these rules or by statute.

f. Notice. Prior notice of any commanded production of documents and things or inspection of premises shall be served on each party in the manner prescribed by R.C.P. 106(b) and in a manner reasonably calculated to give all parties an opportunity to object before the commanded production or inspection is to occur.

g. *Limits.* An attorney may ~~issue a subpoena or~~ cause a subpoena to be issued only in a pending proceeding governed by these Rules of Civil Procedure and in which the attorney has appeared.

DIVISION XIX

RULES OF A GENERAL NATURE

Rule 366. Computing time; holidays. In computing time under these rules the provisions of Iowa Code section 4.1, subsection 34, shall govern.

Rule 367. Death, retirement or disability of judge.

a. In the event of the death or disability of a judge in the course of a proceeding at which ~~he~~ the judge is presiding, or while a motion for new trial or for judgment notwithstanding the verdict, or for other relief, is pending, any other judge of the district may hear or act upon the same, and, if in ~~his~~ the judge's opinion ~~he~~ the judge can proceed with the matter or determine the motion ~~he~~ the judge shall do so; otherwise, ~~he~~ the judge may order a continuance, declare a mistrial, order a new trial of all or any of the issues, or make such disposition of the matter as the situation warrants.

b. In the event of the death or disability of a judge who has under advisement an undecided motion, or case tried ~~to him~~ without a jury, any other judge of the district may be called in,

or a judge from another district may be appointed by the chief justice of the supreme court to consider the same, and, if by a review of the transcript or a reargument ~~he~~ the judge can, in ~~his~~ the judge's opinion, become sufficiently informed ~~himself~~ to ~~enable him to~~ render a decision, ~~he~~ the judge shall do so; otherwise ~~he~~ the judge may order a continuance, declare a mistrial, or order a new trial of all or any of the issues, or direct the recalling of any witnesses, or make such disposition of the matter as the situation warrants.

c. In the event of the death, disability or retirement of a judge before the record for appeal in any case tried by ~~him shall have been~~ the judge is settled, the ~~same~~ record shall be settled by another judge of the district, or by a judge of another district appointed for that purpose by the chief justice of the supreme court.

Rule 368. Appeal to district court from administrative body. Where appeal to the district court from an action or decision of any officer, body or board is provided for by statute and the statute does not provide for the formulation of the issues either before such officer, body or board, or in the district court, the appellant shall file a petition in the district court within ten days after perfecting the appeal, or within such time as may be prescribed by the court. The appellee shall file motion or an answer to such petition within ~~ten~~ 20 days thereafter, or within such further time as may be prescribed by the court. Thereafter the rules of pleading and procedure in actions in the district court shall be applicable.

Rule 369. Effect of notice by posting. Notice by posting shall not have legal effect except where expressly authorized by statute.

Rule 370. General provisions, comments and footnotes.

a. The past, present and future tense shall each include the others; the masculine, feminine and neuter gender shall include the

others; and the singular and plural number shall each include the other.

b. Rule and subdivision headings do not in any manner affect the scope, meaning or intent of the provisions of these rules.

c. All references to sources, comments, and footnotes are incorporated solely for convenience in the use of the rules and do not form a part thereof.

Rule 371. Power of supreme court to change. Stricken by Report 1978, effective July 1, 1979. See also R.C.P. 371, Report 1982, stricken by 1982 Iowa Acts, ch 1130.

Rule 372. Rules by trial courts. Each district court, by action of a majority of its district judges, may from time to time make and amend rules governing its practice and administration not inconsistent with these rules. All such rules or changes shall be subject to prior approval of the supreme court.

Rule 373. Purpose of administrative rules. The purpose of all rules for court administration shall be to provide for the administration of justice in an orderly, efficient and effective manner, in accordance with the highest standards of justice and judicial service.

Rule 374. Supervision of courts. The supreme court, by and through the chief justice, shall exercise supervisory and administrative control over all trial courts in the state, and over the judges and other personnel thereof, including but not limited to authority to make and issue any order a chief judge may make under R.C.P. 377, or to modify, amend or revoke any such order or court schedule.

Rule 375. Recall and transfer of judges. The supreme court by and through the chief justice may at any time order the recall of eligible retired judges for active service, and the transfer of active judges and other court personnel from one judicial district to another to provide a sufficient number of judges to handle the judicial business in all districts promptly and efficiently.

Rule 376. Selection of chief judges. Not later than December 15 in each odd-numbered year the chief justice, with the approval of the supreme court, shall appoint from the district judges of each district one of their number to serve as chief judge. The judge so appointed shall serve for a two-year term and shall be eligible for reappointment. Vacancies in the office of chief judge shall be filled in the same manner within 30~~thirty~~ days after the vacancy occurs~~. Provided~~, however, if there is a vacant judgeship in a district, the chief judge therein shall be appointed within 30~~thirty~~ days after such vacancy is filled by qualification of the appointee. During any period of vacancy the judge of longest service in the district shall be the acting chief judge.

Rule 377. Duties and powers of chief judges. In addition to their ordinary judicial duties, chief judges shall exercise continuing administrative supervision within their respective districts over all district courts, judges, magistrates, officials and employees thereof for the purposes stated in R.C.P. 373. They shall by order fix times and places of holding court and designate the respective presiding judges and magistrates; they shall supervise and direct the performance of all administrative business of their district courts; they may conduct judicial conferences of their district judges, district associate judges, and magistrates to consider, study and plan for improvement of the administration of justice; and may make such administrative orders as necessary. No chief judge shall at any time direct or influence any judge or magistrate in any ruling or decision in any proceeding or matter whatsoever.

The chief judge of a judicial district may appoint from the other district judges an assistant or assistants to serve on a judicial district-wide basis and at the chief judge's~~his~~ pleasure. When so acting, such an assistant shall have those powers and duties given to the chief judge by statute or rule of court which are specified in the order of ~~his~~ appointment. Such appointment shall by general order be made a matter of record in each county in the judicial district.

Rule 378. Court and trial sessions. Chief judges shall by order provide for:

a. A court session by a district judge at least once each week in each county of the district, announced in advance in the form of a written or printed schedule, provided that, if in the opinion of the chief judge more efficient operations in the district will result, such court sessions may be at different intervals than once each week.

b. Additional sessions in each county for the trial of cases, and other judicial matters, of such duration and frequency as will best serve to expeditiously dispose of pending cases ready for trial, and other pending judicial matters.

Rule 379. Order appointing chief judges. The order appointing chief judges shall be filed with the clerk of the supreme court who shall mail certified copies to the clerk of each district court.

Rule 380. Stricken by Report November 25, 1985, effective February 3, 1986.

Rule 381. Forms. The forms contained in the Appendix of Forms following this rule are for use and are sufficient under the Iowa Rules of Civil Procedure.

APPENDIX OF FORMS

1. *FORM OF ORIGINAL NOTICE FOR PERSONAL SERVICE.*

IN THE IOWA DISTRICT COURT FOR ..... COUNTY

Plaintiff(s), PIN	)	No. .....
	)	
vs.	)	(INSERT "LAW" OR "EQUITY")
	)	
Defendant(s), PIN.	)	ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are ~~hereby~~ notified that ~~there is now on file~~ a petition has been filed in the office of the clerk of ~~the above~~ this court~~;~~ naming you as the defendant in this action. A copy of the ~~a~~ petition ~~in the above entitled action, a copy of which petition is attached hereto~~ (and any documents filed with it) is attached to this notice. The ~~plaintiff's~~ attorney for the plaintiff(s) is _____, whose address is _____, Iowa _____. That attorney's phone number is _____; facsimile number _____.

You ~~are further notified that unless~~, must serve a motion or answer within 20 days after service of this original notice upon you~~, you serve~~ and, within a reasonable time thereafter, file~~;~~ your~~a~~ motion or answer~~;~~ with the ~~in the Iowa District Court~~ Clerk of Court for _____ County, at the county courthouse in _____, Iowa~~;~~. If you do not, judgment by default may~~will~~ be rendered against you for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at _____. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

(SEAL)

_____
CLERK OF ~~THE ABOVE~~ COURT
_____ County Courthouse
_____, Iowa __ ____

IMPORTANT~~NOTE:~~

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS. ~~The attorney who is expected to represent the defendant should be promptly advised by defendant of the service of this notice.~~

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), PIN	)	No. .....
	)	
vs.	)	(INSERT "LAW" OR "EQUITY")
	)	
Defendant(s), PIN.	)	**ORIGINAL NOTICE**

TO THE ABOVE-NAMED DEFENDANT(S):

You are ~~hereby~~ notified that ~~there is now on file~~ a petition has been filed in the office of the clerk of ~~the above~~ this court~~;~~ naming you as the defendant in this action. A copy of the ~~a~~ petition ~~in the above-entitled action, a copy of which petition is attached hereto~~(and any documents filed with it) is attached to this notice. The ~~plaintiff's~~ attorney for the plaintiff(s) is _____, whose address is _____, Iowa _____. That attorney's phone number is _____; facsimile number _____.

You must serve a motion or answer~~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~~,~~ your~~a~~ motion or answer~~, in the Iowa District~~ with the Clerk of Court for _____ County, at the county courthouse in _____, Iowa~~;~~. If you do not, judgment by default may~~will~~ be ~~entered and judgment~~ rendered against you ~~by the court~~for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at _____. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

(SEAL)

_____
CLERK OF THE ABOVE COURT
_____ County Courthouse
_____, Iowa _____

IMPORTANT~~NOTE:~~

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS. ~~The attorney who is expected to represent the defendant should be promptly advised by defendant of the service of this notice.~~

3. *FORM OF ORIGINAL NOTICE AGAINST FOREIGN CORPORATION OR NONRESIDENT UNDER IOWA CODE SECTION 617.3.*

IN THE IOWA DISTRICT COURT FOR ..... COUNTY

Plaintiff(s), PIN	)	No. .....
	)	
vs.	)	(INSERT "LAW" OR "EQUITY")
	)	
Defendant(s), PIN.	)	ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are ~~hereby~~ notified that ~~there is now on file~~ a petition has been filed in the office of the clerk of ~~the above~~ this court~~;~~ naming you as the defendant in this action. A copy of the ~~a~~ petition ~~in the above-entitled action, a copy of which petition is attached hereto~~(and any documents filed with it) is attached to this notice. The ~~plaintiff's~~ attorney for the plaintiff(s) is _____, whose address is _____, Iowa _____. That attorney's phone number is _____; facsimile number _____.

You must serve a motion or answer ~~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~~;~~ your~~a~~ motion or answer~~, in the Iowa District~~ with the Clerk of Court for _____ County, at the county courthouse in _____, Iowa~~;~~. If you do not, judgment by default may~~will~~ be ~~entered and judgment~~ rendered against you ~~by the court~~for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at _____. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

(SEAL)

_____
CLERK OF THE ABOVE COURT
_____ County Courthouse
_____, Iowa _____

IMPORTANT~~NOTE:~~

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS. ~~The attorney who is expected to represent the defendant should be promptly advised by defendant of the service of this notice.~~

4. *FORM OF ORIGINAL NOTICE FOR PUBLICATION.*

IN THE IOWA DISTRICT COURT FOR ..... COUNTY

Plaintiff(s), PIN	)	No. .....
	)	
vs.	)	(INSERT "LAW" OR "EQUITY")
	)	
Defendant(s), PIN.	)	ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are ~~hereby~~ notified that ~~there is~~ a petition has been filed ~~now on file~~ in the office of the clerk of ~~the above~~ this court naming you as a defendant in this action, ~~a petition in the above entitled action,~~ which petition prays[1] _____. The ~~plaintiff's~~ attorney for the plaintiff(s) is _____, whose address is _____, Iowa _____. That attorney's phone number is _____; facsimile number _____.

You must serve a motion or answer ~~are further notified that unless,~~ on or before the[2] _____ day of _____, _____, ~~you serve,~~ and within a reasonable time thereafter, file, your~~a~~ motion or answer~~, in the Iowa District~~ with the Clerk of Court for _____ County, at the courthouse in _____, Iowa~~;~~. If you do not, judgment by default may~~will~~ be rendered against you for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at _____. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

(SEAL)

_____
CLERK OF THE ABOVE COURT
_____ County Courthouse
_____, Iowa _____

---

[1]Here make a general statement of the claim or claims and, subject to the limitation ~~of~~in R.C.P. ~~69~~70(a), the relief demanded (R.C.P. ~~50~~49(a)).

[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).

IMPORTANT~~NOTE:~~

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS.~~The attorney who is expected to represent the defendant should be promptly advised by defendant of the service of this notice.~~

9. *FORM OF NOTICE OF INTENT TO FILE WRITTEN APPLICATION FOR DEFAULT.*

IN THE IOWA DISTRICT COURT FOR ..... COUNTY

Plaintiff(s),	)	No. .....
	)	NOTICE OF INTENT
vs.	)	TO FILE WRITTEN
	)	APPLICATION FOR DEFAULT
Defendant(s).	)	

TO: (defendant)

DATE OF NOTICE: (date of mailing)

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A DEFAULT JUDGMENT WILL BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD SEEK LEGAL ADVICE AT ONCE.

_____

(Signature of Plaintiff or Attorney)

_____

(Address)

_____

(Phone Number)

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF A CHANGE IN THE IOWA RULES OF APPELLATE PROCEDURE	REPORT OF THE SUPREME COURT

TO: DIANE BOLENDER, SECRETARY OF THE LEGISLATIVE COUNCIL OF THE STATE OF IOWA.

Pursuant to Iowa Code sections 602.4201 and 602.4202, the Supreme Court of Iowa has prescribed and hereby reports on this date to the Secretary of the Legislative Council concerning amendments to Iowa Rule of Appellate Procedure 1 as shown in the attached Exhibit "A".

Pursuant to Iowa Code section 602.4202(2), the changes to Iowa Rule of Appellate Procedure 1 are to take effect January 2, 1998.

Respectfully submitted,

THE SUPREME COURT OF IOWA

By Arthur A. McGiverin
Arthur A. McGiverin, Chief Justice

Des Moines, Iowa

Oct. 30, 1997

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Legislative Council, hereby acknowledge delivery to me on the 4th day of November, 1997, the Report of the Supreme Court pertaining to the Iowa Rules of Appellate Procedure.

Diane E. Bolender
Secretary of the Legislative Council

Please return to: Iowa Supreme Court Clerk's Office, State Capitol, Des Moines, IA 50319.

EXHIBIT "A"

RULES OF APPELLATE PROCEDURE

I. APPEALS IN CIVIL CASES

Rule 1. From final judgment.

***

b. A final order or judgment on an application for attorney fees entered after the final order or judgment in the underlying action is separately appealable. Notwithstanding appeal of a final order or judgment in the underlying action, the district court retains jurisdiction to consider an application for attorney fees in that action. If the final order or judgment in the underlying case is also appealed, the appellant on any appeal of the order or judgment on the attorney fees application shall file a motion to consolidate the two appeals so that they may be submitted and decided together.

~~b.~~ c. No interlocutory ruling or decision may be appealed except as provided in ~~rule 2, rules of appellate procedure,~~ Iowa Rule of Appellate Procedure 2 until after the final judgment or order. No error in such interlocutory ruling or decision is waived by pleading over or proceeding to trial. On appeal from the final judgment, appellant may assign as error such interlocutory ruling or decision or any final adjudication in the trial court under R.C.P. 86, from which no appeal has been taken, where such ruling, decision or final adjudication is shown to have substantially affected the rights of the complaining party.

~~c.~~ d. If an appeal to the supreme court is improvidently taken because the order from which appeal is taken is interlocutory, this alone shall not be ground for dismissal. The papers upon which the appeal was taken shall be regarded and acted upon as an application for interlocutory appeal under Iowa Rule of Appellate Procedure 2, as if duly presented to the supreme court at the time the appeal was taken.